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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

APPLICATION RECORD
Returnable December 20, 2022

December 20, 2022

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TO: THE SERVICE LIST

Court File No.:

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(as at December 20, 2022)

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Court File No.

ONTARIO
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APPLICATION RECORD

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Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List:

☐ In person;
☐ By telephone conference;
☒ By video conference.

on **December 20, 2022 at 1:00 p.m.,** or as soon after that time as the application can be heard, at the following location:

Join Zoom Meeting
https://ca01web.zoom.us/j/69713164235?pwd=Z0UxMHc5OWtLZU5RNndScFlZQzNaZz09

Please refer to the video conference details attached at Schedule "A" hereto in order to attend the application and advise if you plan to attend the application by emailing Nancy Thompson at nancy.thompson@blakes.com.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: Issued by: _____
Local Registrar

Address of Court Office: 330 University Avenue
Toronto, Ontario M5G 1R7

TO: SERVICE LIST

APPLICATION

THE APPLICANT MAKES AN APPLICATION FOR:

1. DCL Corporation (the "**Applicant**") makes this application for an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended ("**CCAA**"), substantially in the form attached as Tab 3 of the Application Record, *inter alia*[1]:

(a) immediate relief in the form of a stay of proceedings;

(b) a limited related party stay of proceedings in respect of certain inventory of DCL USA LLC located in Ontario (the "**DCL USA LLC Inventory**");

(c) the appointment of Alvarez & Marsal Canada Inc. as monitor of the Applicant (the "**Monitor**");

(d) approval of Scott Davido's appointment as chief restructuring officer (the "**CRO**") pursuant to the terms of the engagement letter dated November 16, 2022;

(e) approval of a the DIP ABL Credit Agreement substantially in the form attached as Exhibit "L" to the Affidavit of Scott Davido sworn December 20, 2022 (the "**Davido Affidavit**"), for the provision of interim financing ("**DIP Financing**") among Wells Fargo Bank, National Association, as the administrative agent (in such capacity, "**DIP Agent**") and sole lead arranger and booker runner for on behalf of the lenders party thereto (the "**DIP Lenders**"), and the Applicant, DCL USA LLC and DCL BP, as borrowers, and the other members of the DCL Group, as guarantors, with permitted drawings being limited to what is reasonably necessary during the initial 10-day period before the Filing Date;

[1] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Affidavit of Scott Davido sworn December 20, 2022 in support of this application.

(f) approval of a court-ordered charge (the "**DIP Charge**") against the property of the Applicant, other than with respect to certain collateral, in favour of the DIP Agent and DIP Lenders to secure the obligations under the DIP Financing and DIP ABL Credit Agreement;

(g) authorization to make certain payments relating to wages, taxes and pension obligations, irrespective of whether such obligations arose prior to or after the Filing Date;

(h) approval of the continued use of the Applicant's cash management system;

(i) granting of the Administration Charge, in the maximum amount of $175,000[2] over certain of the Applicant's property to secure payments of reasonable fees and disbursements incurred both prior to and after the filing of this Application, of the Monitor, counsel to the Monitor and counsel to the Applicant;

(j) granting of the Directors' Charge, to the maximum amount of CAD$1,000,000 over certain of the Applicant's property to secure the indemnification obligations of the Applicant in favour of the Applicant's officers and directors (the "**Directors**") for any such liabilities as they may incur in these proceedings in their capacity as officers and directors, to the extent such liability is not covered by existing directors' and officers' insurance;

(k) approval of the Intercompany Agreements;

(l) granting of the Intercompany Charge over certain of the Applicant's property to secure the intercompany balances owing by the Applicant to DCL USA LLC;

[2] All currency references contained herein are to USD, unless otherwise indicated

(m) authorization to serve the within application record to other parties as a means of providing notice of the Comeback Hearing and the Bidding Procedures Hearing; and

(n) adoption of the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network to facilitate communications between this Court and the U.S. Bankruptcy Court.

2. The Applicant has scheduled a comeback hearing on December 29, 2022 (the "**Comeback Hearing**") to seek the following additional relief:

(a) granting restructuring powers to the Applicant that will enable it to obtain a going concern solution with the assistance of the Monitor;

(b) increasing the quantum that the Applicant is able to borrow under the DIP ABL Credit Agreement to meet its working capital needs during the pendency of these proceedings;

(c) extending the DIP Charge over the DCL USA LLC Inventory to secure the obligations of DCL USA under the DIP ABL Credit Agreement and related documents;

(d) authorizing the Applicant to make certain pre-filing payments to critical vendors with the consent of the Monitor;

(e) increasing the quantum of the Administration Charge to the maximum amount of $1,100,000;

(f) increasing the quantum of the Directors' Charge to the maximum amount of CAD$1,700,000; and

(g) approval, *nunc pro tunc*, of the retention of TM Capital Corp. as investment banker and sale advisor, pursuant to the terms of an engagement letter.

3. The Applicant intends to seek an order approving certain bidding procedures for the business and assets of the Applicant to be heard at a later date, to be scheduled by this Court (the "**Bidding Procedures Hearing**").

4. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

Background

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

6. The Applicant is part of an integrated business with the DCL Group. The DCL Group operates six manufacturing facilities throughout Canada, the U.S., the Netherlands and United Kingdom. The DCL Group supplies pigments and dispersions to customers in the coatings, plastics and digital printing markets.

7. As a result of heavy inflation in the global economy and the consistent pressures of increasing input costs, the Applicant's business of manufacturing pigments for coatings, plastics and inks is facing serious financial challenges. The Applicant's capital structure has placed substantial strain on its business.

8. The Applicant is a company to which the CCAA applies and has claims in excess of $5 million.

9. The Applicant requires relief under the CCAA to stabilize its business, obtain needed financing and implement a going concern sale of its business. The Applicant is of the view that seeking protection under the CCAA is in the best interests of the broad cross section of the Applicant's stakeholders including creditors, employees, pensioners, suppliers, and customers.

Stay of Proceedings

10. The Applicant requires a stay of proceedings to prevent enforcement action by its creditors and disruption to its business. A stay of proceedings will preserve the *status quo* and afford the Applicant the breathing room and stability required to advance its restructuring efforts, including implementing a going concern sale solution, with minimal disruption to its business.

11. The Applicant further seeks a related party stay of proceedings in respect of the DCL USA LLC Inventory. The value of the DCL USA LLC Inventory is material to the business and a narrow related party stay of proceedings will ensure that this inventory is not subject to any precipitous creditor action.

Appointment of Monitor

12. Alvarez & Marsal Canada Inc. has consented to act as the Court-appointed Monitor of the Applicant subject to court approval (the "**Monitor**").

13. Alvarez & Marsal Canada Inc. has extensive experience in matters of this nature, including in cross-border restructuring proceedings, and is therefore well-suited to this mandate.

Appointment of CRO

14. The CRO is an experienced restructuring professional having served many similar roles in prior large restructurings, including those with cross-border elements, and has agreed to assist with the Applicant's operational and restructuring efforts. The CRO has consented to act in this capacity within the proceeding.

DIP ABL Credit Agreement and DIP Financing

15. Pursuant to the DIP ABL Credit Agreement, the DIP Lenders have agreed to provide DIP Financing to the Applicant in the maximum principal amount of $55 million.

16. Absent the proposed DIP Facility, the Applicant would be unable to maintain continued business operations in the ordinary course. Given the current economic and market conditions and the Applicant's extensive liabilities, the proposed DIP Facility is urgently needed to pay the Applicant's working capital needs and other costs associated with the CCAA proceedings.

17. Approval of the interim financing facility would provide stability to the Applicant's business, ensure liquidity and the continued day-to-day operation of the Applicant's business.

18. The proposed guarantee by the Applicant of the obligations of DCL USA LLC under the DIP ABL Credit Agreement is reasonable and appropriate in light of the circumstances.

The Charges

19. The Applicant is seeking the Court's approval of an Administration Charge, a Directors' Charge, and an Intercompany Charge as part of the Initial Order, in addition to a DIP Charge as part of the Amended and Restated Initial Order (collectively, the "**Charges**") to secure the professional services required to complete this CCAA proceeding, ensure the continued assistance and oversight of the Applicant's directors and officers, and maintain the Applicant's continued operation in the ordinary course of business during the stay of proceedings.

20. The relief sought in the proposed Initial Order, including in respect of the Charges, is limited to what is reasonably necessary during the stay of proceedings.

Intercompany Agreements

21. The Applicant is part of an integrated business with the DCL Group and the Applicant sells substantially all of its manufactured finished goods inventory to DCL USA LLC.

22. In the ordinary course of their business operations, intercompany advances are exchanged between the Applicant and DCL USA LLC.

23. It is therefore necessary for the Court to allow such intercompany advances to continue, and to grant the Intercompany Charge in order to secure such intercompany advances, and ensure the Applicant is able to receive sufficient funding from DCL USA LLC.

Material or evidence to be relied upon:

(a) the Davido Affidavit, and the exhibits thereto;

(b) the Monitor's Pre-Filing Report and the appendices attached thereto;

(c) the consent of the Monitor;

(d) such further and other evidence and material as counsel may advise and this Honourable Court may permit.

Applicable acts, regulations and rules:

(e) the provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Honourable Court;

(f) rules 2.03, 3.02, 14.05(2) and 16 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194, as amended; and

(g) such further acts, regulations and rules as counsel may advise and this Honourable Court may permit.

December 20, 2022

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SCHEDULE "A"

Join Zoom Meeting
https://ca01web.zoom.us/j/69713164235?pwd=Z0UxMHc5OWtLZU5RNndScFlZQzNaZz09

Meeting ID: 697 1316 4235
Passcode: 891451
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65.39.152.160 (Canada Vancouver)
Meeting ID: 697 1316 4235
Passcode: 891451

Court File No.:

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

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

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF APPLICATION

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TAB 2

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

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

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

AFFIDAVIT OF SCOTT DAVIDO

(Sworn December 20, 2022)

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Court File No.

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

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

AFFIDAVIT OF SCOTT DAVIDO

(Sworn December 20, 2022)

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

I. Introduction

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

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

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

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

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

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

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

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

A. Nature of Application and Overview of Relief Sought

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

(a) H.I.G. Colors, Inc. ("**Colors**");

(b) H.I.G. Colors Holdings, Inc. ("**Holdings**");

(c) DCL Holdings (USA), Inc. ("**DCL Holdings**") (formerly Lansco Holdings, Inc.);

(d) DCL Corporation (USA) LLC ("**DCL USA LLC**") (formerly Lansco Colors, LLC);

(e) DCL Corporation (BP), LLC ("**DCL BP**"); and

(f) Dominion Colour Corporation (USA) ("**DCC USA**")

(collectively, "**DCL US**" and together with the Applicant and the Applicant's other subsidiaries, the "**DCL Group**").

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

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

(b) should the Initial Order be granted, the Amended and Restated Initial Order, the request for which is to be heard at a hearing to be scheduled by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") within 10 days from the date of the Filing Date (the "**Comeback Hearing**"); and

(c) an order to approve certain bidding procedures for the business and assets of the Applicant and DCL US (the "**Bidding Procedures Order**"), the request for which is to be heard at a later date, to be scheduled by this Court, and coordinated with the date that the U.S. Bankruptcy Court hears a similar motion in the Chapter 11 Proceedings (the "**Bidding Procedures Hearing**").

B. Initial Order

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

(a) immediate relief in the form of a stay of proceedings;

(b) a limited related party stay of proceedings in respect of certain inventory of DCL USA LLC located in Ontario (the "**DCL USA LLC Inventory**");

(c) the appointment of Alvarez & Marsal Canada Inc. (the "**Proposed Monitor**") as monitor of the Applicant (in such capacity, when and if appointed, the "**Monitor**");

(d) approval of my appointment as chief restructuring officer pursuant to the terms of the engagement letter dated November 16, 2022 (the "**CRO Engagement Letter**");

(e) approval of the DIP ABL Credit Agreement (as defined below) for the provision of interim financing ("**DIP Financing**") among Wells Fargo Bank, National Association, as the administrative agent (in such capacity, "**DIP Agent**") and sole lead arranger and booker runner for on behalf of the lenders party thereto (the "**DIP Lenders**"), and the Applicant, DCL USA LLC and DCL BP, as borrowers, and the other members of the DCL Group, as guarantors, with permitted drawings being limited to what is reasonably necessary during the initial 10-day period following the Filing Date;

(f) approval of a court-ordered charge (the "**DIP Charge**") against the property of the Applicant, other than with respect to the Excluded Collateral (as defined below), in favour of the DIP Agent and DIP Lenders to secure the obligations under the DIP Financing and DIP ABL Credit Agreement;

(g) authorization to make certain payments relating to wages, taxes and pension obligations, irrespective of whether such obligations arose prior to or after the Filing Date;

(h) approval of the continued use of the Applicant's Cash Management System (as defined below);

(i) granting of a charge, in the maximum amount of $175,000[1] over the Applicant's property (excluding the HSBC Cash Collateral, as defined below) to secure payments of reasonable fees and disbursements incurred both prior to and after the Filing Date, of the Monitor, counsel to the Monitor and counsel to the Applicant (the "**Administration Charge**");

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

(j) granting of a charge, to the maximum amount of CAD$1,000,000 over the Applicant's property (excluding the HSBC Cash Collateral) to secure the indemnification obligations of the Applicant in favour of the officers and directors of the Applicant (the "**Directors**") for any such liabilities as they may incur in these proceedings in their capacity as officers and directors (the "**Directors' Charge**"), to the extent such liability is not covered by existing directors' and officers' insurance;

(k) approval of the US/Canada Intercompany Agreement (as defined below);

(l) approval of the European Intercompany Agreement (as defined below);

(m) granting of the Intercompany Charge (as defined below) over the Applicant's property (excluding the HSBC Cash Collateral) to secure the intercompany balances owing by the Applicant to DCL USA LLC;

(n) authorization to serve the within application record to the Notice Parties (as defined below) as a means of providing notice of the Comeback Hearing and the Bidding Procedures Hearing; and

(o) adoption of the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network to facilitate communications between this Court and the U.S. Bankruptcy Court.

C. Amended and Restated Initial Order

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

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

(a) granting restructuring powers to the Applicant that will enable it to obtain a going concern solution with the assistance of the Monitor;

(b) an increase in the quantum that the Applicant is able to borrow under the DIP ABL Credit Agreement to meet its working capital needs during the pendency of these proceedings;

(c) extending the DIP Charge over the DCL USA LLC Inventory to secure the obligations of DCL USA under the DIP ABL Credit Agreement and related documents;

(d) authorizing the Applicant to make certain pre-filing payments to critical vendors with the consent of the Monitor;

(e) increasing the quantum of the Administration Charge to the maximum amount of $1,100,000;

(f) increasing the quantum of the Directors' Charge to the maximum amount of CAD$1,700,000; and

(g) approval, *nunc pro tunc*, of the retention of TM Capital Corp. ("**TM Capital**"), as investment banker and sale advisor, pursuant to the terms of the engagement letter dated September 6, 2022 between TM Capital and Colors, for and behalf of its subsidiaries including the Applicant (the "**TM Engagement Letter**").

D. Bidding Procedures Order

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

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

E. Affidavit Structure

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

(a) the first section provides background on the commercial and financial operations of the DCL Group and the Applicant;

(b) the second section discusses the financial challenges facing the DCL Group and the steps taken prior to seeking the relief hereunder to address those challenges; and

(c) the third section discusses the key relief sought by the Applicant.

II. Background

A. Corporate History

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

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

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

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

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

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

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

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

B. Corporate Organization

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

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

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

C. Business Overview of DCL Group

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

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

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

(b) the plastics market (approximately 25% of the DCL Group's sales); and

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

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

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

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

D. The Applicant's Business

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

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

30. The Ajax Plant, which focuses on the production of organics and CYMO[2], and the Ajax Distribution Centre employ approximately 80 employees. The Mississauga Plant has approximately 18 employees and focuses on the production of dispersions (i.e., the pigments suspended in liquid). The New Toronto Plant has approximately 62 employees and is known as the "Organic Plant & Lab". Approximately 46 employees work out of the DCL Head Office.

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

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

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

[2] Cyan Magenta Yellow Overcoating

E. Intercompany Arrangements

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

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

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

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

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

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

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

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

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

40. The DCL Group resolved its system issues and effective July 1, 2022, the Applicant transferred to DCL USA LLC (i) third-party accounts receivables existing on July 1, 2022 relating to the Transferred Contracts[4] (the "**July 1/22 Receivables**"), (ii) finished goods inventory existing on such date manufactured for DCL USA LLC's third-party customers (the "**July 1/22 Inventory**"), and (iii) substantially all its customer sales contracts with Canadian customers other than its third-party customer sales contracts relating to the Monteith business (the "**Non-Monteith Canadian Contracts**").

(ii) **Consideration for the July 1, 2022 transfers**

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

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

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

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

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

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

(iii) Current intercompany finished goods inventory sales

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

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

(iv) The US/Canada Intercompany Agreement

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

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

(a) Substantially all of the finished goods inventory that are manufactured at the Ajax Plant and New Toronto Plant and certain finished goods inventory manufactured at the Mississauga Plant will be sold to DCL USA LLC.

(b) Ownership of such finished goods inventory is transferred to DCL USA LLC at the time such inventory leaves the Ajax Plant or New Toronto Plant and is shipped to one of two Distribution Centres (as defined below) located in Ontario, or in the case of the finished goods inventory manufactured at the Mississauga Plant, when such inventory leaves the Mississauga Plant to be shipped to DCL USA LLC's third-party customers, and in all cases, at DCL USA LLC's cost.

(c) One distribution centre is the Ajax Distribution Centre owned by the Applicant, while the other distribution centre (the "**Third-Party Distribution Centre**" and together with the Ajax Distribution Centre, the "**Distribution Centres**") is a warehouse owned by Pinnacle Storage & Services Ltd. ("**Pinnacle**"). The

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

(d) DCL USA LLC is responsible for arranging the shipment of the DCL USA LLC Inventory to third-party customers and/or to a distribution centre in the United States, or such other location as may be designated by DCL USA LLC from time to time, at DCL USA LLC's cost, including all related export and customs clearance and payment of any customs duties or fees related to such shipment reflecting DCL USA LLC as the exporter and importer of record.

(e) With respect to the sale of finished goods inventory to DCL USA LLC produced by the Mississauga Plant, DCL USA LLC arranges for shipment of such DCL USA LLC Inventory at its cost to DCL USA LLC third-party customers, including all related export and customs clearance and payment of any customs duties or fees related to such shipment reflecting DCL USA LLC as the exporter and importer of record.

(f) All sales of finished goods inventory by the Applicant to DCL USA LLC are to be at an arm's length price as determined in accordance with the US/Canada Intercompany Agreement and consistent with the DCL Group's transfer pricing policy.

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

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

(v) The European Intercompany Arrangements

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

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

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

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

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

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

F. Cash Management System

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

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

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

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

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

(a) four disbursement accounts held with HBSC Canada, denominated in CAD, USD, EUR, and GBP (collectively the "**HSBC Disbursement Accounts**"). The HSBC Disbursement Accounts are funded via intercompany cash transfers from DCL USA LLC;

(b) one CAD payroll account held with HSBC Canada (the "**CAD Payroll Account**"), which is funded either from the CAD HSBC Disbursement Account or via intercompany cash transfers from DCL USA LLC as needed to fund payroll disbursements. The Applicant utilizes a third-party payroll services provider, ADP Canada Co., to administer its payroll;

(c) five receipt accounts held with HSBC Canada, denominated in CAD, USD, EUR, GBP and JPY (collectively the "**HSBC Receipt Accounts**"). The HSBC Receipt Accounts are used to collect cash related to intercompany receivables[5];

(d) two receipt and disbursement accounts held with HSBC Canada, denominated in CAD and USD (collectively the "**Monteith Accounts**") are used to collect

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

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

(e) two savings accounts are held with HSBC Canada, denominated in CAD and USD which hold negligible balances and have minimal activity;

(f) one restricted CAD account (the "**CAD Cash Collateral Account**") is used as cash collateral for two letters of credit issued by HSBC Canada for the benefit of the Minister of Environment and Climate Change (the "**MECC**") and the Town of Ajax in connection with certain environmental remediation obligations related to the Ajax Plant. The restricted funds total CAD$382,000; and

(g) two receipt and disbursement accounts held with Wells Fargo Canada denominated in CAD and USD (collectively the "**Wells Fargo Canada Accounts**"). The Applicant is in the process of transitioning certain of its HSBC Canada accounts to the Wells Fargo Canada Accounts, such that the Wells Fargo Canada Accounts will become the Applicant's primary operating accounts. Following that transition, certain of the Bank Accounts held at HSBC Canada will be closed.

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

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

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

G. Financial Position

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

H. Assets

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

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

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

I. Liabilities

(i) Secured Debt of the Applicant - Generally

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

(ii) Term Loan

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

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

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

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

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

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

(a) Colors made a contribution to DCL Holdings in an amount equal to the Non-Canadian Contracts Purchase Price;

(b) DCL Holdings contributed the same amount to DCL USA LLC;

(c) DCL USA LLC used the proceeds of that contribution to pay the Applicant the Non-Canadian Contracts Purchase Price;

(d) Colors used the remaining amount to make a contribution of legal stated capital to the Applicant; and

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

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

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

(iii) ABL Cap

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

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

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

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

(iv) Wells Fargo – ABL Credit Facility

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

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

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

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

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

80. Pursuant to a letter dated November 22, 2022[6], the Pre-Filing ABL Agent issued a reservation of rights letter in respect of those Events of Default, which confirmed that any election by the Pre-Filing ABL Lenders to provide any further loans would not constitute a waiver of the Events of Default. A copy of the reservation of rights letter is attached hereto as Exhibit "**G**".

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

[6] The reservation of rights letter contains a typo in the date and inadvertently references "2020" instead of "2022".

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

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

(v) ABL Pre-Filing Security Opinion

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

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

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

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

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

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

(vii) Other Secured Creditors

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

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

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

(collectively, the "**Other Secured Creditors**").

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

(viii) Supply Chain Finance Arrangements

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

(a) a Master Accounts Receivable Purchase Agreement with BNP Paribas Dublin Branch ("**BNP**") dated February 5, 2014, covering the receivables owing from PPG Industries, Inc. and its subsidiaries (collectively, "**PPG**"); and

(b) a Supplier Agreement with Citibank dated December 2, 2020 relating to receivables owing from Axalta ("**Citibank SCF Arrangement**", and together with the BNP SCF Arrangement, the "**SCF Arrangements**").

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

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

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

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

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

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

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

(ix) Environmental Obligations - Generally

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

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

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

(x) Environmental Obligations - Ajax Plant

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

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

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

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

(xi) Environmental Obligations - New Toronto Plant

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

(xii) Sponsor Note

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

(xiii) Other Intercompany Liabilities

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

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

(xiv) Earnout Obligations

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

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

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

(xv) Trade Creditors

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

(xvi) Outstanding Litigation

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

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

(xvii) Priority Statutory Liabilities

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

J. Employees of the Business

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

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

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

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

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

K. Pension Obligations and Employee Benefit Plans

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

(i) Defined Benefit Registered Pension Plans

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

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

(b) The DCL Corporation Hourly Pension Plan, registered with FSRA and CRA under Registration No. 0401455 (the "**Hourly DB Plan**").

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

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

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

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

(ii) Defined Contribution Registered Pension Plans

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

(a) Pension Plan for the Employees of Dominion Colour Corporation, registered with FSRA and CRA under Registration No. 1141860 (the "**Salaried DC Plan**"); and

(b) Dominion Colour Corporation Hourly Pension Plan, registered with FSRA and CRA under Registration No. 1166354 (the "**Hourly DC Plan**").

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

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

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

(iii) Monteith Pension Plan

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

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

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

(iv) Other Employee Benefit Plans

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

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

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

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

III. Need for Protection

A. Financial Distress

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

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

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

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

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

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

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

B. <u>Restructuring Advisors</u>

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

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

C. Key Employee Retention Plan

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

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

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

D. Pre-Filing Sale Process

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

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

(a) prepared a list of the most likely potential strategic buyers, including parties in the U.S., Canada and internationally ("**Potential Bidders**");

(b) prepared and delivered a "teaser letter" inviting Potential Bidders to learn more about the potential acquisition opportunity;

(c) prepared and delivered a "process letter" setting out the terms and conditions under which bids may be submitted and considered;

(d) prepared and made available to those parties executing a non-disclosure agreement, a confidential information memorandum setting out detailed financial, operational and commercial information regarding the DCL Group; and

(e) offered Potential Bidders the opportunity to make additional inquiries, meet with management and conduct onsite visits.

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

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

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

IV. Relief Sought

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

A. Related Party Stay of Proceedings

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

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

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

B. Appointment of the Monitor

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

C. Cash Management System

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

D. Financing During the Proceedings

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

(i) DIP ABL Credit Agreement

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

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

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

(a) Borrowers. The borrowers will be the Applicant, as the Canadian DIP borrower, and DCL USA LLC and DCL BP, as the US DIP borrowers (the "**US DIP Borrowers**" and together with the Applicant, the "**DIP Borrowers**"). The DIP Borrowers are jointly and severally liable for each other's obligations under the DIP ABL Credit Agreement.

(b) Creeping Roll-Up. Cash receipts received by the DIP Borrowers will first be applied to amounts outstanding under the ABL Credit Facility, while new borrowings will be made under the DIP ABL Credit Agreement. As the Applicant does not have any obligations owing under the ABL Credit Facility at this time, this roll-up feature does not impact the Applicant.

(c) Guarantors. The Guarantors are Colors, DCL Holdings, DCL NL and DCL UK. The Applicant will guarantee the obligations of the US DIP Borrowers and the US

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

(d) Maximum Availability. The DIP Financing will consist of up to $55 million of revolving loans provided to the US DIP Borrowers and the Applicant, subject to the borrowing bases of the applicable US DIP Borrower and the Applicant and other terms set out in the DIP ABL Credit Agreement. Amounts outstanding under the ABL Credit Facility for each borrower, also constitutes a dollar for dollar block on availability.

(e) Prepayment. The DIP Financing may be prepaid at any time.

(f) DIP Charge. The DIP Financing is to be secured by a DIP Charge against the "ABL Priority Collateral," subject only to the Administration Charge. The DIP Charge will have second priority behind the security granted to the Term Loan Agent in the Term Loan Priority Collateral. The DIP Charge will not attach to (i) the Applicant's real property or other collateral to which the ABL Pre-Filing Security does not attach, (ii) the HSBC Cash Collateral, and (iii) the De Lage Landen Collateral (collectively, the "**Excluded Collateral**").

(g) Interest Rate: The DIP Borrowers may elect that (a) US Revolving Loans (other than Swing Line Loans) bear interest at a rate per annum equal to (i) the US Base Rate plus the Applicable Margin or (ii) Adjusted Term SOFR for the interest period therefor plus the Applicable Margin, and (b) Canadian Revolving Loans (i) denominated in CAD bear interest at a rate per annum equal to (A) the Canadian

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

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

(h) Fees: Standard fees are payable under the DIP Financing including an Unused Line Fee, Letter of Credit Fees, Closing and Commitment Fees and an Administrative Agent Fee. These fees are calculated using a variety of standard formulas.

(i) DIP Budget and Events of Default. I understand that the DIP ABL Credit Facility contains standard events of default in facilities of this nature. The DCL Group will have to demonstrate its compliance with an agreed upon budget (the "**DIP Budget**"), subject to certain acceptable variances. A copy of the DIP Budget, a 13-week cash flow forecasts for the DCL Group on a consolidated basis and for the Applicant on a separate-entity basis, is included in the Pre-Filing Report.

(j) Maturity. The DIP ABL Facility will mature on March 31, 2023 and upon the occurrence of certain enumerated events.

(ii) DIP Milestones

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

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

(a) On or before 1 Business Day after the Petition Date, Loan Parties shall file a motion with each Bankruptcy Court seeking approval of the DIP ABL Credit Facility under the Bankruptcy Code and the CCAA.

(b) On or before December 29, 2022, the Canadian Bankruptcy Court shall have entered the Amended Initial CCAA Order in form and substance satisfactory to Agent.

(c) On or before January 6, 2023, Loan Parties shall have filed a motion (the "Sale Motion") seeking entry of the Bid Procedures Order pursuant to Section 363 of the Bankruptcy Code and in accordance with the CCAA, which Sale Motion (including all deadlines contained therein) shall be satisfactory to Agent.

(d) On or before January 23, 2023, the US Bankruptcy Court shall have entered the Final US Financing Order in form and substance satisfactory to Agent.

(e) On or before January 31, 2023, the Loan Parties shall have filed the DIP Asset Purchase Agreement with each Bankruptcy Court, duly authorized, executed and delivered by the parties thereto, providing for the Sale Transaction, in each case on terms and conditions acceptable to Agent.

(f) On or before February 7, 2023, each Bankruptcy Court shall have entered one or more orders each in form and substance acceptable to Agent approving the DIP Asset Purchase Agreement and the Bid Procedures Order and providing, among other things, that qualifying bids shall be due by no later than March 10, 2023 (the "Bid Deadline").

(g) On or before March 15, 2023, Loan Parties shall have commenced the auction (if there is more than one qualifying bid) for the Sale Transaction, and, in accordance with the Bidding Procedures Order applicable thereto, shall have selected the winning bid(s) for the Sale Transaction at the conclusion of such auction.

(h) On or before March 17, 2023, each Bankruptcy Court shall have entered the Sale Order with respect to the results of the auction, and with the proceeds to be applied to the obligations under the DIP ABL Credit Facility sufficient to repay such obligations in full in cash.

(i) On or before March 31, 2023, Loan Parties shall have consummated the Sale Transaction, pursuant to the DIP Asset Purchase Agreement entered into among Loan Parties and the winning bidder(s) at the auction.

(j) On or before March 31, 2023, the Loan Parties shall make Payment in Full (as defined in the Final US Financing Order) of all Obligations under the DIP ABL Credit Facility and

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

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

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

(iii) Intercompany Transfers

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

E. Chief Restructuring Officer

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

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

F. Administration Charge

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

G. Directors' Charge

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

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

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

H. Intercompany Agreements and Intercompany Charge

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

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

I. TM Engagement Letter

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

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

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

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

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

(a) $1,500,000; and

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

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

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

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

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

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

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

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

J. Critical Suppliers

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

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

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

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

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

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

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

K. Related Party DIP Charge

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

L. Bidding Procedures Order

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

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

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

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

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

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

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

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

M. Notice Parties

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

(a) the Teamsters;

(b) FSRA;

(c) KNRV (the vendor owed the Pension Earn Out);

(d) the plaintiffs or their counsel if they are represented in the Outstanding Litigation;

(e) the landlords of the Applicant;

(f) Pinnacle, as the owner of the Third-Party Distribution Centre;

(g) the Other Secured Creditors;

(h) HSBC Canada, as the cash management bank;

(i) CRA;

(j) the Ontario Ministry of Finance;

(k) the Ontario Ministry of the Environment;

(l) Citibank, as a SCF Provider; and

(m) BNP, as a SCF Provider,

(collectively, the "**Notice Parties**").

V. Conclusion

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

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

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

A commissioner for taking affidavits, etc.

Scott Davido

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

Court File No.:

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

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

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF SCOTT DAVIDO
(SWORN DECEMBER 20, 2022)

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Lawyers for the Applicant

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

Affidavit of Scott Davido

sworn before me by video conference
this 20th day of December, 2022

A Commissioner, etc.

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

DCL CORPORATION
SEARCH OVERVIEW

CORPORATE SEARCHES (as at September 26, 2022)

Current Name	Incorporating Jurisdiction	Registered Office Address	Extra-Provincial Jurisdictions	Corporate History	Officers/Directors	
					Name	Title
1. DCL Corporation (1000156489)	Ontario	1 Concorde Gate, 608 Toronto, Ontario M3C 3N6		Formed on April 1, 2022 upon the amalgamation of DCL Corporation (1993321) and Monteith Inc. Active business name of: DCL	Michael Koichopolos Eddie Mattei Keval Patel John von Bargen	Director Director Director Director *[No officers]*
Predecessors:						
2. DCL Corporation (1993321)	Ontario	1 Concorde Gate, 608 Toronto, Ontario M3C 3N6		Formed on April 1, 2018 as Dominion Colour Corporation upon the amalgamation of (i) DCC Holdings Ltd. (1993296), (ii) Dominion Colour Corporation (1963020), and (iii) Dominion Colour Corporation (China) Name change on August 24, 2020 to DCL Corporation Amalgamated on April 1, 2022 into DCL Corporation (1000156489)	Michael Koichopolos Eddie Mattei Keval Patel John von Bargen Magen Butterbaugh Chuck (David Charles) Herak Jeff Versterre	Director Director, Chief Financial Officer Director Director, President Other (untitled) Chief Executive Officer Chief Operating Officer
3. Monteith Inc. (2279233)	Ontario	515 Consumers Road, 700 Toronto, Ontario M2J 2Z2		Incorporated on March 25, 2011 Amalgamated on April 1, 2022 into DCL Corporation (1000156489)	Michael Koichopolos Eddie Mattie Keval Patel John Von Bargen	Director Director, Chief Financial Officer Director Director, President

Current Name	Incorporating Jurisdiction	Registered Office Address	Extra-Provincial Jurisdictions	Corporate History	Officers/Directors	
					Name	**Title**
					Magen Buterbaugh	Other (untitled)
					Chuck Herak	Chief Executive Officer
					Jeff Versterre	Chief Operating Officer
4. DCC Holdings Ltd. (1993296)	Ontario	515 Consumers Road, 700 Toronto, Ontario M2J 4Z2	BC ? (1113895) *[See details on this entity below]*	Formed on March 29, 2018 upon the amalgamation of DCC (Europe) Inc. and DCC Holdings Ltd. (1169068) Amalgamated on April 1, 2018 into DCL Corporation (1993321)	Caroline Kung	Director
					Keval Patel	Director
					Mark Vincent	Director
						[No officers]
5. Dominion Colour Corporation (1963020)	Ontario	515 Consumers Road, 700 Toronto, Ontario M2J 2Z2		Formed on October 1, 2016 upon the amalgamation of (i) Colour Acquisition Corporation and (ii) Dominion Colour Corporation (1846621) Amalgamated on April 1, 2018 into DCL Corporation (1993321)	Aaron Davidson	Director
					Michael Klein	Director
					Michael Koichopolos	Director
					Caroline Kung	Director, Secretary, Vice-President
					Dr. Uwe Nickel	Director
					Keval Patel	Director, President
					Julian Steinberg	Director
					Mark Vincent	Director, Chief Executive Officer
					Jeff Zanarini	Director
					Graham Dickie	Chief Financial Officer

Current Name	Incorporating Jurisdiction	Registered Office Address	Extra-Provincial Jurisdictions	Corporate History	Officers/Directors	
					Name	Title
6. Dominion Colour Corporation (China)	Ontario	515 Consumers Road, 700 Toronto, Ontario M2J 2Z2		Incorporated on May 29, 1997 Amalgamated on April 1, 2018 into DCL Corporation (1993321)	Caroline Kung Keval Patel Mark Vincent	Director, Secretary, Vice-President Director, President Director, Chief Executive Officer
7. DCC (Europe) Inc.	Ontario	515 Consumers Road, 700 Toronto, Ontario M2J 2Z2		Incorporated on June 29, 2005 as Dominion Colour Corporation (Europe) Name change on April 9, 2008 to DCC (Europe) Inc. Amalgamated on March 29, 2018 into DCC Holdings Ltd. (1993296)	Caroline Kung Keval Patel Mark Vincent Rachel Pekar	Director, Secretary, Vice President Director, President Director, Chief Executive Officer Other (untitled)
8. DCC Holdings Ltd. (1169068)	Ontario	515 Consumers Road, 700 Toronto, Ontario M2J 2Z2		Incorporated on February 14, 1996 Amalgamated on March 29, 2018 into DCC Holdings Ltd. (1993296)	Caroline Kung Keval Patel Mark Vincent	Director, Secretary, Vice President Director, President Director, Chief Executive Officer
9. Colour Acquisition Corporation	Ontario	199 Bay Street, 4000 Toronto, Ontario M5L 1A9		Incorporated on September 13, 2016 Amalgamated on October 1, 2016 into Dominion Colour Corporation (1963020)	Aaron Davidson Caroline King Keval Patel	Director Vice-President President
10. Dominion Colour Corporation (1846621)	Ontario	515 Consumers Road, 700 Toronto, Ontario M2J 2Z2		Formed on April 3, 2011 upon the amalgamation of Dominion Colour Corporation (1653542) and A. R. Monteith Corporation Amalgamated on October 1, 2016 into Dominion Colour Corporation (1963020)	Brian James Michael Klein Caroline Kung	Director Director Director, Secretary, Vice President

Current Name	Incorporating Jurisdiction	Registered Office Address	Extra-Provincial Jurisdictions	Corporate History	Officers/Directors	
					Name	Title
				Expired business names: (i) Monteith, and (ii) A.R. Monteith [cancelled October 19, 2021]	Keval Patel Mark Vincent	Director, President Director, Chief Executive Officer
11. DCC Holdings Ltd. (BC1113895)	British Columbia	3105-193 Aquarius Mews Vancouver, BC V6Z 2Z2		Incorporated on April 4, 2017. Voluntary dissolution on December 7, 2020	Denis Chor-tak Chen	Director

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

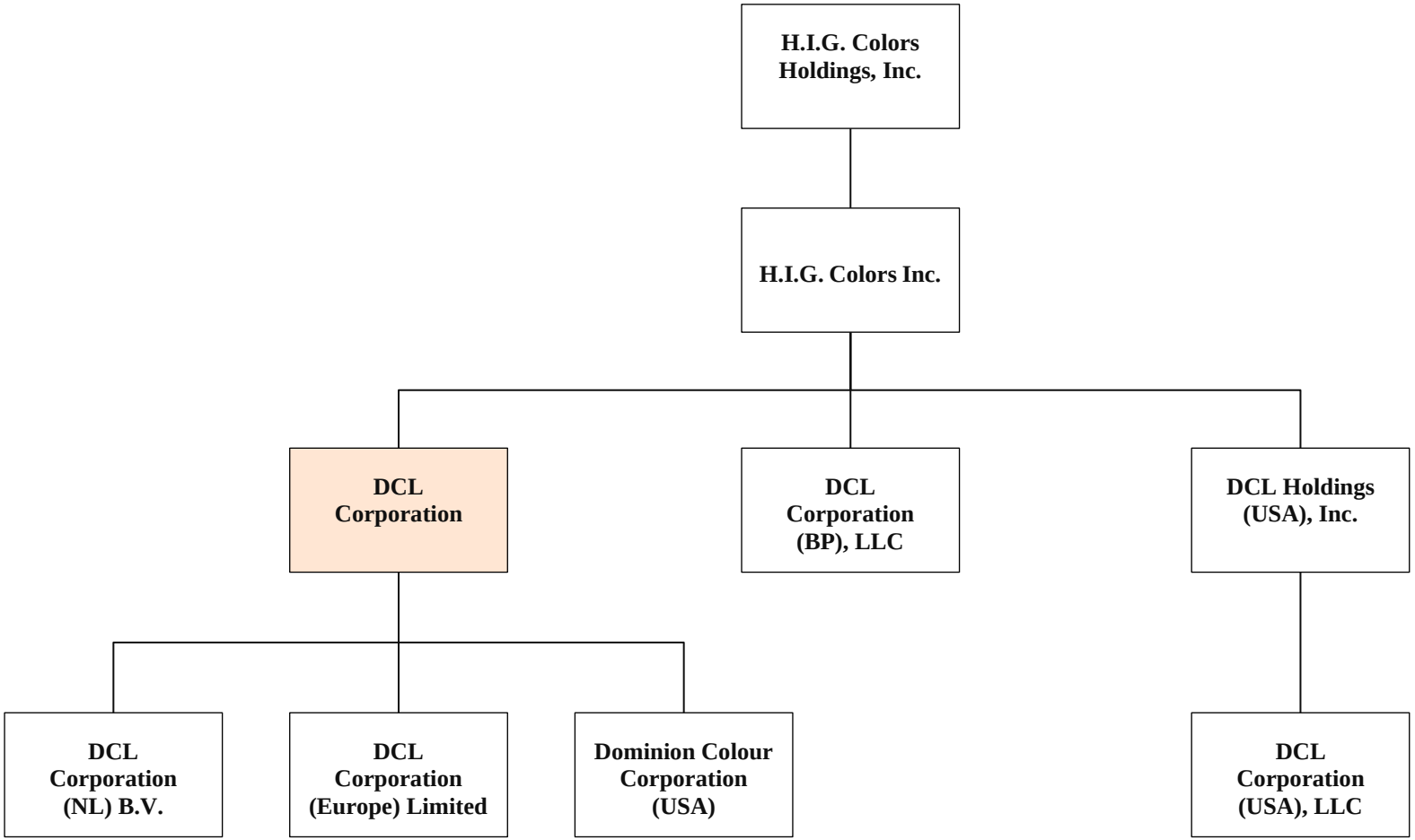
Affidavit of Scott Davido

sworn before me by video conference
this 20th day of December, 2022

A Commissioner, etc.

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

Corporate Chart:
DCL Corporation



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

Affidavit of Scott Davido

sworn before me by video conference
this 20th day of December, 2022

A Commissioner, etc.

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

INTERCOMPANY AGREEMENT
[DCL CANADA / DCL USA LLC]

THIS INTERCOMPANY AGREEMENT is made as of December 18, 2022 between **DCL Corporation** ("**DCL Canada**"), a corporation incorporated under the laws of Ontario and **DCL Corporation (USA) LLC**, a limited liability company formed under the laws of Delaware ("**DCL USA LLC**").

RECITALS:

A. All capitalized terms used in these Recitals but not defined in these Recitals, shall have the meanings given to them in Section 1.

B. DCL Canada and DCL USA LLC, together with those companies set out in Schedule "A" hereto, form the "**DCL Group**", which operates as an integrated global manufacturer and reseller of high-performance specialty pigments and dispersions. As an integrated group, the DCL Group, its members, including DCL Canada and DCL USA LLC, engage in a variety of intercompany arrangements.

C. Pursuant to an Order Book Purchase and Sale Agreement between DCL Canada and DCL USA LLC executed on December 15, 2021 and with an effective date of August 1, 2021 (the "**Working Capital Sale Effective Date**"), DCL Canada agreed to sell, and DCL USA LLC agreed to buy, all of DCL Canada's right, title and interest in and to its non-Canadian customer sales contracts, and all business information related thereto, and all interests and benefits derived therefrom as more particularly set out in such agreement (the "**Customer Contracts Sale**").

D. In addition to the Customer Contracts Sale, DCL Canada has transferred to DCL USA LLC, among other things:

(i) all sales contracts existing at July 1, 2022 with Canadian customers of DCL Canada that were non-Monteith legacy customers (such contracts, together with the sales contracts transferred to DCL USA LLC pursuant to the Customer Contracts Sale, the "**Transferred Contracts**"); and

(ii) finished goods inventory manufactured by DCL Canada for DCL USA LLC from and after the Working Capital Sale Effective Date as required by DCL USA LLC to service the Transferred Contracts, the sales of which were and are to be conducted at an arm's length price, as determined by the Parties, in consultation with the DCL Group Tax Advisor (the "**Inventory Sales**"). The inventory referred to above does not include the inventory to be sold by DCL Canada to legacy Monteith customers.

E. DCL Canada and DCL USA LLC have engaged in other intercompany arrangements, including sharing certain operational resources, management services and infrastructure with the rest of the DCL Group as more particularly described in this Agreement (the "**Shared Services**").

F. It is contemplated that DCL Canada will commence restructuring proceedings under the *Companies' Creditors Arrangement Act* ("**CCAA**", and such proceedings, the "**CCAA Proceedings**") and DCL USA LLC and certain other members of the DCL Group will commence proceedings under chapter 11 of title 11 of the *United States Code* (the "**Chapter 11 Proceedings**", together with the CCAA Proceedings, the "**Proceedings**").

G. As part of the proposed Proceedings, the proposed debtor-in-possession financing arrangements of DCL Canada, DCL USA LLC, and certain other companies constituting the DCL Group (the "**DIP Financing Facility**") contemplate that DCL Canada will meet its funding needs during the CCAA Proceedings through borrowings by it under the DIP Financing Facility and through the following intercompany transfers by DCL USA LLC to DCL Canada (collectively, the "**Intercompany Transfers**") made in the order and manner set forth in this Agreement: (i) first, payments by DCL USA LLC to DCL Canada on account of the Inventory Purchase Price for the purchase of DCL USA Inventory by DCL USA LLC; (ii) second, payments by DCL USA LLC to DCL Canada of amounts owing on account of the Net Shared Services Price; (iii) third, payments by DCL USA LLC to DCL Canada on account of payments made or to be made by DCL Canada of DCL NL Supplier Invoices for the account of DCL NL; and (iv) fourth, intercompany loans by DCL USA LLC to DCL Canada to be used by DCL Canada for operating and non-operating expenses, including professional fees and other costs relating to the CCAA Proceedings.

H. It is a condition of the proposed DIP Financing Facility that the Parties formalize the terms and conditions of Inventory Sales and the provision of Shared Services between each other and the methodology pursuant to which the Parties are to apply the Intercompany Transfers permitted under the DIP Financing Facility on account of the permitted Intercompany Categories and this Agreement has been entered into in satisfaction of that condition.

I. Concurrently with the execution of this Agreement, the Parties have entered into a separate intercompany agreement with the European Subsidiaries formalizing the Parties' intercompany arrangements with the European Subsidiaries (the "**European Intercompany Agreement**").

NOW THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Interpretation; Definitions.**

1.1 Definitions. All capitalized terms used herein shall have the respective meanings given to them below:

(a) "**Action**" means any dispute, claim, action, litigation, arbitration or proceeding commenced, brought or asserted by any person or conducted or heard before any Governmental Authority.

(b) "**Agreement**" means this intercompany agreement, including all Schedules, Appendices, and Exhibits hereto, as each may be amended, supplemented, restated, or replaced from time to time.

(c) "**Ajax Plant**" means the manufacturing facility of DCL Corporation located at 445 Finley Avenue, Ajax, Ontario, Canada, L1S 2E3.

(d) "**Business Day**" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under applicable law of, or are in fact closed in, the state of Delaware or the province of Ontario.

(e) "**CCAA**" has the meaning given to it in Recital F.

(f) "**CCAA Court**" means the Ontario Superior Court of Justice (Commercial List).

(g) "**CCAA Proceedings**" has the meaning given to it in Recital F.

(h) "**Chapter 11 Court**" means the United States Bankruptcy Court for the District of Delaware.

(i) "**Chapter 11 Proceedings**" has the meaning given to it in Recital F.

(j) "**DCL Canada**" has the meaning given to it in the Preamble, and its successors and assigns.

(k) "**DCL Canada Distribution Centre**" has the meaning given to it in Section 2.2(a)(i).

(l) "**DCL Canada Plants**" means the Ajax Plant, the New Toronto Plant and the Mississauga plant, and "**DCL Canada Plant**" means any one of them.

(m) "**DCL Canada Loans**" has the meaning given to it in Section 4.4(b).

(n) "**DCL Canada Shared Services**" has the meaning given to it in Section 3.1.

(o) "**DCL Canada Receivables**" has the meaning given to it in Section 4.4(c).

(p) "**DCL Group**" has the meaning given to it in Recital B.

(q) "**DCL Group Tax Advisor**" means Grant Thornton LLP or such other tax advisor from a an internationally recognized firm of independent public accountants engaged by DCL Group.

(r) "**DCL NL**" means DCL Corporation (NL) B.V., an entity established under the laws of the Netherlands, and its successors and assigns.

(s) "**DCL NL Supplier Invoices**" means invoices on account of goods supplied from and after the Filing Date from a single supplier to DCL NL that DCL Canada has agreed to pay, on behalf and for the account of DCL NL, directly to such supplier.

(t) '**DCL UK**" means DCL Corporation (Europe) Limited, company incorporated under the laws of the UK, and its successors and assigns.

(u) "**DCL USA Inventory**" means such finished goods inventory manufactured by DCL Canada sold to or for sale to DCL USA LLC pursuant to the Inventory Sales.

(v) "**DCL USA LLC**" has the meaning given to it in Preamble, and its successors and assigns.

(w) "**DCL USA Shared Services**" has the meaning given to it in Section 3.2.

(x) "**DIP Budget**" means the budget in respect of the DIP Financing Facility as approved by the CCAA Court in the CCAA Proceedings and by the Chapter 11 Court in the Chapter 11 Proceedings, as it may be amended from time to time in accordance with the DIP Financing Orders.

(y) "**DIP Credit Agreement**" means the debtor-in-possession credit agreement approved by the CCAA Court in the CCAA Proceedings and by the Chapter 11 Court in the Chapter 11 Proceedings.

(z) "**DIP Financing Facility**" has the meaning given to it in Recital G.

(aa) "**DIP Financing Orders**" means the orders of the CCAA Court in the CCAA Proceedings and the Chapter 11 Court in the Chapter 11 Proceedings approving the DIP Financing Facility.

(bb) "**Distribution Centre**" and "**Distribution Centres**" has the meaning given to it in Section 2.2(a)(ii).

(cc) "**European Intercompany Agreement**" has the meaning given to it in Recital I.

(dd) "**European Subsidiaries**" means DCL UK and DCL NL.

(ee) "**Filing Date**" means the later of (i) the date on which the Chapter 11 Proceedings are commenced and (ii) the date on which the CCAA Proceedings are commenced.

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

(gg) "**High Value-Adding Shared Services**" means those Shared Services relating to provision of management services and oversight performed by senior level personnel, including the Chief Restructuring Officer, Chief Executive Officer, Chief Financial Officer, Chief Commercial Officer, and Vice Presidents and Directors for the Supply Chain, Human Resources, Global Procurement, Information Technology, Finance and Sales & Marketing and Regulatory departments for the DCL Group.

(hh) "**Intercompany Categories**" has the meaning given to it in Section 4.2.

(ii) "**Intercompany Obligations**" has the meaning given to in Section 4.4(c).

(jj) "**Intercompany Transfers**" has the meaning given to it in Recital G .

(kk) "**Inventory Cost**" means the cost of materials, labour, and general manufacturing overhead incurred by DCL Canada as allocated to the manufacture of the DCL USA Inventory, as determined by the Parties, in consultation with the DCL Group Tax Advisor, as such may be adjusted from time to time in accordance with Schedule "B".

(ll) "**Inventory Purchase Price**" has the meaning given to it in Schedule "B".

(mm) "**Inventory Sales**" has the meaning given to it in Recital D.

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

(oo) "**Low Value-Adding Shared Services**" means those Shared Services performed by managers or other employees that support functions such as financial planning, sales, communications, and operations.

(pp) "**Mississauga Plant**" means DCL Canada's leased manufacturing facility located at 2615 Wharton Glen Avenue, Mississauga, Ontario, L4X 2B1.

(qq) "**Net Shared Services Price**" has the meaning given to it in Section 3.4.

(rr) "**New Toronto Plant**" means DCL Canada's manufacturing facility located at 199 New Toronto St., Toronto, Ontario, M8V 3X4.

(ss) "**Parties**" means DCL Canada and DCL USA LLC and their respective successors and assigns.

(tt) "**Pass-Through Costs**" means the amount of any out-of-pocket fees and expenses paid by DCL Canada or DCL USA LLC in the provision of a Shared Service.

(uu) "**Proceedings**" has the meaning given to it in Recital F.

(vv) "**Receivables Sale**" has the meaning given to it in Recital D

(ww) "**Selected Court**" has the meaning given to it in Section 5.4.

(xx) "**Shared Services**" has the meaning given to it in Recital E.

(yy) "**Shared Services Cost**" means in respect of Shared Services provided by each of DCL Canada and DCL USA LLC:

(i) For High Value-Adding Shared Services, the cost of compensation of those persons performing the Shared Services incurred by such Party.

(ii) For Low Value-Adding Shared Services, the cost of compensation of those persons performing the Shared Services incurred by such Party.

In each case of clause (i) and (ii) above, such costs are to be allocated to the provision of such Shared Services by such Party, as determined by the Parties, in consultation with the DCL Group Tax Advisor, as such costs may be adjusted from time to time in accordance with Schedule "C". For greater certainty and the avoidance of doubt, Pass-Through Costs are not included in Shared Services Costs but are a separate category of costs that are to be dealt with in accordance with Schedule "C".

(zz) "**Shared Services Price**" shall have the meaning given to it in Schedule "C".

(aaa) "**Third Party Distribution Centre**" has the meaning given to it in Section 2.2(a)(ii).

(bbb) "**Transferred Contracts**" has the meaning given to it in Recital D.

(ccc) "**Working Capital Sale Effective Date**" has the meaning given to in Recital C.

1.2 Currency. Unless expressly stated otherwise, all dollar amounts in this Agreement are in US Dollars.

2. **Purchase and Sale of DCL USA Inventory**. The sale of the DCL USA Inventory by DCL Canada, to and the purchase of, the DCL USA Inventory by DCL USA LLC, shall be on the following terms and conditions:

2.1 Transfer of Title; Risk of Loss. All right, title and interest in and to DCL USA Inventory manufactured by DCL Canada from and after the Filing Date shall absolutely transfer to DCL USA LLC at the time such DCL USA Inventory leaves a DCL Canada Plant to be shipped to one of the Distribution Centres or in the case of DCL USA Inventory produced at the Mississauga Plant, at the time such DCL USA Inventory leaves the Mississauga Plant to be shipped directly to DCL USA LLC's third-party customers. All responsibility and risk of loss for the DCL USA Inventory shall transfer to DCL USA LLC at such time, subject to Section 2.2(c)(ii) below. All sales of such DCL USA Inventory by DCL Canada to DCL USA LLC shall be on an "as is, where is" and no recourse basis.

2.2 Storage and Shipping Arrangements.

(a) Subject to clause (b) below, on completion of the manufacture of DCL USA Inventory ordered by DCL USA LLC, DCL USA LLC will arrange for shipment of such DCL USA Inventory, at its sole cost, to one or more of the following distribution centres located in Canada, as determined by DCL Canada:

(i) the distribution centre adjacent to the Ajax Plant and owned by DCL Canada (the "**DCL Canada Distribution Centre**"); or

(ii) the warehouse owned by a third-party logistics service provider (the "**Third Party Distribution Centre**", together with the DCL Canada Distribution

Centre, the "**Distribution Centres**" and "**Distribution Centre**" shall mean either one of them).

(b) On completion of the manufacture of DCL USA Inventory produced by the Mississauga Plant, DCL USA LLC will arrange for shipment of such DCL USA Inventory, at its sole cost, risk and expense, to DCL USA LLC third-party customers, including all related export and customs clearance and payment of any customs duties or fees related to such shipment reflecting DCL USA LLC as the exporter and importer of record.

(c) Once the DCL USA Inventory is shipped to a Distribution Centre pursuant to Section 2.2(a) above:

(i) DCL USA LLC is responsible for all storage costs relating to the DCL USA Inventory stored at the Third-Party Distribution Centres;

(ii) DCL USA LLC Inventory stored at the DCL Canada Distribution Centre is stored at no costs to DCL USA LLC; and

(iii) DCL USA LLC is responsible for arranging the shipment of the DCL USA Inventory to third-party customers and/or to a distribution centre in the United States, or such other location as may be designated by DCL USA LLC from time to time, at DCL USA LLC's sole cost, risk and expense, including all related export and customs clearance and payment of any customs duties or fees related to such shipment reflecting DCL USA LLC as the exporter and importer of record.

2.3 Purchase Price. It is the intention of the Parties that the DCL USA Inventory is to be purchased by DCL USA LLC from DCL Canada at a purchase price equal to the arm's length price for the DCL USA Inventory which the Parties will determine, in consultation with the DCL Group Tax Advisor, to be an amount as calculated and as may be adjusted in accordance with Schedule "B".

2.4 Payment/Satisfaction of Inventory Purchase Price. The Inventory Purchase Price for the sale by DCL Canada to DCL USA LLC of DCL USA Inventory, plus any applicable sales taxes required by Law, is to be paid or satisfied in accordance with Section 4 below.

3. **Shared Services**. The Shared Services provided by DCL Canada and DCL USA LLC and the obligations in respect thereof are set out below.

3.1 DCL Canada Shared Services. Subject to amendment as the Parties may agree from time to time, DCL Canada will provide the following Shared Services to the DCL Group (the "**DCL Canada Shared Services**"):

(a) management and oversight services provided by key members of the executive management team who are employed by DCL Canada, including the Vice Presidents for Supply Chain, Human Resources, Global Procurement, Information

Technology, Finance, Sales and Marketing, Regulatory and Research & Development;

(b) oversight of the budgeting process, including stipulating sales targets and forecasting inventory volume for the DCL Group; and

(c) general strategic oversight, management services and administrative support to the DCL Group.

3.2 DCL USA Shared Services. Subject to amendment as the Parties may agree from time to time, DCL USA LLC will provide the following Shared Services to the DCL Group (the "**DCL USA Shared Services**"):

(a) management and oversight services by the Chief Restructuring Officer, Chief Executive Officer and the Interim Chief Financial Officer;

(b) strategic oversight and special advisory services relating to commercializing the DCL Group's products; and

(c) general management services and administrative support to the DCL Group.

3.3 Costs of Shared Services. Each of DCL Canada and DCL USA LLC agree to be responsible for the arm's length costs of the provision of Shared Services provided to it by the other Party as set out below in accordance with Section 3.4:

(a) DCL USA LLC will be responsible for the cost of the DCL Canada Shared Services to the DCL Group at the Shared Services Price, less any amounts that have been paid or satisfied by another member of the DCL Group to DCL Canada for the provision of DCL Canada Shared Service to such DCL Group member; and

(b) DCL Canada shall be responsible for its proportionate share of the cost of the DCL USA Shared Services at the Shared Services Price.

3.4 Shared Services Price. It is the intention of the Parties that the DCL Canada Shared Services and the DCL USA Shared Services shall be provided at an arm's length price as calculated by the Parties, in consultation with the DCL Group Tax Advisor (in each case as applicable, the "**Shared Services Price**") as calculated, and as the same may be adjusted from time to time in accordance with Schedule "C". The amount owing at any time by DCL USA LLC to DCL Canada after any adjustments and the reconciliation of the obligations owing to each other in respect of the provision of Shared Services under this Agreement shall constitute the "**Net Shared Services Price**". In the event that at any time after the date hereof, the aggregate amount payable by DCL Canada to DCL USA LLC in respect of the DCL USA Shared Services based on the arm's length price thereof exceeds the aggregate amount payable by DCL USA LLC to DCL Canada in respect of the DCL Canada Shared Services based on the arm's length price thereof, the Parties shall promptly amend this Agreement to provide for payments by DCL Canada to DCL USA LLC of such excess amounts.

3.5 Payment/Satisfaction of the Net Shared Services Price. The payment obligation of DCL USA LLC[1] in respect of the Net Shared Services Price as set out Section 3.4, plus any applicable sales taxes as required by Law, is to be paid or satisfied by DCL Canada in accordance with Section 4.

4. **Intercompany Transfers and Intercompany Obligations**. From and after the Filing Date, DCL Canada and DCL USA LLC agree to the provision of Intercompany Transfers to DCL Canada as follows:

4.1 Amount and Timing of Intercompany Transfers. Subject to Section 4.4(b), DCL USA LLC shall provide Intercompany Transfers to DCL Canada in the amounts and at the times set out in the DIP Budget and permitted under the DIP Credit Agreement.

4.2 Application of Intercompany Transfers.[2] The Intercompany Transfers shall be applied amongst the following categories (the "**Intercompany Categories**") in accordance with Section 4.4:

(a) First to satisfy any then outstanding Inventory Purchase Price for DCL USA Inventory sold by DCL Canada to DCL USA LLC from and after the Filing Date;[3]

(b) Second, after satisfaction of all obligations set forth in (a) above, to satisfy any outstanding amount, if any, then owing by DCL USA LLC to DCL Canada for the Net Shares Services Price for DCL Canada Shared Services provided from and after the Filing Date;[4]

(c) Third, after satisfaction of all obligations set forth in paragraphs (a) and (b) above, to make payments to DCL Canada to be used for the payment of the DCL NL Supplier Invoices, if any, from and after the Filing Date.

(d) Fourth, after satisfaction of all obligations set forth in paragraphs (a), (b) and (c) above, to the making of intercompany loans by DCL USA LLC to DCL Canada to be used for DCL Canada's operating and non-operating costs, including professional fees and other costs relating to the CCAA Proceedings, from and after the Filing Date. If the amount of the Intercompany Transfers at any time is insufficient to fully satisfy the intercompany obligations in paragraphs (a), (b) and

[1] This section only refers to DCL USA LLC's payment obligation for the Net Shares Services Cost because it is anticipated that DCL Canada is a net provider of Shared Services. The Parties agree that should DCL USA LLC become the net provider for any reason, appropriate amendments will be made to this Agreement to account for that change in circumstances.

[2] Intercompany balances to be reset at zero balances on the filing date to distinguish between pre- and post-filing intercompany amounts.

[3] Outstanding Inventory Purchase Price will be calculated based on the Inventory Sales that have occurred up to the end of the week that the Intercompany Transfer has occurred as determined by sales recorded as a sale in the DCL Canada accounting system when title passes and that have not been paid for or satisfied by DCL USA LLC.

[4] Net Shared Services Price will be calculated based on the Shared Services provided as at the end of the week that the Intercompany Transfer has occurred, which may be an estimate.

(c) above, the amount of the unsatisfied intercompany obligations, shall be a DCL Canada Receivable owing by DCL USA LLC to DCL Canada in accordance with, and subject to, Section 4.4(c).

4.3 Mode of Provision of Intercompany Transfers. The provision of Intercompany Transfers by DCL USA LLC to DCL Canada may be effected by way of:

(a) direct payments to DCL Canada by wire transfer funds into a DCL Canada deposit account as directed by DCL Canada;

(b) direct payments to third-party suppliers/vendors for goods sold, or services provided, to DCL Canada; and/or

(c) direct payments of operational expenses of DCL Canada (e.g. payroll, benefits, utilities, etc.), without duplication.

4.4 Reconciliation of Intercompany Obligations. From and after the date of this Agreement, on a monthly basis in accordance with existing month-end reporting, DCL Canada and DCL USA LLC will perform the following calculations and produce a summary report with respect thereto:

(a) DCL Canada and DCL USA LLC will account for the Intercompany Transfers made by DCL USA LLC in each Intercompany Category, as applicable, in accordance with Section 4.2.

(b) The balance remaining, if any, of the Intercompany Transfers after satisfaction of the intercompany obligations in accordance with Section 4.2(a), Section 4.2(b), and Section 4.2(c), shall constitute an intercompany loan by DCL USA LLC to DCL Canada (such intercompany loans, the "**DCL Canada Loans**"). The amount of any DCL Canada Loans shall be subject to (i) adjustment from time to time as a result of any adjustments to the applicable Inventory Purchase Price and Shared Services Price in accordance with Schedule "B" and Schedule "C", and (ii) set-off in accordance with Section 4.4(c). The maximum net aggregate principal amount of DCL Canada Loans outstanding at any time shall not exceed the maximum amount permitted for such DCL Canada Loans under the DIP Credit Agreement.

(c) If Intercompany Transfers by DCL USA LLC are not sufficient to satisfy the intercompany obligations in accordance with Section 4.2(a), Section 4.2(b), and 4.2(c), the balance owing by DCL USA LLC to DCL Canada shall be set off against the amount of any DCL Canada Loan outstanding at such time to DCL USA LLC, and any residual amount remaining owing by DCL USA LLC to DCL Canada after such application shall constitute an intercompany receivable from DCL USA LLC to DCL Canada (the aggregate amount of all such receivables, together with DCL USA LLC obligations to pay the Inventory Purchase Price and the Net Shared Services Amount, and to fund the DCL NL Supplier Invoices, the "**DCL Canada Receivables**", together with the DCL Canada Loans, the "**Intercompany Obligations**"), The amount of any DCL Canada Receivables shall be subject to (i) adjustment from time to time as a result of any adjustments to the applicable

Inventory Purchase Price and Shared Services Price pursuant to Schedule "B" or Schedule "C", and (ii) set off in accordance with this Section 4.4(c). The maximum aggregate net principal amount of DCL Canada Receivables outstanding at any time shall not exceed $5,000,000.

4.5 Interest on DCL Canada Loans. DCL Canada Loans shall accrue interest at an arm's length rate to be determined by the Parties, in consultation with DCL Group's Tax Advisor, payable monthly on the last day of each month by adding accrued interest to the outstanding principal amount on each interest payment date

4.6 Termination of Commitments for Intercompany Loans; Repayment. The obligation of either Party to provide intercompany loans or trade credit to the other pursuant to this Agreement shall terminate upon the termination of the DIP Financing Facility pursuant to the terms of the DIP Credit Agreement and DIP Financing Orders and any obligation to provide DCL Intercompany Loans or DCL Canada Receivables shall terminate at such time. At that time, any Party may demand repayment of any outstanding Intercompany Obligations owing to it.

4.7 Security for Intercompany Obligations. DCL Canada Loans will be secured by a court-ordered charge in the CCAA Proceedings over the property of DCL Canada in favour of DCL USA LLC, with the rank, priority, rights and over such property of the Applicant as ascribed to it by the CCAA Court in the CCAA Proceedings. DCL Canada Receivables will be treated as an administrative expense claim in the Chapter 11 Proceedings with the rank, priority and rights as ascribed to it under chapter 11 of title 11 of the *United States Code*.[5]

4.8 Reconciliation of Intercompany Obligations at October 31, 2022. DCL Canada and DCL USA LLC agree to produce a schedule setting out the outstanding intercompany payable balances between DCL Canada and DCL USA LLC in each of the Intercompany Categories and the overall net balance resulting therefrom at October 31, 2022, by not later than January 31, 2023.

5. **Miscellaneous**.

5.1 Severability. If any provision hereof is held to be illegal, invalid or unenforceable in any jurisdiction, such provision shall be deemed to be severed from the remainder of this Agreement with respect only to such jurisdiction and the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect.

5.2 Amendments; Waiver. No amendment of this Agreement shall be effective unless made in writing and signed by the Parties. A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing and signed by the Party to be bound by the waiver and then only in the specific instance and for the specific purpose for which it has been given. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under

this Agreement will not operate as a waiver of that Party's rights under this Agreement in respect of any subsequent default, breach or non-observance (whether of the same or any other nature).

5.3 Applicable Law. This Agreement shall be construed in accordance with and governed by the Laws of the Province of Ontario and the federal Laws of Canada applicable therein (without giving effect to any choice or conflict of laws principles).

5.4 Jurisdiction. With respect to any Action arising out of or relating to this Agreement, each of the Parties hereby irrevocably consents to the exclusive jurisdiction of the Ontario Superior Court of Justice (Commercial List) as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement (the "**Selected Court**") for any Action arising out of or relating to this Agreement (and agrees not to commence any Action relating hereto except in such court) and waives any objection to venue being laid in the Selected Court whether based on the grounds of *forum non conveniens* or otherwise.

5.5 Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties hereto.

5.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which, when taken together, shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Agreement by email transmission (in pdf format) or electronic copy shall be effective as delivery of a manually executed counterpart of this Agreement.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES TO FOLLOW]**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

DCL CORPORATION

DocuSigned by:

By: Ed Zhang
45B9E9FE4AF44C4...

Name: Ed Zhang
Title: Vice President, Treasurer and Secretary

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

DCL CORPORATION (USA) LLC

DocuSigned by:

By: Ed Zhang
45B9E9FE4AF44C4...

Name: Ed Zhang
Title: Vice President, Treasurer and Secretary

Schedule "A"

Additional Entities in DCL Group

H.I.G. Colors Holdings, Inc.

H.I.G. Colors Inc.

DCL Holdings (USA), Inc.

DCL Corporation (BP), LLC

Dominion Colour Corporation (USA)

DCL Corporation (Europe) Limited

DCL Corporation (NL) B.V.

Schedule "B"

Inventory Purchase Price

1. Inventory Purchase Price. The Parties have determined, in consultation with the DCL Group Tax Advisor, that the arm's length purchase price for the DCL USA Inventory shall be Inventory Cost plus [redacted] percent ([redacted]%), subject to the adjustments as set out in Paragraph 2 below (the "**Inventory Purchase Price**").

2. Adjustments to Inventory Purchase Price**.**

   (a) The Parties agree to periodically review the Inventory Purchase Price and to make adjustments to the Inventory Purchase Price from time to time as the Parties, in consultation with the DCL Group Tax Advisor, deem appropriate to maintain an arm's length renumeration as contemplated in Section 2.3 and this Schedule "B". Any such adjustment may include adjustments to the Inventory Cost to reflect actual costs incurred and/or to the margin set out in Paragraph 1 above to reflect arm's length renumeration.

   (b) If any time following a sale of the DCL USA Inventory, the Parties determine, based on the analysis of the DCL Group Tax Advisor or otherwise, that the arm's length price for the DCL USA Inventory as at the time of any sale of such inventory is an amount other than the Inventory Purchase Price as initially determined by the Parties in Paragraph 1 above (whether due to adjustments to the Inventory Cost, margin, or otherwise), or the Canada Revenue Agency or any other taxation authority determines that such Inventory Purchase Price is an amount other than the Inventory Purchase Price as initially determined in accordance with Paragraph 1 above, and either (A) DCL Canada and DCL USA LLC concur in such determination (which concurrence will be deemed to have occurred if the Canada Revenue Agency or other taxation authority makes an assessment or reassessment that is not objected to by DCL Canada or DCL USA LLC), or (B) in the absence of such concurrence, such amount is determined or accepted by a tribunal or court having jurisdiction in the matter to be the arm's length value, after all appeal rights in respect of the relevant decision of the tribunal or court have expired or been exhausted, then the Parties agree to adjust the Inventory Purchase Price for the DCL USA Inventory to the arm's length value and allocation as finally determined by such tribunal or court.

   (c) Where there is an adjustment to the Inventory Purchase Price pursuant to this Schedule "B", any such adjustment shall be deemed to be made *nunc pro tunc* with effect as of the time of the sale of the DCL USA Inventory, and for the purposes of the foregoing, the Parties covenant and agree to make all payments or repayments necessary to reflect such adjustments and to give full effect thereto.

1. Payment Terms.

   (a) *Currency*. The Inventory Purchase Price shall be calculated and paid in Canadian Dollars.

(b) *Sales Taxes.* The Inventory Purchase Price shall be subject to sales taxes, if any, as required by applicable Law.

(c) *Payment*. Payment or satisfaction of the Inventory Purchase Price shall be in accordance with Section 4 of this Agreement.

Schedule "C"

Shared Services Price

1. Shared Services Price. The Parties have determined, in consultation with the DCL Group Tax Advisor, that the arm's length cost for the Shared Services shall be as follows, subject to the adjustments set out in Paragraph 2 below (the "**Shared Services Price**"):

   (a) For Low Value-Adding Shared Services – Shared Services Cost plus [redacted] percent ([redacted]%), together with any Pass-Through Costs.

   (b) For High Value-Adding Shared Services – Shared Services Cost plus [redacted] percent ([redacted]%), together with any Pass-Through Costs.

   For greater certainty, Pass-Through Costs shall only be charged at the actual cost incurred by the Parties, without any margin applied.

2. Adjustments to Shared Services Price.

   (a) The Parties agree to periodically review the Shared Services Price and to make adjustments to the Shared Services Price from time to time as the Parties, in consultation with the DCL Group Tax Advisor, deems appropriate to maintain an arm's length renumeration as contemplated in Section 3.4 of this Agreement and this Schedule "C". Any such adjustment may include adjustments to the Shared Services Cost to reflect actual costs incurred and/or to any of the margins as set out in Paragraph 1 above to reflect an arm's length renumeration.

   (b) If any time following a payment of Shared Services Price, the Parties determine, based on the analysis of the DCL Group Tax Advisor or otherwise, that the arm's length value for the Shared Services as at the time of any provision of a Shared Services is an amount other than the initial Shared Services Price as determined by the Parties in Paragraph 1 above (whether due to an adjustment to the Shared Services Cost, margins, or otherwise), or the Canada Revenue Agency or any other taxation authority determines that a Shared Services Price is an amount other than the Shared Services Price as initially determined by the Parties as set out in Paragraph 1 above, and either (A) DCL Canada and DCL USA LLC, as applicable, concur in such determination (which concurrence will be deemed to have occurred if the Canada Revenue Agency or other taxation authority makes an assessment or reassessment that is not objected to by DCL Canada or DCL USA LLC, as applicable), or (B) in the absence of such concurrence, such amount is determined or accepted by a tribunal or court having jurisdiction in the matter to be the arm's length value, after all appeal rights in respect of the relevant decision of the tribunal or court have expired or been exhausted, then the Parties agree to adjust the applicable Shared Services Price for the provision of the applicable Shared Services to the arm's length value and allocation as finally determined by such tribunal or court.

(c) Where there is an adjustment to a Shared Services Price pursuant to this Schedule "C", any such adjustment shall be deemed to be made *nunc pro tunc* with effect as of the time of the provision of the applicable Shared Services, and for the purposes of the foregoing, the Parties covenant and agree to make all payments or repayments necessary to reflect such adjustments and to give full effect thereto.

3. Payment Terms.

(a) *Currency*. The Shared Services Price shall be calculated and paid in United States Dollars.

(b) *Sales Taxes.* The Shared Services Price shall be subject to sales taxes, if any, as required by applicable Law.

(c) *Payment*. Payment or satisfaction of the Net Shared Services Price shall be in accordance with Section 4 of this Agreement.

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

Affidavit of Scott Davido

sworn before me by video conference
this 20th day of December, 2022

A Commissioner, etc.

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

INTERCOMPANY AGREEMENT
[DCL CANADA / DCL USA LLC / DCL UK / DCL NL]

THIS INTERCOMPANY AGREEMENT is made as of December 18, 2022 between **DCL Corporation** ("**DCL Canada**"), a corporation incorporated under the laws of Ontario, **DCL Corporation (USA) LLC**, a limited liability company formed under the laws of Delaware ("**DCL USA LLC**"), **DCL Corporation (Europe) Limited**, a corporation registered under the laws of England ("**DCL UK**"), and **DCL Corporation (NL) B.V.,** private limited liability company (besloten vennootschap met berperkte aansprakelijkheid) incorporate under Dutch law, having its statutory authority in Maastricht, the Netherlands, and registered with the Dutch trade register under number 14124987 ("**DCL NL**").

RECITALS:

A. All capitalized terms used in these Recitals but not defined in these Recitals, shall have the meanings given to them in Section 1.

B. DCL Canada and DCL USA LLC, together with those companies set out in Schedule "A" hereto, form the "**DCL Group**", which operates as an integrated global manufacturer and reseller of high-performance specialty pigments and dispersions. As an integrated group, the DCL Group, its members, including DCL Canada, DCL USA LLC, DCL UK and DCL NL engage in a variety of intercompany arrangements.

C. Pursuant to an Order Book Purchase and Sale Agreement between DCL Canada and DCL USA LLC executed on December 15, 2021 and with an effective date of August 1, 2021 (the "**Working Capital Sale Effective Date**"), DCL Canada agreed to sell, and DCL USA LLC agreed to buy, all of DCL Canada's right, title and interest in and to its non-Canadian customer sales contracts, and all business information related thereto, and all interests and benefits derived therefrom as more particularly set out in such agreement (the "**Customer Contracts Sale**").

D. In addition to the Customer Contracts Sale, DCL Canada transferred to DCL USA LLC, among other things:

(i) all sales contracts existing at July 1, 2022 with Canadian customers of DCL Canada that were non-Monteith legacy customers (such contracts, together with the sales contracts transferred to DCL USA LLC pursuant to the Customer Contracts Sale, the "**Transferred Contracts**"); and

(ii) finished goods inventory manufactured by DCL Canada from and after the Working Capital Sale Effective Date as required by DCL USA LLC to service the Transferred Contracts, the sales of which were and are to be conducted at an arm's length price, as determined by the Parties, in consultation with the DCL Group Tax Advisor. The inventory referred to above does not include the inventory to be sold by DCL Canada to legacy Monteith customers.

E. Prior to the Working Capital Sale Effective Date, DCL Canada had purchased all of the finished goods inventory manufactured by DCL UK (the "**DCL UK Inventory**") and

manufactured by DCL NL (the "**DCL NL Inventory**", together with the DCL UK Inventory, the "**DCL European Inventory**") and resold them to its third-party customers.

F. From and after the Working Capital Effective Date, DCL USA LLC purchased all the DCL UK Inventory from DCL UK and DCL USA LLC purchased all the DCL NL Inventory from DCL NL. DCL USA LLC then sells to its third-party customers, including those party to the Transferred Contracts.

G. DCL Canada, DCL USA LLC and the European Subsidiaries have engaged in other intercompany arrangements, including sharing certain operational resources, management services and infrastructure as more particularly described in this Agreement (the "**Shared Services**").

H. It is contemplated that DCL Canada will commence restructuring proceedings under the *Companies' Creditors Arrangement Act* ("**CCAA**", and such proceedings, the "**CCAA Proceedings**") and DCL USA LLC and certain other members of the DCL Group will commence proceedings under chapter 11 of title 11 of the *United States Code* (the "**Chapter 11 Proceedings**", together with the CCAA Proceedings, the "**Proceedings**").

I. From time to time after the Filing Date, in connection with the DCL European Inventory and the provision of Shared Services and other intercompany obligations, DCL USA LLC will make certain intercompany transfers comprised of the following amounts (collectively, the "**Intercompany Transfers**") made in the order and manner set forth in this Agreement: (i) payments by DCL USA LLC on account of the Inventory Purchase Price for the purchase of DCL European Inventory by DCL USA LLC, (ii) payments by DCL USA LLC of amounts owing on account of the Shared Services Price, (iii) payment by DCL USA LLC to DCL Canada on account of payments made or to be made by DCL Canada of the DCL NL Supplier Invoices for the account of DCL NL, and (iv) intercompany loans by DCL USA LLC to the European Subsidiaries to be used by the European Subsidiaries for operating and non-operating.

J. It is a condition of the proposed debtor-in-possession financing arrangements of DCL Canada, DCL USA LLC, and certain other companies constituting the DCL Group in the Proceedings (the "**DIP Financing Facility**") that the Parties formalize the terms and conditions of sales of DCL UK Inventory and DCL NL Inventory to DCL USA LLC and the provision of Shared Services between each other and the methodology pursuant to which the Parties are to apply the Intercompany Transfers permitted under the DIP Financing Facility on account of the permitted Intercompany Categories and this Agreement has been entered into in satisfaction of that condition.

K. Concurrently with the execution of this Agreement, DCL Canada and DCL US have entered into a separate intercompany agreement formalizing the Parties' intercompany arrangements with each other (the "**US/Canada Intercompany Agreement**").

NOW THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Interpretation; Definitions.**

1.1 Definitions. All capitalized terms used herein shall have the respective meanings given to them below:

(a) "**Action**" means any dispute, claim, action, litigation, arbitration or proceeding commenced, brought or asserted by any person or conducted or heard before any Governmental Authority.

(b) "**Agreement**" means this intercompany agreement, including all Schedules, Appendices, and Exhibits hereto, as each may be amended, supplemented, restated, or replaced from time to time.

(c) "**Business Day**" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under applicable law of, or are in fact closed in, the state of Delaware or the province of Ontario.

(d) **"Canadian Distribution Centres"** means the Ajax Distribution Centre and Third-Party Distribution Centre as defined in the US/Canada Intercompany Agreement and "**Canadian Distribution Centre**" means any one of them**.**

(e) "**CCAA**" has the meaning given to it in Recital H.

(f) "**CCAA Court**" means the Ontario Superior Court of Justice (Commercial List).

(g) "**CCAA Proceedings**" has the meaning given to it in Recital H.

(h) "**Chapter 11 Court**" means the United States Bankruptcy Court for the District of Delaware.

(i) "**Chapter 11 Proceedings**" has the meaning given to it in Recital H.

(j) "**DCL Canada**" has the meaning given to it in the Preamble, and its successors and assigns.

(k) "**DCL Canada Shared Services**" has the meaning given to it in the US/Canada Intercompany Agreement.

(l) "**DCL European Inventory**" has the meaning given to it in Recital E.

(m) "**DCL European Loan**" has the meaning given to it in Section 5.4(d).

(n) "**DCL European Receivables**" has the meaning given to in Section 5.4(b).

(o) "**DCL Group**" has the meaning given to it in Recital B.

(p) "**DCL Group Tax Advisor**" means Grant Thornton LLP or such other tax advisor from a an internationally recognized firm of independent public accountants engaged by the DCL Group.

(q) "**DCL NL**" has the meaning given to it in the Preamble, and its successors and assigns.

(r) "**DCL NL Inventory**" has the meaning given to it in Recital E.

(s) "**DCL NL Inventory Purchase Price**" has the meaning given to it in Schedule "B".

(t) "**DCL NL Loans**" has the meaning given to it in Section 5.4(c).

(u) "**DCL NL Receivables**" has the meaning given to it in Section 5.4(c).

(v) "**DCL NL Supplier Invoices**" means invoices on account of goods supplied from and after the Filing Date from a single supplier to DCL NL that DCL Canada has agreed to pay, on behalf and for the account of DCL NL.

(w) "**DCL UK**" has the meaning given to it in the Preamble, and its successors and assigns.

(x) "**DCL UK Inventory Purchase Price**" has the meaning given to it in Schedule "B".

(y) "**DCL UK Loans**" has the meaning given to it in Section 5.4(b).

(z) "**DCL UK Shared Services**" has the meaning given to it in Section 3.1.

(aa) "**DCL USA LLC**" has the meaning given to it in Preamble, and its successors and assigns.

(bb) "**DCL USA Shared Services**" has the meaning given to it in the US/Canada Intercompany Agreement.

(cc) "**DIP Budget**" means the budget in respect of the DIP Financing Facility as approved by the CCAA Court in the CCAA Proceedings and by the Chapter 11 Court in the Chapter 11 Proceedings, as it may be amended from time to time in accordance with the DIP Financing Orders.

(dd) "**DIP Credit Agreement**" means the debtor-in-possession credit agreement approved by the CCAA Court in the CCAA Proceedings and by the Chapter 11 Court in the Chapter 11 Proceedings.

(ee) "**DIP Financing Facility**" has the meaning given to it in Recital I.

(ff) "**DIP Financing Orders**" means the orders of the CCAA Court in the CCAA Proceedings and the Chapter 11 Court in the Chapter 11 Proceedings approving the DIP Financing Facility.

(gg) "**European Plant**" means the manufacturing facility operated by DCL UK or DCL NL, as applicable.

(hh) "**European Subsidiaries**" means DCL UK and DCL NL.

(ii) "**Filing Date**" means the later of (i) the date on which the Chapter 11 Proceedings are commenced and (ii) the date on which the CCAA Proceedings are commenced.

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

(kk) "**High Value-Adding Shared Services**" means those Shared Services relating to provision of management services and oversight performed by senior level personnel, including the Chief Restructuring Officer, Chief Executive Officer, Chief Financial Officer, Chief Commercial Officer, and Vice Presidents and Directors for the Supply Chain, Human Resources, Global Procurement, Information Technology, Finance and Sales & Marketing and Regulatory departments for the DCL Group.

(ll) "**Intercompany Categories**" has the meaning given to it in Section 5.2.

(mm) "**Intercompany Obligations**" has the meaning given to it in Section 5.4(d).

(nn) "**Intercompany Transfers**" has the meaning given to it in Recital I .

(oo) "**Inventory Cost**" means the cost of materials, labour, and general manufacturing overhead incurred by DCL UK or DCL NL as allocated to the manufacture of the DCL UK Inventory and DCL NL Inventory, as applicable, as determined by the applicable Parties, in consultation with the DCL Group Tax Advisor, as such may be adjusted from time to time in accordance with Schedule "B".

(pp) "**Inventory Purchase Price**" has the meaning given to it in Schedule "B".

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

(rr) "**Low Value-Adding Shared Services**" means those Shared Services performed by managers or other employees that support functions such as financial planning, sales, communications, and operations.

(ss) "**Parties**" means DCL Canada, DCL USA LLC, DCL UK and DCL NL and their respective successors and assigns.

(tt) "**Pass-Through Costs**" means the amount of any out-of-pocket fees and expenses paid by DCL Canada or DCL USA LLC in the provision of a Shared Service.

(uu) "**Proceedings**" has the meaning given to it in Recital H.

(vv) "**Proportionate Share**" means the proportionate share of the cost of DCL Canada Shared Services or DCL USA Shared Services, provided to DCL UK or DCL NL, as applicable, as determined by the Parties, in consultation with the DCL Group Tax Advisor.

(ww) "**Selected Court**" has the meaning given to it in Section 6.4.

(xx) "**Shared Services**" has the meaning given to it in Recital G.

(yy) "**Shared Services Cost**" means in respect of Shared Services provided by each of DCL Canada and DCL USA LLC:

(i) For High Value-Adding Shared Services, the cost of compensation of those persons performing the Shared Services incurred by such Party.

(ii) For Low Value-Adding Shared Services, the cost of compensation of those persons performing the Shared Services incurred by such Party.

In each case of clause (i) and (ii) above, such costs are to be allocated to the provision of such Shared Services by such Party, as determined by the Parties, in consultation with the DCL Group Tax Advisor, as such costs may be adjusted from time to time in accordance with Schedule "C". For greater certainty and the avoidance of doubt, Pass-Through Costs are not included in Shared Services Costs but are a separate category of costs that are to be dealt with in accordance with Schedule "C".

(zz) "**Shared Services Price**" shall have the meaning given to it in Schedule "C".

(aaa) "**Third-Party European Distribution Centre**" and "**Third-Party European Distribution Centres**" has the meaning given to it in Section 2.2(a).

(bbb) "**Transferred Contracts**" has the meaning given to it in Recital D.

(ccc) "**US/Canada Intercompany Agreement**" has the meaning given to it in Recital K

(ddd) "**Working Capital Sale Effective Date**" has the meaning given to in Recital C.

1.2 Currency. Unless expressly stated otherwise, all dollar amounts in this Agreement are in US Dollars.

2. **Purchase and Sale of DCL European Inventory**. The sale of the DCL European Inventory by DCL UK and DCL NL to, and the purchase of the DCL European Inventory by DCL USA LLC, shall be on the following terms and conditions:

2.1 Transfer of Title; Risk of Loss.

(a) All right, title and interest in and to DCL USA Inventory manufactured by the European Subsidiaries from and after the Filing Date shall absolutely transfer to DCL USA LLC at the time such DCL USA Inventory leaves a European Plant to be shipped to one of the Third-Party European Distribution Centres or Canadian

Distribution Centres. All responsibility and risk of loss for the DCL USA Inventory shall transfer to DCL USA LLC at such time. All sales of such DCL USA Inventory by the European Subsidiaries to DCL USA LLC shall be on an "as is, where is" and no recourse basis.

2.2 Storage and Shipping Arrangements.

(a) On completion of the manufacture of the DCL European Inventory ordered by DCL USA LLC, DCL USA LLC, will arrange for shipment of such DCL European Inventory, at its sole cost, to such third-party distribution centres located in the UK and the Netherlands (the "**Third-Party European Distribution Centres**" and any one of them, a "**Third-Party European Distribution Centre**"), or Canadian Distribution Centres as determined by DCL USA LLC.

(b) Once the DCL European Inventory is at a Third-Party European Distribution Centre or Canadian Distribution Center:

(i) DCL USA LLC, as applicable, is responsible for all storage costs relating to the DCL UK and DCL NL Inventory stored at the Third-Party European Distribution Centre or the Canadian Distribution Centre; and

(ii) DCL USA LLC is responsible for arranging the shipment of the DCL European Inventory to third party customers and/or to a distribution centre in the United States, or such other location as may be designated by DCL USA LLC from time to time, at DCL USA LLC's sole cost, risk and expense, including all related export and customs clearance and payment of any customs duties or fees related to such shipment reflecting DCL USA LLC as the exporter and importer of record.

2.3 Purchase Price. It is the intention of the Parties that the DCL European Inventory is to be purchased by DCL USA LLC from the European Subsidiaries at a purchase price equal to the arm's length price for the DCL European Inventory which the Parties will determine, in consultation with the DCL Group Tax Advisor, to be an amount as calculated and as may be adjusted in accordance with Schedule "B".

2.4 Payment/Satisfaction of Inventory Purchase Price. The Inventory Purchase Price for the sale of DCL European Inventory, together whether any sales taxes as required by Law, is to be paid or satisfied in accordance with Section 4 below.

3. **Shared Services**. The Shared Services provided by DCL Canada, DCL US and DCL UK to the Parties and the obligations in respect thereto are set out below.

3.1 DCL Canada Shared Services. Subject to amendment as the Parties may agree from time to time, DCL Canada will provide the DCL Canada Shared Services to the DCL Group.

3.2 DCL USA Shared Services. Subject to amendment as the Parties may agree from time to time, DCL USA LLC will provide the DCL USA Shared Services to the DCL Group.

3.3 DCL UK Shared Services. Subject to amendment as the Parties may agree from time to time, DCL UK will provide the following Shared Services to DCL USA LLC (collectively, the "**DCL UK Shared Services**"):

(a) sales and customer service support functions that service DCL USA LLC's third-party European customers.

3.4 Costs of Shared Services. Each of DCL USA LLC, DCL UK and DCL NL agree, subject to Section 5.2(c), to be responsible for the arm's length cost of the Shared Services as follows:

(a) DCL USA LLC will be responsible for the cost of:

(i) the provision of the DCL UK Shared Services to DCL USA LLC by DCL UK at the Shared Services Price;

(b) DCL UK will be responsible for its Proportionate Share of the cost of:

(i) the provision of DCL USA Shared Services provided by DCL USA LLC to DCL UK based on the Shared Services Price applicable to such Shared Services; and

(ii) the provision of the DCL Canada Shared Services provided to DCL UK at the Shared Services Price; and

(c) DCL NL will be responsible for its Proportionate Share of the cost of:

(i) the provision of DCL USA LLC Shared Services provided by DCL USA LLC to DCL NL based on the Shared Services Price applicable to such Shared Services; and

(ii) the provision of DCL Canada Shared Services provided to DCL NL at the Shared Services Price.

(d) Although DCL UK and DCL NL are responsible for their Proportionate Share of the DCL Canada Shared Services provided to each of them pursuant to Section 3.4(b)(ii) and Section 3.4(c)(ii), DCL USA LLC will pay or satisfy those costs on their behalf in accordance with Section 5.2.

3.5 Shared Services Price. It is the intention of the Parties that the Shared Services shall be provided at an arm's length price as calculated by the Parties, in consultation with the DCL Group Tax Advisor (in each case as applicable, the "**Shared Services Price**") as calculated, and as the same may be adjusted from time to time in accordance with Schedule "C".

3.6 Payment/Satisfaction of the Shared Services Price. The payment obligation of DCL USA LLC, DCL UK and DCL NL in respect of the Shared Services Price as set out Section 3.5 is to be paid or satisfied in accordance with Section 5.

4. **Payment of DCL NL Supplier Invoices.** From and after the Filing Date, DCL Canada agrees to pay the DCL NL Supplier Invoices on behalf and for the account of DCL NL. The obligation of DCL NL to reimburse DCL Canada for that obligation is to be paid or satisfied in accordance with Section 5.

5. **Intercompany Transfers and Intercompany Receivables**. From and after the Filing Date, the Parties agree to the provision of Intercompany Transfers as follows:

5.1 Amount and Timing of Intercompany Transfers. DCL USA LLC shall provide Intercompany Transfers to the European Subsidiaries in the amounts and at the times set out in the DIP Budget and permitted under the DIP Credit Agreement.

5.2 Application of Intercompany Transfers.[1] The Intercompany Transfers shall be applied amongst the following categories (the "**Intercompany Categories**") in accordance with Section 5.4:

(a) Intercompany Transfers from DCL USA LLC to DCL UK:

(i) First to satisfy any then outstanding Inventory Purchase Price for DCL UK Inventory sold by DCL UK to DCL USA LLC from and after the Filing Date;

(ii) Second, after satisfaction of all obligations set forth in paragraphs (a)(i) above, to satisfy any outstanding amount, if any, then owing for the Shared Services Price owed by DCL USA LLC to DCL UK for DCL UK Shared Services provided from and after the Filing Date; and

(iii) Third, after satisfaction of all obligations set forth in paragraphs (a)(i) and (a)(ii), to the making of intercompany loans by DCL USA LLC to DCL UK to be used for operating and non-operating costs. If the amount of the Intercompany Transfers from DCL USA LLC to DCL UK, at any time is insufficient to fully satisfy the intercompany obligations under paragraphs (a)(i) and (a)(ii) above, the amount of the unsatisfied intercompany obligations, shall be a DCL USA Receivable owing by DCL USA LLC to DCL UK in accordance with, and subject to, Section 5.4(d).

[1] Intercompany balances will need to be reset at zero balances on the Filing Date to distinguish the between pre and post filing intercompany amounts.

(b) Intercompany Transfers from DCL USA LLC to DCL NL:

(i) First to satisfy any then outstanding Inventory Purchase Price for DCL NL Inventory sold by DCL NL to DCL USA LLC from and after the Filing Date;

(ii) Second, to make payments to DCL Canada to be used for payment of any DCL NL Supplier Invoices pursuant to Section 4; and

(iii) Third, after satisfaction of the obligations set forth in paragraphs (b)(i) and (b)(ii) above, to the making of intercompany loans to be used by DCL NL for operating and non-operating costs. If the amount of Intercompany Transfer from DCL USA LLC to DCL NL, is at any time insufficient to fully satisfy the obligations under paragraphs (b)(i) and (b)(ii) above, the amount of the unsatisfied intercompany obligations, shall be a DCL NL Receivable owing by DCL USA LLC to DCL NL in accordance with, and subject to, Section 5.4(d).

(c) As captive manufacturers, (i) any amounts owed by the European Subsidiaries on account of their Proportionate Share of the DCL Canada Shared Services and paid for or satisfied by DCL USA LLC pursuant to Section 3.4(d) and (ii) any amounts funded by DCL USA LLC to pay for the DCL NL Supplier Invoices for and on DCL NL's behalf pursuant to Section 4 will be charged back to DCL USA LLC by the European Subsidiaries as part of the Inventory Purchase Price. Accordingly, as a result, any amounts paid by DCL USA LLC for or on behalf of the European Subsidiaries pursuant to this Agreement or owed to DCL USA LLC by the European Subsidiaries to DCL USA LLC for DCL Shared Services will result in a net intercompany balance of $0 and therefore amounts owing by DCL USA LLC to the European Subsidiaries pursuant to this Agreement will not be reduced by any such amounts.

5.3 Mode of Provision of Intercompany Transfers. The provision of Intercompany Transfers by DCL USA LLC to the European Subsidiaries and from the European Subsidiaries to DCL USA LLC may be effected in the following manner:

(a) Intercompany Transfers from DCL USA LLC to DCL UK, by way of;

(i) direct payments to DCL UK by wire transfer funds into a DCL UK deposit account as directed by DCL UK;

(ii) direct payments to third party suppliers/vendors for goods sold, or and services provided, to DCL UK; and/or

(iii) direct payments of operational expenses of DCL UK (e.g. payroll, benefits, utilities, etc.), without duplication.

(b) Intercompany Transfers from DCL USA LLC to DCL NL by way of:

(i) direct payments to DCL NL by wire transfer funds into a DCL NL deposit account as directed by DCL NL;

(ii) direct payments to third party suppliers/vendors for goods sold, and services provided to, DCL NL; and/or

(iii) direct payments of operational expenses of DCL NL (e.g. payroll, benefits, utilities, etc.), without duplication.

5.4 Reconciliation of Intercompany Obligations. From and after the date of this Agreement, on a monthly basis in accordance with existing month-end reporting, the Parties will perform the following calculations and produce a summary report with respect thereto:

(a) DCL USA LLC and the European Subsidiaries will account for the Intercompany Transfers made by DCL USA LLC to each Intercompany Category, as applicable, in accordance with Section 5.2.

(b) In respect of DCL UK, the balance remaining, if any, of the Intercompany Transfers after satisfaction of the intercompany obligations in accordance with Sections 5.2(a)(i) and 5.2(a)(ii), shall constitute an intercompany loan by DCL USA LLC to DCL USA LLC (such intercompany loans, the "**DCL UK Loans**"). The amount of any DCL UK Loans shall be subject to (i) adjustment from time to time as a result of any adjustments to the applicable Inventory Purchase Price and Shared Services Price in accordance with Schedule "B" and Schedule "C", and (ii) set-off in accordance with Section 5.4(c). The maximum net aggregate principal amount of DCL European Loans (as defined below) outstanding at any time shall not exceed the maximum amount permitted for DCL European Loans under the DIP Credit Agreement.

(c) In respect of DCL NL, the balance remaining, if any, of the Intercompany Transfers after satisfaction of the intercompany obligations in accordance with Sections 5.2(b)(i) and 5.2(b)(ii), shall constitute an intercompany loan by DCL USA LLC to DCL NL (such intercompany loans, the "**DCL NL Loans**", and together with the DCL UK Loans, the "**DCL European Loans**"). The amount of any DCL NL Loans shall be subject to (i) adjustment from time to time as a result of any adjustments to the applicable Inventory Purchase Price and Shared Services Price in accordance with Schedule "B" and Schedule "C", and (ii) set-off in accordance with Section 5.4(c). The maximum net aggregate principal amount of DCL European Loans outstanding at any time shall not exceed the maximum amount permitted for DCL European Loans under the DIP Credit Agreement.

(d) If Intercompany Transfers by DCL USA LLC are not sufficient to satisfy the intercompany obligations in accordance with Section 5.2(a)(i) and Section 5.2(a)(ii), in the case of DCL UK, or Section 5.2(b)(i) and Section 5.2(b)(ii), in the case of DCL NL, the balance owing by DCL USA LLC to DCL UK or DCL NL, as applicable, shall be set off against the amount of any DCL UK Loan or DCL NL Receivable, respectively, outstanding at such time to DCL USA LLC, and residual

amount remaining owing by DCL USA LLC to DCL UK or DCL NL, as applicable, after such application shall constitute an intercompany receivable from DCL USA LLC to DCL UK or DCL NL, as applicable (such receivables, together with the obligations to pay the Inventory Purchase Price and DCL UK Shared Services and to fund the DCL NL Supplier Invoices, the "**DCL European Receivables**", together with the DCL UK Loans and DCL NL Loans, the "**Intercompany Obligations**"). The amount of any DCL European Receivables shall be subject to (i) adjustment from time to time as a result of any adjustments to the applicable Inventory Purchase Price and Shared Services Price pursuant to Schedule "B" or Schedule "C" and (ii) set off in accordance with this Section 5.4(d). The maximum aggregate net principal amount of DCL European Receivables outstanding at any time shall not exceed $5,000,000.

5.5 Interest on DCL European Loans. DCL European Loans shall accrue interest at an arm's length rate to be determined by the Parties, in consultation with DCL Group's Tax Advisor, payable monthly on the last day of each month by adding accrued interest to the outstanding principal amount on each interest payment date.

5.6 Termination of Commitments for Intercompany Obligations; Repayment. The obligation of DCL USA LLC to provide intercompany loans to the European Subsidiaries and for the European Subsidiaries to provide to provide trade credit to DCL USA LLC pursuant to this Agreement shall terminate upon the termination of the DIP Financing Facility pursuant to the terms of the DIP Credit Agreement and DIP Financing Orders and any obligation to provide DCL European Loans or DCL European Receivables shall terminate at such time. At that time, any Party may demand repayment of any outstanding Intercompany Obligations owing to it.

5.7 Reconciliation of Intercompany Obligations at October 31, 2022. The Parties agree to produce a schedule setting out the outstanding intercompany payable balances between (i) DCL Canada and each of the European Subsidiaries and (ii) DCL USA LLC and each of the European Subsidiaries, in each of the Intercompany Categories and the overall net balance resulting therefrom at October 31, 2022, by not later than January 31, 2023.

6. **Miscellaneous**.

6.1 Severability. If any provision hereof is held to be illegal, invalid or unenforceable in any jurisdiction, such provision shall be deemed to be severed from the remainder of this Agreement with respect only to such jurisdiction and the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect.

6.2 Amendments; Waiver. No amendment of this Agreement shall be effective unless made in writing and signed by the Parties. A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing and signed by the Party to be bound by the waiver and then only in the specific instance and for the specific purpose for which it has been given. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under

this Agreement will not operate as a waiver of that Party's rights under this Agreement in respect of any subsequent default, breach or non-observance (whether of the same or any other nature).

6.3 Applicable Law. This Agreement shall be construed in accordance with and governed by the Laws of the Province of Ontario and the federal Laws of Canada applicable therein (without giving effect to any choice or conflict of laws principles).

6.4 Jurisdiction. With respect to any Action arising out of or relating to this Agreement, each of the Parties hereby irrevocably consents to the exclusive jurisdiction of the Ontario Superior Court of Justice (Commercial List) as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement (the "**Selected Court**") for any Action arising out of or relating to this Agreement (and agrees not to commence any Action relating hereto except in such court) and waives any objection to venue being laid in the Selected Court whether based on the grounds of *forum non conveniens* or otherwise.

6.5 Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties hereto.

6.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which, when taken together, shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Agreement by email transmission (in pdf format) or electronic copy shall be effective as delivery of a manually executed counterpart of this Agreement.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

DCL CORPORATION

DocuSigned by:

By: Ed Zhang
45B9E9FE4AF44C4...

Name: Ed Zhang
Title: Vice President, Treasurer and Secretary

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

DCL CORPORATION (USA) LLC

By: DocuSigned by: Ed Zhang 45B9E9FE4AF44C4...

Name: Ed Zhang

Title: Vice President, Treasurer and Secretary

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

DCL CORPORATION (EUROPE) LIMITED

By: N. Smith.
Name: NIGEL SMITH
Title: DIRECTOR

N

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

DCL CORPORATION (NL) B.V.

By: DocuSigned by: David C Herak 408AEF83C9C3487...

Name: David Herak

Title: Director A

Schedule "A"

Additional Entities in DCL Group

H.I.G. Colors Holdings, Inc.

H.I.G. Colors Inc.

DCL Holdings (USA), Inc.

DCL Corporation (BP), LLC

Dominion Colour Corporation (USA)

Schedule "B"

Inventory Purchase Price

1. Inventory Purchase Price. The Parties have determined, in consultation with the DCL Group Tax Advisor, that the arm's length purchase price for:

   (a) the DCL UK Inventory shall be Inventory Cost plus [redacted]%, subject to the adjustments as set out in Paragraph 2 below (the "**DCL UK Inventory Purchase Price**").

   (b) The DCL NL Inventory shall be the Inventory Cost plus [redacted]%, subject to the adjustments as set out in Paragraph 2 below (the "**DCL NL Inventory Purchase Price**", and "**Inventory Purchase Price**" shall refer to either the DCL UK Inventory Purchase Price or the DCL NL Inventory Purchase Price, as applicable).

2. Adjustments to Inventory Purchase Price.

   (a) The Parties agree to periodically review the Inventory Purchase Price and to make adjustments to the Inventory Purchase Price from time to time as the Parties, in consultation with the DCL Group Tax Advisor, deem appropriate to maintain an arm's length renumeration as contemplated in Section 2.3 and this Schedule "B". Any such adjustment may include adjustments to the Inventory Cost to reflect actual costs incurred and/or to the margin set out in Paragraph 1 above to reflect arm's length renumeration.

   (b) If any time following a sale of the DCL European Inventory, the Parties determine, based on the analysis of the DCL Group Tax Advisor or otherwise, that the arm's length price for the DCL European Inventory as at the time of any sale of such inventory is an amount other than the Inventory Purchase Price as initially determined by the Parties in Paragraph 1 above (whether due to adjustments to the Inventory Cost, margin, or otherwise), or the Canada Revenue Agency or any other taxation authority determines that such Inventory Purchase Price is an amount other than the Inventory Purchase Price as initially determined in accordance with Paragraph 1 above, and either (A) DCL USA LLC or the applicable European Subsidiary concur in such determination (which concurrence will be deemed to have occurred if the Canada Revenue Agency or other taxation authority makes an assessment or reassessment that is not objected to by DCL USA LLC or the applicable European Subsidiary), or (B) in the absence of such concurrence, such amount is determined or accepted by a tribunal or court having jurisdiction in the matter to be the arm's length value, after all appeal rights in respect of the relevant decision of the tribunal or court have expired or been exhausted, then the Parties agree to adjust the Inventory Purchase Price for the DCL European Inventory to the arm's length value and allocation as finally determined by such tribunal or court.

(c) Where there is an adjustment to the Inventory Purchase Price pursuant to this Schedule "B", any such adjustment shall be deemed to be made *nunc pro tunc* with effect as of the time of the sale of the DCL European Inventory, and for the purposes of the foregoing, the Parties covenant and agree to make all payments or repayments necessary to reflect such adjustments and to give full effect thereto.

3. Payment Terms.

(a) *Currency*. The Inventory Purchase Price shall be calculated and paid in:

(i) Euros for DCL NL Inventory sales; and

(i) Pound Sterling for DCL UK Inventory sales.

(b) *Sales Taxes.* The Inventory Purchase Price shall be subject to sales taxes, if any, as required by applicable Law.

(c) *Payment*. Payment or satisfaction of the Inventory Purchase Price shall be in accordance with Section 5 of this Agreement.

Schedule "C"

Shared Services Price

1. Shared Services Price. The Parties have determined, in consultation with the DCL Group Tax Advisor, that the arm's length cost for the Shared Services shall be as follows, subject to the adjustments set out in Paragraph 2 below (the "**Shared Services Price**"):

   (a) For DCL UK Shared Services set out in Section 3.3(a), Shared Services Cost plus [redacted] percent ([redacted]%).

   (b) For Low Value-Adding Shared Services (other than those set out in Section 3.3(a)) – Shared Services Cost plus [redacted] percent ([redacted]%), together with any Pass-Through Costs.

   (c) For High Value-Adding Shared Services (other than those set out in Section 3.3(a))– Shared Services Cost plus [redacted] percent ([redacted]%), together with any Pass-Through Costs.

   For greater certainty, Pass-Through Costs shall only be charged at the actual cost incurred by the Parties, without any margin applied.

2. Adjustments to Shared Services Price.

   (a) The Parties agree to periodically review the Shared Services Price and to make adjustments to the Shared Services Price from time to time as the Parties, in consultation with the DCL Group Tax Advisor, deems appropriate to maintain an arm's length renumeration as contemplated in Section 3.5 of this Agreement and this Schedule "C". Any such adjustment may include adjustments to the Shared Services Cost to reflect actual costs incurred and/or to any of the margins as set out in Paragraph 1 above to reflect an arm's length renumeration.

   (b) If any time following a payment of Shared Services Price, the Parties determine, based on the analysis of the DCL Group Tax Advisor or otherwise, that the arm's length value for the Shared Services as at the time of any provision of a Shared Services is an amount other than the initial Shared Services Price as determined by the Parties in Paragraph 1 above (whether due to an adjustment to the Shared Services Cost, margins, or otherwise), or the Canada Revenue Agency or any other taxation authority determines that a Shared Services Price is an amount other than the Shared Services Price as initially determined by the Parties as set out in Paragraph 1 above, and either (A) DCL Canada, DCL USA LLC, DCL UK or DCL NL, as applicable, concur in such determination (which concurrence will be deemed to have occurred if the Canada Revenue Agency or other taxation authority makes an assessment or reassessment that is not objected to by DCL Canada, DCL USA LLC, DCL UK or DCL NL, as applicable), or (B) in the absence of such concurrence, such amount is determined or accepted by a tribunal or court having jurisdiction in the matter to be the arm's length value, after all appeal rights in respect of the relevant decision of the tribunal or court have expired or been

exhausted, then the Parties agree to adjust the applicable Shared Services Price for the provision of the applicable Shared Services to the arm's length value and allocation as finally determined by such tribunal or court.

(c) Where there is an adjustment to a Shared Services Price pursuant to this Schedule "C", any such adjustment shall be deemed to be made *nunc pro tunc* with effect as of the time of the provision of the applicable Shared Services, and for the purposes of the foregoing, the Parties covenant and agree to make all payments or repayments necessary to reflect such adjustments and to give full effect thereto.

3. Payment Terms.

(a) *Currency*. The Shared Services Price shall be calculated and paid in:

(i) USD for DCL USA Shared Services and DCL Canada Shared Services; and

(ii) Pound Sterling for DCL UK Shared Services.

(b) *Sales Taxes.* The Shared Services Price shall be subject to sales taxes, if any, as required by applicable Law.

(c) *Payment*. Payment or satisfaction of the Shared Services Price shall be in accordance with Section 5 of this Agreement.

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

Affidavit of Scott Davido

sworn before me by video conference
this 20th day of December, 2022

A Commissioner, etc.

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

H.I.G. Colors Holdings, Inc.

Consolidated Financial Statements
March 31, 2022
(expressed in 000's US dollars, unless otherwise specified)

Tel: (416) 865-0200
Fax: (416) 367-3912
www.bdo.ca

BDO Canada LLP
222 Bay Street
Suite 2200, P.O. Box 131
Toronto, Ontario M5K 1H1

Independent Auditor's Report

To the Shareholders of H.I.G Colors Holdings, Inc.

Opinion

We have audited the consolidated financial statements of H.I.G. Colors Holdings, Inc. and its subsidiaries (together, the Company), which comprise the consolidated balance sheet as at March 31, 2022, and the consolidated statements of operations and comprehensive income (loss), changes in shareholders' equity (deficiency) and cash flows for the year then ended, and notes to the consolidated financial statements, including a summary of significant accounting policies.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Company as at March 31, 2022, and its consolidated results of operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America (US GAAP).

Basis for Opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Consolidated Financial Statements* section of our report. We are independent of the Company in accordance with the ethical requirements that are relevant to our audit of the consolidated financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Other Matter

The consolidated financial statements of the Company for the year ended March 31, 2021 were audited by another auditor who expressed an unmodified opinion on those consolidated financial statements on June 29, 2021.

Responsibilities of Management and Those Charged with Governance for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with US GAAP, and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Company's financial reporting process.

Auditor's Responsibilities for the Audit of the Consolidated Financial Statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence

the economic decisions of users taken on the basis of these consolidated financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of entities or business activities within the Company to express an opinion on the consolidated financial statements. We are responsible for the direction, supervision and performance of the group audit. We remain solely responsible for our audit opinion.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

BDO Canada LLP

Chartered Professional Accountants, Licensed Public Accountants

Toronto, Ontario
July 2, 2022

H.I.G. Colors Holdings, Inc.

Consolidated Balance Sheet

As at March 31, 2022

(expressed in '000s US dollars)

	2022 $	2021 $
Assets		
Current assets		
Cash	3,180	4,315
Accounts receivable (note 3)	64,128	42,062
Income taxes recoverable	278	278
Inventories (note 4)	106,735	51,149
Prepaid expenses	1,097	1,139
Deferred income taxes (note 14)	5,263	3,840
	180,681	102,783
Long-term receivables	65	65
Property, plant and equipment (note 5)	75,087	43,148
Intangible assets (note 6)	41,626	38,371
Goodwill (note 2)	6,960	6,960
Accrued pension benefit assets (note 7)	6,606	1,734
Deferred income taxes (note 14)	9,041	6,992
	320,066	200,053
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	55,900	42,853
Income taxes payable	14,468	561
Credit facilities (note 8)	29,104	18,519
Interest payable	686	1,726
Contingent consideration (note 9)	9,954	7,475
	110,112	63,659
Credit facilities (note 8)	89,310	96,418
Sponsor note (note 8)	9,839	6,317
Promissory note payable (note 8)	6,594	6,213
Asset retirement obligations (note 10)	4,555	4,369
Deferred income taxes (note 14)	17,133	5,423
	237,543	189,874
Shareholders' Equity		
Capital stock (note 11)	19,582	19,657
Contributed surplus	512	900
Accumulated other comprehensive income	8,365	3,973
Surplus (Deficit)	54,064	(14,351)
	82,523	10,179
	320,066	200,053

Subsequent events (note 18)

Approved by the Board of Directors

"*Edoardo Mattei*" Officer

"*Chuck Herak*" Director

The accompanying notes are an integral part of these consolidated financial statements.

H.I.G. Colors Holdings, Inc.

Consolidated Statement of Operations and Comprehensive Income (Loss)

For the year ended March 31, 2022

(expressed in '000s US dollars)

	2022 $	2021 $
Sales	245,628	169,568
Cost of sales	199,523	130,444
	46,105	39,124
Expenses		
Selling, general and administrative	26,585	19,240
Amortization and depreciation	10,156	6,432
	36,741	25,672
	9,364	13,452
Other expenses (income)		
Interest expense – net (note 8)	11,318	12,018
Foreign exchange expense	601	104
Other	4,733	12,895
Bargain purchase gain (Note 2)	(98,578)	-
	(81,926)	25,017
Loss before income taxes	91,290	(11,565)
Provision for (recovery of) income taxes (note 12)		
Current	14,637	(116)
Deferred	8,238	(2,461)
	22,875	(2,577)
Net income (loss) for the year before the undernoted	68,415	(8,988)
Change in valuation of pension funds	4,392	245
Net and comprehensive income (loss) for the year	72,807	(8,743)

The accompanying notes are an integral part of these consolidated financial statements.

H.I.G. Colors Holdings, Inc.

Statement of Equity

For the year ended March 31, 2022

(expressed in '000s US dollars)

	Capital Stock					
	(#)	($)	Contributed Surplus	Accumulated OCI	Retained Earnings (Deficit)	Shareholders' Equity
Balance, March 31, 2020	**1,160,987**	**19,657**	**593**	**3,728**	**(5,363)**	**18,615**
Net income (loss) for the year			-	-	(8,988)	(8,988)
Change in valuation of pension funds			307	-	-	307
Movement in contributed surplus			-	245	-	245
Balance, March 31, 2021	**1,160,987**	**19,657**	**900**	**3,973**	**(14,351)**	**10,179**
Net income (loss) for the year					68,415	68,415
Repurchase of shares (note 8)	(32,987)	(75)	(388)			(463)
Change in valuation of pension funds				4,392		4,392
Balance, March 31, 2022	**1,128,000**	**19,582**	**512**	**8,365**	**54,064**	**82,523**

The accompanying notes are an integral part of these consolidated financial statements.

H.I.G. Colors Holdings, Inc.

Consolidated Statement of Cash Flows

For the year ended March 31, 2022

(expressed in '000s US dollars)

	2022 $	2021 $
Cash provided by (used in)		
Operating activities		
Net income (loss) for the year	68,415	(8,988)
Items not affecting cash		
Amortization and depreciation	10,156	6,432
Deferred income taxes	8,238	(2,461)
Accretion of asset retirement obligation – net of amounts utilized	186	552
Remeasurement of contingent consideration	2,479	7,475
Difference between pension expense and amount funded	(4)	(46)
Interest accrued on sponsor note and promissory note payable	1,403	1,113
Change in non-cash components of working capital (note 15)	(51,698)	1,023
Gain on bargain purchase, net of tax	98,578	-
	(59,403)	5,100
Financing activities		
Proceeds from issuance of sponsor note payable	2,500	-
Proceeds from long-term debt (note 8)	34,787	(4,447)
Repayment of long-term debt (note 8)	(31,332)	(990)
Repurchase of shares	(915)	-
	5,040	(5,437)
Investing activities		
Purchase of property, plant and equipment	(38,747)	(6,301)
Purchase of intangible assets	(6,603)	(2,498)
Purchase of Bushy Park, net of transaction costs (note 2)	98,578	-
	53,228	(8,799)
Change in cash and cash equivalents during the year	(1,135)	(9,136)
Cash and cash equivalents – Beginning of year	4,315	13,451
Cash and cash equivalents – End of year	3,180	4,315

The accompanying notes are an integral part of these consolidated financial statements.

(expressed in '000s US dollars)

1 Summary of significant accounting policies

Status of corporation

H.I.G. Colors Holdings, Inc. (the Company) was incorporated in the state of Delaware on March 21, 2018. The Company provides colour pigments and preparations for the coatings, plastics and ink industries worldwide.

Basis of presentation

The consolidated financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States of America (US GAAP) and include the results of the Company and its wholly-owned subsidiaries stated below, from the date the Company acquired control to the year ended March 31, 2022:

Subsidiary	Ownership interest
HIG Colors Inc.	100%
DCL Holdings (USA), Inc.	100%
DCL Corporation (USA), LLC	100%
DCL Corporation (BP), LLC	100%
DCL Corporation (NL) B.V.	100%
DCL Corporation (Europe) Limited	100%
Dominion Color Corporation (USA)	100%
Monteith Inc.	100%

All intercompany accounts and transactions have been eliminated on consolidation.

These consolidated financial statements are presented in U.S. dollars, which is the functional currency of the Company.

Revenue recognition

The Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 606, Revenue Recognition, defines a five-step process to recognize revenue and requires judgment and estimates within the revenue recognition process, including identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each separate performance obligation.

The Company recognizes revenue as performance obligations with the customer are satisfied, at an amount that is determined to be collectible. As the Company earns revenues through sale of its products, satisfaction of performance obligation generally occurs at the point in time when control of the Company's products transfers to the customer based on the agreed upon shipping terms. Transaction price is determined to be the contractual price agreed with the customer and allocated to the single performance obligation of providing products to the customer. The Company does not have significant refunds and/or product returns that may cause there to be a variable consideration in its revenues.

(expressed in '000s US dollars)

Shipping and handling costs

Amounts billed to customers for shipping and handling are reported in sales in the consolidated statement of operations and deficit. These are not determined to be separate performance obligations, but instead fulfilment costs of delivering the products to the customer. Shipping and handling costs incurred by the Company for the delivery of goods to customers are included in cost of sales.

Foreign currencies

The functional currency of the Company and its U.S. based subsidiaries is the U.S. dollar. Transactions denominated in currencies other than the U.S. dollar are remeasured using end-of-year exchange rates or exchange rates prevailing at the date of the transaction, and the resulting gains or losses are recognized as components of operating expenses.

The functional currency of the non U.S. subsidiaries of the Company is the local currency. The financial statements of these subsidiaries are translated into U.S. dollars using end-of-year exchange rates for assets and liabilities and year-specific average exchange rates for revenues and expenses. Cumulative translation gains and losses are recognized as a component of other comprehensive income. Transactions denominated in currencies other than the subsidiary's functional currency are remeasured using end-of-year exchange rates, and the resulting gains or losses are recognized as a component of operating expenses.

Product warranties

The Company accrues for product warranties at the time the associated products are sold based on historical claims experience. The reserve, pre-tax charges against income and cash outlays for product warranties were not significant to the consolidated financial statements of the Company for any year presented.

Cash

Cash consists of cash on hand and cash balances with major financial institutions.

Financial instruments

The Company initially measures its financial assets and financial liabilities at fair value.

The Company subsequently measures all its financial assets and financial liabilities at amortized cost.

Financial assets measured at amortized cost include cash and cash equivalents and accounts receivable. Financial liabilities measured at amortized cost include accounts payable and long-term debt.

Financial assets measured at amortized cost are tested for impairment when there are indicators of possible impairment.

(expressed in '000s US dollars)

Inventories

Inventories are valued at the lower of cost and net realizable value. Cost is determined principally on the first-in, first-out method. Net realizable value is the estimated selling price in the normal course of business less the estimated costs necessary to make the sale. Included in the cost of inventories are all costs of conversion including materials, direct labour, production and overheads that are directly incurred to bring inventories to their present location and condition. Raw materials and supplies are stated at the lower of cost and replacement cost, which is not in excess of net realizable value.

Property, plant and equipment

Property, plant and equipment are recorded at cost, net of accumulated amortization and any impairment loss. Amortization has been provided at annual rates designed to charge operations with the cost of the assets over their estimated useful service lives on a straight-line basis as follows:

Buildings	15 – 33 years
Machinery and equipment	3 – 15 years

Assets attributable to capital projects that are not available for use are held as construction-in-progress and are not amortized until they are entered into use.

The Company reviews the carrying values of its property, plant and equipment for impairment whenever events or changes in circumstances indicate the carrying amount of an asset or asset group might not be recoverable. Assets are grouped at the lowest level for which identifiable cash flows are largely independent when testing for, and measuring for, impairment. In performing its review of recoverability, the Company estimates the future cash flows expected to result from the use of the asset or asset group and its eventual disposition. If the sum of the expected undiscounted future cash flows is less than the carrying amount of the asset or asset group, an impairment loss is recognized in the consolidated statement of operations and deficit. Measurement of the impairment loss is based on the excess of the carrying amount of the asset or asset group over the fair value calculated using discounted expected future cash flows.

Business combinations

When the Company acquires a business in a business combination, the total consideration paid is allocated to the fair value of the tangible assets, liabilities, and identifiable intangible assets acquired. Any residual purchase consideration is recorded as goodwill. The allocation of the purchase price requires management to make significant estimates in determining the fair values of assets acquired and liabilities assumed, in particular with respect to identified intangible assets. These estimates are based on the application of valuation models using historical experience and information from independent valuation consultants. These estimates can include, but are not limited to, the cash flows that an asset is expected to generate in the future, the appropriate weighted-average cost of capital, and the cost savings expected to be derived from acquiring an asset. These estimates are inherently uncertain and unpredictable. In addition, unanticipated events and circumstances may occur which may affect the accuracy or validity of these estimates. Acquisition-related costs are expensed as incurred. Refer to Note 2 for further information.

(expressed in '000s US dollars)

Intangible assets

Intangible assets are assets that lack physical substance and that meet the specific criteria for recognition.

Intangible assets are recorded at cost, net of accumulated amortization and any impairment loss. Amortization is calculated on a straight-line basis over the estimated useful life as follows:

Customer related	17 – 20 years
Patents	2 – 8 years
Formula	10 – 20 years
Technology related	3 – 15 years
Trade names	15 – 26 years
Registration, evaluation, authorization and restriction of chemical substances (REACH)	12 years

The Company reviews the carrying values of its intangible assets for impairment whenever events or changes in circumstances indicate the carrying amount of an asset or asset group might not be recoverable. Assets are grouped at the lowest level for which identifiable cash flows are largely independent when testing for, and measuring for, impairment. In performing its review for recoverability, the Company estimates the future cash flows expected to result from the use of the asset or asset group and its eventual disposition. If the sum of the expected undiscounted future cash flows is less than the carrying amount of the asset or asset group, an impairment loss is recognized in the consolidated statement of operations and deficit. Measurement of the impairment loss is based on the excess of the carrying amount of the asset or asset group over the fair value calculated using discounted expected future cash flows.

Goodwill

Goodwill represents the excess of purchase price over the fair value of net identifiable assets acquired in a business combination. Goodwill is not subject to amortization and is tested for impairment annually or more frequently if events or circumstances indicate the asset might be impaired.

The Company performs a qualitative assessment along with certain select quantitative calculations against its current long-range plan to determine whether it is more likely than not (that is, a likelihood of more than 50 percent) the fair value of a reporting unit is less than its carrying amount. The Company first assesses certain qualitative factors to determine whether the existence of events or circumstances leads to determination that it is more likely than not the fair value of a reporting unit is less than its carrying amount. If, after assessing the totality of events or circumstances, the Company determines it is not more likely than not the fair value of a reporting unit is less than its carrying amount, then performing the two-step impairment test is unnecessary. When necessary, impairment of goodwill is tested at the reporting unit level by comparing the reporting unit's carrying amount, including goodwill, to the fair value of the reporting unit. The fair value of the reporting unit is estimated using a discounted cash flow approach. If the carrying amount of the reporting unit exceeds its fair value, then a second step is performed to measure the amount of impairment loss, if any, by comparing the fair value of each identifiable asset and liability in the reporting unit to the total fair value of the reporting unit. Any impairment loss is expensed in the consolidated statement of operations and deficit and is not reversed if the fair value subsequently increases.

(expressed in '000s US dollars)

Fair value measurements

The Company follows ASC 820-10, Fair Value Measurements, which defines fair value, establishes a framework for measuring fair value in U.S. GAAP and expands disclosures about fair value measurements.

ASC 820-10 defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the most advantageous market for the asset or liability in an orderly transaction. Fair value measurement is based on a hierarchy of observable or unobservable inputs. The standard describes three levels of inputs that may be used to measure fair value.

Level 1 -	Inputs to the valuation methodology are quoted prices available in active markets for identical investments as of the reporting date;
Level 2 -	Inputs to the valuation methodology other than quoted prices in active markets, which are either directly or indirectly observable as of the reporting date, and the fair value can be determined through the use of models or other valuation methodologies; and
Level 3 -	Inputs to the valuation methodology are unobservable inputs in situations where there is little or no market activity of the asset and liability and the reporting entity makes estimates and assumptions relating to the pricing of the asset or liability, including assumptions regarding risk. This includes certain cash flow pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

In instances where the determination of the fair value measurement is based on inputs from different levels of the fair value hierarchy, the level in the fair value hierarchy within which the entire fair value measurement falls is based on the lowest level input that is significant to the fair value measurement in its entirety. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability.

The carrying values of the Company's cash, accounts receivable, and accounts payable and accrued liabilities are reasonable estimates of their fair value because of the short time period to maturity or repayment and are considered Level 1 in the fair value hierarchy.

The Company believes that the current carrying amount of its long-term debt approximates fair value because the interest rates on these instruments are subject to change with, or approximate, market interest rates.

The Company believes that the current carrying amount of contingent consideration is a reasonable estimate of its fair value because of the short time period to maturity and is considered Level 1 in the fair value hierarchy.

For the acquisition noted in Note 2, the Company followed purchase accounting conventions as prescribed by ASC 805, Business Combinations, to establish the opening balance sheet for the acquired entity. The fair value measurement methods used to estimate the fair value of the assets acquired and liabilities assumed at the acquisition dates utilized a number of significant unobservable inputs of Level 3 assumptions. These

assumptions included, among other things, projections of future operating results, the implied fair value of assets using an income approach by preparing a discounted cash flow analysis, and other subjective assumptions.

No other assets or liabilities were measured at fair value as of March 31, 2022.

Post-employment benefits

The Company records its obligations under the pension plan and other post-retirement benefit plan as its total liabilities and related costs less the fair value of plan assets. The Company has adopted the following policies:

- the cost of pensions and other retirement benefits earned by employees is actuarially determined using the projected benefit method pro-rated on service and management's best estimate of economic assumptions and the mortality assumption and the actuary's selection of other assumptions;
- past service costs from plan amendments are amortized on a straight-line basis over the expected average remaining service lifetime of employees active at the date of amendment;
- the 10% corridor rule is used to amortize actuarial gains and losses on a straight-line basis over the expected average remaining service lifetime of employees active at the date of valuation; and
- when a restructuring of a benefit plan gives rise to both a curtailment and a settlement, the curtailment is accounted for prior to the settlement.

Marketing costs

All marketing costs are expensed as incurred. External marketing costs were approximately $231 for the year ended March 31, 2022 (March 31, 2021 - $152) and are included in operating expenses.

Income taxes

The Company accounts for income taxes in accordance with the provisions of ASC 740, Income Taxes, which requires that the Company recognize deferred tax liabilities and assets for the expected future tax consequences of events that have been included in the financial statements or tax returns. Under this method, deferred tax assets and liabilities are determined on the basis of the difference between the tax bases of assets and liabilities and their respective financial reporting amounts ("temporary differences") at enacted tax rates in effect for the years in which the temporary differences are expected to reverse. A valuation allowance is established for deferred tax assets for which realization is uncertain.

Uncertain tax positions are accounted for in accordance with ASC 740, Income Taxes, which prescribes a comprehensive model for the manner in which a company should recognize, measure, present and disclose in its financial statements all material uncertain tax positions that the company has taken or expects to take on a tax return. ASC 740 applies to income taxes and is not intended to be applied by analogy to other taxes, such as sales taxes, value-add taxes, or property taxes. The Company reviews its nexus in various tax jurisdictions and the Company's tax positions related to all open tax years for events that could change the status of its ASC

740 liability, if any, or require an additional liability to be recorded. Such events may be the resolution of issues raised by a taxing authority, expiration of the statute of limitations for a prior open tax year or new transactions for which a tax position may be deemed to be uncertain. Those positions, for which management's assessment is that there is more than a 50 percent probability of sustaining the position upon challenge by a taxing authority based upon its technical merits, are subjected to the measurement criteria of ASC 740. The Company records the largest amount of tax benefit that is greater than 50 percent likely of being realized upon ultimate settlement with a taxing authority having full knowledge of all relevant information. Any ASC 740 liabilities for which the Company expects to make cash payments within the next twelve months are classified as "short term."

Asset retirement obligations

The legal obligations associated with the retirement of property, plant and equipment, when these obligations result from the acquisition or normal operation of the assets, are recognized at their fair value in the period in which they are incurred and the corresponding retirement costs are capitalized into the carrying amount of the related asset. In subsequent periods, the liability is adjusted for the accretion of the discount (using the risk-free rate) and any changes in the amount or timing of the underlying future cash flows required for its settlement. The asset retirement cost is amortized on a systematic and rational basis over the term of the related asset.

Stock-based compensation

The Company's stock-based compensation is made up of stock options awarded to employees and Board members. Stock-based compensation is recognized in accordance with the ASC Topic 505, Equity and Topic 718, Compensation – Stock Compensation.

The Company estimates the fair value of stock option awards on the date of grant using fair value measurement techniques such as the Black Scholes option pricing model. The value of the portion of the employee award that is ultimately expected to vest is recognized as an expense over the requisite service periods in the Company's consolidated statement of operations and deficit.

The fair value determined by the model is affected by the Company's stock price as well as assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, the Company's expected stock price volatility over the term of the awards, and actual and projected employee stock option exercise behaviors.

Stock-based compensation expense includes compensation cost for employee stock-based payment awards granted and all modified, repurchased or cancelled employee awards. For the 50% of the share options issued which are subject to service conditions only, the Company has elected to record the employee options compensation expense on a straight-line basis over the service period. For the 50% of the share options issued which are subject to performance conditions only, the Company cannot elect to record the employee options compensation expense on a straight-line basis due to the performance conditions. The Company will begin to recognize the expense using the graded vesting method once the performance conditions are met. The performance conditions vary according to the terms of the specific employees and Board members' stock option agreements, with the most significant condition being a potential liquidity event.

(expressed in '000s US dollars)

Stock-based compensation expense is not adjusted for estimated forfeitures, but instead adjusted upon an actual forfeiture.

The Company's policy is to issue new common shares from treasury to satisfy stock options which are exercised.

Use of estimates

The preparation of consolidated financial statements in accordance with US GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses for the reporting period. On an ongoing basis, the Company evaluates the estimates used, which include but are not limited to: the evaluation of revenue recognition criteria, collectability of accounts receivable, valuation of stock-based compensation awards, fair values of assets acquired and liabilities assumed in business combinations, contingent considerations, asset retirement obligations, and the realization of tax assets, estimates of tax liabilities and valuation of deferred taxes. Actual results could differ from those estimates, judgments or assumptions, and such differences could be material to the Company's consolidated financial position and results of operations.

Recent accounting pronouncements issued but not yet adopted

The following table summarizes accounting pronouncements not yet adopted by the Company, and for which management is currently in the process of analyzing the impact on the consolidated financial statements and related disclosures:

ASU	Description	Adoption date
ASU 2016-02	Topic 842, Leases The update requires most leases to be recorded on the Company's consolidated balance sheet as a lease liability, with a corresponding right-of-use asset, whereas many of these leases currently have an off-balance sheet classification. Topic 842 must be applied on a modified retrospective basis.	Fiscal year beginning after December 15, 2021, with early adoption permitted.
ASU 2016-03	Topic 326, Financial Instruments – Credit Losses: Measurement of Credit Losses on Financial Instruments This update requires the measurement of all expected credit losses for financial assets held at the reporting date based on historical experience, current conditions and reasonable and supportable forecasts. Financial institutions and other organizations will now use forward-looking information to better inform their credit loss estimates.	Fiscal year beginning after December 15, 2022, including interim periods within the fiscal year.
ASU 2017-04	Topic 350, Intangibles – Goodwill and Other. This update modifies the concept of impairment from the condition that exists when the carrying amount of goodwill exceeds its implied fair value to the condition that exists when the carrying amount of a reporting unit exceeds its fair value. An entity no longer will	Fiscal year beginning after December 15, 2022, including interim periods

(expressed in '000s US dollars)

	determine goodwill impairment by calculating the implied fair value of goodwill by assigning the fair value of a reporting unit to all of its assets and liabilities as if that reporting unit had been acquired in a business combination.	within the fiscal year.
ASU 2019-12	Topic 740, Income Taxes: Simplifying the Accounting for Income Taxes This update simplifies the accounting for income taxes by removing certain exceptions to the general principles within Topic 740.	Fiscal year beginning after December 15, 2021

2 Acquisition

On July 31, 2021, the Company completed the acquisition of certain specified assets and agreements of Sun Chemical Corporation's ("Sun Chemical") pigment manufacturing operation located in Goose Creek, South Carolina ("Bushy Park"). The Bushy Park acquisition was initiated by Sun Chemical due to directives issued by both United States and European Trade Commissions' rulings requiring it to divest its interest in its North American pigments assets to address competitive influences post-divesture in order to close a proposed (unrelated) divestiture of a larger basket of global pigment manufacturing assets. Sun Chemical and the Company engaged in arm's length negotiations in determining a fair value for the carve-out Bushy Park operation that included the group of assets that were in scope. The final value agreed upon for the carve-out operation between Sun Chemical and the Company was less than the value of the assets and agreements acquired and, as such, net assets received by the Company exceeded what it was required to pay to Sun Chemical classifying the transaction as a bargain purchase in accordance with ASC Topic 805, *Business Combinations*.

The Bushy Park business is complimentary to that of the Company's and adds a high-performance pigment portfolio to the Company's established platform and operations.

The Company's equity investors provided cash of $2,500 in the form of a subordinated promissory note into Bushy Park for its acquisition, and has recognized this transaction as a bargain purchase in accordance with ASC Topic 805.

The Company has determined the preliminary purchase price allocation for the Bushy Park acquisition to be as follows:

	$
Inventories (note 4)	37,292
Property, plant and equipment (note 5)	33,181
Identified intangible assets (note 6)	3,181
	73,654
Consideration received	40,996
Transaction costs	(4,767)
Bargain purchase gain	109,883
Income tax on bargain purchase	(11,305)

(expressed in '000s US dollars)

Gain on bargain purchase, net of tax	98,578

Net consideration received was based on the closing book values being different from the estimated values at the time of negotiation of the transaction, and certain working capital adjustments.

Intangible assets acquired include certain trade names with a useful life of approximately 20 years and patents with a useful life between 2-8 years.

3 Accounts receivable

	2022 $	2021 $
Trade receivables	64,581	37,078
Less: Allowance for doubtful accounts	446	434
Net trade receivables	61,135	36,644
Other receivables	2,992	5,418
	64,128	42,062

4 Inventories

	2022 $	2021 $
Raw materials and supplies	19,631	13,897
Work-in-progress	3,773	1,626
Finished goods	83,332	35,626
	106,735	51,149

5 Property, plant and equipment

	2022			2021		
	Cost $	Accumulated amortization $	Net $	Cost $	Accumulated amortization $	Net $
Land	5,016	-	5,016	5,016	-	5,016
Buildings	15,436	839	14,597	5,102	405	4,697
Machinery and equipment	60,509	19,328	41,181	33,412	12,048	21,373
Construction-in-progress	14,293	-	14,293	12,062	-	12,062
	95,254	20,167	75,087	55,601	12,453	43,148

(expressed in '000s US dollars)

Amortization expense amounting to $6,808 (2021 – $3,380) was recorded for the year.

6 Intangible assets

	2022			2021		
	Cost $	Accumulated amortization $	Net $	Cost $	Accumulated amortization $	Net $
Customer related	21,913	6,025	15,888	21,913	4,551	17,363
Patents (note 2)	950	170	780	-	-	-
Technology related	3,528	1,104	2,424	3,528	873	2,655
Trade names (note 2)	15,885	3,709	12,176	13,654	2,734	10,920
REACH	2,858	2,231	627	2,841	1,734	1,108
Software	9,732	-	9,732	6,326	-	6,326
	54,866	13,240	41,625	48,262	9,892	38,371

Amortization expense amounting to $3,349 (2020 – $3,047) was recorded for the year.

7 Pension costs and obligations

- **Defined benefit plans**

  The Company sponsors defined benefit pension plans for both hourly and salaried employees. These plans have been closed to new entrants since 2006. The Company measured the accrued benefit obligation and the fair value of the plan assets for accounting purposes as at March 31, 2022.

  The most recent actuarial valuation for the hourly and salaried plans for funding purposes was December 31, 2018. The next valuation is scheduled to be completed in the second quarter of fiscal 2023. The following information has been calculated by an independent actuary based on assumptions determined by management for consolidated financial statement purposes.

(expressed in '000s US dollars)

The net expense for the Company's defined benefit plans is as follows:

	2022 $	2021 $
Hourly defined benefit plan	121	99
Salaried defined benefit plan	332	364

Information about the Company's defined benefit plans, in aggregate, is as follows:

	2022 $	2021 $
Fair value of plan assets	50,352	50,468
Accrued benefit obligation	43,745	48,734
Accrued pension benefit assets	6,606	1,734

Significant assumptions used to value the year-end benefit obligation and plan assets are as follows:

	2022	2021
Hourly plan		
Discount rate	4.1%	3.1%
Expected return on net assets	3.75%	4.0%
Expected average remaining service life	3.20 years	4.20 years
Salaried plan		
Discount rate	4.1%	3.1%
Salary increases	2.5%	2.5%
Mortality table	CPM2014Pri	CPM2014Pri

Projected benefit payments over the next five years and beyond are as follows:

	Hourly plan $	Salaried plan $	Total $
Fiscal 2023	475	1,545	2,020
Fiscal 2024	505	1,604	2,108
Fiscal 2025	545	1,617	2,162
Fiscal 2026	610	1,741	2,350
Fiscal 2027	678	1,873	2,551
Fiscal 2028 – 2032	3,786	10,449	14,235
	6,599	18,808	25,428

(expressed in '000s US dollars)

Employer contributions for the next fiscal year amount to a receivable of $(112) (2021, payable of $274) for the hourly plan and $603 (2021 – $623) for the salaried plan.

- **Defined contribution plans**

The Company sponsors several defined contribution plans. The net expenses for the Company's defined contribution plans are as follows:

	2022 $	2021 $
Hourly defined contribution plan	6	16
Salaried defined contribution plan	47	35
401(K) plan	148	144
Other defined contribution plans	108	94

- **Other pension plan**

One of the Company's subsidiaries sponsors a defined benefit pension plan. The plan was converted into a multi-employer plan on January 1, 2015. Contributions to the plan for the year amounted to $618 (2022 – $623).

8 Credit facilities

The following credit facilities were outstanding at year-end:

	2022 $	2021 $
Revolving line of credit (a)	29,104	18,519
Long-term debt		
Term loan (b)	90,502	98,301
Sponsor note (c)	9,839	6,317
Promissory note (d)	6,594	6,213
	136,039	129,350
Less: Deferred financing fees	1,192	1,884
	134,847	127,466
Less		
Current portion	29,104	18,519
Sponsor note	9,839	6,317
Promissory note	6,594	6,213
	89,310	96,418

(expressed in '000s US dollars)

a) On April 25, 2018, certain of the Company's subsidiaries entered into a revolving line of credit with a lender up to a maximum of $25 million, which was increased to $30 million based on an amendment dated April 22, 2019 and further increased to $55 million based on an amendment dated May 6, 2021. The facility carries interest at a variable rate based on a combination of the US Federal Funds Rate, Canadian CDOR, Canadian Prime or LIBOR and a spread of 0.50% based on the amount undrawn and matures on April 25, 2023.

b) On April 6, 2018, certain of the Company's subsidiaries entered into a credit agreement with a consortium of lenders to finance an acquisition and pay off existing facilities. The term loan, which was subsequently amended on April 26, 2019, May 6th 2021 and May 31st, 2021, carries interest at a variable rate based on LIBOR and a spread based on the total leverage, with the balance due on April 6, 2024. The facility is secured by assets of the borrowers and cross-guaranteed by the borrowers and the Company. On August 1, 2021, the Company executed a $10,000 principal repayment utilizing a portion of the Bushy Park net proceeds (note 2). A portion of this repayment was applied, in order of maturity, to the balance of the quarterly principal repayment instalments as specified under the terms of the credit agreement. As a result of the above noted principal repayments, the Company has satisfied its principal repayment obligation under the terms of the credit agreement to the date of maturity of the credit agreement.

c) On April 26, 2019, certain of the Company's subsidiaries entered into a subordinated promissory note, the proceeds of which were used for working capital and general corporate purposes. On July 31st, 2021 the promissory note was amended to account for an additional $2,500 advance which was used for working capital associated with the Bushy Park acquisition (Note 2). The subordinated promissory note carries interest at an annual fixed rate of 12%. The entire principal balance of the note and any accrued and unpaid interest is due and payable in cash on April 6, 2025.

d) On April 6th, 2018, certain of the Company's subsidiaries entered into a subordinated promissory note. The subordinated promissory note carries interest at an annual fixed rate of 6%. The entire principal balance of the note and any accrued and unpaid interest is due and payable on the earlier of (a) a change in control and (b) October 6th, 2024.

The Company is required to comply with certain financial and non-financial covenants in accordance with the terms of the credit agreements related to (i) and (ii) above. As at March 31, 2022, the Company was in compliance with the financial covenants (note 15).

9 Contingent consideration

Contingent consideration represents a liability in the form of an earnout, owing to the former owners of DCL Corporation, that was concluded as part of the consideration for the acquisition of the shares of DCL Corporation by the Company in September 2018. The amount of the earnout liability is primarily contingent on the investment returns generated by the assets held within the Company's Salaried and Hourly defined benefit pension plans. The pension earnout liability is subject to a maximum payout of CAD$13,125 (approx. USD$10,500) including simple interest earned, at a rate of 5%, since inception. The final determination date for the pension earnout is September 30, 2022. The gross amount of the liability has been discounted, utilizing a 5% rate of return, to reflect the value of the liability at the balance sheet date.

(expressed in '000s US dollars)

	2022 $	2021 $
Opening contingent consideration	7,475	-
Changes in value of liability recorded during the year	2,479	7,475
	9,954	7,475

10 Asset retirement obligations

Asset retirement obligations relate to environmental remediation at two of the Company's sites located in North America. The obligations are expected to be settled throughout a period exceeding 20 years. The discount rate used is 5% (2020 – 5%).

	2022 $	2021 $
Opening asset retirement obligations	4,369	3,816
Accretion recorded during the year	342	638
Amounts utilized	(156)	(85)
	4,555	4,369

11 Capital stock

Authorized

2,000,000 common shares, par value of $0.01

Issued

	2022 $	2021 $
1,128,000 common shares (March 31, 2021 – 1,160,987 common shares)	19,582	19,657

During the course of the fiscal year, the Company repurchased 32,987 common shares held by certain parties for a total consideration of $915,000. This has been accounted for using the treasury stock method, by reducing the share capital by $495,000, which was the original value, with the remaining amount treated as a reduction in contributed surplus. The repurchased shares were not reissued by the Company.

12 Share-based compensation

In 2017, the Board of Directors approved the Stock Option Plan (plan). This plan was in effect from the time of approval until DCC was acquired by the Company on April 6, 2018. Upon acquisition, the outstanding options in DCC were exchanged for options to acquire common shares in the Company. No further adjustments were

(expressed in '000s US dollars)

made to the historical plan at the time of the acquisition. On April 6, 2018, on acquisition of Lansco, certain employees of the acquired entity were eligible for grants of stock options under the existing plan.

The plan allows for the grant of options to the Company's key employees and Board members. All options granted under the plan will have an exercise price determined and approved by the Company's Board of Directors at the time of grant. Options granted under the plan are exercisable for common shares of the Company. The options granted under this plan vest in accordance with the terms set out in the option grant agreement, whereby 50% of the options will vest in equal tranches on each of the first five anniversaries following the date of grant of each option and the remaining 50% of the options will vest based on a future liquidity event.

The following table summarizes the stock option award activities under the Company's share-based compensation plans for the years ended March 31, 2022 and 2021:

	Shares subject to options outstanding			
	Number of options	**Weighted average exercise price $**	**Remaining contractual term (in years)**	**Weighted average grant date fair value $**
March 31, 2020	137,800	28.05	3.49	25.53
Stock options granted	31,000	26.90	5.00	23.94
Stock options forfeited	(15,600)	(40.56)	(2.57)	(36.94)
March 31, 2021	153,200	26.55	2.82	24.06
Stock options granted	16,000	36.47	5.00	32.51
Stock options forfeited	(1,500)	(45.00)	(2.67)	(40.33)
March 31, 2022	167,700	40.63	2.45	37.71

Share-based compensation expense

All share-based awards are measured based on the grant date fair value of the awards and recognized in the consolidated statement of operations and deficit over the period during which the employee is required to perform services in exchange for the award (generally the vesting period of the award).

The Company estimates the fair value of stock options granted using the Black-Scholes option valuation model, which requires assumptions, including the fair value of our underlying common stock, expected term, expected volatility, risk-free interest rate and dividend yield of the Company's common stock. These estimates involve

(expressed in '000s US dollars)

inherent uncertainties and the application of management's judgment. If factors change and different assumptions are used, share-based compensation expense could be materially different in the future.

The assumptions used to estimate the fair value of stock options granted to employees are as follows:

	2022
Expected volatility	100%
Risk-free interest rate	0.62% - 2.89%
Dividend yield	Nil%
Average expected life	5 Years

Total share-based compensation expense of $426 (2021 – $307) was recorded in the current year.

13 Current income tax rate reconciliation

		2022		2021
Net income (loss) before tax	$	91,290	$	(11,565)
Statutory income tax rate		25%		25%
Expected income tax	$	22,822	$	(2,891)
Increase (decrease) resulting from:				
Non-deductible expenses		1,084		(80)
Non-taxable portion of capital gains		(2,948)		-
Rate differential (local vs statutory)		(265)		(16)
Items directly recognized under other comprehensive income		1,112		-
Provision to tax return adjustments		840		63
Other items		230		347
Current income tax expense (recovery)	$	22,875	$	(2,577)

(expressed in '000s US dollars)

14 Deferred income taxes

	2022 $	2021 $
Deferred tax assets attributable to the following:		
Reserves	3,840	3,054
Others	1,423	786
Total current	5,263	3,840
Property, plant and equipment	151	301
Inventory	259	-
Intangibles	6,225	713
Loss carryforwards	2,354	4,958
Disallowed interest carryforwards	52	1,020
Total long term	9,041	6,992
	14,304	10,832

	2022 $	2021 $
Deferred tax liabilities are attributable to the following:		
Property, plant and equipment	12,163	3,557
Intangibles	1,041	1,102
Pension reserve	-	325
Inventory	1,949	-
Financing fees	169	78
Long-term debt	32	161
Other (including US GAAP adjustments)	1,779	200
	17,133	5,423

(expressed in '000s US dollars)

The Company's statutory tax rate and effective tax rate are 25.0% and 24.7%, respectively. The main reasons for the difference are:

a) Current income tax payable recognized on intercompany dividends which were reversed on consolidation for accounting purposes.

b) Deferred tax liability recognized on unrealized foreign exchange gains for tax purposes which were reversed on consolidation for accounting purposes.

c) Contingent liability accrued in the current year.

d) Other items including jurisdictional tax rate differences, non-deductible expenses, and adjustments for final tax filing positions.

The deferred tax asset amounts have been recognized primarily with respect to carry forward of non-capital losses, investment tax credits, interest expenses and accounting reserves that are not currently deductible for income tax purposes.

The deferred tax liability amounts have been recognized primarily with respect to the excess of carrying values of property, plant and equipment, including construction in progress, and intangible assets over their respective carrying values for income tax purposes.

The Company has the following significant tax carry forward amounts:

a) Non-capital losses, which do not start to expire until 2039 of $9,416 (2021 – $19,830).

b) Investment tax credits, which do not start to expire until 2034, of $803 (2021 – $755).

The income tax benefits of the above noted amounts have been recognized as deferred tax assets.

15 Net changes in non-cash working capital items

	2022 $	2021 $
Accounts receivable	(22,066)	(4,037)
Inventories	(55,586)	(5,245)
Prepaid expenses	42	(499)
Long-term receivables	(0)	(5)
Accounts payable and accrued liabilities	13,045	9,564
Interest payable	(1,040)	1,458
Income taxes recoverable/payable	13,907	(213)
	(51,698)	1,023

(expressed in '000s US dollars)

16 Lease commitments

Future minimum lease commitments under existing long-term operating leases are as follows:

	$
2023	946
2024	752
2025	762
2026	767
	3,228

The Company has a 99-year lease for one of its operating facilities, which expires in 2109 and is cancellable with six months' notice.

17 Financial instrument risks

Fair value

The Company's financial instruments consist of cash, accounts receivable, long-term receivables, accounts payable and accrued liabilities, long-term debt, contingent consideration, sponsor note and the promissory note payable. The fair value of financial assets and financial liabilities is considered the carrying value when they are of short duration or when the instrument's interest rate approximates current observable market rates.

As at March 31, 2022, the fair values of all financial instruments are estimated to approximate their carrying values reported in the consolidated balance sheet.

Credit risk

The Company maintains cash balances at banks which are highly rated financial institutions within the Company's operating area.

The Company, in the normal course of business, is exposed to credit risk from its customers. This risk is mitigated through internal credit approval procedures.

Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate due to a change in market interest rates. The Company's long-term debt credit facilities, with the exception of promissory and sponsor notes payable (note 8) have variable interest rates.

(expressed in '000s US dollars)

Foreign exchange risk

The Company's sales and purchases include significant amounts denominated in foreign currencies. Consequently, sales, cost of sales and certain accounts receivable and payable are exposed to foreign currency fluctuations.

Liquidity risk

Liquidity risk is the risk the Company will encounter difficulty in meeting obligations associated with its financial liabilities. Management manages and monitors the Company's liquidity risk, utilizing timely budgets, forecasts and projections developed in collaboration with key management team members, which ensures the Company has sufficient cash on hand to meet its debt service obligations and related debt covenants associated with its term debt.

The Company was in compliance with its financial covenants for the year ended March 31, 2022 (March 31, 2021 – in compliance).

In managing and monitoring the incremental risks associated with the ongoing COVID pandemic and the associated economic recovery from the impact of the COVID pandemic, management has accounted for certain assumptions in its forward-looking financial projections related to the potential future impact of both of the above noted conditions on its' operations, profitability, cash flow, and overall liquidity including but not limited to supply chain constraints caused by the global economic recovery from pandemic induced conditions.

As outlined in note 8, as at March 31, 2022, the Company has $29,104 drawn on a revolving line of credit, $89,310 in term debt and $9,839 in a sponsor note. The Company also has $3,180 in cash on hand. The Company is required to comply with certain debt covenants in accordance with the terms of the credit agreements related to the revolving line of credit and term debt.

As of the date of the issuance of these consolidated financial statements, the extent of the continued impact of COVID-19 pandemic on the Company's business, financial results and liquidity will depend largely on future developments, including the effectiveness of vaccination programs globally, the impact on capital and financial markets and the related impact on our customers. These future developments are outside of the control of the Company, and cannot be reliably predicted.

18 Subsequent events

On April 1, 2022, the Company completed an amalgamation of one of its wholly-owned subsidiaries, Monteith Inc., with DCL Corporation, its' corporate parent.

Subsequent to the year end, the Company reached a settlement with Sun Chemical on the final value of the acquired Bushy Park inventory. A payment of $5,354 was issued in favour of the Company on June 28, 2022.

DCL Corporation: Separate Entity Financial Statements
As of March 31, 2022
in USD

Balance Sheet	**DCL Corporation**
Cash	1,558,754
Accounts Receivable External	23,103,611
Accounts Receivable Interco	35,231,300
Taxes Receivable	-
Inventories	45,382,273
Prepaid Assets	345,883
Deferred Tax Asset ST	-
Current Assets	105,621,822
LT Receivables External	42,317
LT Receivables Interco	-
Property, Plant and Equipment	32,064,514
Accrued Benefit Assets	6,606,498
Intangible Assets	11,631,432
Investments	(456,457)
Deferred Taxes	7,959,261
Goodwill	-
Long Term Assets	57,847,565
Assets	**163,469,387**
Bank Indebtedness	
Accounts Payable Ext Exc	21,012,858
Interest Payable	278,051
Taxes Payable	251,002
Accounts Payable Interco	39,845,388
Revolver External	29,103,760
LT Debt Current Portion	-
Debt Current Portion Interco	23
ARO Current Portion	-
Current Liabilities	90,491,082
LT Debt External Principal	11,621,442
Related Party Notes	7,129,997
Deferred Financing Fees	(659,679)
Long Term Debt Interco	-
Contingent Consideration	9,954,326
ARO	4,554,726
Accrued Benefit Obligations	-
Deferred Taxes	5,852,050
Long Term Liabilities	38,452,862
Liabilities	**128,943,944**
Capital Stock	48,210,815
Accumulated OCI	8,365,402
Retained Earnings	(22,050,775)
Equity	34,525,442
Liabilities and Equity	**163,469,387**

DCL Corporation: Separate Entity Financial Statements
As of March 31, 2022
in USD

Income Statement	**DCL Corporation**
Gross Sales External	117,182,436
Gross Sales Interco	-
Gross Sales	117,182,436
Sales Deductions	382,258
Net Sales	116,800,178
Material Costs at Standard	71,625,875
Purchase Price Variance	3,487,531
Yield and Usage Variances	423,088
Inventory Variances	(3,885,910)
Material Costs	71,650,584
Direct Manufacturing at Standard	11,982,036
Direct Manufacturing Variances	456,667
Direct Manufacturing Costs	12,438,702
Other Direct Costs	5,770,647
Cost of Goods Sold	89,859,933
Direct Margin	26,940,245
Manufacturing Period	12,597,008
Gross Profit	14,343,237
Selling, General, and Administration	10,407,846
Operating Forex	293,048
SG&A and Operating FX	10,700,894
EBITDA	**3,642,342**
Depreciation	2,746,557
Amortization	748,316
Interest	6,377,006
Tax	2,169,241
Non-EBITDA Expenses	(18,048,000)
Transfer Pricing	(1,746,530)
Non - controlling Interest	-
Net Profit	**11,395,752**
Prior RE	(23,107,984)
Income Statement	11,395,752
Other Comprehensive Income	-
Non - controlling Interest	-
Retained Earnings	**(22,050,775)**

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

Affidavit of Scott Davido

sworn before me by video conference
this 20th day of December, 2022

A Commissioner, etc.

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

NOTICE OF DEFAULT UNDER CREDIT AGREEMENT AND LIMITED WAIVER REQUEST

November 22, 2022

Via E-mail and Facsimile

Wells Fargo Bank, National Association, as Agent
Bay Adelaide East
22 Adelaide Street West, Suite 2200
Toronto, Ontario M5C 1X3
Attn: Portfolio Manager--Dominion

with a copy to:

Otterbourg P.C.
230 Park Avenue
New York, New York 10169
Attn: David W. Morse, Esq.
Fax No.: 212-684-6102

Ladies and Gentlemen:

Reference is made to the Credit Agreement, dated as of April 25, 2018, by and among DCL Corporation (USA) LLC (formerly known as Lansco Colors, LLC), a Delaware limited liability company ("DCL USA"), DCL Corporation (BP), LLC, a Delaware limited liability company ("DCL BP," and together with DCL USA, individually, a "US Borrower" and collectively, "US Borrowers"), DCL Corporation (formerly known as Dominion Colour Corporation and as successor by amalgamation to Monteith Inc.), an Ontario corporation ("DCL Canada" or "Canadian Borrower," and together with US Borrowers, individually a "Borrower" and collectively, "Borrowers"), Dominion Colour Corporation (USA), a New Jersey corporation ("DCC US"), DCL Holdings (USA), Inc. (formerly known as Lansco Holdings, Inc.), a Delaware corporation ("DCL Holdings"), H.I.G. Colors, Inc., a Delaware corporation ("Holdings"), DCL Corporation (NL) B.V., formerly known as DCL Maastricht B.V., a company organized under the laws of The Netherlands ("DCL BV"), and DCL Corporation (Europe) Limited, formerly known as Dominion Colour Corporation (Europe) Limited, a private liability company incorporated in England and Wales with company number 05452995 ("DCL UK"), the lenders party thereto as Lenders (each of such Lenders, together with its successors and assigns, each a "Lender", and collectively, "Lenders") and Wells Fargo Bank, National Association, as administrative agent for each member of the Lender Group and the Bank Product Providers (in such capacity, together with its successors and assigns in such capacity, "Agent"). Such Credit Agreement, as amended, restated, supplemented, or otherwise modified from time to time, is referred to herein as the "Credit Agreement". Capitalized terms used in this letter (this "Limited Waiver Request Letter") but not specifically defined herein have the meanings assigned to them in the Credit Agreement.

Under the terms of Section 3.2(b) of the Credit Agreement, the obligation of the Lender Group to make any Revolving Loans is subject to no Default or Event of Default having occurred or be continuing on the date of such extension of credit (the "EoD Condition"). The Administrative Borrower hereby

notifies the Agent that the Events of Default described on Exhibit A attached hereto have occurred and are continuing (collectively, the "Specified Defaults").

The Administrative Borrower hereby requests that the Lender Group agree to temporarily waive the EoD Condition for purposes of permitting any Borrowing of Revolving Loans from the date hereof until December 6, 2022; provided that the aggregate principal amount of Revolving Loans outstanding at such time shall not exceed $42,500,000 (the "EoD Condition Limited Waiver"). By countersigning this Limited Waiver Request Letter, the Lender Group is solely agreeing to the EoD Condition Limited Waiver; nothing in this Limited Waiver Request shall be deemed to be waiver or amendment of any other provision of the Credit Agreement or any other Loan Document, nor shall it be deemed to be a waiver with respect to the Specified Defaults or any other Defaults or Events of Default that may have occurred and/or be continuing. This Limited Waiver Request Letter shall be governed by, and construed in accordance with, the internal laws (and not the laws of conflicts) of the State of New York and all applicable laws of the United States of America. This Limited Waiver Request Letter shall be effective as of the date first set forth above.

[signature pages follow]

The parties hereto have caused this Limited Waiver Letter to be duly executed and delivered by their authorized officers as of the day and year first above written.

Very truly yours,

DCL CORPORATION (USA) LLC

By: _____
Name: Ed Zhang
Title: Vice President, Treasurer, and Secretary

DCL CORPORATION (BP), LLC

By: _____
Name: Ed Zhang
Title: Vice President, Treasurer, and Secretary

DCL CORPORATION

By: _____
Name: Ed Zhang
Title: Vice President, Treasurer, and Secretary

DOMINION COLOUR CORPORATION (USA)

By: _____
Name: Ed Zhang
Title: Vice President, Treasurer, and Secretary

DCL HOLDINGS (USA), INC.

By: _____
Name: Ed Zhang
Title: Vice President, Treasurer, and Secretary

H.I.G. COLORS, INC.

By: _____
Name: Ed Zhang
Title: Vice President, Treasurer, and Secretary

DCL CORPORATION (NL)

By: _____
Name: Ed Zhang
Title: Vice President, Treasurer, and Secretary

DCL CORPORATION (EUROPE) LIMITED

By: _____
Name: Ed Zhang
Title: Authorized Signatory

Accepted as of the date first above written:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Agent and Lender

By: _____
Name: _____
Title: _____

Exhibit A

Specified Defaults

1. An Event of Default under Section 8.2(a) of the Credit Agreement arising as a result of the Administrative Borrower's failure to deliver quarterly financial statements for the fiscal quarter ended June 30, 2022, within 45 days after the end of such fiscal quarter, in violation of Section 5.1 of the Credit Agreement.

2. An Event of Default under Section 8.2(a) of the Credit Agreement arising as a result of the Administrative Borrower's failure to deliver quarterly financial statements for the fiscal quarter ended September 30, 2022, within 45 days after the end of such fiscal quarter, in violation of Section 5.1 of the Credit Agreement.

3. An Event of Default under Section 8.1(b) of the Credit Agreement arising as a result of the Borrowers failure to make a mandatory payment as a result of the Canadian Revolver Usage exceeding the Canadian Borrowing Base in violation of Section 2.4(e)(i) of the Credit Agreement.

4. An Event of Default under Section 8.6 of the Credit Agreement arising as a result of Events of Defaults arising under the Term Loan Agreement.

5. An Event of Default under Section 8.7 of the Credit Agreement arising as a result of the Loan Parties' breach of the representation in Section 4.23 with respect to Inventory constituting Eligible Inventory as result of such Inventory being located at a location other than one of the locations in the continental United States set forth on Schedule 4.25.

6. An Event of Default under Section 8.2(b) arising as a result of the Loan Parties breach of Section 5.14 of the Credit Agreement with respect to keeping Inventory at a location other than the locations identified on Schedule 4.25.

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

Affidavit of Scott Davido

sworn before me by video conference
this 20th day of December, 2022

A Commissioner, etc.

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

WELLS FARGO BANK, NATIONAL ASSOCIATION, AS AGENT
Bay Adelaide East
22 Adelaide Street West, Suite 2200
Toronto, Ontario M5C 1X3

November 22, 2020

VIA FEDERAL EXPRESS
AND ELECTRONIC MAIL

DCL Corporation (USA) LLC
DCL Corporation (formerly known as Dominion Colour Corporation)
1 Concorde Gate
Suite 608, Toronto, Ontario, Canada
M3C 3N6
Attention: Ed Zhang, Vice President, Treasurer and Secretary

Re: Notice of Event of Default and Reservation of Rights

Ladies and Gentlemen:

We have received the Notice of Default under Credit Agreement and Limited Waiver Request, dated November 22, 2022, from you.

As set forth in the Notice, we refer to the Credit Agreement, dated as of April 25, 2018, by and among DCL Corporation (USA) LLC (formerly known as Lansco Colors, LLC), a Delaware limited liability company ("DCL USA"), DCL Corporation (BP), LLC, a Delaware limited liability company ("DCL BP," and together with DCL USA, individually, a "US Borrower" and collectively, "US Borrowers"), DCL Corporation (formerly known as Dominion Colour Corporation and as successor by amalgamation to Monteith Inc.), an Ontario corporation ("DCL Canada" or "Canadian Borrower," and together with US Borrowers, individually a "Borrower" and collectively, "Borrowers"), Dominion Colour Corporation (USA), a New Jersey corporation ("DCC US"), DCL Holdings (USA), Inc. (formerly known as Lansco Holdings, Inc.), a Delaware corporation ("DCL Holdings"), H.I.G. Colors, Inc., a Delaware corporation ("Holdings"), DCL Corporation (NL), formerly known as DCL Maastricht B.V., a company organized under the laws of The Netherlands ("DCL BV"), and DCL Corporation (Europe) Limited, formerly known as Dominion Colour Corporation (Europe) Limited, a private liability company incorporated in England and Wales with company number 05452995 ("DCL UK"), the lenders party thereto as Lenders (each of such Lenders, together with its successors and assigns, each a "Lender", and collectively, "Lenders") and Wells Fargo Bank, National Association, as administrative agent for each member of the Lender Group and the Bank Product Providers (in such capacity, together with its successors and assigns in such capacity, "Agent"). Such Credit Agreement, as amended, restated, supplemented, or otherwise modified from time to time, is

referred to herein as the "Credit Agreement". Capitalized terms used in this letter but not specifically defined herein have the meanings assigned to them in the Credit Agreement.

Based on the information provided to Agent, Events of Default exist as of the date hereof (individually, a "Specified Event of Default," and collectively "Specified Events of Default").

Under the terms of the Credit Agreement, as a result of the Specified Events of Default, Agent and Lenders may exercise their respective rights and remedies under the Credit Agreement, the other Loan Documents, applicable law or otherwise, including, but not limited to, the right to cease making and providing Revolving Loans, Letters of Credit and other financial and credit accommodations otherwise available to Borrowers under the Credit Agreement and other Loan Documents. The election of Agent or any Lender to make any Revolving Loan or issue any Letter of Credit on a discretionary basis at any time on or after the date hereof shall not be deemed to be a waiver of any Specified Event of Default or any other Event of Default which may at any time exist or of any of the rights or remedies of Agent and Lenders pursuant to the Credit Agreement, the other Loan Documents, applicable law or otherwise.

Based on the existence of the Specified Events of Default, without limiting any rights or remedies of Agent and Lenders pursuant to the Credit Agreement, the other Loan Documents, applicable law or otherwise, a Cash Dominion Event has occurred for all purposes of the Credit Agreement and the other Loan Documents and Agent has the right to send an Activation Instruction with respect to the Deposit Accounts. Without limitation of any other rights or remedies of Agent or Lenders, this letter shall constitute written notice to Borrowers that Agent intends to exercise its rights to send an Activation Instruction.

Agent and Lenders hereby expressly reserve all rights, remedies, actions and powers to which Agent and any Lender may be entitled under the Credit Agreement, the other Loan Documents and applicable law based upon the existence and continuance of a Specified Event of Default or otherwise. Agent and Lenders do not waive any Specified Event of Default or any other Event of Default which may have occurred prior to the date of this letter or which may exist as of the date of this letter. The specific identification of a Specified Event of Default should not be deemed to constitute a waiver of any other Events of Default which may now or hereafter exist under the Credit Agreement or any of the other Loan Documents. Such Events of Default may only be waived in writing duly executed by an authorized officer of Agent with the approval or consent of such Lenders as are required under the terms of the Credit Agreement.

Without limiting the foregoing, no failure on the part of Agent or any Lender to exercise, and no delay in exercising, any right under any Loan Document or applicable law shall operate as a waiver thereof or give rise to any course of dealing. Nor shall the single or partial exercise by Agent or any Lender of any right, power or privilege under any of the Loan Documents or applicable law preclude any other or further exercise thereof or the exercise of any other right, power or privilege thereunder or be deemed a waiver of any Event of Default or of any such rights, powers or privileges, all of which shall remain in full force and effect and shall not be deemed to be waived, impaired, estopped, diminished or prejudiced in any manner.

The sending of this letter should not be construed to limit the right of Agent or any Lender to act without any other or further notice to any Loan Party in accordance with the terms of the Credit Agreement, the other Loan Documents or applicable law. Loan Parties are not entitled to rely upon any oral statements made or reported to be made by or on behalf of Agent or any Lender in connection with any alleged agreement by Agent or any Lender to refrain from exercising any of its rights and remedies under the Credit Agreement, the other Loan Documents or applicable law.

This notice is without prejudice to, and Agent and Lenders hereby specifically reserve all of the rights and remedies of Agent and Lenders.

Very truly yours,

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Agent

By: Raymond Eghobamien Digitally signed by Raymond Eghobamien Date: 2022.11.22 18:41:55 -05'00'

Name: _____

Title: Vice President

Cc:

H.I.G. Capital, LLC
1450 Brickell Avenue, 31st Floor
Miami, FL 33131
Attention: Michael Koichopolos
Telephone No.: (305) 379-2322
Telecopier No.: (305) 381-4199
Email: MKoichopolos@higcapital.com

and

King & Spalding LLP
300 S. Tryon St., Suite 1700
Charlotte, NC 28202
Attention: Chris Buchanan, Esq.
Telephone No.: (704) 503-2602
Telecopier No.: (704) 503-2600
Email: cbuchanan@kslaw.com; mhandler@kslaw.com

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

Affidavit of Scott Davido

sworn before me by video conference
this 20th day of December, 2022

A Commissioner, etc.

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

INTERCREDITOR AGREEMENT

This **INTERCREDITOR AGREEMENT** (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "Agreement") is dated as of April 25, 2018, and entered into by and between **WELLS FARGO BANK, NATIONAL ASSOCIATION,** in its capacity as agent under the ABL Documents, including its successors and assigns in such capacity from time to time ("**ABL Agent**"), and **VIRTUS GROUP, LP**, not in its individual capacity but solely in its capacity as administrative agent and collateral agent under the Term Loan Documents, including its successors and assigns in such capacity from time to time ("**Term Loan Agent**").

RECITALS

Dominion Colour Corporation, a corporation organized under the laws of the Province of Ontario ("**DCC Canada**"), Monteith Inc., a corporation organized under the laws of the Province of Ontario ("**Monteith**"), Dominion Colour Corporation (USA), a New Jersey corporation ("**DCC US**"), Lansco Colors LLC, a Delaware limited liability company ("**Lansco**" and together with DCC Canada, Monteith and DCC US, each an "**ABL Borrower**" and collectively "**ABL Borrowers**"), H.I.G. Colors, Inc., a Delaware corporation ("**Holdings**"), the subsidiaries of Holdings party thereto as guarantors (together with Holdings, the "**Guarantors**"), the lenders party thereto and ABL Agent have entered into that certain Credit Agreement dated as of the date hereof (as amended, supplemented or otherwise modified from time to time, the "**ABL Credit Agreement**") providing for a revolving credit facility pursuant to which such lenders have or may, from time to time, make loans and provide other financial accommodations to the ABL Borrowers;

DCC Canada, Lansco Holdings, Inc., a Delaware corporation (the "**Lansco Holdings**", and together with DCC Canada, each a "**Term Loan Borrower**" and collectively "**Term Loan Borrowers**"), Holdings, the other Guarantors, the lenders party thereto and Term Loan Agent have entered into that certain Credit Agreement dated as of April 6, 2018 (as amended, supplemented or otherwise modified from time to time, the "**Term Loan Credit Agreement**") pursuant to which such lenders have agreed to make term loans to the Term Loan Borrowers;

The obligations of the Borrowers and the Guarantors under the ABL Documents are to be secured (a) on a first priority basis by Liens on the ABL Priority Collateral and (b) on a second priority basis by Liens on the Term Loan Priority Collateral;

The obligations of the Borrowers and the Guarantors under the Term Loan Documents are to be secured (a) on a first priority basis by Liens on the Term Loan Priority Collateral and (b) on a second priority basis by Liens on the ABL Priority Collateral; and

ABL Agent, for itself and on behalf of the ABL Claimholders, and Term Loan Agent, for itself and on behalf of the Term Loan Claimholders, desire to enter into this Agreement to (a) confirm the relative priority of their respective security interests in the assets of Borrowers and the Guarantors, (b) provide for the application, in accordance with such priorities, of proceeds of such assets and properties, and (c) address certain other matters.

AGREEMENT

In consideration of the foregoing, the mutual covenants and obligations herein set forth, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

SECTION 1. Definitions; Rules of Construction.

1.1 Defined Terms. Any terms (whether capitalized or lower case) used in this Agreement that are defined in the UCC shall be construed and defined as set forth in the UCC unless otherwise defined herein; provided that to the extent that the UCC is used to define any term used herein and if such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern. As used in the Agreement, the following terms shall have the following meanings:

"**ABL Agent**" has the meaning set forth in the preamble to this Agreement.

"**ABL Borrowers**" has the meaning set forth in the recitals to this Agreement and "**ABL Borrower**" means any one of them.

"**ABL Cap**" means, as of any date of determination, the result of:

(a) the sum of (which amount, to the extent permitted in accordance with the terms of this Agreement, shall be increased by the amount of all interest, fees, costs, expenses, indemnities, and other amounts accrued or charged with respect to any of the ABL Debt (other than Excess ABL Debt) as and when the same accrues or becomes due and payable, irrespective of whether the same is added to the principal amount of the ABL Debt and including the same as would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable, in whole or in part, in any such Insolvency Proceeding):

(i) $30,000,000, plus

(ii) the amount of the Bank Product Obligations, plus

(iii) the ABL DIP Amount

minus

(b) the amount of all payments or prepayments of revolving loan obligations under the ABL Credit Agreement that result in a permanent reduction of the Commitments (as defined in the ABL Credit Agreement) (other than payments of such revolving loan obligations in connection with a Refinancing thereof).

Any net increase in the aggregate principal amount of a loan or Letter of Credit (on a U.S. Dollar equivalent basis) after the loan is made or the Letter of Credit issued that is caused by a fluctuation in the exchange rate of the currency in which the loan or Letter of Credit is denominated will be ignored in determining whether the ABL Cap has been exceeded.

"**ABL Cash Collateral**" has the meaning set forth in Section 6.2(a).

"**ABL Claimholders**" means, as of any date of determination, the holders of the ABL Debt at that time, including (a) ABL Agent, (b) the ABL Lenders, and (c) the Bank Product Providers.

"**ABL Collateral**" means the assets of each and every Grantor, whether real, personal or mixed, with respect to which a Lien is granted (or purported to be granted) as security for any ABL Debt, including all proceeds and products thereof.

"**ABL Collateral Documents**" means the ABL Security Agreement, the ABL Mortgages, and any other agreement, document, or instrument pursuant to which a Lien is granted (or purported to be granted) securing any ABL Debt or under which rights or remedies with respect to such Liens are governed.

"**ABL Credit Agreement**" has the meaning set forth in the recitals to this Agreement.

"**ABL Debt**" means all Obligations (as defined in the ABL Credit Agreement) and all other amounts owing, due, or secured under the terms of the ABL Credit Agreement or any other ABL Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, attorneys' fees, costs, charges, expenses, reimbursement obligations, obligations with respect to loans, Letters of Credit, Bank Product Obligations, obligations to provide cash collateral in respect of Letters of Credit or Bank Product Obligations or indemnities in respect thereof, any other indemnities or guarantees, and all other amounts payable under or secured by any ABL Document (including, in each case, all amounts accruing on or after the commencement of any Insolvency Proceeding relating to any Grantor, or that would have accrued or become due under the terms of the ABL Documents but for the effect of the Insolvency Proceeding and irrespective of whether a claim for all or any portion of such amounts is allowable or allowed in such Insolvency Proceeding), in each case whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured. For the avoidance of doubt, the foregoing shall constitute "ABL Debt" notwithstanding any limitations on, restrictions of, or agreements by, Grantors in the Term Loan Documents with respect to the incurrence of any ABL Debt (whether as a result of Special Advances (as defined in the ABL Credit Agreement) or otherwise).

"**ABL Default**" means any "Event of Default," as such term is defined in any ABL Document.

"**ABL Default Disposition**" has the meaning set forth in Section 5.1(g).

"**ABL Diminution Amount**" means, as of any date of determination, the amount of any decrease in value of the ABL Priority Collateral that is entitled to adequate protection from and after the date of the commencement of any Insolvency Proceeding.

"**ABL Deficiency Claim**" means any portion of the ABL Debt consisting of an allowed unsecured claim under Section 506(a) of the Bankruptcy Code (or any similar provision under any other law governing an Insolvency Proceeding).

"**ABL DIP Amount**" means, after the commencement of an Insolvency Proceeding, to the extent that ABL DIP Financing has been provided, with respect to any Grantor, $3,000,000.

"**ABL DIP Financing**" has the meaning set forth in Section 6.2(a).

"**ABL DIP Financing Conditions**" means (a) that (i) Term Loan Agent retains its Liens with respect to the Collateral that existed as of the date of the commencement of the applicable Insolvency Proceeding (including proceeds thereof arising after the commencement of such Insolvency Proceeding), (ii) as to the Term Loan Priority Collateral that existed as of the date of the commencement of such Insolvency Proceeding (including proceeds thereof arising after such commencement of the Insolvency Proceeding), Term Loan Agent's Liens with respect to such Collateral remain senior and prior to the Liens (inclusive of any Liens securing the ABL DIP Financing) of ABL Agent with respect to such Collateral, and (iii) as to Term Loan Priority Collateral acquired by the applicable Grantor after the commencement of such Insolvency Proceeding (excluding proceeds of Term Loan Priority Collateral

existing prior to the commencement of applicable Insolvency Proceeding), either (A) neither the ABL Claimholders nor the Term Loan Claimholders obtain a Lien with respect to such Collateral, or (B) if a Lien with respect to such Collateral is granted to secure the ABL DIP Financing, then Term Loan Agent obtains a Lien with respect to such Collateral and the Liens with respect to such Collateral securing the ABL DIP Financing are junior and subordinate to the Liens of Term Loan Agent with respect to such Collateral, (b) in the case of ABL DIP Financing, that the aggregate principal amount of such ABL DIP Financing plus the outstanding principal amount of other ABL Priority Debt outstanding as of the commencement of the Insolvency Proceeding does not exceed the ABL Cap, (c) that the interest rate, advance rates and fees are commercially reasonable under the circumstances as determined by the applicable court in such Insolvency Proceeding, (d) that the proposed ABL Cash Collateral use or ABL DIP Financing does not compel any Grantor to seek confirmation of a specific plan of reorganization for which all or substantially all of the material terms are set forth in the ABL Cash Collateral order or ABL DIP Financing documentation, as applicable, (e) that the proposed ABL Cash Collateral order or ABL DIP Financing documentation does not expressly require the sale of all or substantially all of the Collateral prior to a default under such order or documentation and (f) that the ABL DIP Financing is otherwise subject to the terms of this Agreement.

"**ABL Documents**" means the ABL Collateral Documents, the ABL Credit Agreement, and each of the other Loan Documents (as that term is defined in the ABL Credit Agreement).

"**ABL Lenders**" means the "Lenders" as that term is defined in the ABL Credit Agreement (including each Issuing Lender and each Swing Lender (as those terms are defined in the ABL Credit Agreement)).

"**ABL Mortgages**" means each mortgage, deed of trust, charge, hypothecation and other document or instrument under which any Lien on real property or fixtures owned or leased by any Grantor is granted to secure any ABL Debt or under which rights or remedies with respect to any such Liens are governed.

"**ABL Priority Collateral**" means, other than Excluded Collateral, all of each and every Grantor's right, title, and interest in and to the following types of property of such Grantor, wherever located and whether now owned by such Grantor or hereafter acquired (including, for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code (or any provision of any other Bankruptcy Law), would constitute ABL Priority Collateral):

(a) all accounts (except to the extent that such accounts constitute identifiable proceeds of equipment, Investment Property (including Equity Interests), general intangibles (including Intellectual Property), instruments, chattel paper, commercial tort claims or real estate, in each case not constituting ABL Priority Collateral);

(b) all inventory;

(c) all instruments, chattel paper (including all tangible and electronic chattel paper) and other contracts, in each case to the extent governing, evidencing, substituting for, arising from or constituting proceeds of any property that is otherwise ABL Priority Collateral;

(d) all deposit accounts and securities accounts into which any proceeds of ABL Priority Collateral are deposited (including any cash and other funds or other property held in or on deposit therein, except, subject to Section 3.11 hereof, for cash and other funds or property held in or on deposit therein that constitutes identifiable proceeds of equipment, Investment Property (including Equity Interests), general intangibles (including Intellectual Property), instruments, chattel paper, commercial

tort claims or real estate, in each case not constituting ABL Priority Collateral) but in any event excluding the deposit account to be established under Section 5.15(b) of the Term Loan Credit Agreement (as in effect on the date hereof) except for cash and other funds or property held in or on deposit therein that constitutes identifiable proceeds of ABL Priority Collateral;

(e) all contracts, documents of title, and other documents that evidence the ownership of, right to receive or possess, or that otherwise relate to, any accounts, other Receivables, inventory, or other ABL Priority Collateral, including contracts, documents of title, and other documents that relate to the acquisition of, or sale or other Disposition of, any inventory, and all contracts, documents of title, or other documents that arise from or constitute proceeds of property that is otherwise ABL Priority Collateral;

(f) all guaranties, contracts of suretyship, insurance, letters of credit, letter-of-credit rights, security and other credit enhancements (including repurchase agreements), and supporting obligations, in each case in respect of property that is otherwise ABL Priority Collateral, including (i) rights of stoppage in transit, replevin, repossession, reclamation, and other rights and remedies of an unpaid vendor, and (ii) identifiable deposits by and property of account debtors or other persons securing the obligations of account debtors in respect of accounts or other Receivables;

(g) all commercial tort claims and general intangibles (other than Intellectual Property) to the extent arising from, relating to or constituting proceeds of property that is otherwise ABL Priority Collateral;

(h) all cash and cash equivalents of any kind at any time deposited with or held by any ABL Claimholder that arise from or constitute proceeds of property that is otherwise ABL Priority Collateral;

(i) all investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts, or commodity accounts) and all monies, credit balances, deposits, and other property of any Grantor now or hereafter held, or received by, or in transit to, an ABL Claimholder, any bank, securities intermediary, depository, or other institution from or for the account of any Grantor, whether for safekeeping, pledge, custody, transmission, collection, or otherwise, in each case, to the extent arising from or constituting proceeds of property that is otherwise ABL Priority Collateral (other than identifiable proceeds of Term Loan Priority Collateral);

(j) all claims under policies of casualty insurance and all proceeds of casualty insurance, in each case, payable by reason of loss or damage to any accounts, other Receivables, inventory or other ABL Priority Collateral and (i) 50% of all claims under, or proceeds of, business interruption insurance of any Grantor and (ii) all claims under, or proceeds of, any R&W Policy to the extent relating to any other ABL Priority Collateral;

(k) to the extent not otherwise described above, all Receivables;

(l) all Books evidencing or relating to any of the foregoing; and

(m) all substitutions, replacements, accessions, products, or proceeds of any of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to, or destruction of, or other involuntary conversion (including claims in respect of condemnation or expropriation) of any kind or nature of any or all of the foregoing.

For purposes of clarification, and notwithstanding anything to the contrary set forth in this Agreement, (i) Intellectual Property shall not constitute ABL Priority Collateral, but instead shall constitute Term Loan Priority Collateral, (ii) no proceeds arising from any Disposition of any such ABL Priority Collateral shall be, or be deemed to be, attributable to Term Loan Priority Collateral, and (iii) Equity Interests of any Grantor and any and all proceeds thereof shall not constitute ABL Priority Collateral but instead shall constitute Term Loan Priority Collateral.

"**ABL Priority Debt**" means all ABL Debt other than Excess ABL Debt.

"**ABL Retained Interest**" has the meaning set forth in Section 10.7.

"**ABL Secured Claim**" means any portion of the ABL Debt not constituting an ABL Deficiency Claim.

"**ABL Security Agreement**" means the "Security Agreement," as that term is defined in the ABL Credit Agreement.

"**Agent**" means ABL Agent or Term Loan Agent, as the context requires.

"**Agreement**" has the meaning set forth in the preamble hereto.

"**Bank Product Agreements**" means the "Bank Product Agreements," as that term is defined in the ABL Credit Agreement as in effect on the date hereof.

"**Bank Product Obligations**" means the "Bank Product Obligations," as that term is defined in the ABL Credit Agreement as in effect on the date hereof.

"**Bank Product Providers**" means the "Bank Product Providers," as that term is defined in the ABL Credit Agreement as in effect on the date hereof.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as in effect from time to time, or any successor statute.

"**Bankruptcy Law**" means, as applicable, the Bankruptcy Code and any other federal, state, provincial or foreign law for the relief of debtors or affecting creditors' rights generally.

"**BIA**" means the *Bankruptcy and Insolvency Act (Canada)*, as in effect from time to time, or any successor statute.

"**Books**" means books and records of each Grantor (including each Grantor's Records indicating, summarizing, or evidencing such Grantor's assets (including the Collateral) or liabilities, each Grantor's Records relating to such Grantor's business operations or financial condition, including customer lists, invoices, credit memos, purchase and file orders, and each Grantor's goods or general intangibles related to such items).

"**Borrowers**" means, collectively, (a) for purposes of Term Loan Debt, the Term Loan Borrowers, (b) for purposes of ABL Debt, the ABL Borrowers, (c) any other person that at any time after the date hereof becomes a party to the ABL Credit Agreement or the Term Loan Credit Agreement as a borrower thereunder, and (d) their respective successors and assigns; sometimes being referred to herein individually as a "**Borrower**".

"**Business Day**" shall mean any day other than a Saturday, Sunday or other day on which banks in (a) New York City, (b) Toronto, Canada or (c) Houston, Texas are authorized or required by law to close.

"**CCAA**" means the *Companies' Creditors Arrangement Act*, as in effect from time to time, or any successor statute.

"**Claimholders**" means the ABL Claimholders and the Term Loan Claimholders, or any one of them.

"**Collateral**" means all of the assets of each and every Grantor, whether real, personal or mixed, moveable or immoveable, constituting ABL Collateral or Term Loan Collateral.

"**Collateral Documents**" means the ABL Collateral Documents or the Term Loan Collateral Documents, as the context requires.

"**Debt**" means the ABL Debt or the Term Loan Debt, as the context requires.

"**Disposition**" or "**Dispose**" means the sale, assignment, transfer, license, lease (as lessor), exchange, or other disposition (including any sale and leaseback transaction) of any property by any person (or the granting of any option or other right to do any of the foregoing).

"**Enforcement Action**" means

(a) the taking of any action to enforce any Lien in respect of the Collateral, including the institution of any foreclosure proceedings or the noticing of any public or private sale or other disposition pursuant to Article 9 of the UCC (or any comparable provision under any other applicable legislation), Bankruptcy Code, CCAA, BIA, WURA or other applicable law, or the taking of any action in an attempt to vacate or obtain relief from a stay or other injunction restricting any other action described in this definition,

(b) the exercise of any right or remedy provided to a secured creditor under the ABL Documents or the Term Loan Documents (excluding any notice to depository banks or securities intermediaries to remit funds to any Agent under a control agreement, but including, in either case, any delivery of any notice to seek to obtain payment directly from any account debtor of any Grantor or other person obligated on any Accounts of any Grantor, the taking of any action or the exercise of any right or remedy in respect of the Collateral, or the exercise of any right of setoff or recoupment with respect to obligations owed to any Grantor), under applicable law, at equity, in an Insolvency Proceeding or otherwise, including the acceptance of Collateral in full or partial satisfaction of an obligation,

(c) the Disposition of all or any portion of the Collateral, by private or public sale or any other means, in connection with the exercise of enforcement rights relating to the Collateral,

(d) the solicitation of bids from third parties to conduct the Disposition of all or a material portion of the Collateral, in connection with, or in anticipation of, the exercise of enforcement rights relating to the Collateral,

(e) the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third parties for the purpose of valuing, marketing, or Disposing of all or a material portion of the Collateral within a commercially reasonable period of time,

following the occurrence and during the continuance of an "Event of Default" under the ABL Credit Agreement or Term Loan Credit Agreement, as applicable,

(f) the exercise of any other enforcement right relating to the Collateral (including the exercise of any voting rights relating to any Equity Interests composing a portion of the Collateral) whether under the ABL Documents, the Term Loan Documents, under applicable law of any jurisdiction, in equity, in an Insolvency Proceeding, or otherwise (including the commencement of applicable legal proceedings or other actions with respect to the Collateral to facilitate the actions described in the preceding clauses), or

(g) the pursuit of ABL Default Dispositions or Term Loan Default Dispositions relative to all or a material portion of the Collateral to the extent undertaken and being diligently pursued in good faith to consummate the Disposition of such Collateral within a commercially reasonable time.

Notwithstanding the foregoing, an "Enforcement Action" shall not include (a) the imposition of a default rate or late fee, (b) the filing of a proof of claim in any Insolvency Proceeding, (c) the consent of the ABL Agent to the disposition (other than an ABL Default Disposition) by Holdings, the Borrowers or any Guarantor of any of the ABL Priority Collateral, (d) the consent of the Term Loan Agent to the disposition (other than a Term Loan Default Disposition) by Holdings, the Borrowers or any Guarantor of any of the Term Loan Priority Collateral or (e) the acceleration of the ABL Debt or the Term Loan Debt.

"**Enforcement Notice**" means a written notice delivered by either ABL Agent or Term Loan Agent to the other stating (a) that an ABL Default or a Term Loan Default, as applicable, has occurred and is continuing under the ABL Credit Agreement or the Term Loan Credit Agreement, as applicable, and specifying the nature of the relevant event of default, and (b) that an Enforcement Period has commenced with respect to the applicable Priority Collateral.

"**Enforcement Period**" means the period of time following the receipt by either ABL Agent or Term Loan Agent of an Enforcement Notice from the other and continuing until the earliest of (a) in case of an Enforcement Period commenced by Term Loan Agent, the Payment in Full of Term Loan Priority Debt, (b) in the case of an Enforcement Period commenced by ABL Agent, the Payment in Full of ABL Priority Debt, or (c) ABL Agent or Term Loan Agent (as applicable) terminates, or agrees in writing to terminate, the Enforcement Period (including in connection with a waiver or cure of the event of default that gave rise to such Enforcement Notice).

"**Equity Cure Proceeds**" means the proceeds of any Curative Equity (as defined in the ABL Credit Agreement as in effect on the date hereof) or Specified Equity Contribution (as defined in the Term Loan Credit Agreement as in effect on the date hereof).

"**Equity Interests**" means, with respect to a person, all of the shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the United States Securities and Exchange Commission under the Securities Exchange Act of 1934).

"**Excess ABL Debt**" means the sum of (a) the portion of the principal amount of the loans and other financial accommodations outstanding under, or in connection with, the ABL Documents and the undrawn amount of outstanding Letters of Credit that is in excess of the ABL Cap, plus (b) the

portion of interest, costs, expenses and fees that accrues or is charged with respect to that portion of the principal amount of the loans and Letters of Credit described in clause (a) of this definition.

"**Excess Term Loan Debt**" means the sum of (a) the portion of the principal amount of the loans outstanding under the Term Loan Documents that is in excess of the Term Loan Cap, plus (b) the portion of interest, costs, expenses and fees that accrues or is charged with respect to that portion of the principal amount of the loans described in clause (a) of this definition.

"**Exigent Circumstances**" means (a) an exercise by another lender of enforcement rights or remedies with respect to particular Collateral or (b) an event or circumstance that materially and imminently threatens the ability of the ABL Agent or the Term Loan Agent, as applicable, to realize upon all or a material part of the ABL Priority Collateral or the Term Loan Priority Collateral as applicable, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof.

"**Excluded Collateral**" means (a) any assets described as "Excluded Collateral" in the ABL Security Agreement and the Term Loan Security Agreements, and (b) any other assets of any Grantor, whether real, personal, or mixed, with respect to which a Lien is not granted (and not purported to be granted) as security for the ABL Debt or the Term Loan Debt (excluding, for the avoidance of doubt, any asset that, but for the application of Section 552 of the Bankruptcy Code (or any similar provision of any other Bankruptcy Law), would constitute Collateral).

"**Final Order**" means an order of a court of competent jurisdiction as to which the time to appeal, petition for *certiorari*, or move for re-argument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for re-argument or rehearing shall then be pending or, in the event that an appeal, writ of certiorari, or re-argument or rehearing thereof has been filed or sought, such order shall have been affirmed or confirmed by the highest court to which such order was appealed, or from which certiorari, re-argument or rehearing was sought and the time to take any further appeal, petition for certiorari or move for re-argument or rehearing shall have expired; provided that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or any analogous rule under the Federal Rules of Bankruptcy Procedure, applicable state court rules of civil procedure or any similar rules of civil procedure applicable in any other jurisdiction, may be filed with respect to such order shall not cause such order not to be a Final Order.

"**Governmental Authority**" means the government of the United States of America, Canada or any other nation, any political subdivision thereof, whether state, provincial, or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government.

"**Grantors**" means Holdings, the Borrowers and each Guarantor, and each other person that may, from time to time, execute and deliver an ABL Collateral Document or a Term Loan Collateral Document as a "debtor," "grantor," "obligor," or "pledgor" (or the equivalent thereof) or that may, from time to time, be (or whose assets may be) subject to a judgment lien in favor of any of the ABL Claimholders or any of the Term Loan Claimholders in respect of the ABL Debt and the Term Loan Debt, as applicable, and "**Grantor**" means any one of them.

"**Guarantors**" has the meaning set forth in the recitals to this Agreement and "**Guarantor**" means any one of them.

"**Holdings**" has the meaning set forth in the recitals to this Agreement.

"**Inalienable Interests**" has the meaning set forth in Section 4.4.

"**Insolvency Proceeding**" means:

(a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any Grantor; or any filing by any Grantor of a notice of intention to make a proposal;

(b) any other voluntary or involuntary insolvency or bankruptcy case or proceeding, or any interim receivership or other receivership, administration, liquidation or other similar case or proceeding with respect to any Grantor or with respect to a material portion of its assets;

(c) any administration, liquidation, dissolution, or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy;

(d) any assignment for the benefit of creditors or any other marshaling of assets or liabilities of any Grantor; or

(e) any event analogous to any of the foregoing in any jurisdiction.

"**Investment Property**" means any and all investment property (as that term is defined in the UCC).

"**Intellectual Property**" means the "Intellectual Property," as that term is defined in the ABL Security Agreement.

"**Junior Agent**" means, with respect to the ABL Priority Collateral, Term Loan Agent, and with respect to the Term Loan Priority Collateral, ABL Agent.

"**Junior Claimholders**" means, with respect to the ABL Priority Collateral, the Term Loan Claimholders, and with respect to the Term Loan Priority Collateral, the ABL Claimholders.

"**Junior Collateral**" means, with respect to the ABL Debt, all Collateral other than ABL Priority Collateral, and with respect to the Term Loan Debt, all Collateral other than Term Loan Priority Collateral.

"**Junior Debt**" means, with respect to the ABL Priority Collateral, the Term Loan Debt, and with respect to the Term Loan Priority Collateral, the ABL Debt.

"**Junior 507(b) Claims**" has the meaning set forth in Section 6.5(f).

"**Junior Lenders**" means, with respect to the ABL Priority Collateral, the Term Loan Lenders, and with respect to the Term Loan Priority Collateral, the ABL Lenders.

"**Letters of Credit**" means the "Letters of Credit," as that term is defined in the ABL Credit Agreement.

"**Lien**" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a capital lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

"**Loan Documents**" means ABL Documents or Term Loan Documents, as the context requires.

"**Ordinary Course Collections**" has the meaning set forth in Section 4.1.

"**Payment in Full of ABL Priority Debt**" means, except to the extent otherwise expressly provided in Section 5.5 or in Section 6.8:

(a) payment in U.S. Dollars (or in the applicable currency) in full in cash or immediately available funds of all of the ABL Priority Debt (other than outstanding Letters of Credit and Bank Product Obligations and other than unasserted contingent indemnification and reimbursement obligations);

(b) termination or expiration of all commitments, if any, of the ABL Lenders to extend credit to Borrowers;

(c) termination of, providing cash collateral (in an amount, to the extent, and in the manner required by the ABL Credit Agreement) or the making of other arrangements reasonably satisfactory to the ABL Agent in respect of, all outstanding Letters of Credit that compose a portion of the ABL Debt;

(d) termination of (and paying the outstanding amount due in respect of), or providing cash collateral (in an amount, to the extent, and in the manner required by the ABL Credit Agreement) in respect of, all Bank Product Obligations, and

(e) providing cash collateral to ABL Agent in such amount as ABL Agent determines is reasonably necessary to secure the ABL Claimholders in respect of any asserted or threatened (in writing) claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages for which any of the ABL Claimholders may be entitled to indemnification or reimbursement by any Grantor pursuant to the indemnification and reimbursement provisions in the ABL Documents.

"**Payment in Full of Priority Debt**" means, (a) if the Term Loan Priority Debt constitutes the Priority Debt, the Payment in Full of Term Loan Priority Debt, and (b) if the ABL Priority Debt constitutes the Priority Debt, the Payment in Full of ABL Priority Debt.

"**Payment in Full of Term Loan Priority Debt**" means, except to the extent otherwise expressly provided in Section 5.5 or in Section 6.8:

(a) payment in the U.S. Dollars in full in cash or immediately available funds of all of the Term Loan Priority Debt (other than unasserted contingent indemnification and reimbursement obligations);

(b) termination or expiration of all commitments, if any, of the Term Loan Lenders to extend credit to the Borrowers; and

(c) providing cash collateral to Term Loan Agent in such amount as Term Loan Agent determines is reasonably necessary to secure the Term Loan Claimholders in respect of any asserted or threatened (in writing) claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages for which any of the Term Loan Claimholders may be entitled to

indemnification or reimbursement by any Grantor pursuant to the indemnification and reimbursement provisions in the Term Loan Documents.

"**person**" means any natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority, or other entity.

"**Pledged Collateral**" has the meaning set forth in Section 5.4(a).

"**Priority Agent**" means, with respect to the ABL Priority Collateral, ABL Agent, and with respect to the Term Loan Priority Collateral, Term Loan Agent.

"**Priority Collateral**" means, with respect to the ABL Debt, all ABL Priority Collateral, and with respect to the Term Loan Debt, all Term Loan Priority Collateral.

"**Priority Claimholders**" means, with respect to the ABL Priority Collateral, the ABL Claimholders, and with respect to the Term Loan Priority Collateral, the Term Loan Claimholders, subject to the reciprocal rights set forth in Section 9.16.

"**Priority Debt**" means, with respect to the ABL Priority Collateral, the ABL Debt, and with respect to the Term Loan Priority Collateral, the Term Loan Debt.

"**Priority Lenders**" means, with respect to the ABL Priority Collateral, the ABL Lenders, and with respect to the Term Loan Priority Collateral, the Term Loan Lenders.

"**Purchase Notice**" has the meaning set forth in Section 10.1.

"**Receivables**" means all of the following now owned or hereafter arising or acquired assets of any Grantor: (a) all accounts; (b) all amounts at any time payable to any Grantor in respect of the sale or other Disposition of any account; (c) all interest, fees, late charges, penalties, collection fees, and other amounts due or to become due or otherwise payable in connection with any account; (d) all payment intangibles (including indebtedness owing to such Grantor from any other Grantor in respect of intercompany loans and advances that are funded with identifiable proceeds of loans under the ABL Credit Agreement or with identifiable proceeds of ABL Priority Collateral); and (e) all other contract rights, chattel paper, instruments, or other forms of rights to payment, in each case arising from the sale, lease, or other Disposition of inventory, the licensing of inventory, or otherwise related to any accounts or inventory of a Grantor (including, choses in action, causes of action, or other rights and claims against carriers or shippers, rights to indemnification, and identifiable proceeds thereof, casualty or similar types of insurance, in each case relating to ABL Priority Collateral and identifiable proceeds thereof).

"**Records**" means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

"**Recovery**" has the meaning set forth in Section 6.8.

"**Refinance**" means, in respect of any indebtedness, to refinance, extend, renew, supplement, restructure, replace, refund, or repay, or to issue other indebtedness in exchange or replacement for such indebtedness, in whole or in part, whether with the same or different lenders, arrangers, or agents. "**Refinanced**" and "**Refinancing**" shall have correlative meanings.

"**Senior 507(b) Claims**" has the meaning set forth in Section 6.5(e).

"**Standstill Notice**" means a written notice from ABL Agent to Term Loan Agent or from Term Loan Agent to ABL Agent, as applicable, identified by its terms as a "Standstill Notice" for purposes of this Agreement and stating that an ABL Default or Term Loan Default, as applicable, has occurred and is continuing and that, as a consequence thereof, ABL Agent has declared all of the ABL Priority Debt to be immediately due and payable or the Term Loan Agent has declared all of the Term Loan Priority Debt to be immediately due and payable, as applicable.

"**Standstill Period**" means the period of 180 consecutive days commencing on the date on which ABL Agent or Term Loan Agent, as applicable, receives the applicable Standstill Notice.

"**Subsidiary**" means, with respect to any person (the "parent") at any date, (a) any person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, (b) any other corporation, limited liability company, association or other business entity of which securities or other ownership interests representing more than 50% of the voting power of all Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of the board of directors (or equivalent governing body) thereof are, as of such date, owned, controlled or held by the parent and/or one or more subsidiaries of the parent, (c) any partnership (i) the sole general partner or the managing general partner of which is the parent and/or one or more subsidiaries of the parent or (ii) the only general partners of which are the parent and/or one or more subsidiaries of the parent and (d) any other person that is otherwise controlled by the parent and/or one or more subsidiaries of the parent.

"**Term Cash Proceeds Notice**" means a written notice delivered by Term Loan Agent or any Grantor to ABL Agent (a) stating either that a Disposition of Term Loan Priority Collateral is being effected or that an Event of Default has occurred and is continuing under any Term Loan Document and specifying the relevant Event of Default and (b) stating that certain cash proceeds which may be deposited in any Grantor's deposit account, collection account or other account constitute Term Loan Priority Collateral and reasonably identifying the amount of such proceeds.

"**Term Loan Agent**" has the meaning set forth in the preamble to this Agreement.

"**Term Loan Borrowers**" has the meaning set forth in the recitals to this Agreement and "**Term Loan Borrower**" means any one of them.

"**Term Loan Cap**" means, as of any date of determination, the result of:

(a) the sum of (which amount, to the extent permitted in accordance with this Agreement, shall be increased by the amount of all interest, fees, costs, expenses, indemnities, and other amounts accrued or charged with respect to any of the Term Loan Debt (other than Excess Term Loan Debt) as and when the same accrues or becomes due and payable, irrespective of whether the same is added to the principal amount of the Term Loan Debt and including the same as would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable, in whole or in part, in any such Insolvency Proceeding):

(i) $136,400,000, plus

(ii) the Term Loan DIP Amount

minus

(b) the amount of all payments of the principal amount of term loan obligations under the Term Loan Credit Agreement (other than payments of such term loan obligations in connection with a Refinancing thereof).

Any net increase in the aggregate principal amount of a loan (on a U.S. Dollar equivalent basis) after the loan is made that is caused by a fluctuation in the exchange rate of the currency in which the loan is denominated will be ignored in determining whether the Term Loan Cap has been exceeded.

"**Term Loan Cash Collateral**" has the meaning set forth in Section 6.2(b).

"**Term Loan Claimholders**" means, as of any date of determination, the holders of the Term Loan Debt at that time, including (a) Term Loan Agent, and (b) the Term Loan Lenders.

"**Term Loan Collateral**" means all of the assets of each and every Grantor, whether real, personal, or mixed, with respect to which a Lien is granted (or purported to be granted) as security for any Term Loan Debt, including all proceeds and products thereof.

"**Term Loan Collateral Documents**" means the Term Loan Security Agreements, the Term Loan Mortgages, and any other agreement, document, or instrument pursuant to which a Lien is granted (or purported to be granted) securing any Term Loan Debt or under which rights or remedies with respect to such Liens are governed.

"**Term Loan Credit Agreement**" has the meaning set forth in the recitals to this Agreement.

"**Term Loan Debt**" means all Obligations (as that term is defined in the Term Loan Credit Agreement) and all other amounts owing, due, or secured under the terms of the Term Loan Credit Agreement or any other Term Loan Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, attorneys' fees, costs, charges, expenses, reimbursement obligations, obligations with respect to loans, indemnities, guarantees, and all other amounts payable under or secured by any Term Loan Document (including, in each case, all amounts accruing on or after the commencement of any Insolvency Proceeding relating to any Grantor, or that would have accrued or become due under the terms of the Term Loan Documents but for the effect of the Insolvency Proceeding and irrespective of whether a claim for all or any portion of such amounts is allowable or allowed in such Insolvency Proceeding), in each case whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured. For the avoidance of doubt, the foregoing shall constitute "Term Loan Debt" notwithstanding any limitations on, restrictions of, or agreements by, Grantors in the ABL Documents with respect to the incurrence of any Term Loan Debt (whether as a result of incremental **f**acilities or otherwise).

"**Term Loan Default**" means any "Event of Default," as such term is defined in any Term Loan Document.

"**Term Loan Diminution Amount**" means, as of any date of determination, amount of any decrease in value of the Term Loan Priority Collateral that is entitled to adequate protection from and after the date of the commencement of any Insolvency Proceeding.

"**Term Loan Deficiency Claim**" means any portion of the Term Loan Debt consisting of an allowed unsecured claim under Section 506(a) of the Bankruptcy Code (or any similar provision under any other law governing an Insolvency Proceeding).

"**Term Loan Default Disposition**" has the meaning set forth in Section 5.1(h).

"**Term Loan DIP Amount**" means, after the commencement of an Insolvency Proceeding, to the extent that Term Loan DIP Financing has been provided, with respect to any Grantor, $13,640,000.

"**Term Loan DIP Financing**" has the meaning set forth in Section 6.2(b).

"**Term Loan DIP Financing Conditions**" means (a) that (i) ABL Agent retains its Liens with respect to the Collateral that existed as of the date of the commencement of the applicable Insolvency Proceeding (including proceeds thereof arising after the commencement of such Insolvency Proceeding), (ii) as to the ABL Priority Collateral that existed as of the date of such commencement of such Insolvency Proceeding (including proceeds thereof arising after the commencement of such Insolvency Proceeding), ABL Agent's Liens with respect to such Collateral remain senior and prior to the Liens (inclusive of any Liens securing the Term Loan DIP Financing) of Term Loan Agent with respect to such Collateral, and (iii) as to ABL Priority Collateral acquired by the applicable Grantor after the commencement of Insolvency Proceeding (excluding proceeds of ABL Priority Collateral existing prior to the commencement of such Insolvency Proceeding), either (A) neither the ABL Claimholders nor the Term Loan Claimholders obtain a Lien with respect to such Collateral, or (B) if a Lien with respect to such Collateral is granted to secure the Term Loan DIP Financing, then ABL Agent obtains a Lien with respect to such Collateral and the Liens with respect to such Collateral securing the Term Loan DIP Financing are junior and subordinate to the Liens of ABL Agent with respect to such Collateral, (b) that the proposed Term Loan Cash Collateral use or Term Loan DIP Financing does not compel any Grantor to seek confirmation of a specific plan of reorganization for which all or substantially all of the material terms are set forth in the Term Loan Cash Collateral order or Term Loan DIP Financing documentation, as applicable, (c) in case of Term Loan DIP Financing, the aggregate principal amount of such Term Loan DIP Financing plus the outstanding principal amount of other Term Loan Priority Debt does not exceed the Term Loan Cap, (d) that the interest rate, advance rates and fees are commercially reasonable under the circumstances, (e) that the proposed Term Loan Cash Collateral order or Term Loan DIP Financing documentation does not expressly require the sale of all or substantially all of the Collateral prior to a default under such order or documentation and (f) that the Term Loan DIP Financing is otherwise subject to the terms of this Agreement.

"**Term Loan Documents**" means the Term Loan Collateral Documents, the Term Loan Credit Agreement, and each of the other "Loan Documents" (as that term is defined in the Term Loan Credit Agreement).

"**Term Loan Lenders**" means the "Lenders," as that term is defined in the Term Loan Credit Agreement.

"**Term Loan Mortgages**" means each mortgage, deed of trust, and any other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any Term Loan Debt or under which rights or remedies with respect to any such Liens are governed.

"**Term Loan Priority Collateral**" means, other than Excluded Collateral, all of each and every Grantor's right, title and interest in and to Term Loan Collateral that does not constitute ABL Priority Collateral (including, for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code (or any similar provision of any other Bankruptcy Law), would constitute ABL Priority Collateral), wherever located and whether now owned or hereafter acquired, including the following:

(a) all real property owned or leased by each Grantor, together with fixtures integral to the such Collateral;

(b) all tangible personal property other than tangible personal property constituting ABL Priority Collateral;

(c) all general intangibles (including Intellectual Property) other than general intangibles constituting ABL Priority Collateral;

(d) all commercial tort claims other than commercial tort claims constituting ABL Priority Collateral;

(e) all Equity Interests of each Grantor;

(f) all instruments, chattel paper (including all tangible and electronic chattel paper), payment intangibles (including indebtedness owing to such Grantor from any other Grantor in respect of intercompany loans and advances that are not funded with identifiable proceeds of loans under the ABL Credit Agreement or with identifiable proceeds of ABL Priority Collateral) and other contracts (other than such items constituting ABL Priority Collateral);

(g) all insurance (and all claims under all policies of insurance) of any kind relating to any of the Term Loan Priority Collateral (other than insurance constituting ABL Priority Collateral) and (i) 50% of all claims under, or proceeds of, business interruption insurance of any Grantor and (ii) all claims under, or proceeds of, any R&W Policy to the extent relating to any other Term Loan Priority Collateral;

(h) Books evidencing or relating to any of the foregoing (other than Books constituting ABL Priority Collateral);

(i) cash and cash equivalents of any kind that arise from or represent identifiable proceeds of any Term Loan Priority Collateral (other than proceeds of ABL Priority Collateral);

(j) deposit accounts and securities accounts, but only to the extent the amounts therein constitute identifiable proceeds of Term Loan Priority Collateral (except to the extent that such deposit accounts or securities accounts contain proceeds of ABL Priority Collateral), including the account to be established under Section 5.15(b) of the Term Loan Credit Agreement (as in effect on the date hereof);

(k) all investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts, or commodity accounts) and all monies, credit balances, deposits, and other property of any Grantor now or hereafter held, or received by, or in transit to, an Term Loan Claimholder, any bank, securities intermediary, depository, or other institution from or for the account of any Grantor, whether for safekeeping, pledge, custody, transmission, collection, or otherwise, in each case, to the extent arising from or constituting identifiable proceeds of Term Loan Priority Collateral; and

(l) all substitutions, replacements, accessions, products and proceeds of any of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to, or destruction of, or other voluntary conversion (including claims in respect of condemnation or expropriation) of any kind or nature of any or all of the foregoing.

"**Term Loan Priority Debt**" means all Term Loan Debt other than Excess Term Loan Debt.

"**Term Loan Secured Claim**" means any portion of the Term Loan Debt not constituting a Term Loan Deficiency Claim.

"**Term Loan Security Agreements**" means the "Security Agreements," as that term is defined in the Term Loan Credit Agreement.

"**Triggering Event**" means with respect to the purchase option in favor of the Term Loan Claimholders, (a) the occurrence of a payment default under the ABL Credit Agreement with respect to any payments of interest or scheduled payments of principal, (b) the acceleration of the ABL Priority Debt and termination of the commitments to advance further revolving loans under the ABL Credit Agreement, (c) ABL Agent's taking of any Enforcement Action with respect to all or a material portion of the ABL Priority Collateral, (d) the occurrence of a Term Loan Default as a result of a failure to make principal or interest payments of any Term Loan Debt when due under the terms of the Term Loan Documents, (e) prior to the occurrence of an ABL Default, the ABL Lenders do not fund advances requested by the Borrowers under the ABL Credit Agreement for a period of more than five (5) consecutive Business Days (unless the reason for not funding is that the Borrowers do not have availability or has failed to satisfy any of the conditions to funding set forth in the ABL Credit Agreement), (f) the termination or reduction of substantially all of the revolving loan commitments under the ABL Credit Agreement, or the suspension by the ABL Claimholders of such commitments after the occurrence and during the continuance of an ABL Default for a period of more than five (5) consecutive Business Days (other than as a result of a voluntary reduction by the Borrowers or any mandatory commitment reduction provisions of the ABL Credit Agreement) and (g) the commencement of an Insolvency Proceeding with respect to any Grantor.

"**UCC**" means the Uniform Commercial Code (or any similar or comparable legislation) as in effect in any applicable jurisdiction.

"**Use Period**" means the period, with respect to any Term Loan Priority Collateral, which begins on the earlier of (a) the day on which ABL Agent provides Term Loan Agent with written notice that it intends to exercise its rights under Section 3.9 with respect to such Term Loan Priority Collateral, and (b) the 5th Business Day after Term Loan Agent provides ABL Agent with written notice that Term Loan Agent (or its agent) has obtained possession or control, as applicable, of such Term Loan Priority Collateral and ends on the earlier of (i) the 90th day after the date on which ABL Agent has initially exercised its right to occupy, use, possess or control, as applicable, such Term Loan Priority Collateral pursuant to its rights hereunder and (ii) the date on which Payment in Full of ABL Priority Debt occurs; provided that if any stay or other order has occurred by operation of law or has been entered by a court of competent jurisdiction that prohibits or limits any of the ABL Claimholders from commencing and continuing to undertake Enforcement Actions or to Dispose of the ABL Priority Collateral, such 90-day period shall be tolled during the pendency of such stay or other order and the Use Period shall be so extended and upon the expiration or lifting of such stay or order, if there are fewer than 60 days remaining in such 90 -day period, than such 90 -day period shall be extended so that the ABL Claimholders have a Use Period of 60 days remaining upon the expiration or lifting of such stay or order.

"**WURA**" means the *Winding Up and Restructuring Act (Canada),* as in effect from time to time, or any successor statute.

1.2 Construction. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall

include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." The term "or" shall be construed to have, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." Any term used in this Agreement and not defined in this Agreement shall have the meaning set forth in the ABL Credit Agreement. Unless the context requires otherwise:

(a) except as otherwise provided herein, any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded, or replaced in accordance with the terms of this Agreement;

(b) any reference to a definition in an ABL Document shall be construed to also refer to any comparable term in any agreement, instrument, or other document the debt under which Refinances the ABL Debt;

(c) any reference to a definition in a Term Loan Document shall be construed to also refer to any comparable term in any agreement, instrument, or other document the debt under which Refinances the Term Loan Debt;

(d) any reference to any agreement, instrument, or other document herein "as in effect on the date hereof" shall be construed as referring to such agreement, instrument, or other document without giving effect to any amendment, restatement, supplement, modification, or Refinancing thereto or thereof occurring after the date hereof;

(e) any definition of, or reference to, ABL Debt or the Term Loan Debt herein shall be construed as referring to the ABL Debt or the Term Loan Debt (as applicable) as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded, or replaced;

(f) any definition of, or reference to, ABL Collateral or Term Loan Collateral herein shall not be construed as referring to any amounts recovered by a Grantor, as a debtor in possession, or a trustee for the estate of a Grantor, under Section 506(c) of the Bankruptcy Code (or by comparable persons under any other Bankruptcy Law);

(g) any reference herein to any person shall be construed to include such person's successors and assigns and as to any Grantor shall be deemed to include a receiver, trustee, or debtor-in-possession on behalf of any of such person or on behalf of any such successor or assignee of such person;

(h) except as otherwise expressly provided herein, any reference to ABL Agent agreeing to or having the right to do, or refraining from or having the right to refrain from doing, an act shall be construed as binding upon each of the ABL Claimholders, any reference to ABL Agent shall be construed as referring to ABL Agent, for itself and on behalf of the other ABL Claimholders, any reference to Term Loan Agent agreeing to or having the right to do, or refraining from or having the right to refrain from doing, an act shall be construed as binding upon each of the Term Loan Claimholders, any reference to Term Loan Agent shall be construed as referring to Term Loan Agent, for itself and on behalf of the other Term Loan Claimholders, any reference to the ABL Claimholders shall be construed as including ABL Agent, and any reference to the Term Loan Claimholders shall be construed as referring to Term Loan Agent;

(i) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(j) all references herein to Sections shall be construed to refer to Sections of this Agreement; and

(k) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

SECTION 2. Lien Priorities.

2.1 Relative Priorities.

(a) Notwithstanding the date, time, method, manner, or order of grant, attachment, or perfection of any Liens in the Collateral securing the Term Loan Debt or of any Liens in the Collateral securing the ABL Debt (including, in each case, notwithstanding whether any such Lien is granted (or secures Debt relating to the period) before or after the commencement of any Insolvency Proceeding) and notwithstanding any contrary provision of the UCC or any other applicable law, the Term Loan Documents or the ABL Documents or the or any defect or deficiencies in, or failure to attach or perfect, the Liens securing the ABL Debt or the Term Loan Debt, or any other circumstance whatsoever, ABL Agent and Term Loan Agent hereby agree that:

(i) any Lien with respect to the ABL Priority Collateral securing any ABL Priority Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the ABL Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation, or otherwise, shall be senior in all respects and prior to any Lien with respect to the ABL Priority Collateral securing (A) any Term Loan Debt or (B) any Excess ABL Debt;

(ii) any Lien with respect to the ABL Priority Collateral securing any Term Loan Debt, now or hereafter held by or on behalf of, or created for the benefit of, any of the Term Loan Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be (A) junior and subordinate in all respects to all Liens with respect to the ABL Priority Collateral securing any ABL Priority Debt, (B) excluding the extent to which such Lien secures Excess Term Loan Debt, senior in all respects and prior to any Lien with respect to the ABL Priority Collateral securing any Excess ABL Debt and (C) to the extent such Lien secures Excess Term Loan Debt, junior and subordinate to all Liens with respect to the ABL Priority Collateral securing Excess ABL Debt;

(iii) any Lien with respect to the Term Loan Priority Collateral securing any Term Loan Priority Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the Term Loan Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien with respect to the Term Loan Priority Collateral securing (A) any ABL Debt or (B) any Excess Term Loan Debt; and

(iv) any Lien with respect to the Term Loan Priority Collateral securing any ABL Debt now or hereafter held by or on behalf of, or created for the benefit of, any of the ABL Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be (A) junior and subordinate in all respects to all Liens with respect to the Term Loan Priority Collateral securing any Term Loan Priority Debt, (B) excluding the extent to which such Lien secures Excess ABL

Debt, senior in all respects and prior to any Lien with respect to the Term Loan Priority Collateral securing any Excess Term Loan Debt and (C) to the extent such Lien secures Excess ABL Debt, junior and subordinate to all Liens with respect to the Term Loan Priority Collateral securing Excess Term Loan Debt.

(b) All Liens with respect to the ABL Priority Collateral securing any ABL Priority Debt shall be and remain senior in all respects and prior to all Liens with respect to the Collateral securing any Term Loan Debt or any Excess ABL Debt, in each case, for all purposes, whether or not such Liens securing any ABL Priority Debt are subordinated to any Lien securing any other obligation of any Grantor or any other person (but only to the extent that such subordination is permitted pursuant to the terms of the ABL Credit Agreement and the Term Loan Debt Agreement, or as contemplated in Section 6.2). All Liens with respect to the Term Loan Priority Collateral securing any Term Loan Debt shall be and remain senior in all respects and prior to all Liens with respect to the Term Loan Priority Collateral securing any ABL Debt or any Excess Term Loan Debt, for all purposes, whether or not such Liens securing any Term Loan Debt are subordinated to any Lien securing any other obligation of any Grantor or any other person (but only to the extent that such subordination is permitted pursuant to the terms of the ABL Credit Agreement and the Term Loan Debt Agreement, or as contemplated in Section 6.2).

2.2 Prohibition on Contesting Liens or Claims. Each of Term Loan Agent and ABL Agent agrees that it will not (and hereby waives any right to), directly or indirectly, contest, or support any other person in contesting, in any proceeding (including any Insolvency Proceeding), the extent, validity, attachment, perfection, priority, or enforceability of a Lien held by or on behalf of any of the ABL Claimholders in the Collateral (or the extent, validity, allowability, or enforceability of any ABL Debt secured thereby or purported to be secured thereby) or by or on behalf of any of the Term Loan Claimholders in the Collateral (or the extent, validity, allowability, or enforceability of any Term Loan Debt secured thereby or purported to be secured thereby), as the case may be, or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of ABL Agent or Term Loan Agent to enforce the terms of this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the ABL Debt and the Term Loan Debt as provided in Sections 2.1 and 3.

2.3 New Liens.

(a) So long as no Insolvency Proceeding has been commenced by or against any Grantor, the parties hereto agree that no Grantor shall:

(i) grant or permit any additional Liens on any asset that is not Collateral to secure any Term Loan Debt unless such Grantor gives ABL Agent at least 5 Business Days prior written notice thereof and unless such notice also offers to grant a Lien on such asset to secure the ABL Debt concurrently with the grant of a Lien thereon in favor of Term Loan Agent (and if such Lien is granted in favor of Term Loan Agent, such Lien is granted in favor of ABL Agent); or

(ii) grant or permit any additional Liens on any asset that is not Collateral to secure any ABL Debt unless such Grantor gives Term Loan Agent at least 5 Business Days prior written notice thereof and unless such notice also offers to grant a Lien on such asset to secure the Term Loan Debt concurrently with the grant of a Lien thereon in favor of ABL Agent (and if such Lien is granted in favor of ABL Agent, such Lien is granted in favor of Term Loan Agent).

(b) All additional Liens granted to ABL Agent or Term Loan Agent pursuant to this Section 2.3 are intended by the parties to be and shall be deemed to be subject to the Lien priorities in Section 2.1 and the other terms and conditions of this Agreement.

(c) To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the Claimholders, each Agent agrees that any amounts received by or distributed to any of the Claimholders pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2.

2.4 Similar Liens and Agreements.

(a) The parties hereto agree that it is their intention that the ABL Collateral and the Term Loan Collateral be identical except as provided in Section 6 hereof and subject to Section 2.4(b) below. In furtherance of the foregoing and of Section 9.8, the parties hereto agree, subject to the other provisions of this Agreement:

(i) upon reasonable request by ABL Agent or Term Loan Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the ABL Collateral and the Term Loan Collateral and the steps taken or to be taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the ABL Documents and the Term Loan Documents; and

(ii) that the ABL Collateral Documents and Term Loan Collateral Documents and guarantees for the ABL Debt and the Term Loan Debt, shall be, in all material respects, the same forms of documents other than with respect to the priorities of the Liens granted thereunder.

(b) The foregoing to the contrary notwithstanding, each of the parties agrees that to the extent that ABL Agent or Term Loan Agent obtains a Lien in an asset (of a type that is not included in the types of assets included in the Collateral as of the date hereof or which would not constitute Collateral without a grant of a security interest or lien separate from the ABL Documents or Term Loan Documents, as applicable, as in effect immediately prior to obtaining such Lien on such asset) which the other party to this Agreement elects not to obtain after receiving prior written notice thereof in accordance with the provisions of Section 2.3, the Collateral securing the ABL Debt and the Term Loan Debt will not be identical, and the provisions of the documents, agreements and instruments evidencing such Liens also will not be substantively similar, and any such difference in the scope or extent of perfection with respect to the Collateral resulting therefrom are hereby expressly permitted by this Agreement.

SECTION 3. Exercise of Remedies.

3.1 Exercise of Remedies with respect to the ABL Priority Collateral. Until the Payment in Full of ABL Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, the Term Loan Claimholders will not:

(a) exercise or seek to exercise any rights, powers, or remedies with respect to any ABL Priority Collateral (including taking any Enforcement Action with respect to any ABL Priority Collateral); provided that (i) if a Term Loan Default has occurred and is continuing, Term Loan Agent may take Enforcement Actions with respect to any ABL Priority Collateral after the expiration of the applicable Standstill Period (it being understood that if at any time after the delivery of a Standstill Notice that commences a Standstill Period, no Term Loan Default is continuing, Term Loan Agent may not take Enforcement Actions with respect to any ABL Priority Collateral until the expiration of a new Standstill Period commenced by a new Standstill Notice relative to the occurrence of a new Term Loan Default that had not occurred as of the date of the delivery of the earlier Standstill Notice), (ii) in no event shall Term Loan Agent or any other Term Loan Claimholder exercise any rights or remedies with respect to the ABL

Priority Collateral if, notwithstanding the expiration of the Standstill Period, ABL Agent or any other ABL Claimholder shall have commenced prior to the expiration of the Standstill Period (or thereafter but prior to the commencement of any Enforcement Action by Term Loan Agent with respect to all or any material portion of the ABL Priority Collateral) and be diligently pursuing in good faith an Enforcement Action with respect to all or any material portion of the ABL Priority Collateral and (iii) prior to taking any such Enforcement Action with respect to ABL Priority Collateral, Term Loan Agent shall give ABL Agent not less than 5 Business Days prior written notice of the intention of Term Loan Agent or any other Term Loan Claimholder to exercise such rights and remedies, including specifying the rights and remedies that it intends to exercise, which notice may be sent prior to the end of the Standstill Period; or

(b) commence or join with any person (other than ABL Agent) in commencing, or filing a petition for, any Insolvency Proceeding against any Grantor until 10 Business Days after the date on which ABL Agent receives a written notice from Term Loan Agent stating that one or more Term Loan Claimholders intends to commence or join with any person in commencing or filing a petition for any such Insolvency Proceeding.

3.2 Exercise of Remedies With Respect to the Term Loan Priority Collateral. Until the Payment in Full of Term Loan Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, the ABL Claimholders will not:

(a) exercise or seek to exercise any rights, powers, or remedies with respect to any Term Loan Priority Collateral (including taking any Enforcement Action with respect to any Term Loan Priority Collateral); provided that (i) if an ABL Default has occurred and is continuing, ABL Agent may take Enforcement Actions with respect to any Term Loan Priority Collateral after the expiration of the applicable Standstill Period (it being understood that if at any time after the delivery of a Standstill Notice that commences a Standstill Period, no ABL Default is continuing, ABL Agent may not take Enforcement Actions with respect to any Term Loan Collateral until the expiration of a new Standstill Period commenced by a new Standstill Notice relative to the occurrence of a new ABL Default that had not occurred as of the date of the delivery of the earlier Standstill Notice), (ii) in no event shall ABL Agent or any other ABL Claimholder exercise any rights or remedies with respect to the Term Loan Priority Collateral if, notwithstanding the expiration of the Standstill Period, Term Loan Agent or any other Term Loan Claimholder shall have commenced prior to the expiration of the Standstill Period (or thereafter but prior to the commencement of any Enforcement Action by ABL Agent with respect to all or any material portion of the Term Loan Priority Collateral) and be diligently pursuing in good faith an Enforcement Action with respect to all or any material portion of Term Loan Priority Collateral and (iii) prior to taking any such Enforcement Action with respect to Term Loan Priority Collateral, ABL Agent shall give Term Loan Agent not less than 5 Business Days prior written notice of the intention of ABL Agent or any other ABL Claimholder to exercise such rights and remedies, including specifying the rights and remedies that it intends to exercise, which notice may be sent prior to the end of the Standstill Period; or

(b) commence or join with any person (other than Term Loan Agent) in commencing, or filing a petition for, any Insolvency Proceeding against any Grantor until 10 Business Days after the date on which Term Loan Agent receives a written notice from ABL Agent stating that one or more ABL Claimholders intends to commence or join with any person in commencing or filing a petition for any such Insolvency Proceeding.

3.3 Exclusive Enforcement Rights.

(a) Until the Payment in Full of ABL Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, but subject to the first proviso to Section 3.1(a), the ABL Claimholders shall have the exclusive right to take Enforcement Actions with

respect to the ABL Priority Collateral (and in connection therewith, make determinations regarding the release or Disposition thereof or any restrictions with respect thereto); provided that (unless an Insolvency Proceeding has been commenced by or against any Grantor or unless there are Exigent Circumstances), the ABL Agent shall give the Term Loan Agent at least 5 Business Days prior written notice that the ABL Claimholders intend to take such Enforcement Actions. Until the Payment in Full of Term Loan Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, but subject to the first proviso to Section 3.2(a), the Term Loan Claimholders shall have the exclusive right to take Enforcement Actions with respect to the Term Loan Priority Collateral (and in connection therewith, subject to Section 3.9 (but without affecting their rights to freely release, restrict, or make a Disposition thereof in accordance with such section), make determinations regarding the release or Disposition thereof or any restrictions with respect thereto); provided that (unless an Insolvency Proceeding has been commenced by or against any Grantor or unless there are Exigent Circumstances), the Term Loan Agent shall give the ABL Agent at least 5 Business Days prior written notice that the Term Loan Claimholders intend to take such Enforcement Actions.

(b) In connection with (i) any Enforcement Action with respect to the ABL Priority Collateral, the ABL Claimholders may enforce the provisions of the ABL Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion, or (ii) any Enforcement Action with respect to the Term Loan Priority Collateral, the Term Loan Claimholders may enforce the provisions of the Term Loan Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to Dispose of Collateral, to incur expenses in connection with such Disposition, and to exercise all the rights and remedies of a secured creditor under applicable law.

3.4 Permitted Actions. Anything to the contrary in this Section 3 notwithstanding, any Claimholder may:

(a) if an Insolvency Proceeding has been commenced by or against any Grantor, file a claim or statement of interest with respect to (i) in the case of an ABL Claimholder, the ABL Debt, and (ii) in the case of a Term Loan Claimholder, the Term Loan Debt, and in each case the Collateral securing such Debt;

(b) take any action (not adverse to the priority status of the Liens on the Priority Collateral held by the Priority Agent with respect thereto, or the rights of the Priority Agent or any other Priority Claimholder to undertake Enforcement Actions with respect thereto) in order to create, perfect or preserve its Lien in and to the Collateral, to prevent the running of any applicable statute of limitation or similar restriction on claims or to assert a compulsory cross-claim or counterclaim against any person;

(c) before or after the commencement of an Insolvency Proceeding, file any necessary responsive or defensive pleadings (i) in opposition to any motion, claim, adversary proceeding, or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of (A) in the case of a claim of an ABL Claimholder, the ABL Claimholders, or (B) in the case of a claim of a Term Loan Claimholder, the Term Loan Claimholders, or (ii) asserting rights available to unsecured creditors of the applicable Grantor, in each case in accordance with and not in contravention of the terms of this Agreement;

(d) during an Insolvency Proceeding, vote on any plan of reorganization, scheme or arrangement, or liquidation (or similar arrangement affecting creditors' rights generally) and make any filings and motions therein that are, in each case, not in contravention of the provisions of this Agreement,

with respect to (i) in the case of an ABL Claimholder, the ABL Debt, and (ii) in the case of a Term Loan Claimholder, the Term Loan Debt, and (in each case) the Collateral;

(e) join (but not exercise any control with respect to) any judicial foreclosure proceeding or other judicial lien enforcement proceeding with respect to the Priority Collateral of the Priority Agent initiated by such Priority Agent to the extent that any such action could not reasonably be expected, in any material respect, to restrain, hinder, limit, delay for any material period or otherwise interfere with an Enforcement Action by such Priority Agent (it being understood that neither the Junior Agent nor any Junior Claimholder shall be entitled to receive any proceeds from the Priority Collateral unless otherwise expressly permitted herein);

(f) subject to Section 3.6(a), inspect, appraise or value the Collateral (and to engage or retain investment bankers or appraisers for the purposes of appraising or valuing the Collateral) or to receive information or reports concerning the Collateral, in each case pursuant to the terms of the ABL Documents or Term Loan Documents, as applicable, or applicable law;

(g) subject to Section 3.6(a), take any action to seek and obtain specific performance or injunctive relief to compel a Grantor to comply with (or not to violate or breach) an obligation under the ABL Documents or Term Loan Documents, as applicable; provided that such action does not include any action by a Junior Claimholder to seek specific performance or injunctive relief against any Priority Claimholder or the Disposition of any such Priority Claimholder's Priority Collateral in contravention of the other provisions of this Agreement;

(h) bid for Collateral at any public or private sale thereof; provided that (i) such Claimholder does not challenge the bid of the Priority Agent for its Priority Collateral other than by the submission of a competing bid, (ii) each Priority Lender may subject to the terms of its Collateral Documents offset or credit bid its Priority Debt against the purchase price for the Priority Collateral and (iii) if such sale includes Junior Collateral and Priority Collateral, the Junior Lenders may only bid cash with respect to the Priority Collateral; provided, further, that the cash portion of any such bid need not exceed the amount of the ABL Priority Debt or the Term Loan Priority Debt, as applicable, in respect of such Priority Collateral; and

(i) enforce the terms of any subordination agreement with any person (other than a Grantor) with respect to debt of a Grantor that is subordinated to the ABL Debt or the Term Loan Debt; provided (i) prior written notice of such action is provided to each Agent, (ii) no such action includes any Enforcement Action, (iii) any payment or other property received by such Claimholder, to the extent resulting from a payment or other transfer of property or an interest in property of any Grantor, shall be deemed to be proceeds of Collateral subject to the other terms of this Agreement and (iv) any other payments received by such Claimholder in connection with such action shall otherwise be subject to the terms of such subordination agreement with any other person, any related subordination agreement with either or both of the Agents and this Agreement.

3.5 Retention of Proceeds.

(a) Prior to the Payment in Full of ABL Priority Debt, but subject to the provisions of Section 3.5(c) below, the Term Loan Claimholders shall not be permitted to retain any proceeds of ABL Priority Collateral in connection with any Enforcement Action unless and until the Payment in Full of ABL Priority Debt has occurred, and any such proceeds received or retained will be subject to Section 4.2.

(b) Prior to the Payment in Full of Term Loan Priority Debt, but subject to the provisions of Section 3.5(c) below, the ABL Claimholders shall not be permitted to retain any proceeds of Term Loan Priority Collateral in connection with any Enforcement Action unless and until the Payment in Full of Term Loan Priority Debt has occurred, and any such proceeds received or retained in any other circumstance will be subject to Section 4.2.

(c) Notwithstanding anything contained in this Agreement to the contrary, in the event of any Disposition or series of related Dispositions that includes ABL Priority Collateral and Term Loan Priority Collateral (other than a Disposition consisting solely of Equity Interests, subject to the terms below), then solely for purposes of this Agreement, unless otherwise agreed by ABL Agent and Term Loan Agent, the proceeds of any such Disposition shall be allocated to the ABL Priority Collateral in an amount not less than the sum of (i) the book value determined in accordance with GAAP of any ABL Priority Collateral consisting of inventory that is the subject of such Disposition (or, in the case of a Disposition of Equity Interests issued by a Grantor, any ABL Priority Collateral consisting of inventory in which such Grantor has an interest), determined as of the date of such Disposition, (ii) the book value determined in accordance with GAAP of any ABL Priority Collateral consisting of accounts that are the subject of such Disposition (or, in the case of a Disposition of Equity Interests issued by a Grantor, any ABL Priority Collateral consisting of accounts in which such Grantor has an interest), determined as of the date of such Disposition, and (iii) the fair market value of all other ABL Priority Collateral that is the subject of such Disposition (or, in the case of a Disposition of Equity Interests issued by a Grantor, any ABL Priority Collateral in which such Grantor has an interest), determined as of the date of such Disposition.

3.6 Non-Interference. Subject to any specific provision of this Agreement to the contrary, each of Term Loan Agent and ABL Agent hereby:

(a) agrees that the Junior Claimholders will not take any action that would restrain, hinder, limit, delay, or otherwise interfere with any Enforcement Action by the Priority Agent with respect to its Priority Collateral, including any Disposition of such Priority Collateral, whether by foreclosure or otherwise;

(b) waives any and all rights that any Junior Claimholder may have as a junior lien creditor or otherwise to object to the manner in which the Priority Agent or the Priority Claimholders seek to enforce or collect their Debt or the Liens securing such Debt granted in any of the Priority Collateral, regardless of whether any action or failure to act by or on behalf of such Priority Agent or the Priority Claimholders is adverse to the interest of the Junior Agent or the Junior Claimholders;

(c) waives any and all rights that any Junior Claimholder may have to oppose, object to, or seek to restrict the Priority Agent or any Priority Claimholder from exercising their rights to set off or credit bid its Debt; and

(d) acknowledges and agrees that no covenant, agreement, or restriction contained in its Collateral Documents or any other of its Loan Documents (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of the Priority Agent or the Priority Claimholders with respect to their Priority Collateral as set forth in this Agreement and such Priority Agent's Loan Documents.

3.7 Unsecured Creditor Remedies. Except as set forth in Sections 2.2, 3.1, 3.2, 3.6, and 6, the Agents and the other Claimholders may exercise rights and remedies as unsecured creditors generally against any Grantor in accordance with the terms of the applicable Loan Documents and applicable law so long as doing so is not in contravention of the terms of this Agreement; provided that in the event that any

Claimholder becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to its Debt, such judgment Lien shall be subject to the terms of this Agreement for all purposes as the other Liens securing such Debt.

3.8 Notice of Exercise. ABL Agent shall provide reasonable prior written notice to Term Loan Agent of its initial material Enforcement Action. Term Loan Agent shall provide reasonable prior written notice to ABL Agent of its initial material Enforcement Action.

3.9 Inspection and Access Rights.

(a) If any Term Loan Claimholder, or any agent, representative or affiliate of any of the Term Loan Claimholders, or any receiver, shall, after any Term Loan Default, obtain possession or physical control of any of the real properties subject to a Term Loan Mortgage, or any of the tangible Term Loan Priority Collateral located on any premises or control over any intangible Term Loan Priority Collateral, Term Loan Agent shall promptly notify ABL Agent in writing of that fact, and ABL Agent may at any time thereafter notify Term Loan Agent in writing if and when ABL Agent desires to exercise its access rights under this Section 3.9. In addition, if ABL Agent, or any agent, representative or affiliate of ABL Agent, or any receiver, shall obtain possession or physical control of any of the real properties subject to an ABL Mortgage, or any of the tangible Term Loan Priority Collateral or control over any intangible Term Loan Priority Collateral, following the delivery to Term Loan Agent of an Enforcement Notice, then ABL Agent shall promptly thereafter notify Term Loan Agent in writing that ABL Agent is exercising its access rights under this Agreement under either circumstance to the extent that ABL Agent has knowledge of such possession or control. Promptly (but in no event less than five Business Days) after such notice by ABL Agent to Term Loan Agent, the parties shall confer in good faith to coordinate with respect to ABL Agent's exercise of such access rights. Consistent with the definition of "Use Period," access rights may apply to differing parcels of real properties subject to a Term Loan Mortgage and to different assets that constitute a portion of the Term Loan Priority Collateral, in each case at differing times, in which case, a differing Use Period will apply to each such property and to each such portion of the Term Loan Priority Collateral.

(b) Without limiting any rights any of the ABL Claimholders may otherwise have under applicable law or by agreement and whether or not any of the Term Loan Claimholders has commenced and is continuing to undertake any Enforcement Action, ABL Agent or any other person notified in writing by ABL Agent to Term Loan Agent (including any of the ABL Claimholders) acting with the consent, or on behalf, of ABL Agent, shall have an irrevocable, non-exclusive right to have access to, and a royalty-free and rent-free license and right to use the Term Loan Priority Collateral (including, without limitation, a right to use Intellectual Property, general intangibles and equipment, processors, computers and other machinery, in each case, related to the storage or processing of records, documents or files, and the right to enter onto any real property) during the Use Period (i) during normal business hours on any Business Day, to access the ABL Priority Collateral that (A) is stored or located in or on, (B) has become an accession with respect to (within the meaning of Section 9-335 of the UCC or any comparable provision under any other applicable legislation), or (C) has been commingled with (within the meaning of Section 9-336 of the UCC or any comparable provision under any other applicable legislation), Term Loan Priority Collateral, and (ii) in order to assemble, inspect, copy or download information stored on, take actions to perfect its Lien on, process raw materials or work-in-process into finished Inventory, take possession of, move, package, prepare and advertise for sale or disposition, sell (by public auction, private sale, whether in bulk, in lots or to customers in the ordinary course of business or otherwise), store, collect, take reasonable actions to protect, secure and otherwise enforce the rights of ABL Agent in and to the ABL Priority Collateral, or otherwise deal with the ABL Priority Collateral in accordance with applicable law, in each case, subject to clause (c) below, without liability to any of the Term Loan Claimholders and without the involvement of, or interference or restriction by any of the

Term Loan Claimholders; provided, however, that this Section 3.9 shall not require that ABL Agent's use of the Term Loan Priority Collateral be on an exclusive basis. This Agreement will not restrict the rights of Term Loan Agent to sell, assign or otherwise transfer the related Term Loan Priority Collateral prior to the expiration of the Use Period if (but only if) the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section 3.9.

(c) During the period of actual occupation, use or control by ABL Agent (or its respective employees, agents, advisers and representatives) of any Term Loan Priority Collateral, ABL Agent, its employees, agents, advisors and representatives (i) shall be obligated to repair at their expense any physical damage (ordinary wear and tear excepted) to such Term Loan Priority Collateral caused by such occupancy, use or control by ABL Agent or its agents, representatives or designees, and to leave such Term Loan Priority Collateral or other assets or property in substantially the same condition as it was at the commencement of such occupancy, use or control, ordinary wear and tear excepted and (ii) shall use commercially reasonable efforts to not interfere with the normal operations or business of any Grantor; provided that ABL Agent will not be liable for any diminution in the value of the Term Loan Priority Collateral caused by the absence of the ABL Priority Collateral therefrom. Notwithstanding the foregoing, in no event shall ABL Agent have any liability to any of the Term Loan Claimholders pursuant to this Section 3.9 as a result of any condition (including any environmental condition, claim or liability) on or with respect to the Term Loan Priority Collateral existing prior to the date of the exercise by ABL Agent of its rights under this Section 3.9 and ABL Agent shall have no duty or liability to maintain the Term Loan Priority Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by ABL Agent, or for any diminution in the value of the Term Loan Priority Collateral that results solely from ordinary wear and tear resulting from the use of the Term Loan Priority Collateral by ABL Agent in the manner and for the time periods specified under this Section 3.9 and subject to the terms hereof. Without limiting the rights granted in this Section 3.9, ABL Agent shall use commercially reasonable efforts to cooperate with Term Loan Agent in connection with any efforts made by the Term Loan Claimholders to sell, preserve, identify, assemble and protect the Term Loan Priority Collateral.

(d) Consistent with the definition of the term "Use Period," if any order or injunction is issued or stay is granted or is otherwise effective by operation of law that prohibits ABL Agent from exercising any of its rights hereunder, then the Use Period granted to ABL Agent under this Section 3.9 shall be stayed during the period of such prohibition and shall continue thereafter for the number of days remaining as required under this Section 3.9. Term Loan Agent agrees, for the benefit of ABL Agent, that it shall not sell or dispose of any of the Term Loan Priority Collateral during the Use Period unless the buyer agrees in writing to acquire the Term Loan Priority Collateral subject to the terms of Section 3.9 of this Agreement and agrees therein to comply with the terms of this Section 3.9. The rights of ABL Agent under this Section 3.9 during the Use Period shall continue notwithstanding such foreclosure, sale or other disposition by Term Loan Agent.

(e) ABL Agent shall not be obligated to pay any amounts to the Term Loan Claimholders (or any person claiming by, through or under the Term Loan Claimholders, including any purchaser of the Term Loan Priority Collateral) or to any Grantor, for or in respect of the use by ABL Agent of the Term Loan Priority Collateral; provided that ABL Agent shall be obligated, subject to clause (c) above and clause (g) below, to pay all out-of-pocket costs and expenses incurred by any Term Loan Claimholder directly attributable to such use and occupancy by ABL Agent of the Term Loan Priority Collateral, including utilities (including heat, light, electricity and water) and other maintenance and operating costs of such Term Loan Priority Collateral attributable to such use; provided further, that ABL Agent will not be liable for any diminution in the value of the Term Loan Priority Collateral caused by the absence of the ABL Priority Collateral therefrom. In each case, all amounts paid by ABL Agent hereunder shall be added to the outstanding principal balance of the ABL Debt.

(f) The ABL Agent agrees to pay, indemnify and hold harmless the Term Loan Claimholders (and any third party purchaser) from and against any loss, liability, claim, damage or expense (including the reasonable fees and expenses of legal counsel) arising out of any claim asserted by any third party to the extent caused as a direct result of any acts or omissions of any ABL Claimholder or any of their employees, agents, advisers or representatives during the period of its or their occupation and use of such premises as set forth in this Section 3.9 to the extent not covered by insurance that has been unconditionally paid by the applicable insurance company, including any physical damage to the Term Loan Priority Collateral to the extent caused by any act of any ABL Claimholder or any of their employees, agents, advisers or representatives (other than diminution of value (as opposed to actual physical damage to the Collateral) thereof as a result of the removal of the ABL Priority Collateral) during the period of its or their occupation and use of such premises as set forth in this Section 3.9. The ABL Agent shall promptly repair, at the ABL Agent's expense, any physical damage to any Term Loan Priority Collateral to the extent caused by the occupation and/or use thereof by the ABL Agent or any employees, agents, advisers or representatives acting under the direction of the ABL Agent (except ordinary wear and tear and any diminution in value (as opposed to actual physical damage to the Collateral) due to the removal of the ABL Priority Collateral). In no event shall the ABL Agent and ABL Lenders have any liability to the Term Loan Agent or any Term Loan Lender pursuant to this Section 3.9(f) or otherwise as a result of any condition on or with respect to the Term Loan Priority Collateral existing prior to the date of the exercise by the ABL Agent of its rights under this Section 3.9 or, to the extent not caused as a direct result of any acts or omissions of any ABL Claimholder or any of their employees, agents, advisers or representatives. In each case, all amounts paid by ABL Agent hereunder shall be added to the outstanding principal balance of the ABL Debt.

(g) The ABL Agent shall use the Term Loan Priority Collateral as contemplated by this Section 3.9 in accordance with applicable law. The ABL Agent and each ABL Lender hereby acknowledge that, during the period any Term Loan Priority Collateral shall be under control or possession of the Term Loan Agent or Term Loan Lenders, except to the extent that the Term Loan Agent or Term Loan Lenders have exercised their enforcement rights or remedies with respect to the ABL Priority Collateral pursuant to Section 3.1(a), the Term Loan Agent and Term Loan Lenders shall not be obligated to take any action to protect or to procure insurance with respect to any ABL Priority Collateral that may be located on or in the Term Loan Priority Collateral, it being understood that the Term Loan Agent and Term Loan Lenders shall have no responsibility for loss or damage to the ABL Priority Collateral (other than as a result of the gross negligence or willful misconduct of the Term Loan Agent and/or Term Loan Lenders or their agents) and that all risk of loss or damage to the ABL Priority Collateral shall remain with the ABL Agent and the ABL Lenders (other than as a result of the gross negligence or willful misconduct of the Term Loan Agent and/or Term Loan Lenders or their agents).

(h) Subject to the terms hereof, Term Loan Agent may advertise and conduct public auctions or private sales of the Term Loan Priority Collateral, without the involvement of, or interference by, any of the ABL Claimholders or liability to any of the ABL Claimholders as long as, in the case of an actual sale, the respective purchaser assumes and agrees (to the extent applicable) in advance in writing to the obligations of Term Loan Agent under this Section 3.9. If ABL Agent conducts a public auction or private sale of the ABL Priority Collateral at any of the real property included within the Term Loan Priority Collateral, ABL Agent shall provide Term Loan Agent with reasonable prior notice of such sale and shall use reasonable efforts to hold such auction or sale in a manner which would not unduly disrupt Term Loan Agent's use of such real property.

(i) Notwithstanding the termination of the Use Period, ABL Agent shall have the right to Dispose of any inventory that is branded or becomes branded, or produced through the use or other application of, any Intellectual Property, whether pursuant to the exercise of rights pursuant to this Section 3.9 or otherwise, and to use such branded trademarks and tradenames in connection with the

advertising and marketing of such Dispositions; and all such branded inventory shall constitute ABL Priority Collateral, and no proceeds arising from any Disposition of any such ABL Priority Collateral shall be, or be deemed to be, attributable to Term Loan Priority Collateral.

(j) For the avoidance of doubt, and without limiting the generality of the other provisions of this Agreement, it is hereby acknowledged and agreed that ABL Agent shall have the right to bring an action to enforce its rights under this Section 3.9 and Section 3.10, including an action seeking possession of the applicable Collateral or specific performance of this Section 3.9 and Section 3.10.

(k) The Term Loan Agent (i) will, subject to the provisions above in this Section 3.9, cooperate with ABL Agent in its efforts pursuant to Section 3.9(b) to enforce its security interest in the ABL Priority Collateral and to finish any work-in-process and assemble the ABL Priority Collateral, (ii) will not hinder or restrict in any respect ABL Agent from enforcing its security interest in the ABL Priority Collateral or from finishing any work-in-process or assembling the ABL Priority Collateral pursuant to Section 3.9(b), and (iii) will, subject to the rights of any landlords under real estate leases, permit ABL Agent, its employees, agents, advisers and representatives to exercise the rights described in Section 3.9(b).

3.10 Sharing of Information and Access. In the event that ABL Agent shall, in the exercise of its rights under the ABL Collateral Documents or otherwise, receive possession or control of any Books of any Grantor which contain information identifying or pertaining to any of the Term Loan Priority Collateral, ABL Agent shall, upon request from Term Loan Agent and as promptly as practicable thereafter, either make available to Term Loan Agent such books and records for inspection and duplication or provide to Term Loan Agent copies thereof. In the event that Term Loan Agent shall, in the exercise of its rights under the Term Loan Documents or otherwise, receive possession or control of any books and records of any Grantor which contain information identifying or pertaining to any of the ABL Priority Collateral, Term Loan Agent shall, upon request from ABL Agent and as promptly as practicable thereafter, either make available to ABL Agent such books and records for inspection and duplication or provide to ABL Agent copies thereof.

3.11 Tracing of and Priorities in Proceeds. Prior to an issuance of any Enforcement Notice by a Claimholder or the occurrence of any Insolvency Proceeding, and except as otherwise expressly provided in any "adequate protection" order entered during such Insolvency Proceeding, any proceeds of Collateral obtained in accordance with the terms of the ABL Documents and the Term Loan Documents, whether or not deposited under control agreements, which are used by any Grantor to acquire other property which is Collateral shall not (solely as between the Claimholders) be treated as proceeds of Collateral for purposes of determining the relative priorities in the Collateral which was so acquired. Notwithstanding anything to the contrary contained in this Agreement, any Term Loan Document or any ABL Document, until the Payment in Full of ABL Priority Debt occurs Term Loan Agent, for itself and on behalf of the Term Loan Claimholders, agrees that prior to the receipt of a Term Cash Proceeds Notice, and except with respect to Term Loan Priority Collateral, or proceeds thereof reasonably identified in a Term Cash Proceeds Notice, the ABL Claimholders are hereby permitted to treat all cash, cash equivalents, money, collections and payments deposited in or credited to any other Grantor's deposit account, collection account or other bank account or otherwise received by any ABL Claimholders as ABL Priority Collateral, and except as otherwise provided above, no such amounts deposited in or credited to any such accounts or received by any ABL Claimholders or applied to the ABL Debt shall be subject to disgorgement or deemed to be held in trust for the benefit of the Term Loan Claimholders (and all claims of the Term Loan Agent or any other Term Loan Claimholders to such amounts are hereby waived); provided this consent shall not inure to the benefit of any of the Grantors or be deemed a waiver of or modification of any provision of the Term Loan Documents, including any provision requiring application of such proceeds to repayment of the Term Loan Debt or otherwise in the manner provided

for in the Term Loan Documents or any default or event of default that may result from any Grantor's failure to comply with such requirements.

SECTION 4. Proceeds.

4.1 Application of Proceeds.

(a) Regardless of whether an Insolvency Proceeding has been commenced by or against any Grantor, except as otherwise provided in Section 2.1, any ABL Priority Collateral, or proceeds thereof, received in connection with any Enforcement Action and, except as otherwise provided in Sections 4.2 and 6.5, any ABL Priority Collateral or proceeds thereof (or amounts distributed on account of a Lien in such Collateral or the proceeds thereof) received in connection with any Insolvency Proceeding involving a Grantor shall (at such time as such ABL Priority Collateral or proceeds or other amounts have been monetized) be applied:

(i) first, to the payment in full in cash of reasonable and documented out-of-pocket costs and expenses of ABL Agent in connection with such Enforcement Action or Insolvency Proceeding,

(ii) second, to the payment in full in cash or cash collateralization of the ABL Priority Debt in accordance with the ABL Documents, and in the case of payment of any revolving loans (other than pursuant to ABL DIP Financing), together with a concurrent permanent reduction of the ABL Priority Debt,

(iii) third, to the payment in full in cash of reasonable and documented out-of-pocket costs and expenses of Term Loan Agent in connection with such Enforcement Action or Insolvency Proceeding (to the extent Term Loan Agent's Enforcement Action or action in the Insolvency Proceeding was permitted hereunder),

(iv) fourth, to the payment in full in cash of the Term Loan Priority Debt in accordance with the Term Loan Documents,

(v) fifth, to the payment in full in cash of the Excess ABL Debt in accordance with the ABL Documents, and

(vi) sixth, to the payment in full in cash of the Excess Term Loan Debt in accordance with the Term Loan Documents.

(b) Notwithstanding the foregoing, if any Enforcement Action with respect to the ABL Priority Collateral produces non-cash proceeds, then such non-cash proceeds shall be held by ABL Agent as additional collateral and, at such time as such non-cash proceeds are monetized, shall be applied in the order of application set forth above. ABL Agent shall have no duty or obligation to Dispose of such non-cash proceeds and may Dispose of such non-cash proceeds or continue to hold such non-cash proceeds, in each case, in its discretion; provided that any non-cash proceeds received by ABL Agent (other than any non-cash proceeds received on account of any Term Loan Secured Claim) may be distributed by ABL Agent to the ABL Claimholders in full or partial satisfaction of ABL Debt in an amount determined by ABL Agent acting at the direction of the requisite ABL Claimholders or as a court of competent jurisdiction may direct pursuant to a Final Order, including an order confirming a plan of reorganization in an Insolvency Proceeding. No receipt and application of any Collateral, or proceeds thereof, received in the ordinary course of business or as a result of the exercise of dominion of funds under a control agreement (such Collateral, and the proceeds thereof, "**Ordinary Course Collections**")

shall constitute an Enforcement Action for purposes of this Agreement and all Ordinary Course Collections received by ABL Agent may be applied, reversed, reapplied, credited, or reborrowed, in whole or in part, pursuant to the ABL Credit Agreement. Any proceeds from the sale or other disposition, or collection, of the ABL Priority Collateral that are the basis for a mandatory prepayment of the ABL Debt under the ABL Credit Agreement shall first be applied to make a mandatory prepayment of the ABL Debt in accordance with the terms of the ABL Credit Agreement.

(c) Regardless of whether an Insolvency Proceeding has been commenced by or against any Grantor, except as otherwise provided in Section 2.1, any Term Loan Priority Collateral, or proceeds thereof, received in connection with any Enforcement Action and, except as otherwise provided in Sections 4.2 and 6.5, any Term Loan Priority Collateral or proceeds thereof (or amounts distributed on account of a Lien in such Collateral or the proceeds thereof) received in connection with any Insolvency Proceeding involving a Grantor shall (at such time as such Term Loan Priority Collateral or proceeds or other amounts have been monetized) be applied:

(i) first, to the payment in full in cash of reasonable and documented out-of-pocket costs and expenses of Term Loan Agent in connection with such Enforcement Action or Insolvency Proceeding,

(ii) second, to the payment in full in cash of the Term Loan Priority Debt in accordance with the Term Loan Documents,

(iii) third, to the payment in full in cash of reasonable and documented out-of-pocket costs and expenses of ABL Agent in connection with such Enforcement Action or Insolvency Proceeding (to the extent ABL Agent's Enforcement Action or action in the Insolvency Proceeding was permitted hereunder),

(iv) fourth, to the payment in full in cash of the ABL Priority Debt in accordance with the ABL Documents,

(v) fifth, to the payment in full in cash of the Excess Term Loan Debt in accordance with the ABL Documents,

(vi) sixth, to the payment in full in cash of the Excess ABL Debt in accordance with the ABL Documents.

(d) Notwithstanding the foregoing, if any Enforcement Action with respect to the Term Loan Priority Collateral produces non-cash proceeds, then such non-cash proceeds shall be held by Term Loan Agent as additional collateral and, at such time as such non-cash proceeds are monetized, shall be applied in the order of application set forth above. Term Loan Agent shall have no duty or obligation to Dispose of such non-cash proceeds and may Dispose of such non-cash proceeds or continue to hold such non-cash proceeds, in each case, in its discretion; provided that any non-cash proceeds received by Term Loan Agent (other than any non-cash proceeds received on account of any ABL Secured Claim) may be distributed by Term Loan Agent to the Term Loan Claimholders in full or partial satisfaction of Term Loan Debt in an amount determined by Term Loan Agent acting at the direction of the requisite Term Loan Claimholders or as a court of competent jurisdiction may direct pursuant to a Final Order, including an order confirming a plan of reorganization in an Insolvency Proceeding. Any proceeds from the sale or other disposition, of collection, of the Term Loan Priority Collateral that are the basis for a mandatory prepayment of the Term Loan Debt under the Term Loan Credit Agreement shall first be applied to make a mandatory prepayment of the Term Loan Debt in accordance with the terms of the Term Loan Credit Agreement.

4.2 Turnover.

(a) Unless and until the Payment in Full of ABL Priority Debt has occurred (irrespective of whether any Insolvency Proceeding has been commenced by or against any Grantor), except as otherwise provided in Section 2.1, any ABL Priority Collateral, or proceeds thereof (including assets or proceeds subject to Liens referred to in the final sentence of Section 2.3) received by any of the Term Loan Claimholders (i) in connection with an Enforcement Action with respect to the Collateral by any of the Term Loan Claimholders, or (ii) as a result of any Term Loan Claimholder's collusion with any Grantor in violating the rights of the ABL Claimholders (within the meaning of Section 9-332 of the UCC), shall be segregated and held in trust and forthwith paid over to ABL Agent in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. ABL Agent is hereby authorized to make any such endorsements as agent for the Term Loan Claimholders and this authorization is coupled with an interest and is irrevocable until the Payment in Full of ABL Priority Debt.

(b) Unless and until the Payment in Full of ABL Priority Debt has occurred and except as otherwise expressly provided in Sections 6.5 or 6.9, if a Grantor (or any of its assets) is the subject of an Insolvency Proceeding and if any distribution is received by the Term Loan Claimholders (or any of them) on account of their Term Loan Secured Claims in respect of their interest in the ABL Priority Collateral in connection with such Insolvency Proceeding (unless such distribution is made under a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the ABL Claimholders or otherwise provides for the Payment in Full of ABL Priority Debt), then such distribution shall be segregated and held in trust and forthwith paid over to ABL Agent for the benefit of the ABL Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. For the avoidance of doubt, unless and until the Payment in Full of ABL Priority Debt has occurred, Term Loan Agent shall be required to turnover to ABL Agent and ABL Agent shall be entitled to apply (or, in the case of non-cash proceeds, hold) in accordance with Section 4.1(a) any cash or non-cash distribution received by the Term Loan Claimholders on account of their Term Loan Secured Claims in respect of their interest in the ABL Priority Collateral pursuant to a confirmed plan of reorganization of a Grantor (unless such distribution is made under a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the ABL Claimholders or otherwise provides for the Payment in Full of ABL Priority Debt) irrespective of whether such plan of reorganization (or any Final Order in respect thereof) purports to find that the distribution to the ABL Claimholders pays the ABL Debt in full. ABL Agent is hereby authorized to make any such endorsements as agent for the Term Loan Claimholders and this authorization is coupled with an interest and is irrevocable until the Payment in Full of ABL Priority Debt. Term Loan Agent irrevocably authorizes and empowers ABL Agent, in the name of each Term Loan Claimholder, to demand, sue for, collect, and receive any and all distributions on account of any Term Loan Secured Claim in respect of such Term Loan Claimholder's interest in the ABL Priority Collateral to which the ABL Claimholders are entitled hereunder. Notwithstanding anything in this Agreement to the contrary, Term Loan Claimholders may receive and retain any cash, debt, or equity securities on account of Term Loan Deficiency Claims or in respect of any other portion of their Term Loan Secured Claims that are not on account of their interest in the ABL Priority Collateral.

(c) Unless and until the Payment in Full of Term Loan Priority Debt has occurred (irrespective of whether any Insolvency Proceeding has been commenced by or against any Grantor), except as otherwise provided in Section 2.1, any Term Loan Priority Collateral, or proceeds thereof (including assets or proceeds subject to Liens referred to in the final sentence of Section 2.3) received by any of the ABL Claimholders (i) in connection with an Enforcement Action with respect to the Collateral by any of the ABL Claimholders, or (ii) as a result of any ABL Claimholder's collusion with any Grantor

in violating the rights of Term Loan Agent or any of the Term Loan Claimholders (within the meaning of Section 9-332 of the UCC or any comparable provision under any other applicable legislation), shall be segregated and held in trust and forthwith paid over to Term Loan Agent for the benefit of the Term Loan Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. Term Loan Agent is hereby authorized to make any such endorsements as agent for the ABL Claimholders and this authorization is coupled with an interest and is irrevocable until the Payment in Full of Term Loan Priority Debt.

(d) Unless and until the Payment in Full of Term Loan Priority Debt has occurred and except as otherwise expressly provided in Sections 6.5 or 6.9, if a Grantor (or any of its assets) is the subject of an Insolvency Proceeding and if any distribution is received by the ABL Claimholders (or any of them) on account of their ABL Secured Claims in respect of their interest in the Term Loan Priority Collateral in connection with such Insolvency Proceeding (unless such distribution is made under a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the Term Loan Claimholders or otherwise provides for the Payment in Full of Term Loan Priority Debt), then such distribution shall be segregated and held in trust and forthwith paid over to Term Loan Agent for the benefit of the Term Loan Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. For the avoidance of doubt, unless and until the Payment in Full of Term Loan Priority Debt has occurred, ABL Agent shall be required to turnover to Term Loan Agent and Term Loan Agent shall be entitled to apply (or, in the case of non-cash proceeds, hold) in accordance with Section 4.1(c) any cash or non-cash distribution received by the ABL Claimholders on account of their ABL Secured Claims in respect of their interest in the Term Loan Priority Collateral pursuant to a confirmed plan of reorganization of a Grantor (unless such distribution is made under a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the Term Loan Claimholders or otherwise provides for the Payment in Full of Term Loan Priority Debt) irrespective of whether such plan of reorganization (or any Final Order in respect thereof) purports to find that the distribution to the Term Loan Claimholders pays the Term Loan Debt in full. Term Loan Agent is hereby authorized to make any such endorsements as agent for the ABL Claimholders and this authorization is coupled with an interest and is irrevocable until the Payment in Full of Term Loan Priority Debt. ABL Agent irrevocably authorizes and empowers Term Loan Agent, in the name of each ABL Claimholder, to demand, sue for, collect, and receive any and all distributions on account of any ABL Secured Claim in respect of such ABL Claimholder's interest in the Term Loan Priority Collateral to which the Term Loan Claimholders are entitled hereunder. Notwithstanding anything in this Agreement to the contrary, ABL Claimholders may receive and retain any cash, debt, or equity securities on account of ABL Deficiency Claims or in respect of any other portion of their ABL Secured Claims that are not on account of their interest in the Term Loan Priority Collateral.

(e) Term Loan Agent agrees that if, at any time, all or part of any payment with respect to any ABL Debt secured by any ABL Priority Collateral previously made shall be rescinded for any reason whatsoever, it will upon request promptly pay over to ABL Agent any payment received by it in respect of any such ABL Priority Collateral and shall promptly turn any such ABL Priority Collateral then held by it over to ABL Agent, and the provisions set forth in this Agreement will be reinstated as if such payment had not been made, until the payment and satisfaction in full of such ABL Debt.

(f) ABL Agent agrees that if, at any time, all or part of any payment with respect to any Term Loan Debt secured by any Term Loan Priority Collateral previously made shall be rescinded for any reason whatsoever, it will upon request promptly pay over to Term Loan Agent any payment received by it in respect of any such Term Loan Priority Collateral and shall promptly turn any such Term Loan Priority Collateral then held by it over to Term Loan Agent, and the provisions set forth in this Agreement

will be reinstated as if such payment had not been made, until the payment and satisfaction in full of such Term Loan Debt.

4.3 No Subordination of the Relative Priority of Claims. Anything to the contrary contained herein notwithstanding, the subordination of the Liens of the Term Loan Claimholders in respect of the ABL Priority Collateral to the Liens of the ABL Claimholders therein and of the Liens of the ABL Claimholders in respect of the Term Loan Priority Collateral to the Liens of the Term Loan Claimholders therein as set forth herein is with respect to the priority of their respective Liens in and to the Collateral held by or on behalf of them only and shall not constitute a subordination in right of payment of the Term Loan Debt to the ABL Debt or a subordination in right of payment of the ABL Debt to the Term Loan Debt.

4.4 Non-Lienable Assets. Notwithstanding anything to the contrary contained herein (including Section 4.3), if any assets, licenses, rights, or privileges of any Grantor are incapable of being the subject of a Lien in favor of a secured party including because of restrictions under applicable law, the nature of the rights or interests of such Grantor, or the absence of a consent to such Lien by a third party and irrespective of whether the applicable collateral documents attempt (or purport) to encumber such assets, licenses, rights, or privileges (the "**Inalienable Interests**"), then ABL Agent and Term Loan Agent agree that any distribution or recovery that the ABL Claimholders or the Term Loan Claimholders may receive with respect to, or that is allocable to, the value of any such Inalienable Interests, or any proceeds thereof, whether received in their capacity as unsecured creditors or otherwise, shall be turned over and applied in accordance with Section 4.1 and 4.2 as if such distribution or recovery were, or were on account of, Collateral or the proceeds of Collateral. With respect to Inalienable Interests that would be of the same type as the ABL Priority Collateral if such Inalienable Interests were able to be included in the Collateral, until the Payment in Full of ABL Priority Debt occurs, Term Loan Agent hereby appoints ABL Agent, and any officer or agent of ABL Agent, with full power of substitution, as the attorney-in-fact of each of the Term Loan Claimholders for the limited purpose of carrying out the provisions of this Section 4.4 and taking any action and executing any instrument that ABL Agent may reasonably deem necessary or advisable to accomplish the purposes of this Section 4.4, which appointment is irrevocable and coupled with an interest. With respect to Inalienable Interests that would be of the same type as the Term Loan Priority Collateral if such Inalienable Interests were able to be included in the Collateral, until the Payment in Full of Term Loan Priority Debt occurs, ABL Agent hereby appoints Term Loan Agent, and any officer or agent of Term Loan Agent, with full power of substitution, the attorney-in-fact of each of the ABL Claimholders for the limited purpose of carrying out the provisions of this Section 4.4 and taking any action and executing any instrument that Term Loan Agent may reasonably deem necessary or advisable to accomplish the purposes of this Section 4.4, which appointment is irrevocable and coupled with an interest.

4.5 Prepayments.

(a) Except as permitted by Section 6.6(c) of the ABL Credit Agreement as in effect on the date hereof (or as otherwise amended with the written consent of Term Loan Agent), without the prior written consent of ABL Agent, no Term Loan Claimholder will take, demand, or receive from any Grantor any voluntary prepayment with respect to any Term Loan Debt. If any such prepayments are received from any Grantor, at any time before the Payment in Full of ABL Priority Debt by one or more of the Term Loan Claimholders, they shall be held in trust for the benefit of the ABL Claimholders and forthwith paid over to ABL Agent for application to the ABL Debt.

(b) In the event of a Term Loan Default as a result of the Borrowers' failure comply with the financial covenant set forth in Section 6.09 of the Term Loan Credit Agreement, so long as no ABL Default relating to the financial covenant set forth in Section 7 of the ABL Credit Agreement then

exists, any Equity Cure Proceeds received in connection with such Term Loan Default shall be applied (i) first, to the outstanding principal amount of the Loans (as defined in the Term Loan Credit Agreement as in effect on the date hereof) with a corresponding dollar for dollar reduction in the amount of the mandatory prepayment relating to excess cash flow payable for such year, and (ii) second, as the Borrowers may elect.

(c) In the event of an ABL Default as a result of Borrowers' failure comply with the financial covenant set forth in Section 7 of the ABL Credit Agreement, so long as no Term Loan Default relating to the financial covenant set forth in Section 6.09 of the Term Loan Credit Agreement then exists, any Equity Cure Proceeds received in connection with such ABL Default shall be applied (i) first, to the outstanding principal amount of the Loans (as defined in the ABL Credit Agreement as in effect on the date hereof) up to the amount necessary to cure such ABL Default, and (ii) second, as Borrowers may elect (provided, however, any application of such Equity Cure Proceeds to the Loans (as defined in the Term Loan Credit Agreement as in effect on the date hereof) will be deemed to be a voluntary prepayment thereof and subject to the provisions of Section 4.5(a)).

(d) In the event of an ABL Default and Term Loan Default as a result of Borrowers' failure to comply with the financial covenant set forth in Section 7 of the ABL Credit Agreement and Section 6.09 of the Term Loan Credit Agreement, any Equity Cure Proceeds received in connection with such ABL Default and Term Loan Default shall be applied (i) first, to the outstanding principal amount of the Loans (as defined in the ABL Credit Agreement as in effect on the date hereof) up to the amount necessary to cure such ABL Default, (ii) second, to the outstanding principal amount of the Loans (as defined in the Term Loan Credit Agreement as in effect on the date hereof) with a corresponding dollar for dollar reduction in the amount of the mandatory prepayment relating to excess cash flow payable for such year to the extent required under the Term Loan Documents and (iii) third, as Borrowers may elect (provided, however, any application of such Equity Cure Proceeds to the Loans (as defined in the Term Loan Credit Agreement as in effect on the date hereof) will be deemed to be a voluntary prepayment thereof and subject to the provisions of Section 4.5(a)).

4.6 Application of Payments. Subject to the other terms of this Agreement, all payments received (not in violation of this Agreement) by (a) the ABL Claimholders may be applied, reversed, and reapplied, in whole or in part, to the ABL Debt to the extent provided for in the ABL Documents, and (b) the Term Loan Claimholders may be applied, reversed, and reapplied, in whole or in part, to the Term Loan Debt to the extent provided for in the Term Loan Documents.

4.7 Revolving Nature of ABL Debt. Term Loan Agent, acknowledges and agrees that the ABL Credit Agreement includes a revolving commitment and that the amount of the ABL Debt that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed.

SECTION 5. Releases; Dispositions; Other Agreements.

5.1 Releases.

(a) Subject to the other specific provisions of this Agreement including Section 5.1(i), ABL Agent shall have the exclusive right to make determinations regarding the release or Disposition of any ABL Priority Collateral pursuant to the terms of the ABL Documents or in accordance with the provisions of this Agreement, in each case without any consultation with, consent of, or notice to any of the Term Loan Claimholders.

(b) Subject to the other specific provisions of this Agreement including Section 5.1(j), Term Loan Agent shall have the exclusive right to make determinations regarding the release or Disposition of any Term Loan Priority Collateral pursuant to the terms of the Term Loan Documents or in accordance with the provisions of this Agreement, in each case without any consultation with, consent of, or notice to any of the ABL Claimholders.

(c) If, in connection with an Enforcement Action by ABL Agent as provided for in Section 3, ABL Agent releases any of its Liens on any part of the ABL Priority Collateral (or such Liens are released by operation of law), then the Liens of Term Loan Agent on such ABL Priority Collateral, shall be automatically, unconditionally, and simultaneously released to the extent, and only to the extent, the ABL Agent has released its Liens in such ABL Priority Collateral.

(d) If, in connection with an Enforcement Action by Term Loan Agent as provided for in Section 3, Term Loan Agent releases any of its Liens on any part of the Term Loan Priority Collateral (or such Liens are released by operation of law), then the Liens of ABL Agent on such Term Loan Priority Collateral, shall be automatically, unconditionally, and simultaneously released to the extent, and only to the extent, the Term Loan Agent has released its Liens in such Term Loan Priority Collateral.

(e) If, in connection with any Disposition of any ABL Priority Collateral permitted under the terms of the ABL Documents as in effect as of the date hereof (and the Term Loan Documents as in effect as of the date hereof so long as such applicable Disposition covenants are no more restrictive than under the ABL Documents), ABL Agent releases any of its Liens on the portion of the ABL Priority Collateral that is the subject of such Disposition, other than (i) in connection with the Payment in Full of ABL Priority Debt, or (ii) after the occurrence and during the continuance of any Term Loan Default, then the Liens of Term Loan Agent on such ABL Priority Collateral shall be automatically, unconditionally, and simultaneously released.

(f) If, in connection with any Disposition of any Term Loan Priority Collateral permitted under the terms of the Term Loan Documents as in effect as of the date hereof (and the ABL Documents as in effect as of the date hereof so long as such applicable Disposition covenants are no more restrictive than under the Tern Loan Documents), Term Loan Agent releases any of its Liens on the portion of the Term Loan Priority Collateral that is the subject of such Disposition, other than (i) in connection with the Payment in Full of Term Loan Priority Debt, or (ii) after the occurrence and during the continuance of any ABL Default, then the Liens of ABL Agent on such Term Loan Priority Collateral shall be automatically, unconditionally, and simultaneously released.

(g) In the event of any private or public Disposition of all or any portion of the ABL Priority Collateral by one or more Grantors with the consent of ABL Agent after the occurrence and during the continuance of an ABL Default (and prior to the Payment in Full of ABL Priority Debt), including any Disposition contemplated by Section 9-620 of the UCC or any comparable provision under any other applicable legislation, which Disposition is conducted by such Grantors with the consent of ABL Agent in connection with good faith efforts by ABL Agent to collect the ABL Debt through the Disposition of ABL Priority Collateral (any such Disposition, an "**ABL Default Disposition**"), then the Liens of Term Loan Agent shall be automatically, unconditionally, and simultaneously released so long as (i) such ABL Default Disposition is conducted by the applicable Grantor(s) in a commercially reasonable manner (as if such Disposition were a disposition of collateral by a secured party in accordance with the UCC) and in accordance with applicable law, (ii) ABL Agent also releases its Liens on such ABL Priority Collateral, and (iii) the net cash proceeds of any such ABL Default Disposition are applied in accordance with Section 4.1(a) (as if they were proceeds received in connection with an Enforcement Action).

(h) In the event of any private or public Disposition of all or any portion of the Term Loan Priority Collateral by one or more Grantors with the consent of Term Loan Agent after the occurrence and during the continuance of a Term Loan Default (and prior to the Payment in Full of Term Loan Priority Debt), including any Disposition contemplated by Section 9-620 of the UCC or any comparable provision under any other applicable legislation, which Disposition is conducted by such Grantors with the consent of Term Loan Agent in connection with good faith efforts by Term Loan Agent to collect the Term Loan Debt through the Disposition of Term Loan Priority Collateral (any such Disposition, a "**Term Loan Default Disposition**"), then the Liens of ABL Agent shall be automatically, unconditionally, and simultaneously released so long as (i) such Term Loan Default Disposition is conducted by the applicable Grantor(s) in a commercially reasonable manner (as if such Disposition were a disposition of collateral by a secured party in accordance with the UCC) and in accordance with applicable law, (ii) Term Loan Agent also releases its Liens on such Term Loan Priority Collateral, and (iii) the net cash proceeds of any such Term Loan Default Disposition are applied in accordance with Section 4.1(c) (as if they were proceeds received in connection with an Enforcement Action).

(i) To the extent that the Liens of Term Loan Agent in and to any ABL Priority Collateral are to be released as provided in this Section 5.1,

(i) Term Loan Agent shall promptly, upon the written request of ABL Agent, at the joint and several expense of the Grantors, execute and deliver such release documents and confirmations of the authorization to file UCC amendments, in each case, as ABL Agent may reasonably require in connection with such Disposition to evidence and effectuate such release; provided that any such release or UCC amendment by Term Loan Agent shall not extend to or otherwise affect any of the rights, if any, of Term Loan Agent to the proceeds from any such Disposition of any Collateral,

(ii) from and after the time that the Liens of the Term Loan Agent in and to such Term Loan Priority Collateral are released, Term Loan Agent shall be automatically and irrevocably deemed to have authorized ABL Agent to file UCC amendments releasing the Term Loan Priority Collateral subject to such Disposition,

(iii) the Term Loan Claimholders shall be deemed to have consented under the Term Loan Documents to such Disposition to the same extent as the consent of the ABL Claimholders, and

(iv) in accordance with the provisions of applicable law, the Liens of Term Loan Agent shall automatically attach to any proceeds of any Collateral subject to any such Disposition to the extent not used to repay ABL Debt.

(j) To the extent that the Liens of ABL Agent in and to any Term Loan Priority Collateral are to be released as provided in this Section 5.1,

(i) ABL Agent shall, at the joint and several expense of the Grantors, promptly, upon the written request of Term Loan Agent, execute and deliver such release documents and confirmations of the authorization to file UCC amendments, in each case, as Term Loan Agent may reasonably require in connection with such Disposition to evidence and effectuate such release; provided that any such release or UCC amendment by ABL Agent shall not extend to or otherwise affect any of the rights, if any, of ABL Agent to the proceeds from any such Disposition of any Collateral,

(ii) from and after the time that the Liens of the ABL Agent in and to such ABL Priority Collateral are released, ABL Agent shall be automatically and irrevocably deemed to have authorized Term Loan Agent to file UCC amendments releasing the Collateral subject to such Disposition,

(iii) ABL Agent shall be deemed to have consented under the ABL Documents to such Disposition to the same extent as the consent of the Term Loan Claimholders, and

(iv) in accordance with the provisions of applicable law, the Liens of ABL Agent shall automatically attach to any proceeds of any Collateral subject to any such Disposition to the extent not used to repay Term Loan Debt.

(k) Until the Payment in Full of ABL Priority Debt occurs, Term Loan Agent hereby irrevocably constitutes and appoints ABL Agent and any officer or agent of ABL Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Term Loan Agent or in ABL Agent's own name, from time to time in ABL Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action with respect to the ABL Priority Collateral and to execute and deliver any and all documents and instruments with respect thereto that may be necessary to accomplish the purposes of this Section 5.1, including any financing statement amendments (form UCC3 or any comparable provision under any other applicable legislation) or any other endorsements or other instruments of transfer or release with respect to the ABL Priority Collateral.

(l) Until the Payment in Full of Term Loan Priority Debt occurs, ABL Agent hereby irrevocably constitutes and appoints Term Loan Agent and any officer or agent of Term Loan Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of ABL Agent or such holder or in Term Loan Agent's own name, from time to time in Term Loan Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action with respect to the Term Loan Priority Collateral and to execute and deliver any and all documents and instruments with respect thereto that may be necessary to accomplish the purposes of this Section 5.1, including any financing statement amendments (form UCC3) or any other endorsements or other instruments of transfer or release with respect to the Term Loan Priority Collateral.

(m) Until the Payment in Full of ABL Priority Debt occurs, to the extent that the ABL Claimholders (i) have released any Lien on ABL Priority Collateral or any Grantor with respect to the ABL Debt, and any such Liens or obligations are later reinstated, or (ii) obtain any new Liens from any Grantor or obtain a guaranty from any Grantor of the ABL Debt, then Term Loan Agent shall be entitled to obtain a Lien on any such ABL Priority Collateral, subject to the terms (including the lien subordination provisions) of this Agreement, and a guaranty from such Grantor of the Term Loan Debt, as the case may be.

(n) Until the Payment in Full of Term Loan Priority Debt occurs, to the extent that the Term Loan Claimholders (i) have released any Lien on Term Loan Priority Collateral or any Grantor with respect to the Term Loan Debt, and any such Liens or obligations are later reinstated, or (ii) obtain any new Liens from any Grantor or obtain a guaranty from any Grantor of the Term Loan Debt, then ABL Agent shall be entitled to obtain a Lien on any such Term Loan Priority Collateral, subject to the terms (including the lien subordination provisions) of this Agreement, and a guaranty from such Grantor of the ABL Debt, as the case may be.

5.2 Insurance.

(a) Unless and until the Payment in Full of ABL Priority Debt has occurred: (i) ABL Agent shall have the sole and exclusive right, subject to the rights of Grantors under the ABL Documents, to adjust and settle any claim under any insurance policy in respect of the ABL Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation, expropriation or similar proceeding (or any deed in lieu of condemnation and/or expropriation) affecting the ABL Priority Collateral; and (ii) all proceeds of any such insurance policy and any such award (or any payments with respect to a deed in lieu of condemnation and/or expropriation) shall be paid, subject to the rights of Grantors under the ABL Documents and the Term Loan Documents, first to ABL Agent and Term Loan Agent in accordance with the priorities set forth in Section 4.1, until paid in full in cash, and second, to the owner of the subject property, such other person as may be entitled thereto, or as a court of competent jurisdiction may otherwise direct. If any of the Term Loan Claimholders shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Section 5.2(a), it shall pay such proceeds over to ABL Agent in accordance with the terms of Section 4.2.

(b) Unless and until the Payment in Full of Term Loan Priority Debt has occurred: (i) the Term Loan Claimholders shall have the sole and exclusive right, subject to the rights of Grantors under the Term Loan Documents, to adjust and settle any claim under any insurance policy in respect of the Term Loan Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation, expropriation or similar proceeding (or any deed in lieu of condemnation and/or expropriation) affecting the Term Loan Priority Collateral; and (ii) all proceeds of any such insurance policy and any such award (or any payments with respect to a deed in lieu of condemnation and/or expropriation) shall be paid, subject to the rights of Grantors under the Term Loan Documents and the ABL Documents, first to the Term Loan Claimholders and the ABL Claimholders in accordance with the priorities set forth in Section 4.1, until paid in full in cash, and second, to the owner of the subject property, such other person as may be entitled thereto, or as a court of competent jurisdiction may otherwise direct. If any of the ABL Claimholders shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Section 5.2(b), it shall pay such proceeds over to Term Loan Agent in accordance with the terms of Section 4.2.

(c) In the event that any proceeds are derived from any insurance policy that covers ABL Priority Collateral and Term Loan Priority Collateral, ABL Agent and Term Loan Agent will work jointly and in good faith to collect, adjust or settle (subject to the rights of the Grantors under the ABL Documents and the Term Loan Documents) any claim under the relevant insurance policy.

(d) To effectuate the foregoing, Grantors shall provide ABL Agent and Term Loan Agent with separate lender's loss payable endorsements naming themselves as loss payee and additional insured, as their interests may appear, with respect to policies which insure Collateral hereunder. In connection with the collateral assignment of business interruption insurance, promptly upon the Payment in Full of Term Loan Priority Debt, Term Loan Agent shall notify the insurer that ABL Agent is the "Controlling Secured Party" and provide such other notices as may be reasonably required for ABL Agent to have such rights thereunder.

(e) Notwithstanding anything contained in this Agreement to the contrary, in the event that any proceeds are derived from any insurance policy that covers ABL Priority Collateral and Term Loan Priority Collateral, then, solely for the purposes of this Agreement, the allocation of proceeds of such insurance policy shall be allocated to the ABL Priority Collateral in an amount not less than the sum of (A) the book value determined in accordance with GAAP, but not less than cost, of any ABL Priority Collateral consisting of inventory that is the subject of such loss, determined as of the date of such loss, (B) the book value determined in accordance with GAAP of any ABL Priority Collateral consisting of accounts that are the subject of such loss, determined as of the date of such loss, and (C) the

fair market value of all other ABL Priority Collateral that is the subject of such loss, determined as of the date of such loss.

5.3 Amendments; Refinancings; Legend.

(a) The ABL Documents may be amended, supplemented, waived or otherwise modified in accordance with their terms and the ABL Debt may be Refinanced, in each case without notice to, or the consent of, the Term Loan Claimholders, all without affecting the lien subordination or other provisions of this Agreement; provided that, in the case of a Refinancing, the holders of such Refinancing debt shall have bound themselves (in a writing addressed to Term Loan Agent) to the terms of this Agreement; provided, further, that any such amendment, supplement, modification, waiver or Refinancing shall not, without the prior written consent of Term Loan Agent (which it shall be authorized to consent to based upon an affirmative vote of the Term Loan Claimholders holding no more than a majority of the debt under the Term Loan Credit Agreement):

(i) contravene the provisions of this Agreement;

(ii) increase the "Applicable Margin" or similar component of the interest rate (including any "floor") by more than 3.00 percentage points per annum (excluding increases resulting from (A) increases in the underlying reference rate not caused by an amendment, supplement, modification or Refinancing of the ABL Credit Agreement, (B) the application of the pricing grid set forth in the ABL Credit Agreement, or (C) the accrual of interest at the default rate);

(iii) increase the Unused Line Fee (as defined in the ABL Credit Agreement) by more than 0.50 percentage points per annum;

(iv) change to earlier dates any dates upon which payments of principal or interest are due thereon or increase the amount (except as to interest to the extent provided in clause (ii) above) or frequency of any of such payments (in each case, other than in connection with a waiver, amendment or forbearance which waiver, amendment or forbearance is with respect to an ABL Default, so long as such applicable Grantor offers to the Term Loan Claimholders to make a change to the corresponding provisions of the Term Loan Credit Agreement);

(v) modify (or have the effect of a modification of) the mandatory prepayment, redemption or defeasance provisions of the ABL Credit Agreement or any ABL Document in a manner that makes them more restrictive to Grantors (other than such modifications that permit payments to permanently reduce the Term Loan Debt);

(vi) change any covenants, defaults, or events of default under the ABL Credit Agreement or any other ABL Document (including the addition of covenants, defaults, or events of default not contained in the ABL Credit Agreement or other ABL Documents as in effect on the date hereof) to restrict any Grantor from making payments of the Term Loan Debt that would otherwise be permitted under the ABL Documents as in effect on the date hereof;

(vii) modify (or have the effect of a modification of) the conditions for the funding of Delayed Draw Loans (as defined in the Term Loan Agreement) under Section 4.02 of the Term Loan Credit Agreement (including the addition of any conditions not contained in the ABL Credit Agreement or other ABL Documents as in effect on the date hereof) in a manner that makes them more restrictive to Grantors; or

(viii) subordinate the Liens securing the ABL Debt except to Liens securing (A) any other ABL Debt, (B) any ABL DIP Financing or Term Loan DIP Financing and (C) any indebtedness permitted to be senior in right of payment (including by reason of any interest in any ABL Priority Collateral) to the ABL Debt pursuant to the ABL Credit Agreement as in effect on the date hereof; or

(b) The Term Loan Documents may be amended, supplemented, waives or otherwise modified in accordance with their terms and the Term Loan Debt may be Refinanced, in each case without notice to, or the consent of, any of the ABL Claimholders, all without affecting the lien subordination or other provisions of this Agreement; provided that, in the case of a Refinancing, the holders of such Refinancing debt shall have bound themselves (in a writing addressed to ABL Agent) to the terms of this Agreement; provided, further, that any such amendment, supplement, modification, or waiver or Refinancing shall not, without the prior written consent of ABL Agent (which it shall be authorized to consent to based upon an affirmative vote of the ABL Claimholders holding no more than a majority of the debt under the ABL Credit Agreement):

(i) contravene the provisions of this Agreement;

(ii) increase the "Applicable Margin" or similar component of the cash pay portion of any interest rate by more than 3.00 percentage points per annum (excluding increases resulting from the accrual of interest at the default rate);

(iii) change to earlier dates any dates upon which payments of principal or interest are due thereon or increase the amount (except as to interest to the extent provided in clause (ii) above) or frequency of any of such payments (in each case, other than in connection with a waiver, amendment or forbearance which waiver, amendment or forbearance is with respect to a Term Loan Default so long as such applicable Grantor offers to the ABL Claimholders to make a change to the corresponding provisions of the ABL Credit Agreement);

(iv) change any covenants, defaults, or events of default under the Term Loan Credit Agreement or any other Term Loan Document (including the addition of covenants, defaults, or events of default not contained in the Term Loan Credit Agreement or other Term Loan Documents as in effect on the date hereof) to restrict any Grantor from making payments of the ABL Debt that would otherwise be permitted under the Term Loan Documents as in effect on the date hereof;

(v) modify (or have the effect of a modification of) the mandatory prepayment, redemption or defeasance provisions of the Term Loan Agreement or any Term Loan Document in a manner that makes them more restrictive to Grantors (other than such modifications that permit payments to permanently reduce the ABL Debt);

(vi) modify (or have the effect of a modification of) the conditions for the funding of additional revolving loan facilities or increases to the commitments with respect to the revolving loan facility under Section 2.14 of the ABL Credit Agreement (including the addition of any conditions not contained in the Term Loan Credit Agreement or other Term Loan Documents as in effect on the date hereof) in a manner that makes them more restrictive to Grantors; or

(vii) subordinate the Liens securing the Term Loan Debt except to Liens securing (A) any other Term Loan Debt, (B) any ABL DIP Financing or Term Loan DIP Financing and (C) any indebtedness permitted to be senior in right of payment (including by

reason of any interest in any Term Loan Priority Collateral) to the Term Loan Debt pursuant to the Term Loan Credit Agreement as in effect on the date hereof;

(c) Each Borrower agrees that any promissory note evidencing the ABL Debt shall at all times include the following language (or language to similar effect approved by Term Loan Agent):

> "Anything herein to the contrary notwithstanding, the liens and security interests securing the obligations evidenced by this promissory note, the exercise of any right or remedy with respect thereto, and certain of the rights of the holder hereof are subject to the provisions of the Intercreditor Agreement dated as of April 25, 2018 (as amended, restated, supplemented, or otherwise modified from time to time, the "**Intercreditor Agreement**"), by and between Wells Fargo Bank, National Association, as ABL Agent, and Virtus Group, LP, as Term Loan Agent. In the event of any conflict between the terms of the Intercreditor Agreement and this promissory note, the terms of the Intercreditor Agreement shall govern and control."

(d) The Borrowers agree that any promissory note evidencing the Term Loan Debt shall at all times include the following language (or language to similar effect approved by ABL Agent):

> "Anything herein to the contrary notwithstanding, the liens and security interests securing the obligations evidenced by this promissory note, the exercise of any right or remedy with respect thereto, and certain of the rights of the holder hereof are subject to the provisions of the Intercreditor Agreement dated as of April 25, 2018 (as amended, restated, supplemented, or otherwise modified from time to time, the "**Intercreditor Agreement**"), by and between Wells Fargo Bank, National Association, as ABL Agent, and Virtus Group, LP, as Term Loan Agent. In the event of any conflict between the terms of the Intercreditor Agreement and this promissory note, the terms of the Intercreditor Agreement shall govern and control."

5.4 Bailee for Perfection.

(a) ABL Agent and Term Loan Agent each agree to hold that part of the Collateral that is in its possession (or in the possession of its agents or bailees), to the extent that possession is necessary to perfect a Lien thereon under the UCC or other applicable law (such possessory Collateral being referred to as the "**Pledged Collateral**"), as gratuitous bailee and as a non-fiduciary representative for Term Loan Agent or ABL Agent, as applicable, solely for the purpose of perfecting the security interest granted under the Term Loan Documents or the ABL Documents, as applicable, subject to the terms and conditions of this Section 5.4. Term Loan Agent hereby appoints ABL Agent as its gratuitous bailee and non-fiduciary representative for the purposes of perfecting their security interest in all Pledged Collateral in which ABL Agent has a perfected security interest under the UCC. ABL Agent hereby appoints Term Loan Agent as its gratuitous bailee and non-fiduciary representative for the purposes of perfecting their security interest in all Pledged Collateral in which Term Loan Agent has a perfected security interest under the UCC. Each of ABL Agent and Term Loan Agent hereby accept such appointments pursuant to this Section 5.4. Unless and until the Payment in Full of ABL Priority Debt and payment in full in cash of all Excess ABL Debt, Term Loan Agent agrees to promptly notify ABL Agent of any Pledged Collateral constituting ABL Priority Collateral held by it or by any other Term Loan Claimholder, and, immediately upon the request of ABL Agent at any time prior to the Payment in Full of ABL Priority Debt and payment in full in cash of the Excess ABL Debt, Term Loan Agent agrees to deliver to ABL Agent any such Pledged Collateral held by it or by any other Term Loan Claimholder, together with any necessary endorsements (or otherwise allow ABL Agent to obtain possession of such Pledged Collateral). Unless and until the Payment in Full of Term Loan Priority Debt and payment in full

in cash of all Excess Term Loan Debt, ABL Agent agrees to promptly notify Term Loan Agent of any Pledged Collateral constituting Term Loan Priority Collateral held by it or by any other ABL Claimholder, and, immediately upon the request of Term Loan Agent at any time prior to the Payment in Full of Term Loan Priority Debt and payment in full in cash of all Excess Term Loan Debt, ABL Agent agrees to deliver to Term Loan Agent any such Pledged Collateral held by it or by any other ABL Claimholder, together with any necessary endorsements (or otherwise allow Term Loan Agent to obtain possession of such Pledged Collateral).

(b) ABL Agent shall have no obligation whatsoever to any of the Term Loan Claimholders to ensure that the Pledged Collateral is genuine or owned by any of Grantors or to preserve rights or benefits of any person except as expressly set forth in this Section 5.4. Term Loan Agent shall have no obligation whatsoever to any of the ABL Claimholders to ensure that the Pledged Collateral is genuine or owned by any of Grantors or to preserve rights or benefits of any person except as expressly set forth in this Section 5.4. The duties or responsibilities of ABL Agent under this Section 5.4 shall be limited solely to holding the Pledged Collateral as bailee and non-fiduciary representative in accordance with this Section 5.4 and delivering any Pledged Collateral in its possession (or in the possession of its agents or bailees) upon a Payment in Full of ABL Priority Debt as provided in Section 5.6. The duties or responsibilities of Term Loan Agent under this Section 5.4 shall be limited solely to holding the Pledged Collateral as bailee and non-fiduciary representative in accordance with this Section 5.4 and delivering any Pledged Collateral in its possession (or in the possession of its agents or bailees) as provided in Section 5.6.

(c) ABL Agent, in acting pursuant to this Section 5.4, shall not have, or be deemed to have, a fiduciary relationship in respect of any of the Term Loan Claimholders. Term Loan Agent, in acting pursuant to this Section 5.4, shall not have, or be deemed to have, a fiduciary relationship in respect of any of the ABL Claimholders.

5.5 When Payment in Full of ABL Priority Debt or Payment in Full of Term Loan Priority Debt Deemed to Not Have Occurred.

(a) If either Borrower enters into any Refinancing of the ABL Debt that is intended to be secured by the ABL Priority Collateral on a first priority basis, then a Payment in Full of ABL Priority Debt shall be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing of such ABL Debt shall be treated as ABL Debt for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and ABL Agent under the ABL Documents effecting such Refinancing shall be ABL Agent for all purposes of this Agreement. ABL Agent under such ABL Documents shall agree (in a writing addressed to Term Loan Agent) to be bound by the terms of this Agreement and Term Loan Agent agrees to acknowledge and accept such writing.

(b) If the Borrowers enter into any Refinancing of the Term Loan Debt that is intended to be secured by the Term Loan Priority Collateral on a first priority basis, then a Payment in Full of Term Loan Priority Debt shall be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing of such Term Loan Debt shall be treated as Term Loan Debt for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and Term Loan Agent under the Term Loan Documents effecting such Refinancing shall be Term Loan Agent for all purposes of this Agreement. Term Loan Agent under such Term Loan Documents shall agree (in a writing addressed to ABL Agent) to be bound by the terms of this Agreement and ABL Agent agrees to acknowledge and accept such writing.

5.6 Transfer of Pledged Collateral; Other Actions.

(a) ABL Agent hereby agrees that upon the Payment in Full of ABL Priority Debt and payment in full of all Excess ABL Debt, to the extent permitted by applicable law, upon the written request of Term Loan Agent (with all costs and expenses in connection therewith to be for the account of Term Loan Agent and to be paid by Grantors):

(i) ABL Agent shall, without recourse or warranty, take commercially reasonable steps to transfer the possession of the Pledged Collateral, if any, then in its possession to Term Loan Agent, except in the event and to the extent (A) such Collateral is sold, liquidated, or otherwise disposed of by any of the ABL Claimholders or by a Grantor as provided herein in full or partial satisfaction of any of the ABL Debt or (B) it is otherwise required by any order of any court or other governmental authority or applicable law; and

(ii) in connection with the terms of any collateral access agreement, whether with a landlord, processor, warehouseman, or other third party or any control agreement, ABL Agent shall notify the other parties thereto that it no longer has rights as secured party thereunder.

(b) Term Loan Agent hereby agrees that upon the Payment in Full of Term Loan Priority Debt, to the extent permitted by applicable law, upon the written request of ABL Agent (with all costs and expenses in connection therewith to be for the account of ABL Agent and to be paid by Grantors):

(i) Term Loan Agent shall, without recourse or warranty, take commercially reasonable steps to transfer the possession of the Pledged Collateral, if any, then in its possession to ABL Agent, except in the event and to the extent (A) such Collateral is sold, liquidated, or otherwise disposed of by any of the Term Loan Claimholders or by a Grantor as provided herein in full or partial satisfaction of any of the Term Loan Debt or (B) it is otherwise required by any order of any court or other governmental authority or applicable law; and

(ii) in connection with the terms of any collateral access agreement, whether with a landlord, processor, warehouseman, or other third party or any control agreement, Term Loan Agent shall notify the other parties thereto that it no longer has rights as secured party thereunder.

(c) The foregoing provisions shall not impose on any of the ABL Claimholders or any of the Term Loan Claimholders any obligations that would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law or give rise to risk of legal liability.

SECTION 6. Insolvency Proceedings.

6.1 Enforceability and Continuing Priority. This Agreement shall be applicable both before and after the commencement of any Insolvency Proceeding and all converted or succeeding cases in respect thereof. The relative rights of the Claimholders in or to any distributions from or in respect of any Collateral, or proceeds of Collateral, shall continue after the commencement of any Insolvency Proceeding. Accordingly, the provisions of this Agreement are intended to be and shall be enforceable as a subordination agreement within the meaning of Section 510 of the Bankruptcy Code (or any similar Bankruptcy Law).

6.2 Financing.

(a) Until the Payment in Full of ABL Priority Debt, if any Grantor shall be subject to any Insolvency Proceeding and if ABL Agent consents to the use of cash collateral (as such term is defined in Section 363(a) of the Bankruptcy Code (or similar Bankruptcy Law)) constituting ABL Priority Collateral (herein, "**ABL Cash Collateral**"), or consents to such Grantor obtaining financing, whether from any of the ABL Claimholders or any other person, provided under Section 364 of the Bankruptcy Code or any similar provision of any other Bankruptcy Law secured by a Lien on such ABL Priority Collateral (such financing, an "**ABL DIP Financing**"), and if such ABL Cash Collateral use or ABL DIP Financing, as applicable, meets the applicable ABL DIP Financing Conditions, then Term Loan Agent unconditionally agrees that it will consent as a secured creditor to such ABL Cash Collateral use and will raise no objection as a secured creditor to such ABL DIP Financing, as applicable, and, if ABL DIP Financing is involved, Term Loan Agent will subordinate its Liens in the ABL Priority Collateral (and in any other assets (other than Term Loan Priority Collateral) of the Grantors that may serve as collateral (including avoidance actions or the proceeds thereof) for such ABL DIP Financing) to the Liens securing such ABL DIP Financing. If such ABL Cash Collateral use or ABL DIP Financing, as applicable, meets some, but not all, of the applicable ABL DIP Financing Conditions, then Term Loan Agent unconditionally agrees that it will only withhold its consent as a secured creditor to such ABL Cash Collateral use and will only raise an objection as a secured creditor to such ABL DIP Financing based upon the ABL DIP Financing Condition(s) which are not met and will not withhold its consent or object as a secured creditor on any other basis and, if ABL DIP Financing is involved and any permitted objection of Term Loan Agent is withdrawn, overruled, or otherwise eliminated, Term Loan Agent will subordinate its Liens in the ABL Priority Collateral (and in any other assets (other than Term Loan Priority Collateral) of the Grantors that may serve as collateral (including avoidance actions or the proceeds thereof) for such ABL DIP Financing) to the Liens securing such ABL DIP Financing. Term Loan Agent agrees that it shall not, and nor shall any of the Term Loan Claimholders, directly or indirectly, provide, offer to provide, or support any ABL DIP Financing secured by a Lien on the ABL Priority Collateral senior to or pari passu with the Liens securing the ABL Priority Debt. If, in connection with any ABL Cash Collateral use or ABL DIP Financing, any Liens on the ABL Priority Collateral held by the ABL Claimholders to secure the ABL Debt are subject to a surcharge or are subordinated to an administrative priority claim, a professional fee "carve-out," or fees owed to the United States Trustee, then the Liens on the ABL Priority Collateral of the Term Loan Claimholders securing the Term Loan Priority Debt shall also be subordinated to such interest or claim and shall remain subordinated to the Liens on the ABL Priority Collateral of the ABL Claimholders consistent with this Agreement and so long as the amount of such surcharge, claim, carve-out, or fees is reasonable under the circumstances.

(b) Until the Payment in Full of Term Loan Priority Debt, if any Grantor shall be subject to any Insolvency Proceeding and if Term Loan Agent consents to the use of cash collateral (as such term is defined in Section 363(a) of the Bankruptcy Code (or similar Bankruptcy Law)) constituting Term Loan Priority Collateral (herein, "**Term Loan Cash Collateral**"), or consents to such Grantor to obtaining financing, whether from the Term Loan Claimholders or any other person, provided under Section 364 of the Bankruptcy Code or any similar provision of any other Bankruptcy Law secured by a Lien on such Term Loan Priority Collateral (such financing, a "**Term Loan DIP Financing**"), and if such Term Loan Cash Collateral use or Term Loan DIP Financing, as applicable, meets the applicable Term Loan DIP Financing Conditions, then ABL Agent unconditionally agrees that it will consent as a secured creditor to such Term Loan Cash Collateral use and will raise no objection as a secured creditor to such Term Loan DIP Financing, as applicable, and, if Term Loan DIP Financing is involved, ABL Agent will subordinate its Liens in the Term Loan Priority Collateral (and in any other assets (other than ABL Priority Collateral) of the Grantors that may serve as collateral (including avoidance actions or the proceeds thereof) for such Term Loan DIP Financing) to the Liens securing such Term Loan DIP Financing. If such Term Loan Cash Collateral use or Term Loan DIP Financing, as applicable, meets some, but not all, of the applicable Term Loan DIP Financing Conditions, then

ABL Agent unconditionally agrees that it will only withhold its consent as a secured creditor to such Term Loan Cash Collateral use and will only raise an objection as a secured creditor to such Term Loan DIP Financing based upon the Term Loan DIP Financing Conditions which are not met and will not withhold its consent or object as a secured creditor on any other basis and, if Term Loan DIP Financing is involved and any permitted objection of ABL Agent is withdrawn, overruled, or otherwise eliminated, ABL Agent will subordinate its Liens in the Term Loan Priority Collateral (and in any other assets (other than ABL Priority Collateral) of the Grantors that may serve as collateral (including avoidance actions or the proceeds thereof) for such Term Loan DIP Financing) for such Term Loan DIP Financing to the Liens securing such Term Loan DIP Financing. ABL Agent agrees that it shall not, and nor shall any of the ABL Claimholders, directly or indirectly, provide, offer to provide, or support any Term Loan DIP Financing secured by a Lien on the Term Loan Priority Collateral that is senior to or pari passu with the Liens securing the Term Loan Priority Debt. If, in connection with any Term Loan Cash Collateral use or Term Loan DIP Financing, any Liens on the Term Loan Priority Collateral held by the Term Loan Claimholders to secure the Term Loan Debt are subject to a surcharge or are subordinated to an administrative priority claim, a professional fee "carve-out," or fees owed to the United States Trustee, then the Liens on the Term Loan Priority Collateral of the ABL Claimholders securing the ABL Debt shall also be subordinated to such interest or claim and shall remain subordinated to the Liens on the Term Loan Priority Collateral of the Term Loan Claimholders consistent with this Agreement and so long as the amount of such surcharge, claim, carve-out, or fees is reasonable under the circumstances.

(c) All Liens granted to ABL Agent or Term Loan Agent in any Insolvency Proceeding, whether as adequate protection or otherwise, are intended by the parties to be and shall be deemed to be subject to the Lien priorities in Section 2.1 and the other terms and conditions of this Agreement.

6.3 Sales. Each Junior Agent agrees that it will consent to, and will not object or oppose, or support, directly or indirectly, any other person seeking to object or oppose, a motion by a Grantor that is supported by the Priority Agent to Dispose of any of its Priority Collateral free and clear of the Liens of the Junior Agent under Section 363 or 1129 of the Bankruptcy Code (or under any similar provision of any applicable Bankruptcy Law) if (a) the Priority Agent has consented to the sale of such Collateral free and clear of the Liens of the Priority Agent, (b) such motion does not impair, subject to the priorities set forth in this Agreement, the rights of the Junior Claimholders under Section 363(k) of the Bankruptcy Code or similar provision of any applicable Bankruptcy Law (so long as the right of the Junior Claimholders to offset their claims against the purchase price only arises after the Priority Debt has been paid in full in cash), and (c) either (i) pursuant to court order, the Liens of the Junior Agent attach to the net proceeds of the Disposition with the same priority and validity as the Liens held by such Junior Agent on such Priority Collateral, and the Liens remain subject to the terms of this Agreement, or (ii) the proceeds of the Disposition are applied to permanently reduce the ABL Debt or Term Loan Debt, as applicable, in accordance with Section 4.1.

6.4 Relief from the Automatic Stay. Until the Payment in Full of Priority Debt has occurred, Junior Agent agrees not to (a) seek (or support any other person seeking) relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any Priority Collateral, without the prior written consent of Priority Agent; provided that Junior Agent may seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of such Priority Collateral if and to the extent that Priority Agent has obtained relief from or modification of such stay in respect of the Priority Collateral, or (b) oppose any request by the Priority Agent or any Priority Claimholder to seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any Priority Collateral.

6.5 Adequate Protection. In any Insolvency Proceeding involving a Grantor,

(a) each Junior Claimholder agrees that it shall not object to or contest, or support any other person objecting or contesting (and instead shall be deemed to have hereby irrevocably, absolutely, and unconditionally waived any right to do so):

(i) any request by any Priority Claimholder with respect to any Priority Collateral prior to the applicable Payment in Full of Priority Debt, for "adequate protection" (within the meaning of such term under the Bankruptcy Code and any similar concept under applicable Bankruptcy Law) of its interest in the Priority Collateral, including a request for replacement or additional Liens on post-petition assets of the same type as such Priority Collateral; provided any ABL Claimholder, solely in its capacity as a Priority Claimholder, may object to adequate protection in the form of cash payments to the extent such payment is sought to be paid from ABL Priority Collateral or the proceeds thereof and any Term Loan Claimholder, solely in its capacity as a Priority Claimholder, may object to adequate protection in the form of cash payments to the extent such payment is sought to be paid from Term Loan Priority Collateral or the proceeds thereof; or

(ii) as applicable any (A) objection by any Priority Claimholder to any motion, relief, action, or proceeding based on such Priority Claimholders claiming a lack of adequate protection with respect to its Liens in their Priority Collateral, or (B) request by any of the Priority Claimholders for relief from the automatic stay with respect to its Priority Collateral.

(b) if any Priority Claimholder is granted adequate protection with respect to its rights in the Priority Collateral in the form of an additional or replacement Lien with respect to assets of the type included in such Priority Collateral, then Priority Agent agrees that Junior Agent shall also be entitled to seek, without objection from the Priority Claimholders, adequate protection in the form of an additional or replacement Lien with respect to the assets that are the subject of the Priority Claimholder's additional or replacement Lien, which additional or replacement adequate protection Lien of the Junior Agent, if obtained, shall be subordinate to the adequate protection Liens in and to such assets securing the Priority Debt on the same basis as the other Liens on the Junior Collateral securing the Junior Debt are subordinated to the Liens on the Priority Collateral securing the Priority Debt under this Agreement;

(c) no Junior Claimholder may seek adequate protection with respect to its rights in the Priority Collateral except for adequate protection in the form of an additional or replacement Lien in and to existing or future assets of Grantors, and Junior Agent agrees that Priority Agent shall also be entitled to seek, without objection from the Junior Claimholders, a senior adequate protection Lien in and to such existing or future assets of Grantors as security for the Priority Debt and that any adequate protection Lien in and to the Priority Collateral securing the Junior Debt shall be subordinated to such senior adequate protection Lien in and to the Priority Collateral securing the Priority Debt on the same basis as the other Liens on the Junior Collateral securing the Junior Debt are subordinated to the Liens on the Priority Collateral securing the Priority Debt under this Agreement;

(d) each Claimholder may seek adequate protection with respect to its rights in the Collateral in the form of an additional or replacement Lien in and to existing or future Excluded Collateral; provided that, if the ABL Claimholders and the Term Loan Claimholders each receive adequate protection in the form of Liens in and to the Excluded Collateral, then (i) any such Liens in and to Excluded Collateral granted as adequate protection of such Claimholder's interest in and to its Priority Collateral shall be senior in all respects, and prior to, any other Claimholder's Lien in and to such Excluded Collateral granted as adequate protection of such other Claimholder's interest in and to

its Junior Collateral, (ii) any such Liens in and to Excluded Collateral granted as adequate protection of an ABL Claimholder's interest in and to its Priority Collateral and any such Liens in and to Excluded Collateral granted as adequate protection of a Term Loan Claimholder's interest in and to its Priority Collateral shall rank equally and ratably (ratability being calculated based upon the relationship of the ABL Diminution Amount and the Term Loan Diminution Amount), and (iii) any such Liens in and to Excluded Collateral granted as adequate protection of an ABL Claimholder's interest in and to its Junior Collateral and any such Liens in and to Excluded Collateral granted as adequate protection of a Term Loan Claimholder's interest in and to its Junior Collateral shall rank equally and ratably (ratability being calculated based upon the relationship of the ABL Diminution Amount and the Term Loan Diminution Amount);

(e) any adequate protection granted in favor of any Priority Claimholder in the form of a superpriority or other administrative expense claim and any claim in favor of any Priority Claimholder arising under Section 507(b) of the Bankruptcy Code (or similar Bankruptcy Law) ("Senior 507(b) Claims"), shall be *pari passu* with the grant of adequate protection in favor of the other Priority Claimholders in the form of a superpriority or other administrative expense claim and any Senior 507(b) Claims in favor of such other Priority Claimholders;

(f) any claim arising under Section 507(b) of the Bankruptcy Code in favor of any Junior Claimholder shall be *pari passu* with the claims arising under Section 507(b) of the Bankruptcy Code (or similar Bankruptcy Law) in favor of the other Junior Claimholders (collectively, "Junior 507(b) Claims"), all Junior 507(b) Claims shall be junior and subordinate in right of payment to the Senior 507(b) Claims, and the holders of the Junior 507(b) Claims agree that, in connection with any plan of reorganization in such Insolvency Proceeding, such Junior 507(b) Claims may be paid in any combination of cash, securities, or other property having a present value equal to the amount of such Junior 507(b) Claims as of the effective date of confirmation of such plan;

(g) No Junior Claimholder shall object to, oppose, or challenge the determination of the extent of any Liens held by any of the Priority Claimholders or the value of any claims of Priority Claimholders under Section 506(a) of the Bankruptcy Code or any claim by any Priority Claimholder for allowance of Priority Debt consisting of post-petition interest, fees, or expenses.

6.6 Specific Sections of the Bankruptcy Code. The Junior Claimholders shall not object to, oppose, support any objection, or take any other action to impede, the right of any Priority Claimholder to make an election under Section 1111(b)(2) of the Bankruptcy Code (or similar provision of Bankruptcy Law). The Junior Claimholders waive any claim they may hereafter have against any Priority Claimholder arising out of the election by any Priority Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code (or similar provision of Bankruptcy Law). The Junior Claimholders agree that they will not, directly or indirectly, assert or support the assertion of, and hereby waive any right that they may have to assert or support the assertion of any claim under Section 506(c) or the "equities of the case" exception of Section 552(b) of the Bankruptcy Code (or similar provisions of Bankruptcy Law) as against any Priority Claimholder or with respect to any of the Priority Collateral to the extent securing the Priority Debt; provided that nothing herein shall restrict the holder of any ABL DIP Financing or Term Loan DIP Financing from having, or seeking to have, such ABL DIP Financing or Term Loan DIP Financing, as the case may be, repaid, in whole or in part, from the proceeds of the assertion of any claim under Section 506(c) of the Bankruptcy Code (or any similar provision of any other Bankruptcy Law).

6.7 No Waiver; Limitation.

(a) Subject to Sections 3.1(a), 3.2(a), and the other provisions of Section 6, nothing contained herein shall prohibit or in any way limit any Agent or any other Claimholder from objecting in any Insolvency Proceeding involving a Grantor to any action taken by the other Agent or any other Claimholder, including the seeking by the other Agent or any other Claimholder of adequate protection or the assertion by the other Agent or any other Claimholder of any of its rights and remedies under the Term Loan Documents or the ABL Documents, as applicable.

6.8 Avoidance Issues. If any Claimholder is required in any Insolvency Proceeding or otherwise to turn over, disgorge, or otherwise pay to the estate of any Grantor any amount paid in respect of the Debt of such Claimholder (or if any Claimholder elects to do so upon the advice of counsel) (a "**Recovery**"), then such Claimholder shall be entitled to a reinstatement of the applicable Debt with respect to all such amounts, and all rights, interests, priorities, and privileges recognized in this Agreement shall apply with respect to any such Recovery. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the parties hereto from such date of reinstatement and, to the extent the ABL Cap or the Term Loan Cap, as applicable, was decreased in connection with such payment of the applicable Debt, the ABL Cap or the Term Loan Cap, as applicable, shall be increased to such extent.

6.9 Plan of Reorganization.

(a) If, in any Insolvency Proceeding involving a Grantor, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a confirmed plan of reorganization or similar dispositive restructuring plan, compromise or arrangement, both on account of ABL Debt and on account of Term Loan Debt, then, to the extent the debt obligations distributed on account of the ABL Debt and on account of the Term Loan Debt are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

(b) The provisions of Section 1129(b)(1) of the Bankruptcy Code (or similar Bankruptcy Law) notwithstanding, the Claimholders agree that they will not propose, support, or vote in favor of any plan of reorganization, compromise, arrangement or similar proposal of a Grantor that is inconsistent with the priorities or other provisions of this Agreement.

SECTION 7. Reliance; Waivers; Etc.

7.1 Reliance. Other than any reliance on the terms of this Agreement, ABL Agent acknowledges that it and each of the other ABL Claimholders have, independently and without reliance on any of the Term Loan Claimholders, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the ABL Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the ABL Documents or this Agreement. Other than any reliance on the terms of this Agreement, Term Loan Agent acknowledges that it and each of the other Term Loan Claimholders have, independently and without reliance on any of the ABL Claimholders, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Term Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Term Loan Documents or this Agreement.

7.2 No Warranties or Liability. ABL Agent acknowledges and agrees that none of the Term Loan Claimholders have made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any of the Term Loan Documents, the ownership of any Collateral, or the perfection or priority of any Liens thereon. Except as otherwise expressly provided herein, the Term Loan Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Term Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. Term Loan Agent acknowledges and agrees that none of the ABL Claimholders has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any of the ABL Documents, the ownership of any Collateral, or the perfection or priority of any Liens thereon. Except as otherwise expressly provided herein, the ABL Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the ABL Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Term Loan Claimholders shall have no duty to the ABL Claimholders, and the ABL Claimholders shall have no duty to the Term Loan Claimholders, to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreements with any Grantor (including the ABL Documents and the Term Loan Documents), regardless of any knowledge thereof which they may have or be charged with.

7.3 No Waiver of Lien Priorities.

(a) No right of any of the Claimholders, any Agent or any of them to enforce any provision of this Agreement or any Loan Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Grantor or by any act or failure to act by any other Claimholder or any Agent, or by any noncompliance by any person with the terms, provisions, and covenants of this Agreement, any of the Loan Documents, regardless of any knowledge thereof which any Agent or any other Claimholder may have (or be otherwise charged with).

(b) Without in any way limiting the generality of the foregoing provisions of Section 7.3(a) (but subject to any rights of Grantors under the ABL Documents and subject to the provisions of Section 5.3(a)), the ABL Claimholders may, at any time and from time to time in accordance with the ABL Documents or applicable law, without the consent of, or notice to, any of the Term Loan Claimholders, without incurring any liabilities to any of the Term Loan Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any of the Term Loan Claimholders is affected, impaired, or extinguished thereby) do any one or more of the following without the prior written consent of Term Loan Agent:

(i) change the manner, place, or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase, or alter, the terms of any of the ABL Debt or any Lien on any ABL Collateral or guarantee thereof or any liability of any Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the ABL Debt, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify, or supplement in any manner any Liens held by any of the ABL Claimholders, the ABL Debt, or any of the ABL Documents;

(ii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order all or any part of the ABL Priority Collateral or any liability of any Grantor to any of the ABL Claimholders, or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any ABL Debt or any other liability of any Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the ABL Debt) in any manner or order; and

(iv) exercise or delay in or refrain from exercising any right or remedy against any Grantor or any other person, elect any remedy and otherwise deal freely with any Grantor or any ABL Priority Collateral and any guarantor or any liability of any Grantor to any of the ABL Claimholders or any liability incurred directly or indirectly in respect thereof.

(c) Except as otherwise provided herein, Term Loan Agent also agrees that the ABL Claimholders shall have no liability to any of the Term Loan Claimholders, and Term Loan Agent hereby waives any claim of the Term Loan Claimholders against any of the ABL Claimholders arising out of any and all actions which any of the ABL Claimholders may, pursuant to the terms hereof, take, permit, or omit to take with respect to:

(i) the ABL Documents;

(ii) the collection of the ABL Debt; or

(iii) the foreclosure upon, or sale, liquidation, or other disposition of, or the failure to foreclose upon, or sell, liquidate, or otherwise dispose of, any ABL Priority Collateral.

Term Loan Agent agrees that the ABL Claimholders have no duty to the Term Loan Claimholders in respect of the maintenance or preservation of the ABL Priority Collateral, the ABL Debt, or otherwise.

(d) Without in any way limiting the generality of the provisions of Section 7.3(a) (but subject to any rights of Grantors under the Term Loan Documents and subject to the provisions of Section 5.3(b)) the Term Loan Claimholders may, at any time and from time to time in accordance with the Term Loan Documents or applicable law, without the consent of, or notice to, any of the ABL Claimholders, without incurring any liabilities to any of the ABL Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any of the ABL Claimholders is affected, impaired, or extinguished thereby) do any one or more of the following without the prior written consent of ABL Agent:

(i) change the manner, place, or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase, or alter, the terms of any of the Term Loan Debt or any Lien on any Term Loan Collateral or guarantee thereof or any liability of any Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the Term Loan Debt, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify, or supplement in any manner any Liens held by the Term Loan Claimholders, the Term Loan Debt, or any of the Term Loan Documents;

(ii) subject to Section 3.9, sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Term Loan Priority Collateral or any liability of any Grantor to any Term Loan Claimholder, or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any Term Loan Debt or any other liability of any Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the Term Loan Debt) in any manner or order; and

(iv) exercise or delay in or refrain from exercising any right or remedy against any Grantor or any other person, elect any remedy and otherwise deal freely with any Grantor or any Term Loan Priority Collateral and any guarantor or any liability of any Grantor to any Term Loan Claimholder or any liability incurred directly or indirectly in respect thereof.

(e) Except as otherwise provided herein, ABL Agent also agrees that the Term Loan Claimholders shall have no liability to any of the ABL Claimholders, and ABL Agent hereby waives any claim of the ABL Claimholders against any of the Term Loan Claimholders arising out of any and all actions which any of the Term Loan Claimholders may, pursuant to the terms hereof, take, permit or omit to take with respect to:

(i) the Term Loan Documents;

(ii) the collection of the Term Loan Debt; or

(iii) the foreclosure upon, or sale, liquidation, or other disposition of, or the failure to foreclose upon, or sell, liquidate, or otherwise dispose of, any Term Loan Priority Collateral.

ABL Agent agrees that the Term Loan Claimholders have no duty to the ABL Claimholders in respect of the maintenance or preservation of the Term Loan Priority Collateral, the Term Loan Debt, or otherwise.

(f) Until the Payment in Full of ABL Priority Debt and the Payment in Full of Term Loan Priority Debt, each of Term Loan Agent and ABL Agent agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead, or otherwise assert, or otherwise claim the benefit of, any marshaling, appraisal, valuation, or other similar right that may otherwise be available under applicable law with respect to the other Agent's Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

7.4 Obligations Unconditional. For so long as this Agreement is in full force and effect, all rights, interests, agreements, and obligations of the ABL Claimholders and the Term Loan Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any ABL Documents or any Term Loan Documents;

(b) except as otherwise expressly restricted in this Agreement, any change in the time, manner, or place of payment of, or in any other terms of, all or any of the ABL Debt or Term Loan Debt, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any ABL Document or any Term Loan Document;

(c) except as otherwise expressly restricted in this Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the ABL Debt or Term Loan Debt or any guarantee thereof;

(d) the commencement of any Insolvency Proceeding in respect of any Grantor; or

(e) any other circumstances which otherwise might constitute a defense available to any Grantor in respect of the ABL Debt or the Term Loan Debt.

SECTION 8. Representations and Warranties.

8.1 Representations and Warranties of Each Party. Each party hereto represents and warrants to the other parties hereto as follows:

(a) Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(b) This Agreement has been duly executed and delivered by such party and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.

(c) The execution, delivery, and performance by such party of this Agreement (i) do not require any consent or approval of, registration or filing with or any other action by any governmental authority and (ii) will not violate any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of such party or any order of any governmental authority or any provision of any indenture, agreement or other instrument binding upon such party.

8.2 Representations and Warranties of Each Agent. ABL Agent and Term Loan Agent each represents and warrants to the other that it has been authorized by the ABL Claimholders or the Term Loan Claimholders, as applicable, under the ABL Credit Agreement or the Term Loan Credit Agreement, as applicable, to enter into this Agreement and that each of the agreements, covenants, waivers, and other provisions hereof is valid, binding, and enforceable against the ABL Lenders or Term Loan Lenders, as applicable, as fully as if they were parties hereto.

8.3 Survival. All representations and warranties made by one party hereto in this Agreement shall be considered to have been relied upon by the other party hereto and shall survive the execution and delivery of this Agreement, regardless of any investigation made by any such other party.

SECTION 9. Miscellaneous.

9.1 Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of any of the ABL Documents or any of the Term Loan Documents, the provisions of this Agreement shall govern and control with respect to the relative rights, interests and priorities with respect to the Collateral and the proceeds thereof and otherwise as among the ABL Claimholders, on the one hand, and the Term Loan Claimholders, on the other.

9.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and the ABL Claimholders may continue, at any time and without notice to any Term Loan Claimholder, to extend credit and other financial accommodations to or for the benefit of any Grantor constituting ABL Debt in reliance hereof. Each Agent hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency Proceeding. Any provision of this Agreement that is prohibited or unenforceable shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or

render unenforceable such provision in any other jurisdiction. All references to any Grantor shall include such Grantor as debtor and debtor-in-possession and any receiver or trustee for such Grantor in any Insolvency Proceeding. Subject to the terms of this Agreement that provide for reinstatement of Debt, this Agreement shall terminate and be of no further force and effect:

(a) with respect to the ABL Claimholders and the ABL Debt, on the date that the ABL Debt is paid in U.S. Dollars (or the applicable currency) in full in cash or immediately available funds and all commitments, if any, to extend credit to Borrowers are terminated or have expired; and

(b) with respect to the Term Loan Claimholders and the Term Loan Debt, on the date that the Term Loan Debt is paid in the U.S. Dollars in full in cash or immediately available funds and all commitments, if any, to extend credit to the Borrowers are terminated or have expired.

9.3 Amendments; Waivers. No amendment, modification, or waiver of any of the provisions of this Agreement shall be effective unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time.

9.4 Information Concerning Financial Condition of Holdings and its Subsidiaries. The ABL Claimholders, on the one hand, and the Term Loan Claimholders, on the other hand, shall each be responsible for keeping themselves informed of (a) the financial condition of Holdings and its Subsidiaries and all endorsers or guarantors of the ABL Debt or the Term Loan Debt and (b) all other circumstances bearing upon the risk of nonpayment of the ABL Debt or the Term Loan Debt. The ABL Claimholders shall have no duty to advise the Term Loan Claimholders of information known to them regarding such condition or any such circumstances or otherwise. The Term Loan Claimholders shall have no duty to advise the ABL Claimholders of information known to them regarding such condition or any such circumstances or otherwise. In the event any of the ABL Claimholders or any of the Term Loan Claimholders, in its sole discretion, undertakes at any time or from time to time to provide any such information to any other party to this Agreement, it shall be under no obligation:

(a) to make nor shall it be deemed to have made, and the ABL Claimholders and the Term Loan Claimholders, as the case may be, shall not be under any obligation to make nor shall they be deemed to have made, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness, or validity of any such information so provided;

(b) to provide any additional information or to provide any such information on any subsequent occasion;

(c) to undertake any investigation; or

(d) to disclose any information, which pursuant to accepted or reasonable commercial practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

9.5 Subrogation. (a) With respect to any payments or distributions in cash, property, or other assets that any Term Loan Claimholder pays over to ABL Agent under the terms of this Agreement, such Term Loan Claimholders shall be subrogated to the rights of the ABL Claimholders, and (b) with respect to any payments or distributions in cash, property, or other assets that any ABL Claimholder pays over to Term Loan Agent under the terms of this Agreement, such ABL Claimholders shall be subrogated to the rights of the Term Loan Claimholders; provided that (x) the Term Loan Claimholders shall not assert or

enforce any such rights of subrogation they may acquire as a result of any payment hereunder until the Payment in Full of ABL Priority Debt has occurred, and (y) the ABL Claimholders hereby agree not to assert or enforce any such rights of subrogation they may acquire as a result of any payment hereunder until the Payment in Full of Term Loan Priority Debt has occurred.

9.6 **SUBMISSION TO JURISDICTION; WAIVERS.**

(a) **ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY, AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY:**

(i) **ACCEPTS GENERALLY AND UNCONDITIONALLY THE JURISDICTION AND VENUE OF SUCH COURTS;**

(ii) **WAIVES ANY DEFENSE OF FORUM NON CONVENIENS;**

(iii) **AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 9.7; AND**

(iv) **AGREES THAT SERVICE AS PROVIDED IN CLAUSE (iii) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.**

(b) **EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREOF, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE; MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.6(b) AND EXECUTED BY ABL AGENT AND TERM LOAN AGENT), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

9.7 Notices. All notices permitted or required under this Agreement shall be sent to Term Loan Agent and ABL Agent, as the case may be. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served or sent by telefacsimile or United States mail or courier service or electronic mail and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or electronic mail, or 3 Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be the addresses set forth in the applicable Loan Documents or as may be designated by such party in a written notice to all of the other parties.

9.8 Further Assurances. ABL Agent and Term Loan Agent each agrees to take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as ABL Agent or Term Loan Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement, all at the expense of Borrowers (to the extent required under the ABL Credit Agreement or Term Loan Credit Agreement, as applicable). In furtherance of the foregoing, (a) ABL Agent agrees that, if there is a Refinancing of the Term Loan Debt and if the agent or other representative of the holders of the indebtedness that Refinances the Term Loan Debt so requests, it will execute and deliver either an acknowledgement of the joinder of such agent or representative to this Agreement or an agreement with such agent or representative identical to this Agreement (subject to changing names of parties, documents and addresses, as appropriate) in favor of any such agent or representative, and (b) Term Loan Agent agrees that if there is a Refinancing of the ABL Debt and if the agent or other representative of the holders of the indebtedness that Refinances the ABL Debt so requests, it will execute and deliver either an acknowledgement of the joinder of such agent or representative to this Agreement or an agreement with such agent or representative identical to this Agreement (subject to changing names of parties, documents and addresses, as appropriate) in favor of any such agent or representative.

9.9 **APPLICABLE LAW. THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO AGREES THAT THIS AGREEMENT RELATES TO A TRANSACTION COVERING IN THE AGGREGATE NOT LESS THAN $250,000.**

9.10 Binding on Successors and Assigns. This Agreement shall be binding upon ABL Agent, the ABL Claimholders, Term Loan Agent, the Term Loan Claimholders, and their respective successors and assigns.

9.11 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

9.12 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

9.13 No Third Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of and bind each of the ABL Claimholders and the Term Loan Claimholders. In no event shall any Grantor be a third party beneficiary of this Agreement.

9.14 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the ABL Claimholders, on the one hand, and the Term Loan Claimholders on the other hand. No Grantor or any other creditor thereof shall have any rights hereunder and no Grantor may rely on the terms hereof. Nothing in this Agreement shall impair, as between Grantors and the ABL Claimholders, or as between Grantors and the Term Loan Claimholders, the obligations of Grantors to pay principal, interest, fees and other amounts as provided in the ABL Documents and the Term Loan Documents, respectively. Nothing in this Agreement shall create vary or modify the rights or duties of the ABL Claimholders, *inter se*, under the ABL Documents or the rights or duties of the Term Loan Claimholders, *inter se*, under the Term Loan Documents.

9.15 Integration. This Agreement reflects the entire understanding of the parties with respect to the subject matter hereof and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

9.16 Reciprocal Rights. The parties agree that the provisions of Sections 2.3, 2.4(b), 3, 4.2, 5.1, 5.2, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.9(b) and 9.5, including, as applicable, the defined terms referenced therein (but only to the extent used therein), which govern the relationship, and certain rights, restrictions, and agreements, between the ABL Claimholders with respect to the ABL Debt, on the one hand, and the Term Loan Claimholders with respect to the Term Loan Debt, on the other hand, (a) with respect to the ABL Priority Collateral shall, from and after the Payment in Full of ABL Priority Debt apply to and govern, *mutatis mutandis*, (i) until the Payment in Full of Term Loan Priority Debt, the relationship between the Term Loan Claimholders as Priority Claimholders with respect to the Term Loan Priority Debt, on the one hand, and the ABL Claimholders as Junior Claimholders with respect to the Excess ABL Debt, on the other hand and (ii) after Payment in Full of Term Loan Priority Debt, the relationship between the ABL Claimholders as Priority Claimholders with respect to the Excess ABL Debt, on the one hand, and the Term Loan Claimholders as Junior Claimholders with respect to the Excess Term Loan Debt, on the other hand and (b) with respect to the Term Loan Priority Collateral shall, from and after the Payment in Full of Term Loan Priority Debt, apply to and govern, *mutatis mutandis*, (i) until the Payment in Full of ABL Priority Debt, the relationship between the ABL Claimholders as Priority Claimholders with respect to the ABL Priority Debt, on the one hand, and the Term Loan Claimholders as Junior Claimholders with respect to the Excess Term Loan Debt, on the other hand and (ii) after Payment in Full of ABL Priority Debt, the relationship between the Term Loan Claimholders as Priority Claimholders with respect to the Excess Term Loan Debt, on the one hand, and the ABL Claimholders as Junior Claimholders with respect to the Excess ABL Debt, on the other hand.

9.17 Term Loan Agent. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed by the parties hereto that this Agreement has been signed by Virtus Group, LP, not in its individual capacity or personally but solely in its capacity as administrative agent and collateral agent under the Term Loan Documents, in the exercise of the powers and authority conferred and vested in it thereunder, and in no event shall Virtus Group, LP in its individual capacity, have any liability for the representations, warranties, covenants, agreements or other obligations of any Person under this Agreement, any ABL Document, any Term Loan Document or in any of the certificates, reports, documents, data, notices or agreements delivered pursuant hereto or thereto. The Term Loan Agent makes no representations or warranties as to, nor assumes any responsibility for, the correctness of the recitals contained herein, and the Term Loan Agent shall not be responsible or accountable in any way whatsoever for or with respect to the validity, execution or sufficiency of this

Agreement and makes no representation with respect thereto. In entering into this Agreement, the Term Loan Agent shall be entitled to the benefit of every provision of the Term Loan Credit Agreement relating to the rights, exculpations or conduct of, affecting the liability of or otherwise affording protection to the "Administrative Agent" thereunder. The Term Loan Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) solely upon the instructions of the Lender Representative (as defined in the Term Loan Credit Agreement), and such instructions shall be binding upon all Term Loan Lenders; provided, however, that the Term Loan Agent shall not be required to take any action that (i) it in good faith believes exposes it to personal liability unless it receives an indemnification satisfactory to it from the applicable Term Loan Lenders with respect to such action or (ii) is contrary to this Agreement or applicable law.

SECTION 10. Term Claimholder Purchase Option.

10.1 Upon the occurrence and during the continuation of a Triggering Event, then, in any such case, any one or more of the Term Loan Claimholders (acting in their individual capacity or through one or more affiliates) shall have the right, but not the obligation (each Term Loan Claimholder having a ratable right to make the purchase, with each Term Loan Claimholder's right to purchase being automatically proportionately increased by the amount not purchased by another Term Loan Claimholder), upon no less than 3 Business Days prior written notice from (or on behalf of) such Term Loan Claimholders (a "**Purchase Notice**") to ABL Agent to acquire from the ABL Claimholders all (but not less than all) of the right, title, and interest of the ABL Claimholders in and to the ABL Priority Debt and the ABL Documents. The Purchase Notice, if given, shall be irrevocable.

10.2 On the date specified by Term Loan Agent in the Purchase Notice (which shall not be more than 10 Business Days after the receipt by ABL Agent of the Purchase Notice), the ABL Claimholders shall sell to the purchasing Term Loan Claimholders and the purchasing Term Loan Claimholders shall purchase from the ABL Claimholders, the ABL Priority Debt.

10.3 On the date of such purchase and sale, the purchasing Term Loan Claimholders shall

(a) pay to ABL Agent, for the benefit of the ABL Claimholders, as the purchase price therefor, the full amount of all the ABL Priority Debt then outstanding and unpaid, other than (i) indemnification obligations for which no claim or demand for payment has been made at such time, and (ii) ABL Priority Debt cash collateralized in accordance with clause (b) below,

(b) furnish cash collateral to ABL Agent in such amounts as ABL Agent determines is reasonably necessary to secure ABL Agent and the ABL Claimholders in respect of (A) any issued and outstanding Letters of Credit (but not in any event in an amount greater than 105% (115% in the case of Letters of Credit denominated in a currency other than U.S. Dollars) of the aggregate undrawn amount of such Letters of Credit) (such cash collateral shall be applied to the reimbursement of any drawing under a Letter of Credit as and when such drawing is paid and, if a Letter of Credit expires undrawn, the cash collateral held by ABL Agent in respect of such Letter of Credit shall be remitted to the Term Loan Agent for the benefit of the purchasing Term Loan Claimholders) and (B) Bank Product Obligations (such cash collateral shall be applied to the reimbursement of the Bank Product Obligations as and when such obligations become due and payable and, at such time as all of the Bank Product Obligations are paid in full, the remaining cash collateral held by ABL Agent in respect of Bank Product Obligations shall be remitted to the Term Loan Agent for the benefit of the purchasing Term Loan Claimholders), and (C) any asserted or threatened (in writing) claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages that are the subject of the indemnification provisions of the ABL Credit Agreement (such cash collateral shall be applied to the reimbursement of such obligations as and when

they become due and payable and, at such time as all of such obligations are paid in full, the remaining cash collateral held by ABL Agent in respect of indemnification obligations shall be remitted to the Term Loan Agent for the benefit of the purchasing Term Loan Claimholders), and

(c) pay to ABL Agent and the other ABL Claimholders the amount of all out-of-pocket expenses to the extent earned or due and payable in accordance with the terms of ABL Documents against presentation of a documented invoice in reasonable detail (including, to the extent earned or due and payable in accordance with the terms of the ABL Documents, the reimbursement of attorneys' fees, financial examination expenses, and appraisal fees, but excluding, solely for purposes of this Section 10.3(c), any amount in respect of indemnification or reimbursement rights under any ABL Documents not yet due and payable); provided that if all or any portion of the amount paid to ABL Agent and the other ABL Claimholders in respect of any such indemnification or reimbursement right under any ABL Documents exceeds the amount in fact required to be paid to ABL Agent and/or the other ABL Claimholders in respect of any such indemnification or reimbursement right under any ABL Documents, whether pursuant to a Final Order, a final settlement agreement or otherwise, ABL Agent and the other ABL Claimholders shall pay to Term Loan Agent (whether for its own account and/or the account of other Term Loan Claimholders, as determined by Term Loan Agent) an amount equal to such excess.

10.4 Such purchase price and cash collateral shall be remitted by wire transfer of federal funds to such bank account of ABL Agent as ABL Agent may designate in writing to Term Loan Agent for such purpose. Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall occur if the amounts so paid by the purchasing Term Loan Claimholders to the bank account designated by ABL Agent are received in such bank account prior to 2:00 p.m., New York City time, and interest shall be calculated to and including such Business Day if the amounts so paid by the purchasing Term Loan Claimholders to the bank account designated by ABL Agent are received in such bank account later than 2:00 p.m., New York City time.

10.5 Such purchase shall be effected by the execution and delivery of a customary form of assignment and acceptance agreement and shall be expressly made without representation or warranty of any kind by ABL Agent and the other ABL Claimholders as to the ABL Priority Debt so purchased, or otherwise, and without recourse to ABL Agent or any other ABL Claimholder, except that each ABL Claimholder shall represent and warrant: (i) that the amount quoted by such ABL Claimholder as its portion of the purchase price represents the amount shown as owing with respect to the claims transferred as reflected on its books and records, (ii) it owns, or has the right to transfer to the purchasing Term Loan Claimholders, the rights being transferred, and (iii) such transfer will be free and clear of Liens.

10.6 In the event that any one or more of the Term Loan Claimholders exercises and consummates the purchase option set forth in this Section 10, (i) ABL Agent shall have the right, but not the obligation, to immediately resign under the ABL Credit Agreement, and (ii) the purchasing Term Loan Claimholders shall have the right, but not the obligation, to require ABL Agent to immediately resign under the ABL Credit Agreement. If ABL Agent shall resign under this Section 10.6, to the extent permitted by applicable law, upon the written request of Term Loan Agent (with all costs and expenses in connection therewith to be for the account of Term Loan Agent and to be paid by Grantors) ABL Agent shall, without recourse or warranty, take commercially reasonable steps to transfer the possession of the Collateral, if any, then in its possession to Term Loan Agent, except in the event and to the extent (A) such Collateral is sold, liquidated, or otherwise disposed of by any of the ABL Claimholders or by a Grantor as provided herein in full or partial satisfaction of any of the ABL Debt or (B) it is otherwise required by any order of any court or other governmental authority or applicable law.

10.7 In the event that any one or more of the Term Loan Claimholders exercises and consummates the purchase option set forth in this Section 10, (i) the ABL Claimholders shall retain their

indemnification and reimbursement rights under the ABL Credit Agreement for actions or other matters arising on or prior to the date of such purchase, and (ii) and in the event that, at the time of such purchase, there exists Excess ABL Debt, the consummation of such purchase option shall not include (nor shall the purchase price be calculated with respect to) such Excess ABL Debt (clauses (i) and (ii), the "**ABL Retained Interest**").

10.8 In the event that an ABL Retained Interest exists, each ABL Claimholder shall, at the request of the purchasing Term Loan Claimholders, execute an amendment to the ABL Credit Agreement acknowledging that such ABL Retained Interest consisting of Excess ABL Debt is a last-out tranche, payable after Payment in Full of ABL Priority Debt and payment in full of all of the Term Loan Debt other than any Excess Term Loan Debt. Interest with respect to such ABL Retained Interest consisting of Excess ABL Debt shall continue to accrue and be payable in accordance with the terms of the ABL Documents, the ABL Retained Interest shall continue to be secured by the Collateral, and the ABL Retained Interest shall be paid (or cash collateralized, as applicable) in accordance with the terms of the ABL Credit Agreement and this Agreement. Each ABL Claimholder shall continue to have all rights and remedies of a lender under the ABL Credit Agreement and the other ABL Documents; provided that no ABL Claimholder shall have any right to vote on or otherwise consent to any amendment, waiver, departure from, or other modification of any provision of any ABL Document except that the consent of ABL Agent shall be required for (i) those matters that require the agreement of all lenders under the ABL Credit Agreement to reduce interest or principal and (ii) matters in contravention of the provisions and priorities set forth in this Agreement with respect to the ABL Retained Interest.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as ABL Agent

By: _____
Name: ERICA GENTILI
Title: VICE PRESIDENT

VIRTUS GROUP, LP,
not in its individual capacity but solely as
Term Loan Agent

By: _____
Name:
Title: SVP DIR

ACKNOWLEDGMENT

Holdings and each of its undersigned Subsidiaries each hereby acknowledge that they have received a copy of the foregoing Intercreditor Agreement (as in effect on the date hereof, the "Initial Intercreditor Agreement") and agree to recognize all rights granted by the Initial Intercreditor Agreement to the ABL Claimholders and the Term Loan Claimholders, waive the provisions of Section 9-615(a) of the UCC (or any comparable provision under any other applicable legislation) in connection with the application of proceeds of Collateral in accordance with the provisions of the Initial Intercreditor Agreement, agree that they will not do any act or perform any obligation which is not in accordance with the agreements set forth in the Initial Intercreditor Agreement. Holdings and each of its undersigned Subsidiaries each further acknowledge and agree that they are not an intended beneficiary or third party beneficiary under the Initial Intercreditor Agreement, as amended, restated, supplemented, or otherwise modified hereafter. Notwithstanding the foregoing, this Acknowledgment shall not apply to any amendment or modification of the Initial Intercreditor Agreement that (x) amends or modifies any of the covenants or obligations of any Grantor contained in this Agreement in a manner adverse to such Grantor or (y) imposes additional covenants or contractual obligations on any Grantor.

[signature pages follow]

ACKNOWLEDGED AS OF THE DATE FIRST WRITTEN ABOVE:

H.I.G. COLORS, INC.

By: _____
Name: Caroline Kung
Title: Vice President and Secretary

DOMINION COLOUR CORPORATION

By: _____
Name: Caroline Kung
Title: Vice President and Secretary

LANSCO HOLDINGS, INC.

By: _____
Name: Caroline Kung
Title: Vice President and Secretary

LANSCO COLORS LLC

By: _____
Name: Caroline Kung
Title: Vice President and Secretary

DOMINION COLOUR CORPORATION (USA)

By: _____
Name: Caroline Kung
Title: Vice President and Secretary

DCC FINANCE, L.L.C.

By: _____
Name: Caroline Kung
Title: Manager

MONTEITH INC.

By: _____
Name: Caroline Kung
Title: Secretary

[Execution]

AMENDMENT NO. 1 TO INTERCREDITOR AGREEMENT

AMENDMENT NO. 1 TO INTERCREDITOR AGREEMENT, dated as of April 22, 2019 (this "Amendment No. 1"), is by and between WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacity as agent under the ABL Documents, including its successors and assigns in such capacity from time to time ("ABL Agent"), and VIRTUS GROUP, LP, not in its individual capacity but solely in its capacity as administrative agent and collateral agent under the Term Loan Documents, including its successors and assigns in such capacity from time to time ("Term Loan Agent").

W I T N E S S E T H :

WHEREAS, Dominion Colour Corporation, a corporation organized under the laws of the Province of Ontario ("DCC Canada"), Monteith Inc., a corporation organized under the laws of the Province of Ontario ("Monteith"), Dominion Colour Corporation (USA), a New Jersey corporation ("DCC US"), Lansco Colors LLC, a Delaware limited liability company ("Lansco" and together with DCC Canada, Monteith and DCC US, each an "ABL Borrower" and collectively "ABL Borrowers"), H.I.G. Colors, Inc., a Delaware corporation ("Holdings"), the subsidiaries of Holdings party thereto as guarantors (together with Holdings, the "Guarantors"), the lenders party thereto and ABL Agent have entered into the Credit Agreement, dated as of April 25, 2018 (as amended, supplemented or otherwise modified from time to time, the "ABL Credit Agreement") providing for a revolving credit facility pursuant to which such lenders have or may, from time to time, make loans and provide other financial accommodations to the ABL Borrowers;

WHEREAS, DCC Canada, Lansco Holdings, Inc., a Delaware corporation ("Lansco Holdings", and together with DCC Canada, each a "Term Loan Borrower" and collectively "Term Loan Borrowers"), Holdings, the other Guarantors, the lenders party thereto and Term Loan Agent have entered into the Credit Agreement, dated as of April 6, 2018 (as amended, supplemented or otherwise modified from time to time, the "Term Loan Credit Agreement") pursuant to which such lenders have agreed to make term loans to the Term Loan Borrowers;

WHEREAS, ABL Agent and Term Loan Agent have entered into the Intercreditor Agreement, dated as of April 25, 2018, between ABL Agent and Term Loan Agent, as acknowledged by ABL Borrowers, Term Loan Borrowers and Guarantors (as the same is amended hereby and may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced, the "Intercreditor Agreement");

WHEREAS, ABL Borrowers have requested certain amendments to the ABL Credit Agreement and as a condition to such amendments, the ABL Agent and Term Loan Agent have agreed to certain amendments to the Intercreditor Agreement; and

WHEREAS, by this Amendment No. 1, ABL Agent and Term Loan Agent intend to evidence such amendments;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

(a) Amendments to Definition.

(i) The reference to "$30,000,000" in clause (a)(i) of the definition of the term "ABL Cap" in the Intercreditor Agreement is hereby deleted and replaced with: "$33,000,000."

(ii) The reference to "$3,000,000" in the definition of the term "ABL DIP Amount" in the Intercreditor Agreement is hereby deleted and replaced with: "$3,300,000."

(b) Interpretation. All terms used herein which are not otherwise defined herein, including but not limited to, those terms used in the recitals hereto, shall have the respective meanings assigned thereto in the Intercreditor Agreement as amended by this Amendment No. 1.

2. Representation and Warranties. Each of ABL Agent and Term Loan Agent represents and warrants to the other that the execution, delivery and performance by it of this Amendment No. 1 has been duly authorized by all necessary organizational actions and in the case of Term Loan Agent in accordance with, and to the extent required by, the Term Loan Documents and in the case of ABL Agent in accordance with, and to the extent required by, the ABL Documents.

3. Effect of Amendment No. 1. Except as expressly set forth herein, no other amendments, changes or modifications to the Intercreditor Agreement are intended or implied, and in all other respects the Intercreditor Agreement is hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof and each Grantor hereby confirms its acknowledgement of this Amendment No. 1 and that it is, and shall be, subject to the terms hereof.

4. Governing Law. The validity, interpretation and enforcement of this Amendment No. 1 and any dispute arising out of the relationship between the parties hereto whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

5. Binding Effect. This Amendment No. 1 shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

6. Waiver, Modification, Etc. No provision or term of this Amendment No. 1 may be modified, altered, waived, discharged or terminated orally, but only by an instrument in writing executed by the party against whom such modification, alteration, waiver, discharge or termination is sought to be enforced.

7. Entire Agreement. This Amendment No. 1 and the Intercreditor Agreement represent the entire agreement and understanding concerning the subject matter hereof among the parties hereto, and supersedes all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written.

8. Headings. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment No. 1.

9. Counterparts. This Amendment No. 1 may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment No. 1 by telefacsimile or other electronic method of transmission (including by email with a "pdf") shall have the same force and effect as delivery of an

original executed counterpart of this Amendment No. 1. Any party delivering an executed counterpart of this Amendment No. 1 by telefacsimile or other electronic method of transmission shall in a timely manner also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability, and binding effect of this Amendment No. 1.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be duly executed and delivered as of the day and year first above written.

ABL AGENT

WELLS FARGO BANK, NATIONAL ASSOCIATION, as ABL Agent

By:_____
Name: Raymond Eghobamien
Title: Vice President

TERM LOAN AGENT

VIRTUS GROUP, L.P., not in its individual capacity, but solely as Term Loan Agent

By:_____
Name:
Title:

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be duly executed and delivered as of the day and year first above written.

ABL AGENT

WELLS FARGO BANK, NATIONAL ASSOCIATION, as ABL Agent

By:_____
Name:
Title:

TERM LOAN AGENT

VIRTUS GROUP, L.P., not in its individual capacity, but solely as Term Loan Agent

By:_____
Name:
Title:

[SIGNATURES CONTINUE ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

ACKNOWLEDGED:

H.I.G. COLORS, INC.

By: _____
Name: Caroline Kung
Title: VP

DOMINION COLOUR CORPORATION

By: _____
Name: Caroline Kung
Title: VP

LANSCO HOLDINGS, INC.

By: _____
Name: Caroline Kung
Title: VP

LANSCO COLORS LLC

By: _____
Name: Caroline Kung
Title: VP

DOMINION COLOUR CORPORATION (USA)

By: _____
Name: Caroline Kung
Title: VP

DCC FINANCE, L.L.C.

By: _____
Name: Caroline Kung
Title: VP

MONTEITH INC.

By: _____
Name: Caroline Kung
Title: VP

[Execution]

AMENDMENT NO. 2 TO INTERCREDITOR AGREEMENT

AMENDMENT NO. 2 TO INTERCREDITOR AGREEMENT, dated as of May 6, 2021 (this "Amendment No. 2"), is by and between WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacity as agent under the ABL Documents, including its successors and assigns in such capacity from time to time ("ABL Agent"), and VIRTUS GROUP, LP, not in its individual capacity but solely in its capacity as administrative agent and collateral agent under the Term Loan Documents, including its successors and assigns in such capacity from time to time ("Term Loan Agent").

W I T N E S S E T H :

WHEREAS, DCL Corporation (formerly known as Dominion Colour Corporation), a corporation organized under the laws of the Province of Ontario ("DCC Canada"), Monteith Inc., a corporation organized under the laws of the Province of Ontario ("Monteith"), Dominion Colour Corporation (USA), a New Jersey corporation ("DCC US"), DCL Corporation (USA) LLC (formerly known as Lansco Colors LLC), a Delaware limited liability company ("Lansco" and together with DCC Canada, Monteith and DCC US, each an "ABL Borrower" and collectively "ABL Borrowers"), H.I.G. Colors, Inc., a Delaware corporation ("Holdings"), the subsidiaries of Holdings party thereto as guarantors (together with Holdings, the "Guarantors"), the lenders party thereto and ABL Agent have entered into the Credit Agreement, dated as of April 25, 2018 (as amended, supplemented or otherwise modified from time to time, the "ABL Credit Agreement") providing for a revolving credit facility pursuant to which such lenders have or may, from time to time, make loans and provide other financial accommodations to the ABL Borrowers;

WHEREAS, DCC Canada, DCL Holdings (USA), Inc. (formerly known as Lansco Holdings, Inc.), a Delaware corporation ("Lansco Holdings", and together with DCC Canada, each a "Term Loan Borrower" and collectively "Term Loan Borrowers"), Holdings, the other Guarantors, the lenders party thereto and Term Loan Agent have entered into the Credit Agreement, dated as of April 6, 2018 (as amended, supplemented or otherwise modified from time to time, the "Term Loan Credit Agreement") pursuant to which such lenders have agreed to make term loans to the Term Loan Borrowers;

WHEREAS, ABL Agent and Term Loan Agent have entered into the Intercreditor Agreement, dated as of April 25, 2018, between ABL Agent and Term Loan Agent, as acknowledged by ABL Borrowers, Term Loan Borrowers and Guarantors (as the same is amended hereby and may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced, the "Intercreditor Agreement");

WHEREAS, ABL Borrowers have requested certain amendments to the ABL Credit Agreement and as a condition to such amendments, the ABL Agent and Term Loan Agent have agreed to certain amendments to the Intercreditor Agreement; and

WHEREAS, by this Amendment No. 2, ABL Agent and Term Loan Agent intend to evidence such amendments;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendments.

(a) Amendments to Definition.

(i) The reference to "$33,000,000" in clause (a)(i) of the definition of the term "ABL

Cap" in the Intercreditor Agreement is hereby deleted and replaced with: "$60,500,000".

(ii) The reference to "$3,300,000" in the definition of the term "ABL DIP Amount" in the Intercreditor Agreement is hereby deleted and replaced with: "$6,050,000".

(iii) The reference to "$136,400,000" in clause (a)(i) of the definition of the term "Term Loan Cap" in the Intercreditor Agreement is hereby deleted and replaced with: "(x) $120,800,000, plus (y) the amount of any capitalized interest added to the principal amount of the Term Loan Debt after May 5, 2021, plus."

(iv) The reference to "$13,640,000" in the definition of the term "Term Loan DIP Amount" in the Intercreditor Agreement is hereby deleted and replaced with: "$12,080,000."

(b) Amendments to Section 5.3. Section 5.3(a) of the Intercreditor Agreement is hereby amended by adding a new clause (ix) thereto, as follows:

"(ix) modify (or have the effect of a modification of) Section 2.3(a)(iv) of the ABL Credit Agreement."

(c) Interpretation. All terms used herein which are not otherwise defined herein, including but not limited to, those terms used in the recitals hereto, shall have the respective meanings assigned thereto in the Intercreditor Agreement as amended by this Amendment No. 2.

2. Conditions Precedent to Effectiveness of Amendments. The amendments to the Intercreditor Agreement provided for herein shall only be effective upon the satisfaction (or waiver in writing) of both (a) the conditions to the effectiveness of certain amendments to the ABL Credit Agreement set forth in Section 6.2 of Amendment No. 4 to Credit Agreement, dated on or about the date hereof, by and among ABL Agent, ABL Lenders, ABL Borrowers and Guarantors and (b) the conditions to the effectiveness of the Second Amendment Funding Date as such term is defined and as such conditions are set forth in Section 4 of the Second Amendment to Credit Agreement, dated on or about the date hereof, by and among Term Loan Agent, Term Loan Lenders, Term Loan Borrowers and Guarantors.

3. Certain Revolving Loans. Section 4 of the Intercreditor Agreement is hereby amended to add a new Section 4.8 at the end thereof as follows:

Section 4.8 Certain Revolving Loans. Each ABL Borrower has agreed with Term Loan Agent that it shall not request any loans under the ABL Credit Agreement that would result in an ABL Overdraw Event (as defined in the Term Loan Credit Agreement). To the extent that Blackstone Alternative Credit Advisors LP ("Term Loan Lender Representative") may provide any request, consent or approval with respect to any Extended Borrowing (as defined in the ABL Credit Agreement), ABL Agent and ABL Lenders shall not be responsible for or have any duty to ascertain or inquire into any statement, warranty or representation made in or in connection with any such request, consent or approval of an Extended Borrowing or the authenticity of any document or signature or the contents of any certificate or other document relating to an Extended Borrowing or the related request, consent or approval thereof by Term Loan Lender Representative or the performance or observance by any Grantor of any of the covenants, agreements or other terms or conditions of the Term Loan Documents by any Grantor or the validity, enforceability, effectiveness or genuineness of any approval by Term Loan Lender Representative. ABL Agent and ABL Lenders shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) relating to any such request, consent or approval or Extended Borrowing made with respect thereto believed by ABL Agent to be genuine and to have been signed, sent or otherwise authenticated

by the proper Person. ABL Agent and each ABL Lender also may rely upon any statement made to it orally or by telephone relating to any such Extended Borrowing and believed by ABL Agent or such ABL Lender to have been made by the proper Person, and shall not incur any liability for relying thereon. ABL Agent may consult with legal counsel (who may be counsel for Borrowers), independent accountants and other experts selected by it regarding any Extended Borrowing, and shall not be liable for any action taken or not taken by ABL Agent in connection with such Extended Borrowing in accordance with the advice of any such counsel, accountants or experts. Without limiting any of the terms and conditions of the Term Loan Credit Agreement, nothing herein will be construed to limit the right of ABL Agent and ABL Lenders to make Protective Advances (as defined in the ABL Credit Agreement).

4. Representation and Warranties. Each of ABL Agent and Term Loan Agent represents and warrants to the other that the execution, delivery and performance by it of this Amendment No. 2 has been duly authorized by all necessary organizational actions and in the case of Term Loan Agent in accordance with, and to the extent required by, the Term Loan Documents and in the case of ABL Agent in accordance with, and to the extent required by, the ABL Documents.

5. Effect of Amendment No. 2. Except as expressly set forth herein, no other amendments, changes or modifications to the Intercreditor Agreement are intended or implied, and in all other respects the Intercreditor Agreement is hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof and each Grantor hereby confirms its acknowledgement of this Amendment No. 2 and that it is, and shall be, subject to the terms hereof.

6. Governing Law. The validity, interpretation and enforcement of this Amendment No. 2 and any dispute arising out of the relationship between the parties hereto whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

7. Binding Effect. This Amendment No. 2 shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

8. Waiver, Modification, Etc. No provision or term of this Amendment No. 2 may be modified, altered, waived, discharged or terminated orally, but only by an instrument in writing executed by the party against whom such modification, alteration, waiver, discharge or termination is sought to be enforced.

9. Entire Agreement. This Amendment No. 2 and the Intercreditor Agreement represent the entire agreement and understanding concerning the subject matter hereof among the parties hereto, and supersedes all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written.

10. Headings. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment No. 2.

11. Counterparts. This Amendment No. 2 may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment No. 2 by telefacsimile or other electronic method of transmission (including by email with a "pdf") shall have the same force and effect as delivery of an original executed counterpart of this Amendment No. 2. Any party delivering an executed counterpart of this Amendment No. 2 by telefacsimile or other electronic method of transmission shall in a timely manner also deliver an original executed counterpart, but the failure to do

so shall not affect the validity, enforceability, and binding effect of this Amendment No. 2.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 2 to be duly executed and delivered as of the day and year first above written.

ABL AGENT

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as ABL Agent

By: _____
Name: Raymond Eghobamien
Title: Vice President

TERM LOAN AGENT

VIRTUS GROUP, LP, as Term Loan Agent

By: Rocket Partner Holdings, LLC,
its General Partner

By: _____
Name:
Title:

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 2 to be duly executed and delivered as of the day and year first above written.

ABL AGENT

WELLS FARGO BANK, NATIONAL ASSOCIATION, as ABL Agent

By:_____
Name:
Title:

TERM LOAN AGENT

VIRTUS GROUP, LP, as Term Loan Agent

By: Rocket Partner Holdings, LLC,
its General Partner

By: _____
Name: MIRNA HAIR
Title: SVP - Global Client Relations

[SIGNATURES CONTINUE ON NEXT PAGE]

ACKNOWLEDGED:

H.I.G. COLORS, INC.,

By: _____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

DCL CORPORATION,

By: _____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

DCL HOLDINGS (USA), INC.,

By: _____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

ACKNOWLEDGED:

DCL CORPORATION (USA) LLC,

By: _____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

DOMINION COLOUR CORPORATION (USA),

By: _____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

MONTEITH INC.,

By: _____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

DCL CORPORATION (NL) B.V. (formerly known as DCC Maastricht, B.V.)

By: _____

Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

DCL CORPORATION (EUROPE) LIMITED (formerly known as Dominion Colour Corporation (Europe) Limited)

By: _____

Name: Michael Koichopolos
Title: Authorized Signatory

Execution Version

AMENDMENT NO. 3 TO INTERCREDITOR AGREEMENT

AMENDMENT NO. 3 TO INTERCREDITOR AGREEMENT, dated as of December 16, 2021 (this "Amendment No. 3"), is by and between WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacity as agent under the ABL Documents, including its successors and assigns in such capacity from time to time ("ABL Agent"), and VIRTUS GROUP, LP, not in its individual capacity but solely in its capacity as administrative agent and collateral agent under the Term Loan Documents, including its successors and assigns in such capacity from time to time ("Term Loan Agent").

W I T N E S S E T H :

WHEREAS, DCL Corporation (formerly known as Dominion Colour Corporation), a corporation organized under the laws of the Province of Ontario ("DCC Canada"), Monteith Inc., a corporation organized under the laws of the Province of Ontario ("Monteith"), Dominion Colour Corporation (USA), a New Jersey corporation ("DCC US"), DCL Corporation (USA) LLC (formerly known as Lansco Colors LLC), a Delaware limited liability company ("Lansco" and together with DCC Canada, Monteith and DCC US, each an "ABL Borrower" and collectively "ABL Borrowers"), H.I.G. Colors, Inc., a Delaware corporation ("Holdings"), the subsidiaries of Holdings party thereto as guarantors (together with Holdings, the "Guarantors"), the lenders party thereto and ABL Agent have entered into the Credit Agreement, dated as of April 25, 2018 (as amended, supplemented or otherwise modified prior to the date hereof, the "Existing ABL Credit Agreement" and, as further amended, supplemented or otherwise modified from time to time on or after the date hereof, the "ABL Credit Agreement") providing for a revolving credit facility pursuant to which such lenders have or may, from time to time, make loans and provide other financial accommodations to the ABL Borrowers;

WHEREAS, DCC Canada, DCL Holdings (USA), Inc. (formerly known as Lansco Holdings, Inc.), a Delaware corporation ("Lansco Holdings"), Holdings (together with DCC Canada and Lansco Holdings, each a "Term Loan Borrower" and collectively "Term Loan Borrowers"), the other Guarantors, the lenders party thereto and Term Loan Agent have entered into the Credit Agreement, dated as of April 6, 2018 (as amended, supplemented or otherwise modified prior to the date hereof, the "Existing Term Loan Credit Agreement" and, as further amended, supplemented or otherwise modified from time to time on or after the date hereof, the "Term Loan Credit Agreement") pursuant to which such lenders have agreed to make term loans to the Term Loan Borrowers;

WHEREAS, ABL Agent and Term Loan Agent have entered into the Intercreditor Agreement, dated as of April 25, 2018, between ABL Agent and Term Loan Agent, as acknowledged by ABL Borrowers, Term Loan Borrowers and Guarantors (as amended, modified, supplemented, extended, renewed, restated or replaced prior to the date hereof, the "Existing Intercreditor Agreement" and, as amended hereby and may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced, the "Intercreditor Agreement");

WHEREAS, pursuant to the Fourth Amendment to Credit Agreement, dated as of the date hereof ("Term Loan Amendment No. 4"), by and among Term Loan Agent, Term Loan Lenders, Term Loan Borrowers and Guarantors, Term Loan Borrowers have requested certain amendments to the Existing Term Loan Credit Agreement and, as a condition to such amendments, the ABL Agent and Term Loan Agent have agreed to certain amendments to the Existing Intercreditor Agreement;

WHEREAS, Term Loan Borrowers have requested consent from ABL Agent to certain of the amendments to the Existing Term Loan Credit Agreement set forth in Term Loan Amendment No. 4; and

WHEREAS, by this Amendment No. 3, ABL Agent and Term Loan Agent intend to evidence such amendments and ABL Agent intends to provide such consent.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendments and Consent.

(a) Amendments to Existing Intercreditor Agreement. Subject to the satisfaction of the conditions set forth in Section 2 below, the reference to "$120,800,000" in clause (a)(i)(x) of the definition of the term "Term Loan Cap" in the Existing Intercreditor Agreement is hereby deleted and replaced with $187,800,000".

(b) Consent of ABL Agent. Subject to the satisfaction of the conditions set forth in Section 2 below, ABL Agent hereby consents to the amendments to Section 2.09(b)(iv) of the Existing Term Loan Credit Agreement set forth in Term Loan Amendment No. 4.

(c) Interpretation. All terms used herein which are not otherwise defined herein, including but not limited to, those terms used in the recitals hereto, shall have the respective meanings assigned thereto in the Intercreditor Agreement as amended by this Amendment No. 3.

2. Conditions Precedent to Effectiveness of Amendments and Consent. The amendments to, and consent under, the Existing Intercreditor Agreement provided for herein shall only be effective upon (a) the satisfaction (or waiver in writing by Term Loan Agent) of the conditions to the Fourth Amendment Effective Date as such term is defined, and as such conditions are set forth, in Section 3 of Term Loan Amendment No. 4, and (b) the satisfaction (or waiver in writing by ABL Agent) of the conditions to the Waiver and Consent, dated as of the date hereof, among ABL Borrowers, Guarantors, ABL Agent and the lenders party thereto, as set forth in Section 4 thereof.

3. Representation and Warranties. Each of ABL Agent and Term Loan Agent represents and warrants to the other that the execution, delivery and performance by it of this Amendment No. 3 has been duly authorized by all necessary organizational actions and in the case of Term Loan Agent in accordance with, and to the extent required by, the Term Loan Documents and in the case of ABL Agent in accordance with, and to the extent required by, the ABL Documents.

4. Effect of Amendment No. 3. Except as expressly set forth herein, no other amendments, changes or modifications to the Existing Intercreditor Agreement are intended or implied, and in all other respects the Intercreditor Agreement is hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof and each Grantor hereby confirms its acknowledgement of this Amendment No. 3 and that it is, and shall be, subject to the terms hereof.

5. Governing Law. The validity, interpretation and enforcement of this Amendment No. 3 and any dispute arising out of the relationship between the parties hereto whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

6. Binding Effect. This Amendment No. 3 shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

7. Waiver, Modification, Etc. No provision or term of this Amendment No. 3 may be modified, altered, waived, discharged or terminated orally, but only by an instrument in writing executed by the party against whom such modification, alteration, waiver, discharge or termination is sought to be enforced.

8. Entire Agreement. This Amendment No. 3 and the Intercreditor Agreement represent the entire agreement and understanding concerning the subject matter hereof among the parties hereto, and supersedes all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written.

9. Headings. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment No. 3.

10. Counterparts. This Amendment No. 3 may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment No. 3 by telefacsimile or other electronic method of transmission (including by email with a "pdf") shall have the same force and effect as delivery of an original executed counterpart of this Amendment No. 3. Any party delivering an executed counterpart of this Amendment No. 3 by telefacsimile or other electronic method of transmission shall in a timely manner also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability, and binding effect of this Amendment No. 3.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 3 to be duly executed and delivered as of the day and year first above written.

ABL AGENT

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as ABL Agent

By:_____
Name: Raymond Eghobamien
Title: Vice President

TERM LOAN AGENT

VIRTUS GROUP, LP,
as Term Loan Agent

By: Rocket Partners Holdings, LLC,
its General Partner

By:_____
Name:
Title:

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 3 to be duly executed and delivered as of the day and year first above written.

ABL AGENT

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as ABL Agent

By:_____
Name:
Title:

TERM LOAN AGENT

VIRTUS GROUP, LP,
as Term Loan Agent

By: Rocket Partners Holdings, LLC,
its General Partner

By:_____
Name: Joseph U. Elston
Title: Senior Vice President

[SIGNATURES CONTINUE ON NEXT PAGE]

ACKNOWLEDGED:

H.I.G. COLORS, INC.,

By:_____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

DCL CORPORATION,

By:_____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

DCL HOLDINGS (USA), INC.,

By:_____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

ACKNOWLEDGED:

DCL CORPORATION (USA) LLC,

By:_____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

DOMINION COLOUR CORPORATION (USA),

By:_____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

MONTEITH INC.,

By:_____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

DCL CORPORATION (BP), LLC.,

By:_____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

DCL CORPORATION (NL) B.V.
(formerly known as DCC Maastricht, B.V.)

By:_____
Name: Michael Koichopolos
Title: Vice President, Treasurer and Secretary

DCL CORPORATION (EUROPE) LIMITED
(formerly known as Dominion Colour Corporation (Europe) Limited)

By:_____
Name: Michael Koichopolos
Title: Authorized Signatory

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

Affidavit of Scott Davido

sworn before me by video conference
this 20th day of December, 2022

A Commissioner, etc.

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

DCL CORPORATION
PPSA SEARCH SUMMARY

***Personal Property Security Act* (Ontario)**

C means Consumer Goods, **I** means Inventory, **E** means Equipment, **A** means Accounts, **O** means Other, **M** means Motor Vehicle Included
Other Comments intends to capture amendments, partial discharges, etc.
The order of registration set out below is not necessarily indicative of the priority of registration
The first eight digits of the Registration Number denote the year, month and day of registration

Current to December 15, 2022

DCL CORPORATION
MONTEITH INC.
DOMINION COLOUR CORPORATON

Secured Party	File Number	Registration Number	Collateral Classification						Collateral Description	Term (Years)	Debtor	Other Comments
			C	I	E	A	O	M				
1. HSBC Bank Canada Liberty Square, HSBC Tower, 3601 Highway 7 East, Suite 108 Markham, ON L3R 0M3	684299547	i) 20130124 1404 1590 4455		~~X~~	~~X~~	~~X~~	~~X~~	~~X~~		5	~~Dominion Colour Corporation~~	
		ii) 20180115 1930 1531 8396								10		*Renewal*
		iii) 20180328 1229 1862 9454				X	X		The collateral is limited to the debtors' rights, benefits, title and interest in certain cash collateral on deposit in deposit account no. 482-005734-003 held at HSBC Bank Canada up to a maximum amount of CAD $382,341 in respect of certain letters of credit issued in favour of Dominion Colour Corporation			*Amendment* to amend the collateral classification and add a general collateral description

Secured Party	File Number	Registration Number	Collateral Classification						Collateral Description	Term (Years)	Debtor	Other Comments
			C	I	E	A	O	M				
									pursuant to (i) irrevocable standby letter of credit no. SDNHTD333237 dated as of October 21, 2015, and (ii) irrevocable standby letter of credit no. SDNHTO311341 dated as of April 4, 2013 each issued by HSBC Bank Canada (and as amended and restated, supplemented or otherwise modified and in effect from time to time).			
		iv) 20201002 1547 1590 2949									DCL Corporation	*Amendment* to change the debtor name pursuant to articles of amendment
2. ~~Virtus Group, LP, as Collateral Agent~~	737637543	i) 20180327 1229 1590 6223		X	X	X	X	X		10	~~Monteith Inc.~~	
		ii) 20180412 1501 1590 7377										*Amendment* to change the address of the secured party
		iii) 20220421 1015 9234 2360									DCL Corporation	*Amendment* to change the debtor name pursuant to articles of amendment
Delaware Trust Company, as Collateral Agent 251 Little Falls Drive		iv) 20220606 1020 9234 3034										*Assignment*

Secured Party	File Number	Registration Number	Collateral Classification						Collateral Description	Term (Years)	Debtor	Other Comments
			C	I	E	A	O	M				
Wilmington, DE 19808												
3. ~~Virtus Group, LP, as Collateral Agent~~	737637561	i) 20180327 1229 1590 6224		X	X	X	X	X		10	~~Dominion Colour Corporation~~	
		ii) 20180412 1458 1590 7370										*Amendment* to change the address of the secured party
		iii) 20210505 1141 1590 1208									DCL Corporation	*Amendment* to change the debtor name
		iv) 20220421 1016 9234 2361									DCL Corporation	*Amendment* to amend debtor name pursuant to articles of amalgamation
Delaware Trust Company, as Collateral Agent 251 Little Falls Drive Wilmington, DE 19808		v) 20220606 1019 9234 3032										*Assignment*
4. Wells Fargo Bank, National Association, as Administrative Agent	737958375	i) 20180405 1514 1590 6868		X	X	X	X	X		7	~~Dominion Colour Corporation~~ ~~Monteith Inc.~~	
22 Adelaide Street West, Suite 2200, Bay-Adelaide East Toronto, ON M5C 1X3		ii) 20180420 1216 1590 8187										*Amendment* to reflect change in secured party's address

Secured Party	File Number	Registration Number	Collateral Classification						Collateral Description	Term (Years)	Debtor	Other Comments
			C	I	E	A	O	M				
		iii) 20201110 1659 6083 5778 iv) 20201113 0928 6083 5842 v) 20220419 1200 1590 7938									DCL Corporation	*Amendment* to change the debtor name *Amendment* to change the debtor name *Amendment* to reflect change of Monteith Inc. to DCL Corporation pursuant to an amalgamation
5. De Lage Landen Financial Services Canada Inc. 3450 Superior Court, Unit 1 Oakville, ON L6L 0C4	767174859	i) 20201028 1933 1531 4766			X	X	X	X	2020 Hangcha / CQDB14-AC1-JNA, VIN Q8BJ00192 2020 Hangcha / CQDB14-AC1-JNA, VIN Q8BJ00195 2020 Hangcha / CQDB14-AC1-JNA, VIN Q8BJ00191 All personal property of the debtor described herein by vehicle identification number or serial number, as applicable, wherever situated, together with all parts and accessories relating thereto, all attachments, accessories and accessions thereto or thereon, all replacements, substitutions, additions and improvements of all or any part of the foregoing and all proceeds in any form derived therefrom.	6	DCL Corporation	No fixed maturity date

Secured Party	File Number	Registration Number	Collateral Classification						Collateral Description	Term (Years)	Debtor	Other Comments
			C	I	E	A	O	M				
6. Citibank Europe PLC 1 North Wall Quay Dublin, BC 1	770557653	i) 20210315 0947 1902 2752				X			All right, title and interest of DCL Corporation in and to all accounts receivable and other forms of payment obligations and related rights owing to debtor by Axalta Inc. and its subsidiaries and affiliates (and any successor entity thereto, whether by operation of law, name change, merger or otherwise), that are purchased from time to time by secured party under that certain "supplier agreement" (or other form of purchase agreement) between debtor and secured party, as amended, supplemented or otherwise modified from time to time, whether in the form of accounts, chattel paper, general intangibles, payment intangibles, instruments or otherwise, and all collections thereon and proceeds thereof, and whether now existing or hereafter created.	5	DCL Corporation	No fixed maturity date

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

Affidavit of Scott Davido

sworn before me by video conference
this 20th day of December, 2022

A Commissioner, etc.

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

OUTSTANDING LITIGATION

Litigation:

	Plaintiff / Claimant [1]	Subject Matter	Counsel	Stage of the Proceeding
1.	Alex Naghibi	Employment related	GB LAW PROFESSIONAL CORPORATION 7777 Weston Road, Unit 162 Vaughan, ON L4L 0G9 Godfrey Bakeerathan Email: godfrey@gblawpc.com	Statement of Claim issued in Newmarket on July 18, 2022 Mediation scheduled for December 16, 2022
2.	Mineshkumar Shah	Employment related	WILTON MARTIN LITIGATION LAWYERS 65 Queen Street West, Suite 1503 Toronto, ON M5H 2M5 Paul Martin Email: pmartin@wmlitigation.com	Statement of Claim issued in Toronto on March 31, 2020. Statement of Defence and Reply filed. Estimated timeline for proceeding and/or mediation to be finalized.
3.		Employment related	MARVIN A. GORODENSKY PROFESSION CORPORATION 45 St. Clair Avenue West, Suite 908 Toronto, ON M4V 1K9 Marvin Gorodensky Email: mgorodensky@dismissed.ca	No Statement of Claim issued. Settlement reached, but no payment made.
4.		Employment related	MARVIN A. GORODENSKY PROFESSION CORPORATION 45 St. Clair Avenue West, Suite 908 Toronto, ON M4V 1K9 Marvin Gorodensky Email: mgorodensky@dismissed.ca	No Statement of Claim issued. Notified of intention to file a claim.

[1] Where no Statement of Claim has been issued, names of the claimants have been omitted to assist with privacy concerns.

Arbitration / Grievance:

	Plaintiff / Claimant	Subject Matter	Counsel	Stage of the Proceeding
5.	Teamsters	30-day operation arbitration, commenced by Teamsters on behalf of all employees	CALEY WRAY 65 Queen Street West, Suite 1600 Toronto, ON M5H 2M5 Micheil Russell Email: russellm@caleywray.com	Arbitrator has been appointed, and date set tentatively for January 16, 2023.
6.	Teamsters	Termination arbitration, pursued by Teamsters on behalf of employee	CALEY WRAY 65 Queen Street West, Suite 1600 Toronto, ON M5H 2M5 Micheil Russell Email: russellm@caleywray.com	Arbitrator appointed and first day of arbitration completed. Second day scheduled for December 22, 2022.
7.	Teamsters	Termination arbitration claim, pursued by Teamsters on behalf of employee	CALEY WRAY 65 Queen Street West, Suite 1600 Toronto, ON M5H 2M5 Micheil Russell Email: russellm@caleywray.com	Union has notified of its intention to commence formal grievance, but arbitrator has not yet been selected.
8.	Teamsters	Termination arbitration claim, pursued by Teamsters on behalf of employee	CALEY WRAY 65 Queen Street West, Suite 1600 Toronto, ON M5H 2M5 Micheil Russell Email: russellm@caleywray.com	Union has notified of its intention to commence formal grievance, but arbitrator has not yet been selected.

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

Affidavit of Scott Davido

sworn before me by video conference
this 20th day of December, 2022

A Commissioner, etc.

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

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DCL CORPORATION

Applicant

CONSENT OF THE PROPOSED MONITOR

Alvarez & Marsal Canada Inc. hereby consents to act as Court-appointed monitor of DCL Corporation (the "**Applicant**") in respect of its proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

Dated: December 19, 2022

ALVAREZ & MARSAL CANADA INC., IN ITS CAPACITY AS PROPOSED MONITOR OF THE APPLICANT AND NOT IN ITS PERSONAL CAPACITY

Per: _____

Name: Josh Nevsky
Title: Senior Vice-President

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

Affidavit of Scott Davido

sworn before me by video conference
this 20th day of December, 2022

A Commissioner, etc.

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

SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

by and among

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as sole lead arranger and bookrunner

THE LENDERS THAT ARE PARTIES HERETO,
as the Lenders,

H.I.G. COLORS HOLDINGS, INC.,
a debtor and a debtor-in-possession
as Colors Holdings

H.I.G. COLORS, INC.,
a debtor and a debtor-in-possession
as Holdings

DCL CORPORATION (USA) LLC (formerly known as Lansco Colors, LLC),
as debtor and debtor-in-possession
as a US Borrower

DCL CORPORATION (BP), LLC
as debtor and debtor-in-possession
as a US Borrower

DCL CORPORATION
(formerly known as Dominion Colour Corporation and as successor by amalgamation to Monteith Inc.), as debtor under the CCAA
as Canadian Borrower

THE OTHER SUBSIDIARIES OF HOLDINGS PARTY HERETO,
as Guarantors

Dated as of December ___, 2022

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SENIOR SECURED, SUPER-PRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

THIS SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT, is entered into as of December ___, 2022 by and among the lenders identified on the signature pages hereof (each of such lenders, together with its successors and permitted assigns, is referred to hereinafter as a "Lender", as that term is hereinafter further defined), **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as administrative agent for each member of the Lender Group and the Bank Product Providers (in such capacity, together with its successors and assigns in such capacity, "Agent"), **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, as sole lead arranger and bookrunner, **DCL CORPORATION (USA) LLC** (formerly known as Lansco Colors, LLC), a Delaware limited liability company, as debtor and debtor-in-possession under the Bankruptcy Code ("DCL USA"), **DCL CORPORATION (BP), LLC**, a Delaware limited liability company, as debtor and debtor-in-possession under the Bankruptcy Code ("DCL BP," and together with DCL USA, individually, a "US Borrower" and collectively, "US Borrowers"), **DCL CORPORATION** (formerly known as Dominion Colour Corporation and as successor by amalgamation to Monteith Inc.), an Ontario corporation, as debtor under the CCAA ("DCL Canada" or "Canadian Borrower," and together with US Borrowers, individually a "Borrower" and collectively, "Borrowers"), **DOMINION COLOUR CORPORATION (USA)**, a New Jersey corporation, as debtor and debtor-in-possession under the Bankruptcy Code ("DCC US"), **DCL HOLDINGS (USA), INC.** (formerly known as Lansco Holdings, Inc.), a Delaware corporation, as debtor and debtor-in-possession under the Bankruptcy Code ("DCL Holdings"), **H.I.G. COLORS HOLDINGS, INC.**, a Delaware corporation, as debtor and debtor-in-possession under the Bankruptcy Code ("Colors Holdings"), **H.I.G. COLORS, INC.**, a Delaware corporation, as debtor and debtor-in-possession under the Bankruptcy Code ("Holdings," and together with Colors Holdings, DCC US and DCL Holdings, each a "US Guarantor" and collectively, "US Guarantors," and together with US Borrowers, individually, a "US Loan Party" and collectively, "US Loan Parties"), **DCL CORPORATION (NL) B.V**., formerly known as DCC Maastricht B.V., a company organized under the laws of The Netherlands ("DCL BV"), and **DCL CORPORATION (EUROPE) LIMITED**, formerly known as Dominion Colour Corporation (Europe) Limited, a private liability company incorporated in England and Wales with company number 05452995 ("DCL UK," and together with US Guarantors and DCL BV, individually, a "Guarantor" and collectively, "Guarantors", and together with US Borrowers and Canadian Borrower, individually, a "Loan Party" and collectively, "Loan Parties").

PRELIMINARY STATEMENTS:

A. On December ___, 2022 (the "Petition Date"), (i) each US Borrower and US Guarantor commenced a voluntary chapter 11 case, as administratively consolidated (individually, a "Chapter 11 Case" and collectively, the "Chapter 11 Cases"), with the United States Bankruptcy Court for the District of Delaware (the "US Bankruptcy Court"). and (ii) Canadian Borrower commenced a case (the "CCAA Case," and together with the Chapter 11 Cases, the "Bankruptcy Cases") in the Ontario Superior Court of Justice, Commercial List, in Toronto, Ontario, Canada (the "Canadian Bankruptcy Court", and together with the US Bankruptcy Court, each a "Bankruptcy Court" as hereinafter further defined) seeking relief under the provisions of the Companies' Creditors Arrangement Act (Canada) (the "CCAA").

B. US Borrowers continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code and Canadian Borrower continues to operate its businesses and manage its properties pursuant to the CCAA Initial Orders (as hereinafter defined).

C. Prior to the Petition Date, Lenders provided financing to Borrowers as set forth in the Credit Agreement, dated as of April 25, 2018, by and among the lenders party thereto, Wells Fargo Bank, as administrative agent for such lenders and bank product providers, Borrowers and Guarantors.

D. The Pre-Petition ABL Obligations (as defined herein) are secured by a security interest in certain existing and after-acquired assets of the Loan Parties as more fully set forth in the Pre-Petition ABL Loan Documents (as defined herein) and such security interest is perfected and has, with certain exceptions as described in the Pre-Petition ABL Loan Documents (as defined herein), priority over other security interests.

E. Borrowers have requested, and, upon the terms and conditions set forth in this Agreement, Lenders have agreed to make available to Borrowers, a senior secured, super-priority revolving credit facility of up to $55,000,000 (subject to the then applicable Borrowing Base) (i) for working capital and general corporate purposes of Borrowers in accordance with the DIP Budget, including, to refinance in full on the date of the Final US Financing Order the indebtedness of US Borrowers outstanding under the Pre-Petition ABL Credit Facility, and (ii) to pay fees, costs and expenses incurred in connection with the Transactions.

F. Each Loan Party has agreed to secure all of the Obligations under the Loan Documents by granting to Agent, for the benefit of Agent and the other Secured Parties, a security interest in and lien upon substantially all of their existing and after-acquired personal and real property (subject to the limitations and priorities contained in the Loan Documents and the Financing Orders).

G. Each Loan Party's business is a mutual and collective enterprise and the Loan Parties believe that the loans and other financial accommodations to Borrowers under this Agreement will enhance the borrowing power of Borrowers and facilitate the administration of the Bankruptcy Cases and their loan relationship with Agent and Lenders, all to the mutual advantage of the Loan Parties.

H. Each Loan Party acknowledges that it will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to Borrowers as provided in this Agreement.

I. The willingness of Agent and Lenders to provide financial accommodations to Borrowers, as more fully set forth in this Agreement and the other Loan Documents, is done solely as an accommodation to the Loan Parties and at the Loan Parties' request and in furtherance of the Loan Parties' mutual and collective enterprise.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

1. **DEFINITIONS AND CONSTRUCTION**.

1.1 **Definitions**. As used in this Agreement, the following terms shall have the following definitions:

"ABL Priority Collateral" has the meaning specified therefor in the Intercreditor Agreement.

"Acceptable Appraisal" means, with respect to an appraisal of Inventory, the most recent appraisal of such property received by Agent (a) from an appraisal company satisfactory to Agent, (b) the scope and methodology (including, to the extent relevant, any sampling procedure employed by such

appraisal company) of which are reasonably satisfactory to Agent, and (c) the results of which are reasonably satisfactory to Agent, in each case, in Agent's Permitted Discretion.

"Account" means an account (as that term is defined in the UCC, or to the extent applicable, the PPSA).

"Account Debtor" means any Person who is obligated on an Account, chattel paper, or a general intangible or intangible (as defined in the PPSA).

"Account Party" has the meaning specified therefor in Section 2.11(h) of this Agreement.

"Accounting Changes" means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by, as applicable, (a) the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions) or (b) the Canadian Accounting Standards Board of the Canadian Institute of Chartered Accountants (or successor thereto) (or successor thereto or any agency with similar functions).

"Acquisition" means any transaction or series of related transactions, consummated on or after the Closing Date, by which any Company (a) acquires any business of any Person, division thereof or line of business, or all or substantially all of the assets of any Person, whether through purchase of assets, merger, consolidation, amalgamation or otherwise, or (b) acquires securities or other ownership interests of any Person having at least a majority of the combined voting power of the then outstanding Equity Interests of such Person.

"Actuarial Report" means the actuarial report required to be filed by DCL Canada under the Pension Benefits Act (Ontario), or such other pension standards laws as may from time to time apply, with respect to the defined benefit provisions of its Canadian Pension Plans or such other report of the actuaries of DCL Canada as may be approved by the Agent.

"Additional Documents" has the meaning specified therefor in Section 5.12 of this Agreement.

"Adjusted Term SOFR" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided, that, if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

"Administrative Borrower" has the meaning specified therefor in Section 17.13 of this Agreement.

"Administration Charge" means, in the CCAA Case, the charge created by the Canadian Bankruptcy Court in the CCAA Initial Orders to secure payment of the professional fees of Canadian legal counsel to Canadian Borrower, and the Monitor in the CCAA Case and its legal counsel, not to exceed the maximum amount of the Administration Charge set forth in the CCAA Initial Orders.

"Administrative Questionnaire" has the meaning specified therefor in Section 13.1(a) of this Agreement.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affected Lender" has the meaning specified therefor in Section 2.13(b) of this Agreement.

"Affiliate" means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Equity Interests, by contract, or otherwise; provided, that, for purposes of the definition of Eligible Accounts and Section 6.10 of this Agreement: (a) any Person which owns directly or indirectly ten percent (10%) or more of the Equity Interests having ordinary voting power for the election of directors or other members of the governing body of a Person or ten percent (10%) or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

"Agent" has the meaning specified therefor in the preamble to this Agreement.

"Agent Advisors" has the meaning set forth in Section 5.23.

"Agent-Related Persons" means Agent, together with its Affiliates, officers, directors, employees, attorneys, and agents.

"Agent's Liens" means the Liens granted by each Loan Party to Agent under the Loan Documents and securing the Canadian Obligations, the US Obligations or the Obligations, as applicable, for such Loan Party.

"Agent Payment Account" means the Deposit Account of Agent in Dollars and Canadian Dollars, as applicable, identified on Schedule A-1 to this Agreement (or such other Deposit Account of Agent that has been designated as such, in writing, by Agent to Administrative Borrower and the Lenders).

"Agreement" means this Credit Agreement, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Amended Initial CCAA Order" means the Initial CCAA Order as the same may be amended and/or restated at the comeback hearing in the CCAA Case in respect of the Initial CCAA Order.

"Announcements" has the meaning set forth in Section 1.11.

"Anti-Corruption Laws" means the FCPA, the U.K. Bribery Act of 2010, as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery, money laundering or corruption in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business.

"Anti-Money Laundering Laws" means the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto and includes Canadian Anti-Terrorism Laws.

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

"Applicable Unused Line Fee Percentage" means 0.50%.

"Application Event" means the occurrence and continuance of (a) a failure by Borrowers to repay all of the Obligations in full on the Maturity Date, or (b) an Event of Default and the election by Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 2.4(b)(ii) and Section 2.4(b)(iii) of this Agreement.

"Approved Tier 1 Jurisdiction" means each country or jurisdiction listed as a "Tier 1 Jurisdiction" on Schedule A-2 and each additional country or jurisdiction as Agent may from time to time agree constitutes a Tier 1 Jurisdiction.

Approved Tier 2 Jurisdiction" means each country or jurisdiction listed as a "Tier 2 Jurisdiction" on Schedule A-2 and each additional country or jurisdiction as Agent may from time to time agree constitutes a Tier 2 Jurisdiction.

"Assignee" has the meaning specified therefor in Section 13.1(a) of this Agreement.

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1 to this Agreement.

"Attributable Indebtedness" means, when used with respect to any Sale and Leaseback Transaction, as at the date of determination, the present value (discounted at a rate equivalent to the Borrowers' then-current weighted average cost of funds for borrowed money as at the date of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such Sale and Leaseback Transaction.

"Audited Financial Statements" means the audited consolidated balance sheet of Holdings and its Subsidiaries for the fiscal year ended March 31, 2022, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of Holdings and its Subsidiaries, including the notes thereto.

"Available Currency" means, with respect to, (a) Loans to be made to (and Letters of Credit issued for the account of) US Borrowers, Dollars, (b) Loans to be made to (and Letters of Credit to be issued for the account of) Canadian Borrowers, Dollars and Canadian Dollars, and (c) with respect to Eligible Accounts, Japanese Yen, British Pounds, Dollars and Canadian Dollars.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.12(d)(iii)(D).

"Average Revolver Usage" means, with respect to any period, the sum of the aggregate amount of Revolver Usage for each day in such period (calculated as of the end of each respective day after application of funds received on such day) divided by the number of days in such period.

"Avoidance Action" means any and all claims and causes of action of the estate of any Loan Party arising under Sections 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code, or any similar provision of the CCAA, together with any proceeds therefrom.

"Avoided Payment" has the meaning assigned to such term in Section 2.16.

"Axalta" means the Subsidiaries or Affiliates of Axalta Coating Systems Germany GmbH & Co. KG organized under the laws of a jurisdiction in Europe and set forth in the list that may be provided by Administrative Borrower to Agent after the Closing Date, which list may be updated with other Subsidiaries or Affiliates of Axalta Coating Systems Germany GmbH & Co. KG from time to time upon written notice by Administrative Borrower to Agent.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank Product" means any one or more of the following financial products or accommodations extended to any Loan Party by a Bank Product Provider: (a) credit cards (including commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards")), (b) payment card processing services, (c) debit cards, (d) stored value cards, (e) Cash Management Services, (f) transactions under Hedge Agreements; and (g) supply chain finance services including, without limitation, trade payable services and purchases of accounts receivable of Loan Parties (and including each Permitted Supply Chain Financing to which Wells Fargo is a party).

"Bank Product Agreements" means those agreements entered into from time to time by any Loan Party with a Bank Product Provider in connection with obtaining any of the Bank Products.

"Bank Product Collateralization" means providing cash collateral (pursuant to documentation reasonably satisfactory to Agent) to be held by Agent for the benefit of the Bank Product Providers (other than the Hedge Providers) in an amount determined by Agent as sufficient to satisfy the reasonably estimated credit exposure, operational risk or processing risk with respect to the then existing Bank Product Obligations (other than Hedge Obligations).

"Bank Product Obligations" means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by each Loan Party and its Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, (b) all Hedge Obligations, and (c) all amounts that Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to a Loan Party or its Subsidiaries.

"Bank Product Provider" means Wells Fargo or any of its Affiliates, including each of the foregoing in its capacity, if applicable, as a Hedge Provider.

"Bank Product Reserves" means, as of any date of determination, those reserves that Agent deems necessary or appropriate to establish (based upon the Bank Product Providers' determination of the

liabilities and obligations of each Loan Party and its Subsidiaries in respect of Bank Product Obligations) in respect of Bank Products then provided or outstanding.

"Bankruptcy Cases" has the meaning set forth in the Preliminary Statements.

"Bankruptcy Code" means title 11 of the United States Code, as in effect from time to time.

"Bankruptcy Court" means (a) as to US Loan Parties, the US Bankruptcy Court and (b) as to Canadian Borrower, the Canadian Bankruptcy Court.

"Base Rate" means the Canadian Base Rate with respect to Base Rate Loans denominated in Canadian Dollars and the US Base Rate with respect to Base Rate Loans denominated in US Dollars.

"Base Rate Loan" means each portion of the Revolving Loans that bears interest at a rate determined by reference to the Base Rate.

"Base Rate Margin" has the meaning set forth in the definition of Applicable Margin.

"Benchmark" means, initially, with respect to any (a) Obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to, US Dollars, Term SOFR Reference Rate, and (b) Obligations, interest, fees, commissions or other amounts denominated in Canadian Dollars, CDOR; provided, that, if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or CDOR, as applicable, or the then-current Benchmark for such Currency, then "Benchmark" means, with respect to amounts denominated in the applicable Currency, the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.12(d)(iii)(A).

"Benchmark Replacement" means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Agent and Administrative Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement shall be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Agent and Administrative Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided, that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, if the then-current Benchmark has any Available Tenors, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Start Date" means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the ninetieth (90^{th}) day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than ninety (90) days after such statement or publication, the date of such statement or publication).

"Benchmark Unavailability Period" means the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.12(d)(iii) and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.12(d)(iii).

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means a "defined benefit plan" (as defined in Section 3(35) of ERISA) for which any Loan Party or any of its Subsidiaries or ERISA Affiliates has been an "employer" (as defined in Section 3(5) of ERISA) within the past six (6) years.

"BHC Act Affiliate" of a person means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such person.

"BIA" means the Bankruptcy and Insolvency Act (Canada).

"Bid Procedures" means the bid procedures governing the Sale Transaction as approved by the Bankruptcy Court pursuant to the Bid Procedures Order and any other order of the Bankruptcy Court affecting the Sale Transaction, which shall be in form and substance reasonably satisfactory to Agent.

"Bid Procedures Order" means an order of each Bankruptcy Court approving the Bid Procedures for the Sale Transaction scheduling the date for an auction for the Sale Transaction of all or substantially all of the assets of Loan Parties, in each case scheduling a hearing to consider approval of the Sale Transaction, establishing related objection and other deadlines, and approving related notices and forms, in each case in form and substance reasonably satisfactory to Agent.

"Board of Directors" means, as to any Person, the board of directors (or comparable managers) of such Person, or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

"Board of Governors" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Borrower" and "Borrowers" have the respective meanings specified therefor in the preamble to this Agreement.

"Borrower Materials" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Borrowing" means a borrowing consisting of Revolving Loans made on the same day by the Lenders (or Agent on behalf thereof), or by Swing Lender in the case of a Swing Loan, or by Agent in the case of a Special Advance.

"Borrowing Base Certificate" means a certificate in the form of Exhibit B-1 to this Agreement.

"British Pound" means the pound sterling, the lawful currency of the United Kingdom.

"Business Day" means (a) for all purposes other than as set forth in clause (b) below, any day other than a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed; and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, any Canadian Revolving Loan, any day that is a Business Day described in clause (a) and on which banks are open for business in Toronto, Ontario.

"Canadian Anti-Terrorism Laws" means the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws, whether within Canada or elsewhere, the Criminal Code (Canada), the United Nations Act (Canada), United Nations Al-Qaida and Taliban Regulations, the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism, and any similar laws in effect in Canada from time to time.

"Canadian Bankruptcy Court" has the meaning set forth in the Preliminary Statements.

"Canadian BA Rate" means the CDOR Rate.

"Canadian BA Rate Loan" means each portion of a Revolving Loan denominated in Canadian Dollars that bears interest at a rate determined by reference to the Canadian BA Rate.

"Canadian BA Rate Margin" has the meaning set forth in the definition of Applicable Margin.

"Canadian BA Rate Notice" means a written notice in the form of Exhibit C-2 to the Agreement.

"Canadian BA Rate Option" has the meaning specified therefor in Section 2.12(a) of the Agreement.

"Canadian Base Rate" means, on any day, the rate per annum equal to the greater of (a) the Floor, (b) the Canadian BA Rate for a tenor of one (1) month at approximately 10:00 a.m. Eastern (Toronto) time on such day (provided that clause (b) shall not be applicable during any period in which such CDOR is unavailable, unascertainable or illegal) plus one percentage point and (c) the "prime rate" for Canadian Dollar commercial loans made in Canada as reported by Thomson Reuters under Reuters Instrument Code <CAPRIME=> on the "CA Prime Rate (Domestic Interest Rate) – Composite Display" page (or any successor page or such other commercially available service or source (including the Canadian Dollar "prime rate" announced by The Toronto-Dominion Bank or such other Schedule I bank under the Bank Act (Canada)) as Agent may designate from time to time). Any change in the Canadian Base Rate due to a change in the foregoing rate shall be effective as of the opening of business on the effective day of such change. Each determination of the Canadian Base Rate shall be made by Agent and shall be conclusive in the absence of manifest error.

"Canadian Base Rate Loan" means each portion of a Revolving Loan denominated in Canadian Dollars that bears interest at a rate determined by reference to the Canadian Base Rate.

"Canadian Borrower" has the meaning specified therefor in the preamble to the Agreement.

"Canadian Borrowing Base" means, as of any date of determination, the result of:

(a) eighty-five percent (85%) multiplied by the amount of Eligible Accounts of Canadian Borrowers, plus

(b) eighty-five percent (85%) multiplied by the amount of Eligible Supply Chain Receivables of Canadian Borrowers, provided, that, the aggregate amount of Eligible Supply Chain Receivables of Canadian Borrowers included in the calculation above shall not exceed the amount equal to $2,000,000, minus the amount of Eligible Supply Chain Receivables of US Borrowers included in the US Borrowing Base, plus

(c) the least of: (i) seventy percent (70%) multiplied by the Value of Eligible Inventory and Eligible In-Transit Inventory of Canadian Borrowers at such time, and (ii) eighty-five percent (85%) of the Net Recovery Percentage identified in the most recent Acceptable Appraisal of Eligible Inventory and Eligible In-Transit Inventory of Canadian Borrowers multiplied by the Value of such Eligible Inventory and Eligible In-Transit Inventory at such time, provided, that, (A) the aggregate amount of Eligible In-Transit Inventory of Canadian Borrowers included in the calculation above shall not exceed the amount equal to $4,000,000 minus the amount of Eligible In-Transit Inventory of US Borrowers included in the US Borrowing Base and (B) the aggregate amount included in the Borrowing Base based on the applicable percentage of the Value of Eligible Inventory of Canadian Borrowers consisting of work-in-process as set forth above, together with the aggregate amount included in the US Borrowing Base based on the applicable percentage of the Value of Eligible Inventory of US Borrowers consisting of work-in-process, shall not exceed $10,000,000, minus

(d) the aggregate amount of Reserves, if any, established by Agent from time to time under Section 2.1(e) of this Agreement with respect to the Canadian Borrowing Base.

"Canadian Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Canadian Loan Party in or upon which a Lien is granted, or purported to be granted, by such Person in favor of Agent or any Lender under any of the Loan Documents or any Financing Order to secure, either directly or indirectly, repayment of any of the Obligations.

"Canadian Commitment" means, with respect to each Canadian Lender, its commitment to make Canadian Revolving Loans hereunder and, with respect to all Canadian Lenders, their commitments to make Canadian Revolving Loans hereunder, in each case in such Dollar amounts (or US Dollar Equivalent) as are set forth beside such Canadian Lender's name under the applicable heading on Schedule C-1 to this Agreement or in the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"Canadian Defined Benefit Pension Plan" means any Canadian Pension Plan which contains a "defined benefit provision" as defined in subsection 147.1(1) of the Income Tax Act (Canada).

"Canadian Defined Benefit Pension Reserve Event" means (a) a Canadian Defined Benefit Termination Event; (b) the receipt by Loan Party of any notice of intention to issue an order from the applicable Governmental Authority that could be reasonably be expected to affect the registered status or cause the termination (in whole or in part) of any Canadian Defined Benefit Pension Plan; (c) the institution of proceedings by any Governmental Authority to wholly or partially terminate a Canadian Defined Benefit Pension Plan; (d) the appointment by any Governmental Authority of a replacement

administrator or trustee to wholly or partially wind-up a Canadian Defined Benefit Pension Plan; or (e) the taking of any corporate (including the enactment of any corporate resolution) or other action by a Loan Party to wholly or partially terminate or wind up a Canadian Defined Benefit Pension Plan.

"Canadian Defined Benefit Pension Termination Event" means (a) the filing of a notice of intent or amendment with the applicable Governmental Authority to wholly or partially terminate a Canadian Defined Benefit Pension Plan or (b) the receipt by any Loan Party of any order from the applicable Governmental Authority that could reasonably be expected to affect the registered status or cause the termination (in whole or in part) of any Canadian Defined Benefit Pension Plan.

"Canadian Dollars" or "Cdn $" means the lawful currency of Canada.

"Canadian Guarantors" means, collectively, each Person organized under the laws of Canada, any province thereof, or the laws of England and Wales or the Netherlands that at any time becomes a Canadian Guarantor under the Loan Documents; and "Canadian Guarantor" means any one of them.

"Canadian Intercompany Agreement" means the Intercompany Agreement, dated as of December [___], 2022, by and between DCL Canada and DCL USA.

"Canadian Issuing Lender" means Wells Fargo Canada or any other Lender that, at the request of Administrative Borrower and with the consent of Agent, agrees, in such Lender's discretion, to become a Canadian Issuing Lender for the purpose of issuing Canadian Letters of Credit or Canadian Reimbursement Undertakings.

"Canadian Lender" means each Lender having a Canadian Commitment, and shall include the Canadian Swing Lender, and shall also include any other Person made a party as to the Agreement pursuant to the provisions of Section 13.1 of this Agreement; and "Canadian Lenders" means each of the Lenders with a Canadian Commitment or any one or more of them.

"Canadian Letter of Credit" means a letter of credit (as that term is defined in the UCC) issued by Canadian Issuing Lender or Canadian Underlying Issuer for the account of any Canadian Borrower pursuant to the terms of the Agreement.

"Canadian Loan Parties" means, collectively, (a) each Canadian Borrower, (b) each Canadian Guarantor and (c) each other Person organized under the laws of Canada or any province thereof that at any time becomes a Canadian Loan Party under the Loan Documents; and "Canadian Loan Party" means any one of them.

"Canadian Maximum Credit" means the Maximum Credit less the US Revolver Usage.

"Canadian Obligations" means the Obligations of the Canadian Loan Parties.

"Canadian Pension Event" means the taking of any action or the receipt by any Canadian Borrower of notice of any event or condition with respect to a Canadian Pension Plan that could reasonably be expected to result in a Material Adverse Effect.

"Canadian Pension Plan" means a pension plan that is a "registered pension plan" (as defined in the Income Tax Act (Canada)) or that is required to be registered under, or is subject to, the Pension Benefits Act (Ontario) or other Canadian federal or provincial law with respect to pension benefits standards and that is maintained or contributed to by a Loan Party or any of its Subsidiaries for its

Canadian employees or former employees, but does not include the Canada Pension Plan or the Quebec Pension Plan as maintained by the Government of Canada or the Province of Quebec, respectively.

"Canadian Reimbursement Undertaking" has the meaning specified therefor in Section 2.11(a) of the Agreement.

"Canadian Revolver Usage" means, as of any date of determination, the sum of (a) the amount of outstanding Canadian Revolving Loans (inclusive of Canadian Swing Loans and Special Advances to all Canadian Borrowers), plus (b) the amount of the Letter of Credit Usage of all Canadian Borrowers, plus (c) the "Canadian Revolver Usage" as such term is defined in the Pre-Petition ABL Credit Agreement.

"Canadian Revolving Loan" has the meaning specified therefor in Section 2.1(c) of this Agreement.

"Canadian Revolving Loan Exposure" means, with respect to any Lender, as of any date of determination, (a) prior to the termination of the Canadian Commitments, the amount of such Lender's Canadian Commitment, and (b) after the termination of the Canadian Commitments, the aggregate outstanding principal amount of the Canadian Revolving Loans of such Lender.

"Canadian Security Agreement" means a guaranty and security agreement, dated of even date herewith, in form and substance reasonably satisfactory to Agent, executed and delivered by each Canadian Borrower and each Canadian Guarantor to Agent.

"Canadian Swing Lender" means Wells Fargo or any other Lender that, at the request of Borrowers and with the consent of Agent agrees, in such Lender's sole discretion, to become Canadian Swing Lender under Section 2.3(b) of the Agreement.

"Canadian Swing Loan" has the meaning specified therefor in Section 2.3(b) of the Agreement.

"Canadian Underlying Issuer" means The Toronto-Dominion Bank or one of its Affiliates or such other Person that is acceptable to Agent in its Permitted Discretion.

"Canadian Underlying Letter of Credit" means a Canadian Letter of Credit that has been issued by a Canadian Underlying Issuer.

"Capital Expenditures" means all expenditures which, in accordance with GAAP, would be required to be capitalized and shown on the consolidated balance sheet of the Companies, but excluding expenditures made in connection with the purchase, replacement, substitution or restoration of assets to the extent (a) financed from insurance proceeds (or other similar recoveries) paid on account of the loss of or damage to the assets being replaced or restored, (b) financed with cash awards of compensation arising from Casualty Events, (c) made as a tenant in leasehold improvements to the extent reimbursed by landlord or any other capital expenditure to the extent reimbursed by a third party or (d) financed with the proceeds of capital contributions or issuance of Equity Interests (other than Disqualified Equity Interests).

"Capital Lease" means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

"Capitalized Lease Obligation" means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations

shall be the capitalized amount thereof determined in accordance with GAAP; provided, that, all obligations of any Person that are or would be characterized as operating lease obligations in accordance with GAAP on or prior to the Closing Date (whether or not such operating lease obligations were in effect on such date) shall continue to be accounted for as operating lease obligations (and not as Capitalized Lease Obligations) for purposes of this Agreement regardless of any change in GAAP following the Closing Date (or any required implementation of any change in GAAP promulgated prior to the Closing Date) that would otherwise require such obligations to be recharacterized as Capitalized Lease Obligations.

"Carve-Out" means (a) allowed and unpaid fees pursuant to Section 1930 of Title 28 of the United States Code and to the Clerk of the US Bankruptcy Court and any fees payable to the Office of the United States Trustee in the Chapter 11 Cases and (b) allowed and unpaid claims of professionals whose retention is approved by the US Bankruptcy Court during the Chapter 11 Cases pursuant to Sections 327 and 1103 of the Bankruptcy Code for unpaid fees and expenses that are approved by order of the US Bankruptcy Court pursuant to Sections 326, 328, 330, or 331 of the Bankruptcy Code; provided, that, (i) such allowed fees and expenses described in each of clauses (a) and (b) shall not exceed the amount for each such clause set forth in the DIP Budget for purposes of determining the aggregate amount of the Carve-Out and (ii) after any Event of Default, any payments of the allowed professional fees shall reduce the amount of the Carve-Out by the amount of any such payment in a manner to be set forth in the Interim US Financing Order (or Final US Financing Order, when applicable).

"Cash Equivalents" means with respect to any Person, (a) securities issued, or directly, unconditionally and fully guaranteed or insured, by the United States or any agency or instrumentality thereof (provided, that, the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one (1) year from the date of acquisition by such Person; (b) time deposits and certificates of deposit of any Lender or any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of $500,000,000 and a rating of "A" (or such other similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) with maturities of not more than one (1) year from the date of acquisition by such Person; (c) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (b) above, which repurchase obligations are secured by a valid perfected security interest in the underlying securities; (d) commercial paper issued by any Person incorporated in the United States rated at least A-2 or the equivalent thereof by Standard & Poor's Rating Services LLC, a division of the McGraw Hill Company, Inc., or at least P-2 or the equivalent thereof by Moody's Investors Service, Inc., and in each case maturing not more than one (1) year after the date of acquisition by such Person; (e) demand deposit accounts maintained in the ordinary course of business; (f) investments in money market funds substantially all of whose assets are comprised of securities of the types described in clauses (a) through (e) above; and (g) investments by a Foreign Subsidiary (whether denominated in the currency of the jurisdiction in which such Foreign Subsidiary is organized or in Dollars, Euros or Sterling) of comparable tenor and credit quality to those described in the foregoing clauses (a) through (f), customarily utilized by entities similarly situated and of similar size to such Foreign Subsidiary organized under the laws of the jurisdiction of such Foreign Subsidiary for short-term cash management purposes to the extent reasonably required in connection with any business conducted by such Foreign Subsidiary in such jurisdiction.

"Cash Management Order" means (a) the order of the Bankruptcy Court entered in the Chapter 11 Cases after the "first day" hearing, together with all extensions, modifications and amendments thereto, in form and substance reasonably satisfactory to Agent, which among other matters authorizes the US Loan Parties to maintain their existing cash management and treasury arrangements (as set forth in the

Pre-Petition ABL Credit Agreement and the Financing Orders) or such other arrangements as shall be acceptable to Agent and (b) the cash management provisions of the CCAA Initial Orders entered in the CCAA Case, in form and substance reasonably satisfactory to Agent, which among other matters authorizes the Canadian Borrower to maintain its existing cash management and treasury arrangements (as set forth in the Pre-Petition ABL Credit Agreement and the CCAA Initial Orders) or such other arrangements as shall be reasonably acceptable to Agent.

"Cash Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"Casualty Event" means any involuntary loss of title, any involuntary loss of, damage to or any destruction of, or any condemnation, expropriation or other taking (including by any Governmental Authority) of, any property of any Company. "Casualty Event" shall include any taking of all or any part of any Real Property of any Person or any part thereof, in or by condemnation, expropriation or other eminent domain proceedings pursuant to any applicable law, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any Person or any part thereof by any Governmental Authority, civil or military, or any settlement in lieu thereof.

"CCAA" has the meaning set forth in the Preliminary Statements.

"CCAA Case" has the meaning set forth in the Preliminary Statements.

"CCAA Initial Orders" means the Initial CCAA Order and the Amended Initial CCAA Order.

"CDOR" has the meaning set forth in the definition of the term "CDOR Rate".

"CDOR Rate" means, with respect to an Interest Period, the greater of (a) the rate per annum equal to the rate determined by Agent on the basis of the rate applicable to Canadian Dollar bankers' acceptances ("CDOR") as administered by Refinitiv Benchmark Services (UK) Limited, or, subject to Section 2.12(d)(iii), a comparable or successor administrator approved by Agent, for a period comparable to the applicable Interest Period, at approximately 10:00 a.m. Eastern (Toronto) time (or such other time at which such rate customarily is published, including if corrected, as recalculated and republished by the relevant administrator) on the date such Interest Period commences (or, in any case, such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by Agent; provided, that, to the extent that such market practice is not administratively feasible for Agent, such other day as otherwise reasonably determined by Agent) or (b) the Floor. Each determination of the CDOR Rate shall be made by Agent and shall be conclusive in the absence of manifest error.

"Change in Law" means the occurrence after the date of this Agreement of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, (c) any new, or adjustment to, requirements prescribed by the Board of Governors for "Eurocurrency Liabilities" (as defined in Regulation D of the Board of Governors), requirements imposed by the Federal Deposit Insurance Corporation, or similar requirements imposed by any domestic or foreign governmental authority or resulting from compliance by Agent or any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority and related in any manner to SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, CDOR or any

other then-current Benchmark or (d) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided, that, notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Change of Control" means that:

(a) Sponsor (i) fails to directly or indirectly own legally and/or beneficially or to have the power to vote or direct the voting of more than fifty percent (50%) or more, of the Equity Interests of Holdings entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board of Directors of Holdings, or (ii) fails to directly or indirectly own legally and/or beneficially more than fifty percent (50%) of the total economic interests of Holdings;

(b) Sponsor fails to directly or indirectly possess the right to elect a majority of the Board of Directors of Holdings;

(c) Holdings fails to own and control, directly or indirectly, one hundred percent (100%) of the Equity Interests of each other Loan Party, or

(d) the occurrence of any "Change in Control" as defined in the Pre-Petition Term Loan Agreement or a change of control (or similar event) occurs as it may be defined in the Pre-Petition Term Loan Agreement.

"Chapter 11 Case" and "Chapter 11 Cases" each have the meaning set forth in the Preliminary Statements.

"Chief Restructuring Officer" has the meaning specified therefor in Section 5.18 of this Agreement.

"Closing Date" means the first date, which shall be no later than five (5) days after the Petition Date, upon which all the conditions precedent in Section 3.1 are satisfied or waived in accordance with Section 14.3.

"Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Loan Party or its Subsidiaries in or upon which a Lien is granted, or purported to be granted, by such Person in favor of Agent or any Lender under any of the Loan Documents or any Financing Order (including collectively, the Pre-Petition Collateral and all such assets notwithstanding that any such property may have been excluded from the "Collateral" as such term is defined in the Pre-Petition ABL Credit Agreement or other Pre-Petition ABL Loan Documents), other than "Excluded Collateral" as such term is defined in the Financing Orders.

"Collateral Access Agreement" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in any Loan Party's or its Subsidiaries' books and records or Inventory, in each case, in form and substance reasonably satisfactory to Agent.

"Colors Holdings" means H.I.G Colors Holdings, Inc., a Delaware corporation, as debtor and debtor-in-possession.

"Collection Account" means each Deposit Account of a Loan Party which is used exclusively for deposits of collections and proceeds of Collateral and not as a disbursement or operating account upon which checks or other drafts may be drawn.

"Combined Borrowing Base" means, at any time, the aggregate amount of the US Borrowing Base plus the Canadian Borrowing Base at such time.

"Commitment" means, with respect to each Lender, its US Commitment and its Canadian Commitment.

"Committee" means the official committee of unsecured creditors appointed in the Chapter 11 Cases by the US Trustee, if any.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. §1 et seq.), as amended from time to time, and any successor statute.

"Companies" means Holdings and its Subsidiaries, including the Borrowers; and "Company" means any one of them.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-1 to this Agreement delivered by the Financial Officer of Holdings or Administrative Borrower to Agent.

"Confidential Information" has the meaning specified therefor in Section 17.9(a) of this Agreement.

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "US Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.12(b)(ii) and other technical, administrative or operational matters) that Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Connection Income Taxes" means, with respect to any Person, Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes, in each case, to the extent imposed as a result of a present or former connection between such Person and the jurisdiction imposing such Tax (other than connections arising from such Person having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Consolidated EBITDA" means, at any date of determination, with respect to any fiscal period determined, in each case, on a consolidated basis in accordance with GAAP: (a) the consolidated net income (or loss) of Holdings and its Subsidiaries, minus (b) without duplication, the sum of the following amounts for such period to the extent included in determining consolidated net income (or loss) for such period: (i) unusual or non-recurring gains, and (ii) interest income, plus (c) without duplication, the sum of the following amounts for such period to the extent deducted in determining consolidated net income (or loss) for such period: (i) non-cash unusual or non-recurring losses, (ii) the aggregate of the interest expense of Holdings and its Subsidiaries for such period, (iii) income taxes, and (iv) depreciation and amortization.

"Contingent Obligation" means, as to any Person, any obligation, agreement, understanding or arrangement of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; (d) with respect to bankers' acceptances, letters of credit and similar credit arrangements, until a reimbursement obligation arises (which reimbursement obligation shall constitute Indebtedness); or (e) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term "Contingent Obligation" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or any product warranties. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable, whether singly or jointly, pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"Control Agreement" means, with respect to any Deposit Account or Securities Account in the United States, a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by a Loan Party or one of its Subsidiaries, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account) and with respect to any Deposit Account or Securities Account in Canada, a blocked account agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by a Loan Party or one of its Subsidiaries, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Controlled Investment Affiliate" means, as to any Person, any other Person which directly or indirectly is in Control of, is Controlled by, or is under common Control with, such Person and is organized by such Person (or any Person Controlling such Person) primarily for making equity or debt investments in portfolio companies of such Person.

"Copyright Security Agreement" has the meaning specified therefor in the US Security Agreement in the case of any US Loan Party or the meaning specified therefor in the Canadian Security Agreement in the case of any Canadian Loan Party.

"Covered Entity" means any of the following: (a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (b) a "covered bank" as that term is defined in,

and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning specified therefor in Section 17.18 of this Agreement.

"Default" means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Agent and Administrative Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Agent, Issuing Bank, or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two (2) Business Days of the date when due, (b) has notified any Borrower, Agent or Issuing Bank in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by Agent or Administrative Borrower, to confirm in writing to Agent and Administrative Borrower that it will comply with its prospective funding obligations hereunder (provided, that, such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Agent and Administrative Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of any Insolvency Proceeding, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; provided, that, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to Administrative Borrower, Issuing Bank, and each Lender.

"Defaulting Lender Rate" means (a) for the first three (3) days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Revolving Loans that are Base Rate Loans (inclusive of the Base Rate Margin applicable thereto).

"Deposit Account" means any deposit account (as that term is defined in the UCC) or any account maintained for the deposit of funds with a Canadian bank accepting funds for deposit in Canada.

"Designated Account" means the Deposit Accounts (Canadian Dollar and Dollar) of Administrative Borrower identified on Schedule D-1 to this Agreement (or such other Deposit Accounts of Administrative Borrower located at Designated Account Bank that has been designated as such, in writing, by Administrative Borrower to Agent).

"Designated Account Bank" has the meaning specified therefor in Schedule D-1 to the Agreement (or such other bank that is located within the United States for US Borrowers and located within Canada for Canadian Borrowers that has been designated as such, in writing, by the Administrative Borrower to Agent).

"Dilution" means, as of any date of determination, a percentage, based upon the experience of the immediately prior twelve (12) months, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to the Accounts of US Borrowers, in the case of the US Borrowing Base, or with respect to the Accounts of Canadian Borrowers, in the case of the Canadian Borrowing Base, in each case during such period, by (b) the billings of US Borrowers or Canadian Borrowers, as applicable, during such period.

"Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by the extent to which Dilution is in excess of five percent (5%).

"DIP ABL Credit Facility" means the senior secured asset-based loan facility provided by Lenders to US Borrowers as debtors and debtors-in-possession during the Chapter 11 Cases and to Canadian Borrower as debtor under the CCAA pursuant to this Agreement.

"DIP Asset Purchase Agreement" means a "stalking horse" asset purchase agreement by and among certain of the Loan Parties, as Sellers, and a purchaser, for the sale of all or substantially all of the assets of such Loan Parties, for a purchase price the cash portion of which is sufficient, and is used, to repay in full in cash the Obligations on or before the effectiveness of such sale, in form and substance reasonably acceptable to Agent.

"DIP Asset Purchase Documents" means (a) the DIP Asset Purchase Agreement and (b) all material agreements, documents and instruments, including all schedules and exhibits thereto, at any time executed and/or delivered in connection therewith.

"DIP Budget" means the initial budget prepared by or on behalf of Borrowers in the form of Annex A, as the same may be updated, modified or supplemented from time to time as provided in Section 5.20, in each case to the extent approved by Agent as set forth in Section 5.20 showing projected receipts, disbursements, net cash flow, net sales, Eligible Accounts, Eligible Inventory, payable float, loan balances and Excess Availability for the immediately following consecutive 13 weeks, set forth on a weekly basis for each of US Borrowers and Canadian Borrower, including the anticipated uses of the DIP ABL Credit Facility for such period.

"DIP Budget Compliance Certificate" means a certificate substantially in the form of Exhibit D-1 to this Agreement executed by the Financial Officer of Holdings or Administrative Borrower to Agent.

"DIP Budget Modification" has the meaning specified therefor in Section 5.20 of this Agreement.

"DIP Budget Variance Report" means a DIP Budget variance report/reconciliation prepared and delivered on Friday of each week for the prior week and for the period from the commencement of the initial DIP Budget to the end of the prior week in each case (a) showing actual results for the following items: (i) receipts, noting therein variances from values set forth for such periods in the DIP Budget,

calculated on a rolling three (3) week basis and on a cumulative basis, (ii) disbursements, noting therein variances from values set forth for such periods in the DIP Budget, calculated on a rolling three (3) week basis and on a cumulative basis, (iii) net cumulative cash flow, (iv) the Excess Availability, noting therein any variance from the amount thereof for such date set forth in the DIP Budget, and (v) the balance of Loans (and including any loans then outstanding under the Pre-Petition ABL Credit Agreement), noting therein any variance from the amount thereof for such date set forth in the DIP Budget and (b) a detailed narrative and explanation for all material variances, certified by the Financial Officer of Administrative Borrower. The DIP Budget Variance Report shall be in a form, and shall contain supporting information, satisfactory to Agent.

"DIP Measurement Period" means the first three (3) consecutive weeks commencing on the Petition Date (and including the week in which the Petition Date occurs as the first week of such three-week period and including the Friday of such first week with such initial DIP Measurement Period ending on the third Friday after the Petition Date) and each rolling three (3) consecutive week period ending on each Friday thereafter.

"Disqualified Equity Interests" means any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the Maturity Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to in (a) above, in each case, at any time on or prior to the date that is ninety-one (91) days after the Maturity Date, or (c) contains any repurchase obligation which may come into effect prior to payment in full of all Obligations (other than inchoate or contingent or reimbursable obligations for which no claim has been asserted); provided, however, that any Equity Interests that would not constitute Disqualified Equity Interests but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Equity Interests upon the occurrence of a change in control or an asset sale shall not constitute Disqualified Equity Interests if such Equity Interests provide that the issuer thereof will not redeem any such Equity Interests pursuant to such provisions prior to the repayment in full of the Obligations (other than inchoate or contingent or reimbursable obligations for which no claim has been asserted).

"Disqualified Lenders" means (a) those Persons that have been identified by name in writing by the Sponsor to Agent on or prior to the Closing Date, (b) those Persons that have been identified by name in writing by the Sponsor or any Borrower to Agent after the Closing Date and are agreed to by Agent, (c) those Persons who are competitors of any Company that are identified by name in writing by the Sponsor or any Borrower to Agent from time to time and (d) in the case of each of clauses (a), (b) and (c), any of their Affiliates (excluding bona fide debt fund Affiliates) that are either (i) identified by name in writing by the Sponsor or any Borrower to Agent from time to time or (ii) readily identifiable on the basis of such Affiliate's name; provided, that, no modification to the list of Disqualified Lenders pursuant to clauses (b), (c) or (d) shall apply to retroactively disqualify any Person who (A) previously acquired, and continues to hold, any Loans or Commitments or participations therein or (B) is party to a pending trade as of the date of such identification.

"Dollars" or "$" means United States dollars.

"Drawing Document" means any Letter of Credit or other document presented for purposes of drawing under any Letter of Credit, including by electronic transmission such as SWIFT, electronic mail, facsimile or computer generated communication.

"Earn-Outs" means unsecured liabilities of a Loan Party arising under an agreement to make any deferred payment as a part of the consideration for an Acquisition, including performance bonuses or consulting payments in any related services, employment or similar agreement, in an amount that is subject to or contingent upon the revenues, income, cash flow or profits (or the like) of the target of such Acquisition.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Accounts" means those Accounts created by a Borrower in the ordinary course of its business, that arise out of the sale of goods or rendition of services by a Borrower, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible pursuant to one or more of the criteria set forth below; provided, that, such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any information with respect to the Borrowers' business or assets of which Agent becomes aware after the Closing Date, including any field examination performed by (or on behalf of) Agent from time to time after the Closing Date. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits, unapplied cash, taxes, finance charges, service charges, discounts, credits, allowances, and rebates. Eligible Accounts shall not include the following:

(a) Accounts that the Account Debtor has failed to pay within one hundred twenty (120) days of the original invoice date or ninety (90) days of due date, except

(i) in the case of Accounts owing by Specified Account Debtors, such Accounts that such Specified Account Debtor has failed to pay within one hundred fifty (150) days of the original invoice date or one hundred twenty (120) days of the due date,

(ii) in the case of Accounts owing by Axalta or Valspar with selling terms of more than ninety (90) days, such Accounts that Axalta or Valspar, as the case may be, has failed to pay within one hundred eighty (180) days of the original invoice date or one hundred fifty (150) days of the due date, and

(iii) in the case of Accounts owing by PPG Europe with selling terms of more than ninety (90) days, such Accounts that PPG Europe has failed to pay within two hundred forty (240) days of the original invoice date or two hundred ten (210) days of the due date,

Provided, that, the aggregate amount of such Accounts owing by Axalta, Valspar and PPG Europe with selling terms of more than ninety (90) days which are subject to clauses (ii) and (iii) above that are Eligible Accounts shall not exceed $2,000,000 at any time,

(b) Accounts owed by an Account Debtor (or its Affiliates) where fifty percent (50%) or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) Accounts with selling terms of more than ninety (90) days, except

(i) in the case of Accounts owing by Specified Account Debtors, Accounts with selling terms of more than one hundred fifty (150) days of the original invoice date,

(ii) in the case of Accounts owing by Axalta or Valspar, Accounts with selling terms of more one hundred eighty (180) days of the original invoice date, and

(iii) in the case of Accounts owing by PPG Europe, Accounts with selling terms of more than two hundred forty (240) days of the original invoice date,

Provided, that, (A) the aggregate amount of such Accounts owing by Axalta, Valspar and PPG Europe subject to clauses (ii) and (iii) above that are Eligible Accounts shall not exceed $2,000,000 at any time and (B) such limitation in clause (A) shall not be construed to apply to Accounts owing by Axalta, Valspar or PPG Europe with selling terms that are ninety (90) days or less, if any,

(d) Accounts with respect to which the Account Debtor is an Affiliate of any Borrower or an employee or agent of any Borrower or any Affiliate of any Borrower, excluding, however, any Account Debtor that is an Affiliate of a Loan Party solely because such Affiliate is owned or Controlled by the Sponsor or its Affiliates so long as such transactions are on terms no less favorable to such Borrower than similar transactions with independent third parties,

(e) Accounts (i) arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional, or (ii) with respect to which the payment terms are "C.O.D.", cash on delivery or other similar terms,

(f) Accounts that are not payable in Dollars, Japanese Yen, Euros, British Pounds or Canadian Dollars,

(g) Accounts with respect to which the Account Debtor either (i) does not have a place of business in the United States, Canada, the United Kingdom or Ireland or in an Approved Tier 1 Jurisdiction or Approved Tier 2 Jurisdiction, or (ii) is not organized under (A) the laws of the United States or any state thereof, (B) the laws of Canada or any province thereof, (C) the laws of England and Wales, Scotland and Northern Ireland, (D) the laws of Ireland or (E) the laws of an Approved Tier 1 Jurisdiction or Approved Tier 2 Jurisdiction, provided, that, in the case of clauses (i) and (ii) hereof, (1) the aggregate amount of all Accounts with respect to which Account Debtors either maintain a place of business or are organized under the laws of an Approved Tier 1 Jurisdiction or Approved Tier 2 Jurisdiction that may be included as Eligible Accounts shall not exceed $7,500,000 and (2) the aggregate amount of all Accounts with respect to which Account Debtors either maintain their place of business or are organized under the laws of an Approved Tier 2 Jurisdiction that may be included as Eligible Accounts shall not exceed $2,500,000, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent,

(h) Accounts with respect to which the Account Debtor is either (i) in the case of Accounts of US Borrowers, (A) the United States or any department, agency, or instrumentality of the United States (exclusive of Accounts with respect to which Borrowers have complied, to the reasonable satisfaction of Agent, with the Assignment of Claims Act, 31 USC §3727), or (B) any state of the United States, or (ii) in the case of Accounts of Canadian Borrowers, (A) Canada or any department, agency, or instrumentality of Canada (exclusive of Accounts with respect to which Canadian Borrowers have complied, to the reasonable satisfaction of Agent, with the Financial Administration Act (Canada), as amended) or (B) any province of Canada, provided, that, up to an aggregate amount of $500,000 of Accounts for which the Assignment of Claims Act under clause (i)(A) above or the Financial Administration Act (Canada) under clause (ii)(A) have not been complied with shall not be excluded from Eligible Accounts based on this clause (h),

(i) Accounts with respect to which the Account Debtor is a creditor of a Borrower, has or has asserted a right of recoupment or setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of recoupment or setoff, or dispute,

(j) Accounts with respect to an Account Debtor whose Eligible Accounts owing to Borrowers exceed ten percent (10%) (such percentage, as applied to a particular Account Debtor, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, that, in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(k) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which any Loan Party or Agent has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(l) Accounts, the collection of which, Agent, in its Permitted Discretion, believes to be doubtful, including by reason of the Account Debtor's financial condition,

(m) Accounts that are not subject to a valid and perfected first priority Agent's Lien,

(n) Accounts with respect to which (i) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor,

(o) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity,

(p) Accounts (i) that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by the applicable Borrower of the subject contract for goods or services, or (ii) that represent credit card sales,

(q) Accounts owing by an Account Debtor whose Accounts are sold or may be sold pursuant to a Permitted Supply Chain Financing, except for such Accounts that may be sold subject to the following conditions: (i) the aggregate amount of such Accounts that may be Eligible Accounts shall not exceed $3,500,000 at any time, (ii) Agent shall have received weekly reports of the amount of such Accounts owing to such Borrower and such other information with respect thereto as may be reasonably requested by Agent, (iii) Agent shall have received an agreement, in form and substance reasonably

satisfactory to Agent, by and among Agent the purchaser of Accounts under the applicable Permitted Supply Chain Financing, (iv) all payments in respect of such Accounts shall be paid to a Collection Account and (v) such Account has not been sold,

(r) Accounts owned by a Person acquired in connection with an Acquisition or Permitted Investment, or Accounts owned by a Person that is joined to this Agreement as a Borrower pursuant to the provisions of this Agreement, until the completion of a field examination with respect to such Accounts, in each case, satisfactory to Agent in its Permitted Discretion.

"Eligible In-Transit Inventory" means those items of Inventory that do not qualify as Eligible Inventory solely because they are not in a location set forth on Schedule 4.25 to this Agreement (as such Schedule 4.25 may be amended from time to time with the prior written consent of Agent) or in transit among such locations and a Borrower does not have actual and exclusive possession thereof, but as to which,

(a) such Inventory currently is in transit (whether by vessel, air, or land) from a location outside of the continental United States to a location set forth on Schedule 4.25 to this Agreement (as such Schedule 4.25 may be amended from time to time with the prior written consent of Agent),

(b) title to such Inventory has passed to a Borrower and Agent shall have received such evidence thereof as it may from time to time require,

(c) such Inventory is insured against types of loss, damage, hazards, and risks, and in amounts, satisfactory to Agent in its Permitted Discretion, and Agent shall have received a copy of the certificate of marine cargo insurance in connection therewith in which it has been named as an additional insured and loss payee in a manner reasonably acceptable to Agent (and Agent confirms that the marine cargo insurance as set forth in the certificate with respect thereto received by Agent prior to the date hereof is satisfactory),

(d) unless Agent otherwise agrees in writing, such Inventory either:

(i) is the subject of a negotiable bill of lading governed by the laws of a state within the United States or a province of Canada (A) that is consigned to Agent or one of its Freight Forwarders (either directly or by means of endorsements), (B) that was issued by the carrier (including a non-vessel operating common carrier) in possession of the Inventory that is subject to such bill of lading, and (C) that either is in the possession of Agent or a Freight Forwarder (in each case in the continental United States or Canada), or

(ii) is the subject of a negotiable forwarder's cargo receipt governed by the laws of a state within the United States or province of Canada and is not the subject of a bill of lading (other than a negotiable bill of lading consigned to, and in the possession of, a consolidator or Agent, or their respective agents) and such negotiable cargo receipt on its face indicates the name of the Freight Forwarder as a carrier or multimodal transport operator and has been signed or otherwise authenticated by it in such capacity or as a named agent for or on behalf of the carrier or multimodal transport operator, in any case respecting such Inventory (A) consigned to Agent or one of its Freight Forwarders that is handling the importing, shipping and delivery of such Inventory (either directly or by means of endorsements), (B) that was issued by a consolidator respecting the subject Inventory, and (C) that is in the possession of Agent or a Freight Forwarder (in each case in the continental United States or Canada),

(e) such Inventory is in the possession of a common carrier (including on behalf of any non-vessel operating common carrier) that has issued the bill of lading or other document of title with respect thereto or the Freight Forwarder handling the importing, shipping and delivery of such Inventory;

(f) the documents of title related thereto are subject to the valid and perfected first priority Lien of Agent, subject to the Permitted Lien of the carrier in possession of the Inventory subject to such document of title to secure the amounts due to such carrier in connection with the delivery of such Inventory or the Freight Forwarder handling the importing, shipping and delivery of such Inventory to secure the amounts due to such Freight Forwarder in connection therewith;

(g) Agent determines that such Inventory is not subject to (i) any Person's right of reclamation, repudiation, stoppage in transit or diversion or (ii) any other right or claim of any other Person which is (or is capable of being) senior to, or pari passu with, the Lien of Agent (other than the Liens of the carrier or Freight Forwarder described in clause (f) above or Permitted Liens under clause (a) or (s) of the definition of Permitted Liens) or Agent determines that any Person's right or claim impairs, or interferes with, directly or indirectly, the ability of Agent to realize on, or reduces the amount that Agent may realize from the sale or other disposition of such Inventory;

(h) Administrative Borrower has provided (i) a certificate to Agent that certifies that, to the best knowledge of such Borrower, such Inventory meets all of Borrowers' representations and warranties contained in the Loan Documents concerning Eligible In-Transit Inventory, that it knows of no reason why such Inventory would not be accepted by such Borrower when it arrives in the continental United States or Canada and that the shipment as evidenced by the documents conforms to the related order documents, and (ii) upon Agent's request, a copy of the invoice, packing slip and manifest with respect thereto,

(i) such Inventory is subject to a Letter of Credit, or

(j) such Inventory shall not have been in transit for more than sixty (60) days.

"Eligible Inventory" means Inventory of a Borrower consisting of first quality finished goods held for sale in the ordinary course of such Borrower's business, raw materials used in the production of such goods and work-in-process for such goods, that complies with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded as ineligible pursuant to one or more of the criteria set forth below; provided, that, such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any information with respect to the Borrowers' business or assets of which Agent becomes aware after the Closing Date, including any field examination or appraisal performed or received by Agent from time to time after the Closing Date. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices. An item of Inventory shall not be included in Eligible Inventory if:

(a) a Borrower does not have good, valid, and marketable title thereto,

(b) a Borrower does not have actual and exclusive possession thereof (either directly or through a bailee or agent of a Borrower),

(c) it is at a location other than (i) one of the locations in the continental United States set forth on Schedule 4.25 to this Agreement in the case of US Borrowers or at one of the locations in Canada set forth on Schedule 4.25 to this Agreement in the case of Canadian Borrowers (as such Schedule 4.25 may be amended from time to time with the prior written consent of Agent) (or in-transit from one such

location to another such location), (ii) in-transit to or from a location of a Borrower (other than in-transit from one location set forth on Schedule 4.25 to this Agreement to another location set forth on Schedule 4.25 to this Agreement (as such Schedule 4.25 may be amended from time to time with the prior written consent of Agent)), provided, that, if it is at a location leased by a Borrower or in a contract warehouse or with a bailee, within sixty (60) days from and including the Closing Date (or such later date as may be agreed by Agent but in no event to exceed ninety (90) days), either (A) Agent shall have received a Collateral Access Agreement executed by the lessor or warehouseman, as the case may be, and in the case of a warehouse or bailee, it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises, or (B) Agent shall have established a Landlord Reserve with respect to such location,

(d) it is stored at locations holding less than $50,000 of the aggregate value of such Borrower's Inventory,

(e) it is the subject of a bill of lading or other document of title,

(f) it is not subject to a valid and perfected first priority Agent's Lien (except as to priority to the extent it is subject to a Permitted Lien under clauses (a) or (b) of the definition of the term Permitted Lien for which Reserves have been established pursuant to Section 2.1(e)),

(g) it consists of goods returned or rejected by a Borrower's customers, unless (i) such goods are in salable condition and maybe sold as first quality and unused Inventory by a Borrower in the ordinary course of its business to its customer and (ii) such goods are not restrictive or custom items or otherwise manufactured or processed in accordance with customer specific requirements,

(h) it consists of goods that are obsolete, spoiled or are otherwise past the stated expiration, "sell-by" or "use by" date applicable thereto, goods that constitute spare parts, packaging and shipping materials, supplies used or consumed in Borrowers' business, bill and hold goods (unless Agent has received a bill and hold letter in form and substance reasonably satisfactory to Agent duly executed and delivered by the applicable customer), defective goods, "seconds," or Inventory acquired on consignment,

(i) it is subject to third party Intellectual Property, licensing or other proprietary rights, unless Agent is satisfied that such Inventory can be freely sold by Agent on and after the occurrence of an Event of a Default despite such third party rights (without Agent infringing any rights of, or incurring any liability to, or giving any rights to terminate any of such rights of such third party, to any licensor or owner of such third party rights or any other Person),

(j) in the case of Eligible Inventory consisting of work-in-process (except in the case of Eligible Inventory consisting of work-in-process produced by DCL BP), such Inventory is not work-in-process for more than seven (7) Business Days, or

(k) it was acquired in connection with an Acquisition or Permitted Investment, or such Inventory is owned by a Person that is joined to this Agreement as a Borrower pursuant to the provisions of this Agreement, until the completion of an Acceptable Appraisal of such Inventory and the completion of a field examination with respect to such Inventory that is satisfactory to Agent in its Permitted Discretion (which appraisal and field examination may be conducted prior to the closing of the Acquisition or Permitted Investment or other purchase).

"Eligible Supply Chain Receivable" means those Supply Chain Receivables that arise out of the sale of Accounts by a Borrower to the applicable Supply Chain Purchaser under a Permitted Supply Chain Financing that are not excluded as ineligible pursuant to one or more of the criteria set forth below;

provided, that, such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any information with respect to the Borrowers' business or assets of which Agent becomes aware after the Closing Date, including any field examination performed by (or on behalf of) Agent from time to time after the Closing Date. In determining the amount to be included, Eligible Supply Chain Receivables shall be calculated net of any taxes, finance charges, service charges, discounts, credits, allowances, charges, commissions, fees, chargebacks, accruals, deductions, setoffs and other amounts payable to such Supply Chain Purchaser. Eligible Supply Chain Receivables shall not include the following:

(a) Supply Chain Receivables that are unpaid after the date specified for payment under the terms of the applicable agreements with respect thereto for such amounts, but in any event if unpaid more than ten (10) Business Days after the date of the sale giving rise to such Supply Chain Receivable,

(b) Supply Chain Receivables that are not subject to the first priority, valid and perfected security interest of Agent,

(c) the agreements of such Borrower with the Supply Chain Purchaser obligated on such Supply Chain Receivable shall be in full force and effect and each party to such agreements with the Supply Chain Purchaser shall be in compliance with the terms and conditions thereof and no breach of such terms or default or event of default thereunder shall exist or have occurred,

(d) the Supply Chain Purchaser obligated in respect of such Supply Chain Receivable shall not have sent any notice of default or of the failure of such Borrower to comply with any of the terms of the applicable agreements relating to the Permitted Supply Chain Financing (which default has not been waived in writing by such Supply Chain Purchaser) or shall have otherwise notified any Borrower of the intention of such Supply Chain Purchaser to cease or suspend payments to such Borrower in respect of the Supply Chain Receivables,

(e) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of such Supply Chain Receivables or delay payment thereunder,

(f) the Accounts of such Borrower sold giving rise to such Supply Chain Receivables satisfy all of the conditions for the purchase thereof by the applicable Supply Chain Purchaser obligated thereon and the approval and acceptance of such sale by such Supply Chain Purchaser in accordance with the terms of the applicable Permitted Supply Chain Financing and shall not be subject to any chargeback or other right of such Supply Chain Purchaser to reassign such Account to such Borrower or require such Borrower to repurchase such Account (whether or not such Supply Chain Purchaser exercises such right to reassign or require the repurchase thereof, except for the right of Wells Fargo under the Permitted Supply Chain Financing to which it is a party to require the repurchase if the applicable Account does not satisfy the conditions for the purchase thereof under the terms of such arrangements) or obligation of such Borrower to pay the amount of such Account to such Supply Chain Purchaser, whether because the goods sold giving rise to such Account have been rejected or returned by the account debtor owing such Account or otherwise,

(g) Supply Chain Receivables which are not a valid, legally enforceable obligation of the applicable Supply Chain Purchaser,

(h) Agent shall have received weekly reports of the Supply Chain Receivables and such other information with respect thereto as may be reasonably requested by Agent,

(i) Agent shall have received an agreement, in form and substance reasonably satisfactory to Agent, by and among Agent, the purchaser of Accounts under the applicable Permitted Supply Chain Financing and Borrowers,

(j) within sixty (60) days from and including the Closing Date (or such later date as may be agreed by Agent but in no event to exceed ninety (90) days), all payments in respect of the Supply Chain Receivables shall only be paid to a Collection Account.

"Eligible Transferee" means (a) any Lender (other than a Defaulting Lender), any Affiliate of any Lender and any Related Fund of any Lender; and (b) (i) a commercial bank organized under the laws of the United States or any state thereof or Canada, and having total assets in excess of $1,000,000,000; (ii) a savings and loan association or savings bank organized under the laws of the United States or any state thereof, and having total assets in excess of $1,000,000,000; (iii) a commercial bank organized under the laws of any other country or a political subdivision thereof; provided, that, (A) (x) such bank is acting through a branch or agency located in the United States or Canada or (y) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country, and (B) such bank has total assets in excess of $1,000,000,000; (c) any other entity (other than a natural person) that is an "accredited investor" (as defined in Regulation D under the Securities Act) that extends credit or buys loans as one of its businesses including insurance companies, investment or mutual funds and lease financing companies, and having total assets in excess of $1,000,000,000; and (d) during the continuation of an Event of Default, any other Person approved by Agent; provided, that, no Sponsor Affiliated Entity or Disqualified Lender shall qualify as an Eligible Transferee.

"Employee Benefit Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA (but not including a Canadian Pension Plan), (a) that is or within the preceding six (6) years has been sponsored, maintained or contributed to by any Loan Party or ERISA Affiliate or (b) to which any Loan Party or ERISA Affiliate has, or has had at any time within the preceding six (6) years, any liability, contingent or otherwise.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of any Borrower, any Subsidiary of any Borrower, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Borrower, any Subsidiary of any Borrower, or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on any Loan Party or its Subsidiaries, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"Environmental Liabilities" means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities.

"Equipment" means equipment (as that term is defined in the UCC, or the extent applicable, the PPSA).

"Equity Interests" means, with respect to a Person, all of the shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

"ERISA Affiliate" means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of any Loan Party or its Subsidiaries under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of any Loan Party or its Subsidiaries under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which any Loan Party or any of its Subsidiaries is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any Person subject to ERISA that is a party to an arrangement with any Loan Party or any of its Subsidiaries and whose employees are aggregated with the employees of such Loan Party or its Subsidiaries under IRC Section 414(o).

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"European Intercompany Agreement" means the Intercompany Agreement, dated as of December [__], 2022, by and among DCL USA, DCL Canada, DCL UK and DCL BV.

"Event of Default" has the meaning specified therefor in Section 8 of this Agreement.

"Excess" has the meaning specified therefor in Section 2.14 of this Agreement.

"Excess Availability" means at any time, the amount equal to (a) the lesser of the Combined Borrowing Base or the Maximum Credit minus (b) the Revolver Usage, plus in accordance with Agent's customary practices, past due payables that have accrued and are payable following the Petition Date owed to persons that are not Affiliates of Borrowers that are past due by more than sixty (60) days as of the end of the immediately preceding month or at such other time based on information provided to Agent with respect thereto (and with the due date determined in accordance with customary practices and other than payables being contested or disputed by Borrowers in good faith).

"Exchange Act" means the Securities Exchange Act of 1934, as in effect from time to time.

"Exchange Rate" means on any date, as determined by Agent, the spot selling rate posted by Reuters on its website for the sale of the applicable currency for US Dollars at approximately 11:00 a.m., two (2) days prior to such date; provided, that, if, for any reason, no such spot selling rate is being quoted, the spot selling rate shall be determined by reference to such publicly available service for displaying exchange rates as may be reasonably selected by Agent, or, in the event no such service is available, such

spot selling rate shall instead be the rate reasonably determined by Agent as the spot rate of exchange in the market where its foreign currency exchange operations in respect of the applicable currency are then being conducted, at or about 11:00 a.m., on the applicable date for the purchase of the relevant currency for delivery two (2) Business Days later.

"Excluded Subsidiary" means

(a) any Immaterial Subsidiary (provided, that, to the extent any such Subsidiary no longer qualifies as an Immaterial Subsidiary, such Subsidiary shall cease to be an Excluded Subsidiary by virtue of this clause (a)),

(b) any Subsidiary existing on or acquired after the Closing Date to the extent that, and for so long as, such Subsidiary is prohibited by operation of applicable law from guaranteeing the Obligations, so long as such prohibition did not arise as part of or in contemplation of the Closing Date or the acquisition thereof,

(c) any Subsidiary existing on or acquired after the Closing Date to the extent that and for so long as, the guarantee of the Obligations by such Subsidiary would require the consent, approval, license or authorization of a Governmental Authority or under any contractual obligation, not entered into in anticipation or contemplation of such guarantee, with any Person other than any Company or any of its Affiliates, which consent, approval, license or authorization has not been obtained,

(d) any Subsidiary to the extent that Agent and Administrative Borrower shall have reasonably determined that the cost and/or burden of obtaining a guarantee of the Obligations from such Subsidiary outweigh the benefit to the Lenders, as evidenced by a writing from Agent to Administrative Borrower,

(e) any Subsidiary to the extent Agent has consented to the designation of such Subsidiary as an Excluded Subsidiary, as evidenced by a writing from Agent to Administrative Borrower,

(f) any special purpose entity that has no direct or indirect Subsidiaries other than other special purpose entities, and

(g) any direct or indirect Subsidiary organized under the laws of a jurisdiction outside of the United States or Canada that is a Subsidiary that is an Excluded Subsidiary pursuant to clauses (a) through (f) above.

Upon any such Subsidiary ceasing to be an Excluded Subsidiary, such Subsidiary shall comply with Section 5.11, to the extent applicable. Notwithstanding the foregoing, no Subsidiary will be an "Excluded Subsidiary" hereunder if such Subsidiary guarantees any obligations under the Pre-Petition Term Loan Documents or any subordinated Indebtedness of any Loan Party (other than, in the case of any Excluded Subsidiary described in clause (b) above, any subordinated Indebtedness incurred by a Foreign Subsidiary and permitted under this Agreement).

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Loan Party of (including by virtue of the joint and several liability provisions of Section 2.15), or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the

regulations thereunder at the time the guaranty of such Loan Party or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty or security interest is or becomes illegal.

"Excluded Taxes" means (i) any tax imposed on the net income or net profits of any Lender or any Participant (including any branch profits taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender or such Participant is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender's or such Participant's principal office (or lending office in the case of a Lender) is located or as a result of a present or former connection between such Lender or such Participant and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from such Lender or such Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under this Agreement or any other Loan Document), (ii) United States federal withholding taxes that would not have been imposed but for a Lender's or a Participant's failure to comply with the requirements of Section 16.2 of this Agreement, (iii) any United States federal withholding taxes that would be imposed on amounts payable to a Foreign Lender based upon the applicable withholding rate in effect at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office, other than a designation made at the request of a Loan Party), except that Excluded Taxes shall not include (A) any amount that such Foreign Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 16.1 of this Agreement, if any, with respect to such withholding tax at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), and (B) additional United States federal withholding taxes that may be imposed after the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, treaty, order or other decision or other Change in Law with respect to any of the foregoing by any Governmental Authority, and (iv) any United States federal withholding taxes imposed under FATCA.

"Existing Letters of Credit" means the letters of credit issued under the Pre-Petition ABL Credit Facility set forth on Schedule E-1.

"Extraordinary Receipts" means (a) so long as no Event of Default has occurred and is continuing, net proceeds of judgments, proceeds of settlements, or other consideration of any kind received in connection with any cause of action or claim, and (b) if an Event of Default has occurred and is continuing, any payments received by any Loan Party or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds constituting Excluded Collateral) consisting of (i) proceeds of judgments, proceeds of settlements, or other consideration of any kind received in connection with any cause of action or claim (and not consisting of proceeds constituting Excluded Collateral, but including proceeds of business interruption insurance), (ii) indemnity payments (other than to the extent such indemnity payments are immediately payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries, and (iii) any purchase price adjustment received in connection with any purchase agreement.

"FATCA" means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and (a) any current or future regulations or official interpretations thereof, (b) any agreements entered into pursuant to Section 1471(b)(1) of the IRC, and (c) any intergovernmental agreement entered into by the United States (or any fiscal or regulatory legislation, rules, or practices adopted pursuant to any such intergovernmental agreement entered into in connection therewith).

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

"Fee Letter" means the fee letter, dated of even date herewith, among Loan Parties and Agent, in form and substance reasonably satisfactory to Agent.

"Final US Financing Order" means the order of the US Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as are approved by the US Bankruptcy Court, which order shall be satisfactory in form and substance to Agent, and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal or motion to reconsider has been dismissed or denied with no further appeal and the time for filing such appeal has passed (unless Agent waives such requirement), together with all extensions, modifications, and amendments thereto, in form and substance satisfactory to Agent, which, among other matters but not by way of limitation, authorizes the Loan Parties to obtain credit, incur (or guaranty) Indebtedness, and grant Liens under this Agreement and the other Loan Documents, as the case may be, and provides for the super-priority status of the claims of Agent and Lenders.

"Financial Advisor" has the meaning specified therefor in Section 5.18 of this Agreement.

"Financial Officer" of any Person means the chief executive officer, president, chief financial officer, principal accounting officer, treasurer, controller or senior vice president of finance of such Person.

"Financing Orders" means (a) until entry of the Final US Financing Order, the Interim US Financing Order and after the entry of the Final US Financing Order, the Final US Financing Order, or the Interim US Financing Order and the Final US Financing Order and (b) until entry of the Amended Initial CCAA Order, the Initial CCAA Order, and after the entry of the Amended Initial CCAA Order, the Amended Initial CCAA Order, or the Initial CCAA Order and the Amended Initial CCAA Order.

"Floor" means a rate of interest equal to zero percent (0%).

"Foreign Lender" means (a) with respect to any US Borrower, any Lender or Participant that is not a United States person within the meaning of Section 7701(a)(30) of the IRC and (b) with respect to any Canadian Borrower, a Lender or Participant that is organized under the laws of a jurisdiction other than Canada.

"Foreign Subsidiary" means any direct or indirect subsidiary of any Loan Party that is organized under the laws of any jurisdiction other than the United States, any state thereof or the District of Columbia or other than Canada or any province thereof.

"Freight Forwarders" means the persons listed on Schedule F-2 hereto or such other person or persons as may be selected by Administrative Borrower after the date hereof and after written notice by Administrative Borrower to Agent who are reasonably acceptable to Agent to handle the receipt of

Inventory within the United States or to clear Inventory through the Bureau of Customs and Border Protection or other domestic or foreign export control authorities or otherwise perform port of entry services to process Inventory imported by a Borrower from outside the United States (such persons sometimes being referred to herein individually as a "Freight Forwarder"), provided, that, as to each such person, (a) Agent shall have received a Freight Forwarder agreement by such person in favor of Agent (in form and substance satisfactory to Agent) duly authorized, executed and delivered by such person, (b) such agreement shall be in full force and effect and (c) such person shall be in compliance in all material respects with the terms thereof.

"FSRA" means the Financial Services Regulatory Authority of Ontario and any Person succeeding to the functions thereof and includes the Chief Executive Officer under such statute and any other Governmental Authority empowered or created by the Pension Benefits Act (Ontario) or any Governmental Authority of any other Canadian jurisdiction exercising similar functions in respect of any Canadian Pension Plan of the Loan Parties or any of their Subsidiaries and any Governmental Authority succeeding to the functions thereof.

"Funding Date" means the date on which a Borrowing occurs.

"Funding Losses" has the meaning specified therefor in Section 2.12(b)(ii) of this Agreement.

"GAAP" means (a) when used in reference to the Canadian Borrower and its Subsidiaries, the Accounting Standards for Private Enterprises (ASPE) in Canada from time to time established by the Canadian Accounting Standards Board applied on a consistent basis, (b) when used in reference to DCL BV, generally accepted accounting principles as in effect in the Netherlands from time to time (including IFRS if so in effect at the time of determination), and (c) when used in any other context, generally accepted accounting principles in the United States applied on a consistent basis. "IFRS" means generally accepted international accounting standards as from time to time set forth in the statements of International Accounting Standards issued by the International Accounting Standards Board

"Governmental Authority" means the government of any nation or any political subdivision thereof, whether at the national, state, territorial, provincial, county, municipal or any other level, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of, or pertaining to, government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantor" means (a) each Person that guaranties all or a portion of the Obligations, including Holdings and any Person that is a "Guarantor" under the US Security Agreement or the Canadian Security Agreement, and (b) each other Person that becomes a guarantor after the Closing Date pursuant to Section 5.11 of this Agreement.

"Hazardous Materials" means the following: hazardous substances; hazardous wastes; polychlorinated biphenyls ("PCBs") or any substance or compound containing PCBs; asbestos or any asbestos-containing materials in any form or condition; radon or any other radioactive materials; petroleum, crude oil or any fraction thereof; and any other pollutant or contaminant or chemicals, wastes, materials, compounds, constituents or substances, regulated under any Environmental Laws.

"Hedge Agreement" means a "swap agreement" as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

"Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of each Loan Party and its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

"Hedge Provider" means Wells Fargo or any of its Affiliates.

"Holdings" means H.I.G. Colors, Inc., a Delaware corporation.

"Immaterial Subsidiary" means any Subsidiary that

(a) did not (i) as of the last day of the fiscal quarter of Holdings most recently ended for which financial statements are required to be delivered pursuant to Section 5.1 or, as of the Closing Date, the most recent financial statements delivered prior to the Closing Date, have assets (on an individual basis) with a value in excess of two and one-half percent (2.5%) of the consolidated total assets (of the Companies on a consolidated basis) or (ii) generate Consolidated EBITDA or revenues (in each case, on an individual basis) for the Test Period ending on the date referred to in clause (i) above representing in excess of two and one-half percent (2.5%) of Consolidated EBITDA or revenues (in each case, of the Companies on a consolidated basis) for such Test Period and

(b) did not (i) as of the last day of the fiscal quarter of Holdings most recently ended for which financial statements are required to be delivered pursuant to Section 5.1 (or, as of the Closing Date, the most recent financial statements delivered prior to the Closing Date), together with all other Immaterial Subsidiaries, have assets with a value in excess of five percent (5.0%) of consolidated total assets (of the Companies on a consolidated basis) for the Test Period ending on the date referred to in clause (i) above, or (ii) generate, together with all other Immaterial Subsidiaries, Consolidated EBITDA or revenues representing in excess of five percent (5.0%) of Consolidated EBITDA or revenues (in each case, of the Companies on a consolidated basis) for such Test Period;

provided, that, (A) as of the last day of the fiscal quarter of Holdings most recently ended for which financial statements are required to be delivered pursuant to Section 5.1 (or, as of the Closing Date, the most recent financial statements delivered prior to the Closing Date), the consolidated total assets, Consolidated EBITDA and revenues of all Subsidiaries so designated by the Borrowers as "Immaterial Subsidiaries" shall have, as of the last day of such fiscal year, exceeded the limits set forth in clause (a) or (b) above, then within ten (10) Business Days after the date such financial statements are so delivered (or so required to be delivered), the Borrowers shall redesignate one or more Immaterial Subsidiaries by written notice to Agent, such that, as a result thereof, the consolidated total assets, Consolidated EBITDA and revenues of all Subsidiaries that are still designated as "Immaterial Subsidiaries" do not exceed such limits and (B) the status of any such Subsidiary as an Immaterial Subsidiary shall at all times be the same under the Pre-Petition Term Loan Documents and this Agreement. Upon any such Subsidiary ceasing to be an Immaterial Subsidiary pursuant to the preceding sentence, such Subsidiary shall comply with Section 5.11, to the extent applicable.

"Indebtedness" as to any Person means (a) all obligations of such Person for borrowed money or advances; (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person; (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business and not overdue, and purchase price adjustments, working capital adjustments or escrow adjustments pursuant to any Acquisition documents); (e) all Indebtedness of others secured by any Lien on property owned or acquired by such Person, whether or not the obligations

secured thereby have been assumed, but limited to the fair market value of such property; (f) all Capitalized Lease Obligations, Purchase Money Obligations and synthetic lease obligations of such Person; (g) all monetary obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination); (h) all Attributable Indebtedness of such Person; (i) all obligations of such Person for the reimbursement of any obligor in respect of letters of credit, letters of guaranty, bankers' acceptances and similar credit transactions; (j) any Disqualified Equity Interests of such Person, and (k) all Contingent Obligations of such Person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (j) above. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except (other than in the case of general partner liability) to the extent that terms of such Indebtedness expressly provide that such Person is not liable therefor. Notwithstanding the foregoing, Indebtedness shall be deemed not to include (i) Contingent Obligations incurred in the ordinary course of business and which relate to Indebtedness that is otherwise permitted by this Agreement, (ii) prepaid or deferred revenue arising in the ordinary course of business, and (iii) any Earn-Out or similar obligation until such obligation has not been paid in cash when earned and due and such obligation is reflected as a liability on the balance sheet of such Person in accordance with GAAP.

"Indemnified Liabilities" has the meaning specified therefor in Section 10.3 of this Agreement.

"Indemnified Person" has the meaning specified therefor in Section 10.3 of this Agreement.

"Indemnified Taxes" means, (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of, any Loan Party under any Loan Document, and (b) to the extent not otherwise described in the foregoing clause (a), Other Taxes.

"Independent Financial Advisor" means an accounting, appraisal or investment banking firm of nationally recognized standing that is, in the reasonable judgment of Holdings' Board of Directors, qualified to perform the task for which it has been engaged and disinterested and independent with respect to the Loan Parties and their respective Affiliates.

"Initial CCAA Order" means the order by the Canadian Bankruptcy Court commencing the CCAA Case and, inter alia, authorizing the secured financing under the DIP ABL Credit Facility on the terms and conditions contemplated by this Agreement and otherwise in form and substance satisfactory to Agent and, inter alia, including the approval of the DIP ABL Credit Facility, authorizing Agent and Lenders to make the Revolving Loans and provide Letters of Credit, authorizing and granting a charge in favor of Agent on the Collateral of Canadian Borrower, providing that the charge shall have priority on the Collateral of Canadian Borrower as provided for in this Agreement, and granting a super-priority secured claim to Agent and Lenders with respect to all Obligations, subject only to the Administration Charge.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code, the BIA, the CCAA or under any other state, provincial or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Intellectual Property" means any and all (a) rights in any copyrightable works of authorship, including (i) copyrights and moral rights, (ii) copyright registrations and recordings thereof and all applications in connection therewith, and (iii) all of each Loan Party's rights corresponding thereto

throughout the world, (b) patents and patent applications, industrial designs and industrial design applications, continuations, divisionals, continuations-in-part, re-examinations, reissues, and renewals thereof and improvements thereon, and all of each Loan Party's rights corresponding thereto throughout the world, (c) trademarks, trade names, domain names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including the goodwill of each Loan Party's business symbolized by the foregoing or connected therewith, and all of each Loan Party's rights corresponding thereto throughout the world, and (d) trade secrets and all other confidential or proprietary information and know-how, whether or not such trade secret has been reduced to a writing or other tangible form.

"Intercompany Note" means the Intercompany Note, dated as of April 6, 2018, by and among Holdings and its Subsidiaries.

"Intercompany Subordination Agreement" means the Intercompany Subordination Agreement, dated of even date herewith, executed and delivered by Holdings and its Subsidiaries and Agent, the form and substance of which is reasonably satisfactory to Agent.

"Intercreditor Agreement" means the Intercreditor Agreement, dated as of April 25, 2018, by and between Pre-Petition ABL Agent and Pre-Petition Term Loan Agent, as acknowledged by the Loan Parties.

"Interest Period" means, with respect to any SOFR Loan or Canadian BA Rate Loan, a period commencing on the date of the making of such SOFR Loan (or the continuation of a SOFR Loan or the conversion of a Base Rate Loan to a SOFR Loan) or such Canadian BA Rate Loan (or the continuation of a Canadian BA Rate Loan or the conversion of a Canadian Base Rate Loan to a Canadian BA Rate Loan) and in each case ending one (1) or three (3) months thereafter; provided, that, (a) interest shall accrue at the applicable rate based upon Adjusted Term SOFR or the Canadian BA Rate (as applicable) from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (b) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (c) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is one (1) or three (3) months after the date on which the Interest Period began, as applicable, (d) Borrowers may not elect an Interest Period which will end after the Stated Maturity Date and (e) no tenor that has been removed from this definition pursuant to Section 2.12(d)(iii)(D) shall be available for specification in any SOFR Notice or conversion or continuation notice.

"Interim US Financing Order" means the interim order of the US Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing (assuming satisfaction of the standard prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable Law), together with all extensions, modifications, and amendments thereto, on the terms and conditions contemplated by this Agreement and the other Loan Documents, and otherwise in form and substance satisfactory to Agent and, inter alia, modifying the automatic stay, authorizing and granting the security interests and liens provided for herein and in the other Loan Documents, granting a super-priority administrative expense claim to Agent and Lenders with respect to all Obligations and authorizing, on an interim basis, the Loan Parties to execute and perform under the terms of this Agreement and the other Loan Documents.

"Inventory" means inventory (as that term is defined in the UCC or, to the extent applicable, the PPSA).

"Inventory Reserves" means, as of any date of determination, (a) Landlord Reserves, and (b) those reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(d), to establish and maintain, without duplication of other reserves (including reserves for slow moving Inventory and Inventory shrinkage) with respect to Eligible Inventory or the Maximum Credit, including based on the results of appraisals.

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, (b) bona fide accounts receivable arising in the ordinary course of business, and (c) trade credit made in the ordinary course of business), purchases or other acquisitions of Indebtedness, Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustment for increases or decreases in value, or write-ups, write-downs, or write-offs with respect to such Investment.

"Investment Bank" means TM Capital Corp., together with any replacement or successor investment bank retained by a Loan Party with the consent of Agent (not to be unreasonably withheld).

"Investment Bank Engagement Letter" has the meaning specified therefor forth in Section 5.18 of this Agreement.

"Investment Bank Report" has the meaning specified therefor in Section 5.2 of this Agreement.

"IRC" means the Internal Revenue Code of 1986, as amended and any successor statutes thereto.

"ISP" means, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any version or revision thereof accepted by the Issuing Bank for use.

"Issuer Document" means, with respect to any Letter of Credit, a letter of credit application, a letter of credit agreement, or any other document, agreement or instrument entered into (or to be entered into) by a Borrower in favor of Issuing Bank and relating to such Letter of Credit.

"Issuing Bank" means Wells Fargo or any other Lender that, at the request of Borrowers and with the consent of Agent, agrees, in such Lender's sole discretion, to become an Issuing Bank for the purpose of issuing Letters of Credit or Canadian Reimbursement Undertakings pursuant to Section 2.11 of this Agreement, and Issuing Bank shall be a Lender. Canadian Issuing Lender shall also be deemed to be an Issuing Bank. As of the date of this Agreement, Wells Fargo Canada is the only Lender authorized to issue Canadian Reimbursement Undertakings.

"Joinder" means a joinder agreement substantially in the form of Exhibit J-1 to this Agreement.

"Judgment Currency" has the meaning specified therefor in Section 17.15 of this Agreement.

"KNRV Note" means the promissory note that may be issued by KNRV Investments Inc., a corporation organized under the laws of Ontario, Canada, in a maximum principal amount not to exceed Cdn$175,000 payable to DCL Canada after the date hereof in accordance with the terms of the Restructuring Indemnity Agreement, dated as of April 6, 2018, by and among Holdings, DCL Canada and KNRV Investments, Inc.

"Landlord Reserve" means, as to each location at which a Borrower has Inventory or books and records located and as to which a Collateral Access Agreement has not been received by Agent, a reserve in an amount equal to three (3) months' rent, storage charges, fees or other amounts under the lease or other applicable agreement relative to such location or, if greater and Agent so elects, the number of months' rent, storage charges, fess or other amounts for which the landlord, bailee, warehouseman or other property owner will have, under applicable law, a Lien in the Inventory of such Borrower to secure the payment of such amounts under the lease or other applicable agreement relative to such location.

"Lansco Acquisition Seller Note" means the Subordinated Promissory Note, dated April 6, 2018, issued by Holdings payable to Landers-Segal Color Co., in the original principal amount of $5,200,000.

"Laws" means, collectively, all international, foreign, federal, provincial, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lender" has the meaning set forth in the preamble to this Agreement, shall include Issuing Bank and the Swing Lender, and shall also include any other Person made a party to this Agreement pursuant to the provisions of Section 13.1 of this Agreement and "Lenders" means each of the Lenders or any one or more of them.

"Lender Group" means each of the Lenders (including Issuing Bank and the Swing Lender) and Agent, or any one or more of them.

"Lender Group Expenses" means all (a) reasonable, documented (if available) out-of-pocket costs or expenses (including taxes and insurance premiums) required to be paid by any Loan Party under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group, (b) reasonable, documented out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group's transactions with each Loan Party and its Subsidiaries under any of the Loan Documents, any Financing Order or any transaction contemplated thereby, including, photocopying, notarization, couriers and messengers, telecommunication, public record searches, filing fees, recording fees, publication, real estate surveys, real estate title policies and endorsements, and environmental audits, (c) Agent's customary fees and charges imposed or incurred in connection with any background checks or OFAC/PEP searches related to any Loan Party or its Subsidiaries, (d) Agent's customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of any Borrower (whether by wire transfer or otherwise), together with any reasonable, documented (if available) out-of-pocket costs and expenses incurred in connection therewith, (e) customary charges imposed or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (f) reasonable, documented out-of-pocket costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (g) field examination, appraisal, and valuation fees and expenses of Agent related to any field examinations, appraisals, or valuation to the extent of the fees and charges (and up to the amount of any limitation) provided in Section 2.10 of this Agreement, (h) Agent's and Lenders' reasonable, documented (if available) out-of-pocket costs and expenses (including reasonable, documented attorneys' fees and expenses) relative to third party claims or any other lawsuit or adverse proceeding paid or incurred, whether in enforcing or defending the Loan Documents or otherwise in connection with the transactions contemplated by the Loan Documents, Agent's Liens in and to the

Collateral, or the Lender Group's relationship with any Loan Party or any of its Subsidiaries, (i) Agent's reasonable, documented costs and expenses (including reasonable, documented attorneys' fees and due diligence expenses) incurred in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), syndicating (including reasonable costs and expenses relative to CUSIP, DXSyndicate™, SyndTrak or other communication costs incurred in connection with a syndication of the loan facilities), or amending, waiving, or modifying the Loan Documents or otherwise in connection with any Financing Order, or transactions contemplated thereby or in connection with the Chapter 11 Cases, the CCAA Case or Successor Cases (whether or not the transactions contemplated hereby or thereby shall be consummated and including fees and expenses of Agent Advisors) or any refinancing of the DIP ABL Credit Facility or any "exit financing" requested by or on behalf of the Loan Parties, and (j) Agent's and each Lender's reasonable and documented costs and expenses (including reasonable and documented out-of-pocket attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including reasonable, documented attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning any Loan Party or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether a lawsuit or other adverse proceeding is brought, or in taking any enforcement action or any Remedial Action with respect to the Collateral; provided, that, the reasonable, documented out-of-pocket fees and expenses of counsel that shall constitute Lender Group expenses shall in any event be limited to (i) one outside primary counsel to Agent and Lenders, (ii) any special or local legal counsel (limited to one local counsel in each relevant jurisdiction) as shall be reasonably determined to be necessary by Agent, (iii) on specialty counsel in each reasonably necessary specialty areas, and (iv) one or more additional counsel if one or more conflicts of interest arise.

"Lender Group Representatives" has the meaning specified therefor in Section 17.9 of this Agreement.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, attorneys, and agents.

"Letter of Credit" means a letter of credit (as that term is defined in the UCC) issued by Issuing Bank and shall include, to the extent that the context requires, a Canadian Letter of Credit.

"Letter of Credit Collateralization" means either (a) providing cash collateral (pursuant to documentation reasonably satisfactory to Agent (including that Agent has a first priority perfected Lien in such cash collateral), including provisions that specify that the Letter of Credit Fees and all commissions, fees, charges and expenses provided for in Section 2.11(k) of this Agreement (including any fronting fees) will continue to accrue while the Letters of Credit are outstanding) to be held by Agent for the benefit of the Lenders in an amount equal to one hundred three percent (103%) of the then existing Letter of Credit Usage, (b) delivering to Agent documentation executed by all beneficiaries under the Letters of Credit, in form and substance reasonably satisfactory to Agent and Issuing Bank, terminating all of such beneficiaries' rights under the Letters of Credit, or (c) providing Agent with a standby letter of credit, in form and substance reasonably satisfactory to Agent, from a commercial bank acceptable to Agent (in its Permitted Discretion) in an amount equal to one hundred three percent (103%) of the then existing Letter of Credit Usage (it being understood that the Letter of Credit Fee and all fronting fees set forth in this Agreement will continue to accrue while the Letters of Credit are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit).

"Letter of Credit Disbursement" means a payment made by Issuing Bank pursuant to a Letter of Credit or a Canadian Reimbursement Undertaking.

"Letter of Credit Exposure" means, as of any date of determination with respect to any Lender, such Lender's participation in the Letter of Credit Usage or a Canadian Reimbursement Undertaking pursuant to Section 2.11(e) on such date.

"Letter of Credit Fee" has the meaning specified therefor in Section 2.6(b) of this Agreement.

"Letter of Credit Indemnified Costs" has the meaning specified therefor in Section 2.11(f) of this Agreement.

"Letter of Credit Related Person" has the meaning specified therefor in Section 2.11(f) of this Agreement.

"Letter of Credit Sublimit" means $2,000,000.

"Letter of Credit Usage" means, as of any date of determination, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit, plus (b) the aggregate amount of outstanding reimbursement obligations with respect to Letters of Credit which remain unreimbursed or which have not been paid through a Revolving Loan.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

"Loan" means any Revolving Loan, Swing Loan or Special Advance made (or to be made) hereunder.

"Loan Account" has the meaning specified therefor in Section 2.9 of this Agreement.

"Loan Documents" means this Agreement, the Control Agreements, the Copyright Security Agreement, any Borrowing Base Certificate, the Fee Letter, the Security Documents, the Intercreditor Agreement, any Issuer Documents, the Letters of Credit, the Patent Security Agreement, the Intercompany Subordination Agreement, the Trademark Security Agreement, any note or notes executed by Borrowers in connection with this Agreement and payable to any member of the Lender Group, and any other instrument or agreement entered into, now or in the future, by any Loan Party or any of its Subsidiaries and any member of the Lender Group in connection with this Agreement (but specifically excluding Bank Product Agreements).

"Loan Management Service" means Agent's proprietary automated loan management program currently known as "Loan Manager" and any successor service or product of Agent which performs similar services.

"Loan Party" means any Borrower or any Guarantor.

"Management Agreement" means, collectively, (a) the Amended and Restated Professional Services Agreement, effective as of April 6, 2018 by and among Colors Holdings and DCL Canada and (b) the Amended and Restated Transaction Services Agreement, effective as of April 6, 2018, by and among Colors Holdings, DCL Canada and H.I.G. Capital LLC, each as in effect on the Closing Date and

as amended, supplemented, restated or otherwise modified time to time in a manner not in contravention of Section 6.6(b)(i).

"Margin Stock" as defined in Regulation U of the Board of Governors as in effect from time to time.

"Material Adverse Effect" means (a) a material adverse effect in the business, operations, results of operations, assets, liabilities or financial condition of the Loan Parties and their Subsidiaries, taken as a whole, (b) a material impairment of the Loan Parties' and their Subsidiaries' ability to perform their obligations under the Loan Documents to which they are parties or of the Lender Group's ability to enforce the Obligations or realize upon the Collateral (other than as a result of as a result of an action taken or not taken that is solely in the control of Agent), or (c) a material impairment of the enforceability or priority of Agent's Liens with respect to all or a material portion of the Collateral, in each case other than as a result of the filing, commencement, announcement, prosecution and continuation of the Chapter 11 Cases or the CCAA Case, the events and conditions related and/or leading up thereto and the effects thereof and any action required to be taken under the Loan Documents or under the Financing Orders.

"Material Contract" means (a) the Pre-Petition Term Loan Agreement and the Pre-Petition ABL Credit Agreement, and (b) with respect to any Person, any contract or other agreement (other than the Loan Documents), whether written or oral, to which any Loan Party is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would have a Material Adverse Effect.

"Material Property" means (a) any Intellectual Property that is either (i) material to the conduct of the businesses of Holdings and its Subsidiaries as conducted or reasonably expected to be conducted, or is otherwise of material value, or (ii) is affixed to or incorporated or embedded in any Inventory and would be material in connection with the enforcement of any rights or remedies of Agent with respect to the Collateral (other than off-the-shelf, shrink-wrapped or "click to accept" software licenses or other licenses to generally commercially available software), (b) any customer contracts comprising Material Contracts and (c) any other property or assets of Holdings and its Subsidiaries which if sold, disposed or otherwise removed from the business of Holdings and its Subsidiaries, could reasonably be expected to have a Material Adverse Effect.

"Maturity Date" means the earliest of

(a) the Stated Maturity Date,

(b) thirty (30) days after the entry of the Interim US Financing Order if the Final US Financing Order has not been entered prior to the expiration of such thirty (30) day period,

(c) ten (10) days after the entry of the Initial CCAA Order (as defined below) if the Amended Initial CCAA Order has not been entered prior to the expiration of such ten (10) day period,

(d) the date of the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the "effective date") of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered by the US Bankruptcy Court,

(e) the date of implementation of a plan of compromise or arrangement filed in the CCAA Case that is sanctioned and approved pursuant to an order issued by the Canadian Bankruptcy Court,

(f) the date of the sale of all or a substantial part of the business of the Loan Parties or all or substantially all of the assets of the Loan Parties,

(g) the date the Loan Parties' file a motion seeking to convert any or all of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, or seek to terminate the CCAA Case or convert it to a receivership or a bankruptcy under the BIA,

(h) the date of conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, or of the CCAA Case to a receivership or to a bankruptcy under the BIA,

(i) the appointment or election of a trustee under Chapter 11 of the Bankruptcy Code, a receiver or licensed insolvency trustee under the BIA, or a responsible officer or examiner with enlarged powers relating to the operation of the Loan Parties' business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106 of the Bankruptcy Code or similar provisions of Canadian law,

(j) the date the Loan Parties' file a motion seeking a termination or dismissal of any or all of the Bankruptcy Cases, or

(k) the date of dismissal of any of the Bankruptcy Cases.

"Maximum Credit" means $55,000,000, decreased by the amount of reductions in the Commitments made in accordance with Section 2.4(c) of this Agreement and increased by the amount of any Increase made in accordance with Section 2.14 of this Agreement.

"Milestones" means the covenants specified therefor in Section 5.22 of this Agreement.

"Monitor" means the monitor appointed by the Canadian Bankruptcy Court in the CCAA Case in accordance with the CCAA.

"Multiemployer Plan" means any multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA with respect to which any Loan Party or ERISA Affiliate has an obligation to contribute or has any liability, contingent or otherwise or could be assessed withdrawal liability assuming a complete withdrawal from any such multiemployer plan.

"Net Cash Proceeds" means:

(a) with respect to any sale or disposition by any Loan Party or any of its Subsidiaries of assets, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of such Loan Party or such Subsidiary, in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Permitted Lien on any asset (other than (A) Indebtedness owing to Agent or any Lender under this Agreement or the other Loan Documents and (B) Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such sale or disposition, (ii) reasonable fees, commissions, and expenses related thereto and required to be paid by such Loan Party or such Subsidiary in connection with such sale or disposition, (iii) taxes paid or payable to any taxing authorities by such Loan Party or such Subsidiary in connection with such sale or disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries, and are properly attributable to such transaction, and (iv) all amounts that are set aside as a reserve (A) for adjustments in respect of the purchase price of such assets, (B) for any liabilities

associated with such sale or casualty, to the extent such reserve is required by GAAP, (C) for the payment of unassumed liabilities relating to the assets sold or otherwise disposed of at the time of, or within thirty (30) days after, the date of such sale or other disposition, and (D) if and to the extent required in the order of the applicable Bankruptcy Court with respect to such sale or disposition and consistent with the terms and requirements of the applicable Financing Order, for payment of amounts that receive the benefit of the Carve-Out or Administration Charge in connection with such sale or disposition, as applicable, to the extent that in each case the funds described above in this clause (iv) are (1) deposited into escrow with a third party escrow agent or set aside in a separate Deposit Account that is subject to a Control Agreement in favor of Agent, and (2) paid to Agent as a prepayment of the applicable Obligations in accordance with Section 2.4(e) of this Agreement at such time when such amounts are no longer required to be set aside as such a reserve; and

(b) with respect to the issuance or incurrence of any Indebtedness by any Loan Party or any of its Subsidiaries, or the issuance by any Loan Party or any of its Subsidiaries of any Equity Interests, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Loan Party or such Subsidiary in connection with such issuance or incurrence, after deducting therefrom only (i) reasonable fees, commissions, and expenses related thereto and required to be paid by such Loan Party or such Subsidiary in connection with such issuance or incurrence, and (ii) taxes paid or payable to any taxing authorities by such Loan Party or such Subsidiary in connection with such issuance or incurrence, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries, and are properly attributable to such transaction.

"Net Recovery Percentage" means, as of any date of determination, the percentage of the book value of the applicable Borrower's Inventory that is estimated to be recoverable in an orderly liquidation of such Inventory net of all associated costs and expenses of such liquidation, such percentage to be determined as to each category of Inventory and to be as specified in the most recent Acceptable Appraisal of Inventory.

"Non-Consenting Lender" has the meaning specified therefor in Section 14.2(a) of this Agreement.

"Non-Defaulting Lender" means each Lender other than a Defaulting Lender.

"Non-Loan Party" means any Subsidiary of Color Holdings that is not a Loan Party.

"Notification Event" means (a) the occurrence of a "reportable event" described in Section 4043 of ERISA for which the 30-day notice requirement has not been waived by applicable regulations issued by the PBGC, (b) the withdrawal of any Loan Party or ERISA Affiliate from a Pension Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA, (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if the plan assets are not sufficient to pay all plan liabilities, (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC or any Pension Plan or Multiemployer Plan administrator, (e) any other event or condition that would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, (f) the imposition of a Lien pursuant to the IRC or ERISA in connection with any Employee Benefit Plan or the existence of any facts or circumstances that could reasonably be expected to result in the imposition of a Lien, (g) the partial or complete withdrawal of any Loan Party or ERISA Affiliate from a Multiemployer Plan (other than any withdrawal that would not constitute an Event of Default under Section 8.12), (h)

any event or condition that results in the reorganization or insolvency of a Multiemployer Plan under Sections of ERISA, (i) any event or condition that results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by the PBGC of proceedings to terminate or to appoint a trustee to administer a Multiemployer Plan under ERISA, (j) any Pension Plan being in "at risk status" within the meaning of IRC Section 430(i), (k) any Multiemployer Plan being in "endangered status" or "critical status" within the meaning of IRC Section 432(b) or the determination that any Multiemployer Plan is or is expected to be insolvent or in reorganization within the meaning of Title IV of ERISA, (l) with respect to any Pension Plan, any Loan Party or ERISA Affiliate incurring a substantial cessation of operations within the meaning of ERISA Section 4062(e), (m) an "accumulated funding deficiency" within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA) or the failure of any Pension Plan or Multiemployer Plan to meet the minimum funding standards within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA), in each case, whether or not waived, (n) the filing of an application for a waiver of the minimum funding standards within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA) with respect to any Pension Plan or Multiemployer Plan, (o) the failure to make by its due date a required payment or contribution with respect to any Pension Plan or Multiemployer Plan, (p) any event that results in or could reasonably be expected to result in a liability by a Loan Party pursuant to Title I of ERISA or the excise tax provisions of the IRC relating to Employee Benefit Plans or any event that results in or could reasonably be expected to result in a liability to any Loan Party or ERISA Affiliate pursuant to Title IV of ERISA or Section 401(a)(29) of the IRC, or (q) any of the foregoing is reasonably likely to occur in the following thirty (30) days.

"Obligations" means, with respect to a Loan Party, (a) all Loans (including the Revolving Loans (inclusive of Special Advances and Swing Loans)), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), reimbursement or indemnification obligations with respect to Letters of Credit (irrespective of whether contingent), or Canadian Reimbursement Undertaking, premiums, liabilities (including all amounts charged to a Loan Account pursuant to the Agreement), obligations (including indemnification obligations) of such Loan Party, fees (including the fees provided for in the Fee Letter) of such Loan Party, Lender Group Expenses (including any fees or expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding) of such Loan Party, guaranties of such Loan Party, and all covenants and duties of any other kind and description owing by such Loan Party arising out of, under, pursuant to, in connection with, or evidenced by the Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that such Loan Party is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents and (b) all Bank Product Obligations of such Loan Party; provided, that, Obligations shall not include Excluded Swap Obligations. Without limiting the generality of the foregoing, (A) the Obligations under the Loan Documents with respect to Borrowers include the obligation of such Borrowers to pay (i) the principal of the Revolving Loans for the account of such Borrowers, (ii) interest accrued on the Revolving Loans for the account of such Borrowers, (iii) the amount necessary to reimburse Issuing Bank for amounts paid or payable pursuant to Letters of Credit for the account of such Borrowers, and (iv) Letter of Credit commissions, fees (including fronting fees) and charges, in each case in respect of Letters of Credit for the account of such Borrowers, (v) Lender Group Expenses for the account of such Borrowers, (vi) fees payable under this Agreement or any of the other Loan Documents for the account of such Borrowers, and (vii) indemnities and other amounts payable by any Loan Party under any Loan Document for the account of such Borrowers. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

"OFAC" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Originating Lender" has the meaning specified therefor in Section 13.1(e) of this Agreement.

"Other Taxes" means all present or future stamp, court, excise, value added, or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes imposed with respect to an assignment.

"Overadvance" means, as of any date of determination, that the Revolver Usage is greater than any of the limitations set forth in Section 2.1 or Section 2.11 of this Agreement.

"Participant" has the meaning specified therefor in Section 13.1(e) of this Agreement.

"Participant Register" has the meaning specified therefor in Section 13.1(i) of this Agreement.

"Patent Security Agreement" has the meaning specified therefor in the US Security Agreement in the case of any US Loan Party or the meaning specified therefor in the Canadian Security Agreement in the case of any Canadian Loan Party.

"Patriot Act" has the meaning specified therefor in Section 4.13 of this Agreement.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor agency.

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV or Section 302 of ERISA or Sections 412 or 430 of the IRC sponsored, maintained, or contributed to by any Loan Party or ERISA Affiliate or to which any Loan Party or ERISA Affiliate has any liability, contingent or otherwise.

"Perfection Certificate" means a certificate in the form of Exhibit P-1 to this Agreement.

"Permitted Discretion" means with reference to Agent, a determination made in good faith in the exercise of its reasonable business judgment based on how an asset-based lender with similar rights providing a credit facility of the type set forth in the Agreement would act in similar circumstances at the time with the information then available to it.

"Permitted Dispositions" means:

(a) sales, abandonment, or other dispositions of Equipment that is substantially worn, damaged, or obsolete or no longer used or useful in the ordinary course of business and leases or

subleases of Real Property not useful in the conduct of the business of the Loan Parties and their Subsidiaries,

(b) sales of Inventory to buyers in the ordinary course of business,

(c) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents,

(d) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other general intangibles consisting of Intellectual Property rights in the ordinary course of business,

(e) the granting of Permitted Liens,

(f) (i) the sale or discount, in each case without recourse, of Accounts (other than Eligible Accounts) arising in the ordinary course of business, but only in connection with the compromise or collection thereof, and (ii) the sale by DCL Canada and DCL USA of certain Accounts pursuant to a Permitted Supply Chain Financing in accordance with the terms of the agreements with respect thereto,

(g) the leasing or subleasing of assets of any Loan Party or its Subsidiaries in the ordinary course of business,

(h) (i) the lapse or expiration of registered patents, trademarks, copyrights and other Intellectual Property of any Loan Party or any of its Subsidiaries to the extent not economically desirable in the conduct of its business, or (ii) the abandonment of patents, trademarks, copyrights, or other Intellectual Property rights in the ordinary course of business so long as (in each case under clauses (i) and (ii)), (A) with respect to copyrights, such copyrights are not material revenue generating copyrights, and (B) such lapse is not materially adverse to the interests of the Lender Group,

(i) the making of Restricted Payments that are expressly permitted to be made pursuant to this Agreement,

(j) the making of Permitted Investments,

(k) as long as no Default or Event of Default exists, a disposition of Equipment with a Value, in the aggregate together with the Value of all other Equipment disposed of pursuant to this clause (k) during any twelve (12) consecutive month period, of $1,000,000 or less,

(l) sales or issuances of Equity Interests of any Company not otherwise prohibited by the Loan Documents,

(m) sales or other dispositions of assets (other than transfers or sales of its own Equity Interests, cash or Cash Equivalents or Intellectual Property) by:

(i) any Loan Party to any other Loan Party, provided, that, the Loan Party receiving such assets has executed and delivered to Agent an absolute and unconditional guarantee of the Obligations of the Loan Party making the sale or other disposition of such asset,

(ii) any Non-Loan Party to any Loan Party, provided, that, the terms of such sale or other disposition shall not be materially less favorable to the Loan Party than those that would have been obtained in a comparable transaction with an unrelated Person, as determined in the reasonable, good faith judgment of the Loan Party acquiring such assets,

(iii) any Loan Party to any Non-Loan Party, provided, that, (A) the aggregate amount of the Value of all such assets sold or transferred as permitted by this clause (m)(iii) during any twelve (12) consecutive month period shall not exceed $1,000,000, (B) as of the date of any such sale or other disposition and after giving effect thereto, no Default or Event of Default exists or has occurred and is continuing, (C) the terms of such sale or other disposition shall not be materially less favorable to the Loan Party than those that would have been obtained in a comparable transaction with an unrelated Person, and (D) in no event shall such sales or other dispositions involve any Material Property,

(n) any trade-in or replacement of an asset in the ordinary course of business,

(o) foreclosures, condemnation, or any similar action on assets or casualty or insured damage to assets,

(p) the unwinding of hedging obligations or obligations in respect of cash management services,

(q) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements,

(r) the issuance of director's qualifying shares and shares issued to foreign nationals pursuant to Requirements of Law, and

(s) sales, transfers and other dispositions permitted under Section 6.3.

Notwithstanding anything to the contrary in this Agreement, (a) Holdings shall not, and shall not permit any of its Subsidiaries to (i) sell or otherwise dispose (including any license) of any Material Property from a Loan Party to a Non-Loan Party, or (ii) contribute or otherwise invest any Material Property to or in any Non-Loan Party and (b) no transaction provided for in this definition shall result in a sale or other disposition of all or substantially all of the assets of Holdings and its Subsidiaries.

"Permitted Indebtedness" means:

(a) Indebtedness in respect of the Obligations,

(b) Indebtedness as of the Closing Date set forth on Schedule 4.14 to this Agreement and any Refinancing Indebtedness in respect of such Indebtedness,

(c) Indebtedness under the Pre-Petition Term Loan Agreement (including Refinancing Indebtedness in respect thereof in accordance with the Intercreditor Agreement) in an aggregate principal amount outstanding at any time not to exceed $120,800,000 plus interest capitalized after May 6, 2021,

(d) Purchase Money Obligations in an aggregate principal amount outstanding at any one time not in excess of $1,000,000 and any Refinancing Indebtedness in respect of such Indebtedness,

(e) unsecured Indebtedness expressly subordinated to the Obligations on terms reasonably satisfactory to Agent in an aggregate principal amount not to exceed $1,000,000 at any time outstanding;

(f) unsecured Indebtedness evidenced by or arising under the Sponsor Note not to exceed $9,077,919.93 plus the amount of any capitalized interest paid-in-kind in accordance with the terms thereof as in effect on May 6, 2021;

(g) Hedge Agreements entered into in the ordinary course of business and not for the purpose of speculation;

(h) unsecured Indebtedness (subject to customary rights of setoff) incurred in respect of netting services, overdraft protection, and other like services, in each case, incurred in the ordinary course of business;

(i) obligations in respect of performance, bid, surety and appeal bonds and performance and completion guarantees provided by any Company or obligations in respect of unsecured letters of credit related thereto, in each case, in the ordinary course of business;

(j) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to Holdings or any of its Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year;

(k) Indebtedness arising from Permitted Intercompany Advances;

(l) [intentionally omitted];

(m) (i) any guarantee by a US Loan Party of Indebtedness or other obligations of any other Loan Party, or by a Canadian Loan Party of Indebtedness or other obligations of any other Canadian Loan Party, provided, that, in each case, (A) the incurrence of such Indebtedness by such Loan Party that is the subject of the guarantee is permitted under the terms of this Agreement, and (B) if such Indebtedness is required by this Agreement to be, or otherwise by its express terms is, subordinated in right of payment to the Obligations, any such guarantee with respect to such Indebtedness shall be subordinated in right of payment to the Obligations substantially to the same extent as such Indebtedness is subordinated to the Obligations, and (ii) any guarantee by a Canadian Loan Party of Indebtedness or other obligations of any US Loan Party, provided, that, in each case, (A) the incurrence of such Indebtedness by such Loan Party that is the subject of the guarantee is permitted under the terms of this Agreement, (B) if such Indebtedness is required by this Agreement to be, or otherwise by its express terms is, subordinated in right of payment to the Obligations, any such guarantee with respect to such Indebtedness shall be subordinated in right of payment to the Obligations substantially to the same extent as such Indebtedness is subordinated to the Obligations, (C) the aggregate amount of the liability of any US Loan Party for Indebtedness or other obligations of any Canadian Loan Party shall not exceed $1,000,000 at any time outstanding, and (D) as of the date of any guarantee permitted under clause (ii) of this subsection (m) and after giving effect thereto, no Event of Default exists or has occurred and is continuing, and (iii) any guarantee by a Subsidiary that is not a Loan Party of Indebtedness of a Loan Party or another Subsidiary that is not a Loan Party;

(n) unsecured Indebtedness consisting of deferred purchase price or promissory notes issued by any Company to current or former officers, directors, employees, consultants, their respective estates, assigns, heirs, permitted transferees, spouses or former spouses to finance the purchase or redemption of Equity Interests of Holdings or any direct or indirect holding company parent or any direct or indirect Subsidiary permitted by Section 6.7 so long as such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to Agent;

(o) Purchase Money Obligations that is in existence when a Person becomes a Subsidiary or that is secured by an asset when acquired by any Borrower or any Subsidiary of such Borrower, so long as

such purchase money obligations were not incurred in contemplation of such Person becoming a Subsidiary or such acquisition and are not secured by any ABL Priority Collateral;

(p) Indebtedness arising from agreements providing for indemnification, adjustment of purchase price, working capital adjustments or from guarantees or letters of credit, securing the performance of any Company pursuant to such agreements, incurred or contracted for on or before the Closing Date;

(q) obligations under incentive, non-compete, consulting, deferred compensation, or other similar employment or consulting arrangements incurred by it in the ordinary course of business;

(r) accrual and capitalization of interest on any Indebtedness permitted pursuant to this Section;

(s) Indebtedness arising under the Lansco Acquisition Seller Note;

(t) Indebtedness of a Person existing at the time such Person became a Subsidiary of Holdings pursuant to a transaction permitted hereunder in an amount not to exceed $1,000,000 at any time outstanding; provided, that, such Indebtedness shall not have been created or incurred in contemplation of such Person becoming a Subsidiary or in contemplation of such Acquisition;

(u) unsecured Indebtedness consisting of management fees, advisory fees, consulting fees, transaction fees and other fees, expense reimbursement and indemnities to the Sponsor or any of its Affiliates not permitted or elected not to be paid (but permitted to accrue) under this Agreement;

(v) [intentionally omitted];

(w) unsecured Indebtedness of any Borrower or Subsidiary undertaken in connection with cash management and related activities with respect to such Borrower or Subsidiary in the ordinary course of business (including, without limitation, credit cards, credit card processing services, debit cards, stored value cards, commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards"), or Cash Management Services) in an aggregate principal amount not to exceed $1,000,000 at any time outstanding;

(x) Indebtedness incurred by Foreign Subsidiaries (other than any Loan Party) in an aggregate amount not to exceed at any time outstanding $2,000,000; and

(y) other unsecured Indebtedness in an aggregate principal amount not to exceed $1,000,000 at any time outstanding.

provided, that, notwithstanding the foregoing, no Loan Party or any of its Subsidiaries shall incur any Indebtedness on or after the Petition Date unless such Indebtedness is incurred strictly in accordance with the DIP Budget.

"Permitted Intercompany Advances" means loans made by

(a) a US Loan Party to another US Loan Party;

(b) (b) a US Loan Party to Canadian Borrower, provided, that, (i) the aggregate amount of the Indebtedness arising pursuant to such loans shall not at any time exceed by more than fifteen percent (15%) thereof, the amount equal to (A) the aggregate amount of the "Canada Intercompany

Transfers" from US Loan Parties to Canadian Borrower set forth in such line item on the page of the DIP Budget identified as the "USA DIP Budget" as of such time, minus (B) as of such time, the sum of the portion of such Canada Intercompany Transfers that are or have been applied to (1) payments of the purchase price for Inventory purchased by US Borrowers from Canadian Borrower, (2) payments in respect of "DCL Canada Shared Services" (as defined in the Canadian Intercompany Agreement) provided by Canadian Borrower to US Borrowers, and (3) payments made by US Borrowers to Canadian Borrower in respect of amounts paid by Canadian Borrower to sellers of goods to DCL BV to be used to produce goods to be sold to US Borrowers, in each case in accordance with the Canadian Intercompany Agreement, (ii) at the time of any such loan, and after giving effect thereto, no Event of Default exists or has occurred and is continuing, (iii) the Canada Intercompany Transfer that includes such loan is provided for in the DIP Budget at the time the loan is made, and (iv) the proceeds are used by Canadian Borrower to make substantially concurrent payments for the purchase price of Inventory and other operating disbursements and non-operating disbursements of Canadian Borrower pursuant to the Canadian Intercompany Agreement and in accordance with the DIP Budget;

(c) a US Loan Party to DCL BV or DCL UK, provided, that, (i) the aggregate amount of the Indebtedness arising pursuant to such loans shall not at any time exceed by more than fifteen percent (15%) thereof, the amount equal to (A) the aggregate amount of the "International Op. Disbursements" from US Loan Parties to DCL BV and DCL UK set forth in such line item on the page of the DIP Budget identified as the "USA DIP Budget" as of such time, minus (B) as of such time, the sum of the portion of such International Op. Disbursements that are or have been applied to (1) payments of the purchase price for Inventory purchased by US Borrowers from DCL BV and DCL UK, and (2) payments in respect of the "DCL UK Shared Services" (as defined in the European Intercompany Agreement) provided by DCL UK to US Borrowers, in each case in accordance with the European Intercompany Agreement, (ii) at the time of any such loan, and after giving effect thereto, no Event of Default exists or has occurred and is continuing, (iii) the International Op. Disbursement that includes such loan is provided for in the DIP Budget at the time the loan is made, and (iv) the proceeds are used by DCL BV and DCL UK to make substantially concurrent payments for the purchase price of Inventory and other operating disbursements and non-operating disbursements of DCL BV or DCL UK pursuant to the European Intercompany Agreement and in accordance with the DIP Budget;

(d) a Canadian Loan Party to any other Loan Party;

(e) a Non-Loan Party to another Non-Loan Party;

(f) a Non-Loan Party to a Loan Party, so long as the parties thereto are party to the Intercompany Subordination Agreement,

(g) a Loan Party to a Non-Loan Party; provided, that, (i) the aggregate amount of the Indebtedness arising pursuant to such loans shall not exceed [$500,000] at any time outstanding, (ii) at the time of any such loan, and after giving effect thereto, no Event of Default exists or has occurred and is continuing and (iii) such loan is provided for in the DIP Budget at the time the loan is made.

"Permitted Investments" means:

(a) [reserved];

(b) [reserved];

(c) an Investment by any Company in cash and Cash Equivalents, provided, that, notwithstanding the foregoing, no Investments in cash or Cash Equivalents or additional Investments in

the form of cash or Cash Equivalents in each case shall be permitted, except (i) if no Loans are then outstanding and no Letters of Credit are outstanding which have not been cash collateralized if then required to be cash collateralized or (ii) notwithstanding that any Loans are outstanding (or such Letters of Credit), (A) deposits of cash or other immediately available funds in Deposit Accounts used for disbursements in the approximate amount of funds required for amounts drawn or anticipated to be drawn shortly on such Deposit Accounts, (B) any such deposits of cash or other immediately available funds in Deposit Accounts used for disbursements which are then held in Cash Equivalents consisting of overnight investments until so drawn or in the event that the amounts drawn on any such day were less than anticipated (so long as (i) such funds and Cash Equivalents are not held more than two (2) Business Days from the date of the initial deposit thereof and (ii) such Investments are pledged to Agent as additional collateral for the Obligations pursuant to such agreements as may be reasonably required by Agent) and (C) amounts that have been received in a Deposit Account used for collections and subject to a Control Agreement prior to the transfer to the Agent Payment Account;

(d) [reserved];

(e) loans and advances in the ordinary course of business to the directors, employees, officers and members of management of Holdings or any of its Subsidiaries, so long as the aggregate principal amount of all such loans and advances not repaid in cash at any time outstanding (determined without regard to any write-downs or write-offs of such loans and advances) shall not exceed $200,000 at any time outstanding;

(f) an Investment by any Company in any Person to the extent such Investment represents the non-cash portion of the consideration received for a Permitted Disposition as permitted pursuant to Section 6.4;

(g) an Investment by any Company in the form of non-cash loans to officers, directors, employees and consultants of Holdings or any Subsidiary for the sole purpose of purchasing Equity Interests of Holdings or any direct or indirect parent thereof;

(h) Investments arising from Hedge Agreements entered into in the ordinary course of business by any Company and not for the purpose of speculation;

(i) any Investment existing on the Closing Date and listed on Schedule P-1, and any extension, modification, replacement or renewal of any such Investments, but only to the extent not involving additional advances, contributions or other Investments of cash or other assets or other increases thereof other than as a result of (i) amortization of debt discount or the accretion of principal with respect to a non-interest bearing or other discount security, (ii) the receipt of regularly scheduled interest in the form of additional Indebtedness of the same instrument or the receipt of regularly scheduled dividends on Equity Interests in the form of additional Equity Interests of the same class and with the same terms, and (iii) the accrual or accretion of interest, in each case, pursuant to the terms of such Investment as in effect on the Closing Date;

(j) guarantees of Indebtedness and Contingent Obligations permitted under Section 6.1 and performance guarantees incurred in the ordinary course of business;

(k) bank deposits in the ordinary course of business;

(l) increases in Investments reflecting an increase in the value of the Permitted Investment;

(m) the capitalization or forgiveness of any debt owed to a Loan Party by any other Loan Party to the extent that an equity Investment by such Loan Party in such other Loan Party would be permitted pursuant to any other clause of this definition of "Permitted Investments"; provided, that, the principal amount so capitalized or forgiven shall reduce the amount available under such other clause;

(n) [reserved];

(o) guarantee by any Loan Party or any Subsidiary of leases, contracts, or of other obligations that do not constitute Indebtedness, in each case, entered into in the ordinary course of business;

(p) [reserved];

(q) guarantee obligations of any Loan Party or any Subsidiary in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of any Loan Party or any Subsidiary pursuant to the Requirements of Law; provided, that, (i) the aggregate amount of guarantee obligations of any Loan Party in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of any non-Loan Party shall not exceed $250,000 at any time outstanding and (ii) the aggregate amount of guarantee obligations of any US Loan Party in respect of letters of support, guarantees or similar obligations issued, made or incurred for the benefit of any Canadian Loan Party shall not exceed $250,000 at any time outstanding;

(r) [reserved];

(s) Investments in the form of Permitted Intercompany Advances;

(t) the KNRV Note;

(u) extensions of trade credit or accounts receivable in the ordinary course of business;

(v) payroll, travel, relocation and similar advances that are made in the ordinary course of business.

provided, that, notwithstanding the foregoing, no new cash Investments shall be permitted after the Petition Date unless such Investments are made strictly in accordance with the DIP Budget.

"Permitted Liens" means:

(a) Liens for Taxes not yet overdue for a period of more than ninety (90) days and Liens for Taxes that are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP;

(b) Liens in respect of property of any Company imposed by Requirements of Law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, materialmen's, landlords', workmen's, suppliers', repairmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, and (i) which do not in the aggregate materially detract from the value of the property of the Companies, taken as a whole, and do not materially impair the use thereof in the operation of the business of the Companies, taken as a whole and (ii) which, if they secure obligations that are then due and delinquent, are subject to a Permitted Protest and for which adequate reserves have been established in accordance with GAAP;

(c) any Lien in existence on the Closing Date and set forth on Schedule P-2 and any Lien granted as a replacement or substitute therefor; provided, that, any such replacement or substitute Lien (i) secures the Indebtedness that it secures on the Closing Date (together with accrued interest, fees and premiums) and Refinancing Indebtedness in respect thereof, and (ii) does not encumber any property other than the property subject thereto on the Closing Date;

(d) easements, rights-of-way, restrictions (including zoning and other land use restrictions), covenants, licenses, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Real Property, in each case, whether now or hereafter in existence, not (i) securing Indebtedness, (ii) individually or in the aggregate materially impairing the value or marketability of such Real Property or (iii) individually or in the aggregate materially interfering with the ordinary conduct of the business of the Companies at such Real Property;

(e) Liens arising out of judgments, attachments or awards not resulting in an Event of Default;

(f) Liens (i) imposed by Requirements of Law or deposits made in connection therewith in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security legislation, (ii) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations, surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (iii) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; provided, that, (A) with respect to clauses (i), (ii) and (iii) of this clause (f), such Liens are for amounts not yet overdue for a period of more than ninety (90) days or, to the extent such amounts are so overdue and payable, such amounts are subject to a Permitted Protest and for which adequate reserves have been established in accordance with GAAP and (B) to the extent such Liens are not required by Requirements of Law to apply to any other assets, such Liens shall in no event encumber any property other than cash and Cash Equivalents;

(g) Leases of the properties of any Company, in each case, entered into in the ordinary course of such Company's business and do not, individually or in the aggregate, (i) interfere in any material respect with the ordinary conduct of the business of any Company and (ii) materially impair the use (for its intended purposes) or the value of the property subject thereto;

(h) Liens on property (other than ABL Priority Collateral) arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by any Company in the ordinary course of business;

(i) Liens on fixed assets or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Purchase Money Obligations permitted under clause (c) of the definition of Permitted Indebtedness; provided, that, (i) such Lien attaches only to the fixed asset purchased or acquired and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the fixed asset purchased or acquired or any Refinancing Indebtedness in respect thereof;

(j) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Company, in each case, granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, solely to the extent incurred in connection with the maintenance of such Deposit Accounts in the ordinary course of business; provided, that, unless such Liens are non-consensual and

arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(k) Liens on property of a Person existing at the time such Person is acquired, amalgamated, merged with or into or consolidated with any Company (other than ABL Priority Collateral) to the extent such acquisition, amalgamation, or merger or consolidation is permitted hereunder and to the extent the Indebtedness securing such Liens are permitted hereunder (and not created in anticipation or contemplation thereof); provided, that, such Liens do not extend to property not subject to such Liens at the time of acquisition (other than improvements thereon) and are no more favorable to the lienholders than such existing Lien;

(l) (i) Liens granted pursuant to the Loan Documents to secure the Obligations and Liens granted pursuant to the Pre-Petition ABL Loan Documents to secure the Pre-Petition ABL Obligations and (ii) Liens of Pre-Petition Term Loan Agent to secure the Pre-Petition Term Loan Obligations permitted by clause (c) of the definition of Permitted Indebtedness; provided, that, such Liens on any assets other than the Term Loan Priority Collateral shall be subject and subordinate to the Liens of Agent on such assets pursuant to the Intercreditor Agreement and shall otherwise be subject at all times to the terms and conditions of the Intercreditor Agreement and the Financing Orders;

(m) licenses and sublicenses of Intellectual Property and leases or subleases granted by any Company to a third party in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Companies, provided, that, in the case of any exclusive license of Intellectual Property such license constitutes a Permitted Disposition and the Intellectual Property subject to such license is not affixed to, embedded in, used in connection with or included in any Inventory of any Loan Party or used in connection with the books and records of any Loan Party;

(n) the filing of UCC and PPSA financing statements solely as a precautionary measure in connection with operating leases or consignment of goods, provided, that, in no event shall any such goods on consignment with any Loan Party be included in the Borrowing Base (or a Borrowing Base Certificate as Eligible Inventory) and upon Agent's request, Administrative Borrower shall provide such information with respect to such consigned goods as Agent may reasonably request;

(o) the interests of lessors under operating leases and non-exclusive licensors under license agreements;

(p) (i) any charge on the assets of Canadian Borrower provided for in the CCAA Initial Orders to secure obligations of Canadian Borrower to indemnify officers and directors of Canadian Borrower for liabilities arising after the Petition Date (subject to insurance coverage), provided, that, such charge shall be subordinate to the Liens of Agent and Pre-Petition ABL Agent and no action against the assets of Canadian Borrower in respect of such charge is permitted without Agent's consent, (ii) any charge on the assets of Canadian Borrower provided for in the CCAA Initial Orders to secure obligations of Canadian Borrower to US Borrowers arising from (A) Permitted Intercompany Advances by US Borrowers to Canadian Borrower and (B) any advance payments of the purchase price of any Inventory purchased Post-Petition by US Borrowers from Canadian Borrower pursuant to the Canadian Intercompany Agreement, provided, that, (1) such obligations of Canadian Borrower to US Borrowers constitute Collateral to secure the Obligations of US Borrowers, (2) such charge on the assets of Canadian Borrower in favor of US Borrowers is subordinate to the Liens of Agent on the Collateral of Canadian Borrower (except as Agent may otherwise specifically hereafter agree) and (3) no action against the assets of Canadian Borrower in respect of such charge is permitted without Agent's consent, and (iii) any other charge on the assets of Canadian Borrower provided for in the CCAA Initial Orders with the prior written consent of Agent, provided, that, in any event, such charge on the assets of Canadian Borrower is

subordinate to the Liens of Agent on the Collateral of Canadian Borrower (except as Agent may otherwise specifically hereafter agree), no action against the assets of Canadian Borrower in respect of such charge is permitted without Agent's consent, and such charge and the obligations secured thereby are subject to such other terms and condition as Agent may require;

(q) Liens encumbering customary initial deposits and margin deposits, and similar Liens in favor of the broker thereof attaching to commodity trading accounts and other brokerage accounts incurred in the ordinary course of business to the extent that the underlying Investment is permitted hereunder;

(r) Liens granted in the ordinary course of business on the unearned portion of insurance premiums, money that is or may be due to the insured because of a loss under the insurance policies that reduces the unearned premium, dividends due to the insured in connection with the insurance policies, interests arising under a state guarantee fund and other assets as may be reasonably agreed to by Agent, in each case, securing the financing of insurance premiums to the extent the financing is permitted under clause (j) of the definition of Permitted Indebtedness;

(s) Liens on goods in the possession of customs authorities in favor of such customs authorities which secure payment of customs duties in connection with importation of goods;

(t) Liens deemed to exist in connection with permitted repurchase obligations or set-off rights;

(u) Liens in favor of collecting banks arising under Section 4-210 of the UCC;

(v) Liens on the assets of any Subsidiary of Holdings that is not a Loan Party securing Permitted Intercompany Advances;

(w) (i) Liens on Equity Interests in joint ventures; provided, that, any such Lien is in favor of a creditor of such joint venture and such creditor is not an Affiliate of any partner to such joint venture and (ii) purchase options, call and similar rights of, and restrictions for the benefit of, a third party with respect to Equity Interests held by any Company in joint ventures;

(x) Liens on the assets of any Foreign Subsidiary (other than any Canadian Loan Party) securing Indebtedness incurred by such Foreign Subsidiaries (other than any Canadian Loan Party) that is permitted in clause (x) of the definition of Permitted Indebtedness;

(y) Liens incurred in the ordinary course of business of any Company on assets other than ABL Priority Collateral with respect to obligations that do not in the aggregate exceed $1,000,000 at any time outstanding, so long as such Liens, to the extent covering any other Collateral, are junior to the Liens granted pursuant to the Security Documents on terms and conditions satisfactory to Agent and are permitted under the Financing Orders; and

(z) with respect to the Real Property of DCL Canada located at 445 Finley Avenue, Ajax, Ontario, 435 Finley Avenue, Ajax, Ontario and 199 New Toronto St., Toronto, Ontario, each of the following Liens to the extent they do not materially interfere with or impair the use or operation thereof:

(i) reservations, limitations, provisos and conditions expressed in the original Crown patent, unpatented mining claims and native land claims, in each case as they apply to such Real Property;

(ii) registered easements for the supply of utilities or telephone services to the Canadian Real Property and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services;

(iii) unregistered easements, rights-of-way and other similar rights for the supply of utilities or telephone services to the Canadian Real Property;

(iv) registered agreements with governmental authorities or public utility or hydro commissions including development agreements, site plan agreements, subdivision agreements and other similar agreements;

(v) the provisions of applicable laws, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning;

(vi) any minor encroachments by any structure located on the Canadian Real Property onto any adjoining lands and any minor encroachment by any structure located on adjoining lands onto the Canadian Real Property provided such encroachments do not affect the marketability of such Canadian Real Property; and

(vii) the environmental certificate registered as Instrument No. DR1439723 on title to PIN 26464-0052 (LT) on January 14, 2016;

provided, that, no consensual Liens shall be permitted to exist, directly or indirectly, on any investment property constituting Collateral, other than Liens granted pursuant to the Security Documents, Liens governed by the Intercreditor Agreement or in the case of such investment property constituting an Equity Interest in a Person that is not a Subsidiary of a Loan Party, transfer restrictions that exist in joint venture or similar agreements of such Person.

"Permitted Protest" means the right of any Loan Party or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien or Canadian equivalent including a requirement to pay issued by a Canadian Governmental Authority), or rental payment; provided, that, (a) a reserve with respect to such obligation is established on such Loan Party's or its Subsidiaries' books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by such Loan Party or its Subsidiary, as applicable, in good faith, and (c) Agent is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Agent's Liens.

"Permitted Supply Chain Financing" means the receivables financing pursuant to (i) the Receivables Purchase Agreement, dated as of March 17, 2010, between DCL USA, as successor to Landers-Segal and Wells Fargo Bank, National Association, as successor to Wachovia Bank, National Association in which DCL USA sells Accounts owing by Valspar Sourcing, Inc., (ii) the Master Accounts Receivables Purchase Agreement (MARPA), dated as of February 5, 2014, between DCL Canada and BNP Paribas Dublin Branch in which DCL Canada sells Accounts owing by PPG Group, and (iii) the Supply Agreement, dated on or after the Closing Date, between DCL Canada and Citi Europe Plc on behalf of Citibank in which DCL Canada sells Accounts owing by Axalta Coating Systems Germany GmbH & Co. KG and its various subsidiaries and affiliates, on and after the date that such Supply Agreement becomes effective and Agent has received a copy of such Supply Agreement as so executed; provided, that,

(a) no portion of any Indebtedness or other obligations (contingent or otherwise) of DCL Canada in connection with such receivables financing is with recourse to, or gives rise to obligations of,

any Loan Party for any payment or subjects any property or asset (other than the Accounts sold under the terms of such agreements), directly or indirectly, contingently or otherwise, to the satisfaction of obligations in such transactions, in each case other than (i) the repurchase of non-eligible receivables under the terms of the applicable agreements or (ii) indemnifications for losses other than credit losses related to the Accounts sold,

(b) all amounts payable to any Loan Party under such financings shall be remitted to a Deposit Account subject to a Control Agreement and upon Agent's request, to the Agent Payment Account and applied to the Obligations in the manner provided for herein,

(c) such sales of Accounts will cease upon a written notice by Agent to the Supply Chain Purchaser under the applicable Permitted Supply Chain Financing,

(d) Borrowers shall receive fair value in the form of cash in exchange for the sale of the Accounts, and the amount of such consideration payable in cash shall not be less than ninety-five percent (95%) of the amount of the Accounts so sold or such other percentage as is acceptable to Agent,

(e) all amounts payable by the Account Debtors in respect of the Accounts sold shall be segregated and paid directly by the applicable Account Debtor to the Supply Chain Purchaser in accordance with the terms of the applicable agreements for such Permitted Supply Chain Financing.

"Permitted Tax Distribution" means, in the event that any Subsidiary of Holdings (or any direct or indirect parent corporation of Holdings) files a consolidated, combined, unitary or similar type income tax return with Holdings (or such parent corporation), distributions by such Subsidiary to Holdings to permit Holdings (or such parent corporation) to pay federal and state income taxes then due and payable, provided, that, the amount of such distribution shall not be greater than the amount of such taxes that would have been due and payable by such Subsidiary had such Subsidiary not filed a consolidated, combined, unitary or similar type return with Holdings (or such parent corporation). For purposes hereof, allowable loss carryovers and credits against Tax shall be taken into account in computing Taxes due and payable.

"Person" means natural persons, corporations, limited liability companies, unlimited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Platform" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Post-Petition" means the time period commencing immediately upon the filing of the applicable Chapter 11 Case or the CCAA Case, as applicable.

"PPG Europe" means the Subsidiaries or Affiliates of PPG Industries, Inc. organized under the laws of a jurisdiction in Europe and set forth in the list provided by Administrative Borrower to Agent on April 19, 2018, which list may be updated with other Subsidiaries or Affiliates of PPG Industries, Inc. from time to time upon written notice by Administrative Borrower to Agent.

"PPSA" means the Personal Property Security Act (Ontario) and the regulations thereunder, as from time to time in effect; provided, however, if attachment, perfection or priority of Agent's Lien on any Collateral are governed by the personal property security laws of any jurisdiction in Canada other than the laws of the Province of Ontario, "PPSA" means those personal property security laws in such

other jurisdiction in Canada for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

"Pre-Petition" means the time period ending immediately prior to the filing of the applicable Chapter 11 Case or the CCAA Case, as applicable.

"Pre-Petition ABL Agent" means Wells Fargo Bank, as administrative agent for the Pre-Petition ABL Lenders and bank product providers under the Pre-Petition ABL Credit Agreement.

"Pre-Petition ABL Credit Agreement" means the Credit Agreement, dated as of April 25, 2018, by and among Holdings and its Subsidiaries, the Pre-Petition ABL Lenders and Pre-Petition ABL Agent and bank product providers, as in effect immediately prior to the Petition Date.

"Pre-Petition ABL Credit Facility" means the credit facility provided to the Borrowers pursuant to the Pre-Petition ABL Credit Agreement.

"Pre-Petition ABL Lenders" means the parties to the Pre-Petition ABL Credit Agreement as lenders, immediately prior to the Petition Date.

"Pre-Petition ABL Loan Documents" means the Loan Documents (as defined in the Pre-Petition ABL Credit Agreement), including, without limitation, the Pre-Petition ABL Credit Agreement, as in effect immediately prior to the Petition Date.

"Pre-Petition ABL Obligations" means "Obligations" (as defined in the Pre-Petition ABL Credit Agreement).

"Pre-Petition Collateral" means, collectively, (a) all "Collateral" as such term is defined in the Pre-Petition ABL Credit Agreement as in effect immediately prior to the Petition Date, (b) all "Collateral" and "Pledged Collateral" as such terms are defined in each of the other Pre-Petition ABL Loan Documents as in effect immediately prior to the Petition Date, and (c) all other security for the Pre-Petition ABL Obligations as provided in the Pre-Petition ABL Credit Agreement and the other Pre-Petition ABL Loan Documents as in effect immediately prior to the Petition Date.

"Pre-Petition Indebtedness" means Indebtedness outstanding as of the time period ending immediately prior to the filing of the applicable Chapter 11 Case or the CCAA Case, as applicable.

"Pre-Petition Term Loan Agent" means Delaware Trust Company (as successor to Virtus Group, LP), in its capacity acting for and on behalf of the Pre-Petition Term Loan Lenders, and its successors and assign, including any replacement or successor agent.

"Pre-Petition Term Loan Agreement" means the Credit Agreement, dated as of April 6, 2018, by and among Administrative Borrower, Holdings, each lender from time to time party thereto and Pre-Petition Term Loan Agent.

"Pre-Petition Term Loan Documents" means the "Loan Documents" as defined in the Pre-Petition Term Loan Agreement.

"Pre-Petition Term Loan Lenders" means the parties to the Pre-Petition Term Loan Agreement as lenders.

"Pre-Petition Term Loan Obligations" means the "Obligations" as defined in the Pre-Petition Term Loan Agreement.

"Priority Payables Reserves" means, without duplication, reserves (determined from time to time by Agent in its Permitted Discretion) representing: (a) the amount past due and owing by any Loan Party, or the accrued amount for which such Loan Party has an obligation to remit, to a Governmental Authority or other Person pursuant to any applicable law, rule or regulation, in respect of (i) goods and services taxes, sales taxes, employee income taxes, municipal taxes and other taxes payable or to be remitted or withheld; (ii) workers' compensation or employment insurance; (iii) vacation or holiday pay; (iv) Canada Pension Plan or other statutory pension plan contributions; and (v) other like charges and demands to the extent that any Governmental Authority or other Person may claim a lien, security interest, hypothec, trust or other claim ranking or capable of ranking in priority to or pari passu with one or more of the Liens granted in the Loan Documents; and (b) the aggregate amount of any other liabilities of any Canadian Loan Party (i) in respect of which a Lien, trust or deemed trust has been or may be imposed on any Collateral to provide for payment, or (ii) in respect of unpaid or unremitted pension plan contributions, normal cost contributions or special payments under Canadian Pension Plans, and (iii) representing any unfunded liability, solvency deficiency or wind-up deficiency (hypothetical or otherwise) with respect to a Canadian Pension Plan that is a Canadian Defined Benefit Pension Plan, provided, that, (A) as of the Closing Date, the Priority Payable Reserves in respect of the existing Salaried Plan and Hourly Plan (each as defined in Section 4.10(h)) shall be in the amount of the minimum special payments required to be paid for a twelve (12) month period plus the aggregate current service payments in respect thereof (including expense allowances) for a three (3) month period, in each case as set out in the Actuarial Reports for such Salaried Plan and Hourly Plan most recently received by the Agent pursuant to Section 5.17; and (B) Agent may increase the amount of such Priority Payable Reserve in its Permitted Discretion at any time if a Canadian Defined Benefit Pension Reserve Event or Event of Default occurs or in the case of any other event, or change in circumstances or condition related to any Loan Party or such liability (or in the case of any existing circumstances or condition which have not been disclosed to Agent related to any Loan Party or such liability) which in the Permitted Discretion of Agent provides the basis for such increase, subject to providing the three (3) Business Days' notice of such change in the Reserve to Administrative Borrower then required in accordance with the terms of Section 2.1(e) of this Agreement or (iv) which are secured by a lien, security interest, pledge, charge, right or claim on any Collateral; in all cases, pursuant to any applicable law, rule or regulation only to the extent such Lien, trust, deemed trust, charge, right or claim ranks or, in the Permitted Discretion of Agent, is capable of ranking in priority to or pari passu with one or more of the Liens granted in the Loan Documents (such as claims by employees for unpaid wages and other amounts payable under the Wage Earner Protection Program Act (Canada)).

"Projections" means Holdings' forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, all prepared on a basis consistent with Holdings' historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

"Pro Rata Share" means, as of any date of determination:

(a) with respect to a US Lender's obligation to make all or a portion of the US Revolving Loans, with respect to such US Lender's right to receive payments of interest, fees, and principal with respect to the US Revolving Loans, and with respect to all other computations and other matters related to the US Commitments or the US Revolving Loans (including, without limitation, US Swing Loans), the percentage obtained by dividing (i) the US Revolving Loan Exposure of such Lender by (ii) the aggregate US Revolving Loan Exposure of all US Lenders,

(b) with respect to a US Lender's obligation to participate in the Letters of Credit for the account of US Borrowers, with respect to such US Lender's obligation to reimburse Issuing Bank, and

with respect to such US Lender's right to receive payments of Letter of Credit Fees in respect of such Letters of Credit, and with respect to all other computations and other matters related to the Letters of Credit for the account of US Borrowers, the percentage obtained by dividing (i) the US Revolving Loan Exposure of such Lender by (ii) the aggregate US Revolving Loan Exposure of all US Lenders; provided, that, if all of the US Revolving Loans have been repaid in full and all US Commitments have been terminated, but US Letters of Credit for the account of US Borrowers remain outstanding, Pro Rata Share under this clause shall be determined as if the US Commitments had not been terminated and based upon the US Commitments as they existed immediately prior to their termination,

(c) with respect to a Canadian Lender's obligation to make all or a portion of the Canadian Revolving Loans, with respect to such Canadian Lender's right to receive payments of interest, fees, and principal with respect to the Canadian Revolving Loans, and with respect to all other computations and other matters related to the Canadian Commitments or the Canadian Revolving Loans, the percentage obtained by dividing (i) the Canadian Revolving Loan Exposure of such Lender by (ii) the aggregate Canadian Revolving Loan Exposure of all Canadian Lenders,

(d) with respect to a Canadian Lender's obligation to participate in the Letters of Credit for the account of Canadian Borrowers, with respect to such Canadian Lender's obligation to reimburse the Issuing Bank, and with respect to such Canadian Lender's right to receive payments of Letter of Credit Fees in respect of such Letters of Credit, and with respect to all other computations and other matters related to the Letters of Credit for the account of Canadian Borrowers, the percentage obtained by dividing (i) the Canadian Revolving Loan Exposure of such Lender by (ii) the aggregate Canadian Revolving Loan Exposure of all Canadian Lenders; provided, that, if all of the Canadian Revolving Loans have been repaid in full and all Canadian Commitments have been terminated, but Canadian Letters of Credit for the account of Canadian Borrowers remain outstanding, Pro Rata Share under this clause shall be determined as if the Canadian Commitments had not been terminated and based upon the Canadian Commitments as they existed immediately prior to their termination, and

(e) with respect to all other matters and for all other matters as to a particular Lender (including the indemnification obligations arising under Section 15.7 of the Agreement), the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender by (ii) the aggregate Revolving Loan Exposure of all Lenders, in any such case as the applicable percentage may be adjusted by assignments permitted pursuant to Section 13.1; provided, that, if the Commitments have been terminated, the Pro Rata Share shall be determined as if the Commitments had not been terminated and based upon the Commitments as they existed immediately prior to their termination.

Each reference to "a Lender" shall include, collectively, all Lenders that are Affiliates and all branches of a Lender or its Affiliates as though all such parties were one Lender hereunder.

"Protective Advances" has the meaning specified therefor in Section 2.3(d)(i) of this Agreement.

"Public Lender" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Purchase Money Obligations" means, for any Person, the obligations of such Person in respect of Indebtedness (including Capitalized Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any property (including Equity Interests of any Person) or the cost of installation, construction or improvement of any property and any refinancing thereof; provided, however, that (a) such Indebtedness is incurred within one hundred eighty (180) days after such acquisition, installation, construction or improvement of such property by such Person and (b) the amount of such Indebtedness does not exceed one hundred percent (100%) of the cost of such acquisition, installation, construction or improvement, as the case may be.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. § 5390(c)(8)(D).

"QFC Credit Support" has the meaning specified therefor in Section 17.18 of this Agreement.

"Qualified Equity Interests" means and refers to any Equity Interests issued by Holdings (and not by one or more of its Subsidiaries) that is not a Disqualified Equity Interest.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by any Loan Party or one of its Subsidiaries and the improvements thereto.

"Receivables Reserves" means, as of any date of determination, those reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(e), to establish and maintain, but without duplication of other Reserves (including Dilution Reserves and reserves for rebates, discounts, warranty claims, and returns) with respect to the Eligible Accounts or the Maximum Credit.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Refinancing Indebtedness" means Indebtedness of any Loan Party arising after the Closing Date issued in exchange for, or the proceeds of which are used to extend, refinance, replace or substitute for other Indebtedness (such extended, refinanced, replaced or substituted Indebtedness, the "Refinanced Obligations") to the extent permitted hereunder; provided, that:

(a) Agent shall have received not less than five (5) Business Days' prior written notice of the intention to incur such Indebtedness, which notice shall set forth in reasonable detail reasonably satisfactory to Agent the amount of such Indebtedness, the schedule of repayments and maturity date with respect thereto and such other information with respect thereto as Agent may reasonably request;

(b) the principal amount of such Refinancing Indebtedness shall not exceed the principal amount of the Refinanced Obligations (plus the amount of reasonable refinancing fees and expenses incurred in connection therewith), any prepayment premiums and any accrued interest on account thereof;

(c) such Refinancing Indebtedness shall have a final maturity that is no earlier than the final maturity of the Refinanced Obligations;

(d) such Refinancing Indebtedness shall have a Weighted Average Life to Maturity not less than the Weighted Average Life to Maturity of the Refinanced Obligations;

(e) such Refinancing Indebtedness shall rank in right of payment no more senior than, and be subordinated (if subordinated) to the Obligations on terms no less favorable to the Loan Parties than the Refinanced Obligations;

(f) if the Refinanced Obligations or any guarantees thereof are unsecured, such Refinancing Indebtedness and any guarantees thereof shall be unsecured;

(g) if the Refinanced Obligations or any guarantees thereof are secured, such Refinancing Indebtedness and any guarantees thereof shall be secured in all material respects by substantially the same or less collateral as secured such Refinanced Obligations or any guarantees thereof, on terms no less favorable to Agent or the Lenders;

(h) if the Refinanced Obligations or any guarantees thereof are secured, the Liens to secure such Refinancing Indebtedness shall not have a priority more senior than the Liens securing the Refinanced Obligations and if subordinated to any other Liens on such property, shall be subordinated to Agent's Liens on terms and conditions no less favorable;

(i) if the Refinanced Obligations or any guarantees thereof are subordinated to any Indebtedness of a Loan Party other than the Obligations, such Refinancing Indebtedness and any guarantees thereof shall be subordinated to the Obligations on terms (including intercreditor terms) no less favorable to the Agent or the Lenders;

(j) the obligors who are Loan Parties in respect of the Refinanced Obligations immediately prior to such refinancing, refunding, extending, renewing or replacing thereof shall be the only obligors who are Loan Parties on such Refinancing Indebtedness; and

(k) the terms and conditions (excluding as to pricing, premiums and optional prepayment or redemption provisions) of any such Refinancing Indebtedness, taken as a whole, are not more restrictive in any material respect with respect to the Loan Parties and their Subsidiaries, as reasonably determined by Administrative Borrower in its Permitted Discretion, than the terms and conditions of the Refinanced Obligations.

"Register" has the meaning specified therefor in Section 13.1(h) of this Agreement.

"Registered Loan" has the meaning specified therefor in Section 13.1(h) of this Agreement.

"Reinvestment Notice" means a written notice executed by a Responsible Officer of each Borrower stating (a) that no Default or Event of Default has occurred and is continuing and (b) that any Company (directly or indirectly through one of its Subsidiaries) intends and expects to use all or a specified portion of the Net Cash Proceeds of a Permitted Disposition or Casualty Event to acquire assets used or useful in the business of the Loan Parties and their Subsidiaries.

"Related Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

"Relevant Governmental Body" means the Board of Governors or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors or the Federal Reserve Bank of New York, or any successor thereto.

"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

"Remedies Notice Period" has the meaning assigned to such term in the Interim US Financing Order (or Final US Financing Order, when applicable).

"Replacement Lender" has the meaning specified therefor in Section 2.13(b) of this Agreement.

"Report" has the meaning specified therefor in Section 15.16 of this Agreement.

"Required Lenders" means, at any time, Lenders having or holding more than fifty percent (50%) of the sum of the aggregate Revolving Loan Exposure of all Lenders; provided, that, (a) the Revolving Loan Exposure of any Defaulting Lender shall be disregarded in the determination of the Required Lenders, and (b) at any time there are two or more Lenders (who are not Affiliates of one another or Defaulting Lenders), "Required Lenders" must include at least two Lenders (who are not Affiliates of one another).

"Requirements of Law" means, collectively, any and all requirements of any Governmental Authority including any and all laws, judgments, orders, decrees, ordinances, rules, regulations, statutes or case law.

"Reserves" means, as of any date of determination, Receivable Reserves, Inventory Reserves, Bank Product Reserves, Priority Payables Reserves and those other reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(e) and without duplication, to establish and maintain (including reserves with respect to (a) sums that any Loan Party or its Subsidiaries are required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay, and (b) amounts owing by any Loan Party or its Subsidiaries to any Person to the extent secured by a Lien on, trust or deemed trust over, any of the Collateral (other than a Permitted Lien), which Lien or trust, in the Permitted Discretion of Agent likely would have a priority equal to or superior to the Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for ad valorem, excise, sales, or other taxes where given priority under applicable law) in and to such item of the Collateral); provided, that, to the extent that such Reserve is in respect of amounts that may be payable to third parties, Agent may, at its option, but without duplication, deduct such Reserve from the Maximum Credit at any time that the Maximum Credit is less than the amount of the Combined Borrowing Base, except, that, the Reserves in respect of the Carve-Out and the Administration Charge (up to the amounts set forth in the DIP Budget) shall be deducted from the applicable Borrowing Base notwithstanding that the Combined Borrowing Base may be greater than the Maximum Credit. In addition, and without limitation of, any of the foregoing, reserves will be established in respect of (i) the Carve-Out and the Administration Charge and any other reserves provided for in any Financing Order to the extent provided for therein, if any, (ii) the amount of any senior liens or claims in or against the ABL Priority Collateral that have priority over the liens and claims of Agent, including, without limitation, the amount of any senior liens or priority claims for wages, salary or benefits (including pensions) of any employees of Canadian Borrower, and (iii) the amount of priority or administrative expense claims which are superior to or rank in parity with Agent's super-priority claim (but without duplication of the reserves established as provided in clause (i) above) or which Agent determines Loan Parties would be required to pay before the obligations due Agent and Lenders during the Bankruptcy Cases, other than as set forth in the DIP Budget (as defined herein). Specific reserves established in respect of liabilities that have been paid will be released based on the amount paid in respect of such liabilities.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" of any Person means any executive officer, vice president or Financial Officer of such Person and any other officer or similar official thereof, so long as and to the extent such Person has been duly authorized by the Board of Directors of such Person to be responsible for the administration of the obligations of such Person in respect of this Agreement, and including, without limitation, any one of the individuals identified as an officer of a Borrower on Schedule R-1 to this

Agreement, or any other individual identified by Administrative Borrower as an authorized person and authenticated through Agent's electronic platform or portal in accordance with its procedures for such authentication.

"Restricted Payment" means (a) any declaration or payment of any dividend or the making of any other payment or distribution, directly or indirectly, on account of Equity Interests issued by Holdings or any of its Subsidiaries (including any payment in connection with any merger, amalgamation or consolidation involving Holdings or any of its Subsidiaries) or to the direct or indirect holders of Equity Interests issued by Holdings or any of its Subsidiaries in their capacity as such (other than dividends or distributions payable in Qualified Equity Interests issued by Holdings or any of its Subsidiaries, or (b) any purchase, redemption, making of any sinking fund or similar payment, or other acquisition or retirement for value (including in connection with any merger or consolidation involving Holdings or any of its Subsidiaries) any Equity Interests issued by Holdings or any of its Subsidiaries, (c) the making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Equity Interests of Holdings or any of its Subsidiaries now or hereafter outstanding or (d) any payment of management fees, consulting fees, advisory fees, transaction fees or any other fees, reimbursement of expenses or indemnities to the Sponsor or its Affiliates.

"Revolver Usage" means, as of any date of determination, the Canadian Revolver Usage and the US Revolver Usage.

"Revolving Loan Exposure" means, with respect to any Lender, as of any date of determination (a) prior to the termination of the Commitments, the amount of such Lender's Commitment, and (b) after the termination of the Commitments, the aggregate outstanding principal amount of the Revolving Loans of such Lender.

"Revolving Loans" means the US Revolving Loans and the Canadian Revolving Loans.

"Sale and Leaseback Transaction" means an arrangement, directly or indirectly, with any Person relating to property, real or personal or mixed, used or useful in the business of any Borrower or any of its Subsidiaries, whether now owned or acquired after the Closing Date, whereby any Borrower or any of its Subsidiary sells or transfers such property to a Person and thereafter rents or leases such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

"Sale Order" means an order entered by each Bankruptcy Court approving the Sale Transaction which order shall be in form and substance reasonably satisfactory to Agent, and shall provide for, among other things, the receipt by Agent of all Net Cash Proceeds from the Sale Transaction to be applied to the indefeasible payment in full of all Obligations in such manner as Agent shall determine in accordance with the Loan Documents (including the Intercreditor Agreement).

"Sale Transaction" means a sale of all or substantially all of the assets of Loan Parties pursuant to Section 363 of the Bankruptcy Code and an approval and vesting order under the CCAA on terms and conditions reasonably satisfactory to Agent.

"Sanctioned Entity" means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, or (d) a Person resident in or determined to be resident in a country, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC or other relevant Governmental Authority.

"Sanctioned Person" means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC's consolidated Non-SDN list or any other Sanctions-related list maintained by any Governmental Authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

"Sanctions" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the Government of Canada; (d) the European Union or any European Union member state, (e) Her Majesty's Treasury of the United Kingdom, or (f) any other Governmental Authority with jurisdiction over any member of Lender Group or any Loan Party or any of their respective Subsidiaries or Affiliates.

"SEC" means the United States Securities and Exchange Commission and any successor thereto.

"Secured Parties" means, collectively, each member of the Lender Group and each Bank Product Provider.

"Securities Account" means a securities account (as that term is defined in the UCC).

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"Security Documents" means, collectively, the US Security Agreement, the Canadian Security Agreement, any applicable Security Agreement supplements and any other security agreement at any time entered into in connection with the Agreement.

"Settlement" has the meaning specified therefor in Section 2.3(e)(i) of this Agreement.

"Settlement Date" has the meaning specified therefor in Section 2.3(e)(i) of this Agreement.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR/Canadian BA Rate Deadline" has the meaning specified therefor in Section 2.12(b) of this Agreement.

"SOFR Deadline" has the meaning specified therefor in Section 2.12(b)(i) of this Agreement.

"SOFR Loan" means each portion of a Revolving Loan that bears interest at a rate determined by reference to Adjusted Term SOFR (other than pursuant to clause (c) of the definition of "Base Rate").

"SOFR Notice" means a written notice in the form of Exhibit S-1 to this Agreement.

"SOFR Option" has the meaning specified therefor in Section 2.12(a) of this Agreement.

"Solvent" means, with respect to any Person as of any date of determination, that (a) at fair valuations, the sum of such Person's debts (including contingent liabilities) is less than all of such Person's assets, (b) such Person is not engaged or about to engage in a business or transaction for which the remaining assets of such Person are unreasonably small in relation to the business or transaction or for which the property remaining with such Person is an unreasonably small capital, (c) such Person has not incurred and does not intend to incur, or reasonably believe that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise), and (d) such Person is "solvent" or not "insolvent", as applicable within the meaning given those terms and similar terms under applicable laws relating to bankruptcy, insolvency and fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Special Advances" has the meaning specified therefor in Section 2.3(d)(iii) of this Agreement.

"Specified Account Debtors" means up to twelve (12) Account Debtors of Borrowers that have been identified in writing by Administrative Borrower to Agent on or before the Closing Date, which list of Account Debtors may be changed from time to time upon the receipt by Agent of written notice from Administrative Borrower of any such change, together with such information with respect to any such Account Debtors as Agent may reasonably request.

"Sponsor" means H.I.G. Capital and its Controlled Investment Affiliates.

"Sponsor Affiliated Entity" means Sponsor or any of its Affiliates (other than Loan Parties or their Subsidiaries and other than operating portfolio companies of Sponsor and its Affiliates).

"Sponsor Note" means the unsecured Amended and Restated Sponsor Subordinated Promissory Note, dated as of July 31, 2021, made by Holdings, Canadian Borrower and DCL Holdings payable to H.I.G. Dominion, Ltd. in the original principal amount of $9,077,919.93.

"Standard Letter of Credit Practice" means, for Issuing Bank, any domestic or foreign law or letter of credit practices applicable in the city in which Issuing Bank issued the applicable Letter of Credit or, for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Letter of Credit, as the case may be, in each case, (a) which letter of credit practices are of banks that regularly issue letters of credit in the particular city, and (b) which laws or letter of credit practices are required or permitted under ISP or UCP, as chosen in the applicable Letter of Credit.

"Stated Maturity Date" means [March 31, 2023].

"Subsidiary" of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the Equity Interests having ordinary voting power to elect a majority of the Board of Directors of such corporation, partnership, limited liability company, or other entity.

"Successor Cases" means, with respect to the Chapter 11 Cases, any subsequent proceedings under chapter 7 of the Bankruptcy Code and with respect to the CCAA Case, any subsequent receivership or bankruptcy proceedings under the BIA or applicable Canadian law.

"Supermajority Lenders" means, at any time, Lender s having or holding more than sixty-six and two-thirds (66 2/3%) of the aggregate Revolving Loan Exposure of all Lenders; provided, that, (i) the Revolving Loan Exposure of any Defaulting Lender shall be disregarded in the determination of the Supermajority Lenders, and (ii) at any time there are two or more Lender s (who are not Affiliates of one another), "Supermajority Lenders" must include at least two Lender s (who are not Affiliates of one another or Defaulting Lenders).

"Supply Chain Purchaser" means, (a) in the case of the Permitted Supply Chain Financing provided by Wells Fargo, Wells Fargo, (b) in the case of the Permitted Supply Chain Financing provided by BNP Paribas Dublin Branch, BNP Paribas Dublin Branch and (c) in the case of the Permitted Supply Chain Financing to be provided by Citi Europe Plc on behalf of Citibank, Citi Europe Plc or Citibank on and after the date that such Permitted Supply Chain Financing becomes effective.

"Supply Chain Receivables" means those Accounts created by a Borrower in the ordinary course of its business, that arise out of the sale of Accounts by a Borrower to a Supply Chain Purchaser under a Permitted Supply Chain Financing.

"Supported QFC" has the meaning specified therefor in Section 17.18 of this Agreement.

"Swap Obligation" means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Swing Lender" means US Swing Lender and Canadian Swing Lender, as applicable.

"Swing Loan" has the meaning specified therefor in Section 2.3(b) of this Agreement.

"Swing Loan Exposure" means, as of any date of determination with respect to any Lender, such Lender's Pro Rata Share of the Swing Loans on such date.

"Taxes" means any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any Governmental Authority, and all interest, penalties or additions to taxes with respect thereto.

"Tax Lender" has the meaning specified therefor in Section 14.2(a) of this Agreement.

"Term Loan Priority Collateral" has the meaning specified therefor in the Intercreditor Agreement.

"Term SOFR" means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) US Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding US Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first

preceding US Government Securities Business Day is not more than three (3) US Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "Base Rate Term SOFR Determination Day") that is two (2) US Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding US Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding US Government Securities Business Day is not more than three (3) US Government Securities Business Days prior to such Base Rate Term SOFR Determination Day.

"Term SOFR Adjustment" means a percentage equal to 0.10% per annum.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Agent in its reasonable discretion).

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Test Period" means, at any time, the twelve (12) consecutive fiscal months of Holdings then last ended (in each case taken as one accounting period) for which financial statements have been required to be delivered pursuant to Section 5.1(a) or, as of the Closing Date, the most recent financial statements delivered prior to the Closing Date.

"Trademark Security Agreement" has the meaning specified therefor in the US Security Agreement in the case of any US Loan Party or the meaning specified therefor in the Canadian Security Agreement in the case of any Canadian Loan Party.

"Transactions" means, collectively, the transactions to occur on or immediately prior to or after the Closing Date, including (a) the execution, delivery and performance of this Agreement and the other Loan Documents, the creation of the Liens pursuant to the Security Documents and the borrowing of the initial Loans hereunder, and (b) the payment of related fees, costs and expenses incurred in connection with the foregoing.

"UCC" means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"UCP" means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any version or revision thereof accepted by Issuing Bank for use.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"United States" and "U.S." means the United States of America.

"Unused Line Fee" has the meaning specified therefor in Section 2.10(b) of this Agreement.

"US Bankruptcy Court" has the meaning set forth in the Preliminary Statements.

"US Base Rate" means, for any day, the greatest of (a) the Floor, (b) the Federal Funds Rate in effect on such day plus one-half percent (½%), (c) Term SOFR for a one month tenor in effect on such day, plus one percentage point, provided, that, this clause (c) shall not be applicable during any period in which Term SOFR is unavailable or unascertainable, and (d) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate" in effect on such day, with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate. Any change in the US Base Rate due to a change in the foregoing rate shall be effective as of the opening of business on the effective day of such change. Each determination of the US Base Rate shall be made by Agent and shall be conclusive in the absence of manifest error.

"US Base Rate Loan" means each portion of a Revolving Loan denominated in Dollars that bears interest at a rate determined by reference to the US Base Rate.

"US Borrowers" means DCL US and DCL BP, individually each a "US Borrower".

"US Borrowing Base" means:

(a) eighty-five percent (85%) multiplied by the amount of Eligible Accounts of US Borrowers, plus

(b) eighty-five percent (85%) multiplied by the amount of Eligible Supply Chain Receivables of US Borrowers, provided, that, the aggregate amount of Eligible Supply Chain Receivables included in the US Borrowing Base shall not exceed in the aggregate the amount equal to $2,000,000, plus

(c) the lesser of: (i) seventy percent (70%) multiplied by the Value of Eligible Inventory and Eligible In-Transit Inventory of US Borrowers at such time, or (ii) eighty-five percent (85%) of the Net Recovery Percentage identified in the most recent Acceptable Appraisal of Eligible Inventory and Eligible In-Transit Inventory of US Borrowers multiplied by the Value of such Eligible Inventory and Eligible In-Transit Inventory at such time, provided, that, (A) the aggregate amount of Eligible In-Transit

Inventory of US Borrowers included in the calculation of the US Borrowing Base in the aggregate shall not exceed the amount equal to $4,000,000 and (B) the aggregate amount included in the US Borrowing Base based on the applicable percentage of the Value of Eligible Inventory of US Borrowers consisting of work-in-process, together with the aggregate amount included in the Canadian Borrowing Base based on the applicable percentage of the Value of Eligible Inventory of Canadian Borrowers consisting of work-in-process, shall not exceed $10,000,000; minus

(d) the aggregate amount of Reserves, if any, established by Agent from time to time.

"US Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any US Loan Party in or upon which a Lien is granted, or purported to be granted, by such Person in favor of Agent or any Lender under any of the Loan Documents or any Financing Order to secure, either directly or indirectly, repayment of any of the Obligations.

"US Commitment" means, with respect to each US Lender, its commitment to make US Revolving Loans hereunder and, with respect to all US Lenders, their commitments to make US Revolving Loans hereunder, in each case as such Dollar amounts are set forth beside such US Lender's name under the applicable heading on Schedule C-1 to the Agreement or in the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"US Dollar Equivalent" means at any time (a) as to any amount denominated in US Dollars, the amount thereof at such time, and (b) as to any amount denominated in any currency other than US Dollars, the equivalent amount in US Dollars calculated by Agent at such time using the Exchange Rate in effect on the Business Day of determination. The US Dollar Equivalent will be used both for determining the US Dollar amount of Eligible Accounts that are payable in currencies other than US Dollars and the amount of Loans and Letters of Credit made in currencies other than US Dollars. The Exchange Rate for the US Dollar Equivalent will be used at the date of the determination of the applicable Borrowing Base for both the calculation of the amount of Eligible Accounts and for the amount of Loans and Letters of Credit.

"US Dollars", "US$" and "$" each means lawful currency of the United States of America.

"US Financing Orders" means the Interim US Financing Order and the Final US Financing Order.

"US Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements in Sections 2.3(a), 2.3(c) and 2.12(b), in each case, such day is also a Business Day.

"US Guarantors" means, collectively, (a) Holdings and (b) each other Person organized under the laws of the United States, and resident in the United States, that at any time after the Closing Date becomes a guarantor pursuant to this Agreement; and "US Guarantor" means any one of them.

"US Guarantors" means Holdings, and any other Person organized under the laws of a jurisdiction in the United States that is wholly owned both directly and indirectly by Persons organized under the laws of a jurisdiction in the United States that becomes a Guarantor after the Closing Date pursuant to Section 5.11 of this Agreement.

"US Lender" means each Lender having a US Commitment and shall include the Issuing Bank and the US Swing Lender, and shall also include any other Person made a party to the Agreement pursuant to the provisions of Section 13.1 of the Agreement; and "US Lenders" means each of the Lenders with a US Commitment, or any one or more of them.

"US Loan Parties" means, collectively, (a) US Borrowers, (b) US Guarantors and (c) each other Person organized under the laws of the United States or any state thereof that at any time becomes a US Loan Party under the Loan Documents; and "US Loan Party" means any one of them.

"US Loan Parties" means US Borrowers and US Guarantors.

"US Maximum Credit" means the Maximum Credit less the Canadian Revolver Usage.

"US Obligations" means the Obligations of the US Loan Parties.

"US Revolver Usage" means, as of any date of determination, the sum of (a) the amount of outstanding US Revolving Loans (including Swing Loans and Protective Advances to US Borrowers), plus (b) the amount of the Letter of Credit Usage of the US Borrowers, plus (c) the "US Revolver Usage" as such term is defined in the Pre-Petition ABL Credit Agreement.

"US Revolving Loan Exposure" means, with respect to any Lender, as of any date of determination, (a) prior to the termination of the US Commitments, the amount of such Lender's US Commitment, and (b) after the termination of the US Commitments, the aggregate outstanding principal amount of the US Revolving Loans of such Lender.

"US Revolving Loans" has the meaning specified therefor in Section 2.1(a) of this Agreement.

"US Security Agreement" means a guaranty and security agreement, dated of even date herewith, in form and substance reasonably satisfactory to Agent, executed and delivered by each US Borrower and each US Guarantor to Agent.

"US Special Resolution Regimes" has the meaning specified therefor in Section 17.18 of this Agreement.

"US Swing Lender" means Wells Fargo or any other Lender that, at the request of Borrowers and with the consent of Agent agrees, in such Lender's sole discretion, to become US Swing Lender under Section 2.3(b) of the Agreement.

"US Swing Loan" has the meaning specified therefor in Section 2.3(b) of this Agreement.

"US Trustee" means the United States Trustee responsible for overseeing the administration of the Chapter 11 Cases.

"Valspar" means the Subsidiaries or Affiliates of Valspar Sourcing, Inc. set forth in the list provided by Administrative Borrower to Agent on or about the Closing Date, which list may be updated with other Subsidiaries or Affiliates of Valspar Sourcing, Inc. from time to time upon written notice by Administrative Borrower to Agent.

"Value" means, (a) except as otherwise provided in clause (b) below, as determined by Agent in good faith, with respect to Inventory, the lower of (i) cost computed on a first-in first-out basis in accordance with GAAP or (i) market value, in each case, consistent with the current practices of

Borrowers in effect immediately prior to the Closing Date, provided, that, for purposes of the calculation of the applicable Borrowing Base, (A) the Value of the Inventory shall not include: (1) the portion of the value of Inventory equal to the profit earned by any Affiliate on the sale thereof to a Borrower or (2) write-ups or write-downs in value with respect to currency exchange rates and (B) notwithstanding anything to the contrary contained herein, the cost of the Inventory shall be computed in the same manner and consistent with the first appraisal of the Inventory received and accepted by Agent after the Closing Date, if any and (b) for purposes of the definition of the term Permitted Disposition, with respect to any other property subject to any conveyance, sale, lease, sublease, assignment, transfer or other disposition, the greater of the fair market value or book value of such property.

"Voidable Transfer" has the meaning specified therefor in Section 17.9 of this Agreement.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (ii) the then outstanding principal amount of such Indebtedness.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"Wells Fargo Canada" means Wells Fargo Capital Finance Corporation Canada, a corporation existing under the laws of the Province of Ontario.

"Withdrawal Liability" means liability with respect to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 **Accounting Terms**. All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, that, if Administrative Borrower notifies Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision (or if Agent notifies Administrative Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Agent and Borrowers agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and Borrowers after such Accounting Change conform as nearly as possible to their respective positions immediately before such Accounting Change took effect and, until any such amendments have been agreed upon and agreed to by the Required Lenders, the provisions in this Agreement shall be calculated as if no such Accounting

Change had occurred When used herein, the term "financial statements" shall include the notes and schedules thereto. Whenever the term "Holdings" is used in respect of a financial covenant or a related definition, it shall be understood to mean Holdings and its Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. Notwithstanding anything to the contrary contained herein, (a) all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards Board's Accounting Standards Codification Topic 825 (or any similar accounting principle) and without giving effect to Statement of Financial Accounting Standards Board's Accounting Standards Codification Topic 470-20, and (b) the term "unqualified opinion" as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is (i) unqualified, and (ii) does not include any explanation, supplemental comment, or other comment concerning the ability of the applicable Person to continue as a going concern or concerning the scope of the audit and (c) Indebtedness of Holdings and its Subsidiaries shall be deemed to be carried at one hundred percent (100%) of the outstanding principal amount thereof. Notwithstanding anything to the contrary above or in the definition of "Capitalized Lease Obligations" or "Capital Expenditures", in the event of a change under GAAP (or the application thereof) requiring all leases to be capitalized, all obligations of any Person that are or would be characterized as operating lease obligations in accordance with GAAP on or prior to the Closing Date (whether or not such operating lease obligations were in effect on such date) shall continue to be accounted for as operating lease obligations (and not as Capitalized Lease Obligations) for purposes of this Agreement regardless of any change in GAAP following the Closing Date (or any required implementation of any change in GAAP promulgated prior to the Closing Date) that would otherwise require such obligations to be recharacterized as Capitalized Lease Obligations.

1.3 **UCC and PPSA**. Any terms used in this Agreement that are defined in the UCC shall be construed and defined as set forth in the UCC unless otherwise defined herein; provided, that, (a) to the extent that the UCC is used to define any term herein and such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern and (b) to the extent applicable, any such terms used in this Agreement that are defined in the PPSA shall have the meanings ascribed to such terms in the PPSA when used in relation to Collateral subject to the PPSA.

1.4 **Construction**. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties. Any reference to "province", "provincial" and like terms shall be construed to include "territory", "territorial" and like terms. "Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (a) the payment or repayment in full in immediately available funds of (i) the principal amount of, and interest accrued and unpaid with respect to, all outstanding Loans, together with the payment of any premium applicable to the repayment of the Loans, (ii) all Lender Group Expenses that have accrued and are unpaid regardless of whether demand has been made therefor, and (iii) all fees or charges that have accrued hereunder or under any other Loan

Document (including the Letter of Credit Fee and the Unused Line Fee) and are unpaid, (b) in the case of contingent reimbursement obligations with respect to Letters of Credit, providing Letter of Credit Collateralization, (c) in the case of obligations with respect to Bank Products (other than Hedge Obligations), providing Bank Product Collateralization, (d) the receipt by Agent of cash collateral in order to secure any other contingent Obligations for which a claim or demand for payment has been made on or prior to such time or in respect of matters or circumstances known to Agent or a Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys' fees and legal expenses), such cash collateral to be in such amount as Agent reasonably determines is appropriate to secure such contingent Obligations, (e) the payment or repayment in full in immediately available funds of all other outstanding Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Hedge Agreements provided by Hedge Providers) other than (i) unasserted contingent indemnification Obligations, (ii) any Bank Product Obligations (other than Hedge Obligations) that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized, and (iii) any Hedge Obligations that, at such time, are allowed by the applicable Hedge Provider to remain outstanding without being required to be repaid, and (f) the termination of all of the Commitments of the Lenders. Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record. All references to "knowledge" or "awareness" of any Company thereof mean the actual knowledge of a Responsible Officer of such Company or a parent entity of such Company which is a Loan Party hereunder.

1.5 **Time References**. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, all references to time of day refer to Eastern standard time or Eastern daylight saving time, as in effect in New York, New York on such day. For purposes of the computation of a period of time from a specified date to a later specified date, unless otherwise expressly provided, the word "from" means "from and including" and the words "to" and "until" each means "to and including"; provided, that, with respect to a computation of fees or interest payable to Agent or any Lender, such period shall in any event consist of at least one full day.

1.6 **Rounding**. The calculation of any financial ratios under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-down if there is no nearest number).

1.7 **Certifications**. All certifications to be made hereunder by a director, officer or representative of a Company shall be made by such person in his or her capacity solely as a director, officer or a representative of such Company, on such Company's behalf and not in such Person's individual capacity.

1.8 **Schedules and Exhibits**. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

1.9 **Currency Translation.** For purposes of this Agreement and the other Loan Documents, where the permissibility of a transaction or determinations of required actions or circumstances depend upon compliance with, or are determined by reference to, amounts stated in Dollars, unless the context of this Agreement or any other Loan Document clearly requires otherwise, such amounts shall be deemed to refer to US Dollars or US Dollar Equivalents and any requisite currency translation shall be based on the Exchange Rate and the permissibility of actions already taken shall not be affected by subsequent fluctuations in the Exchange Rate; provided, that, if Indebtedness is incurred to refinance or renew other Indebtedness, and such refinancing or renewal would cause the applicable dollar denominated limitation

to be exceeded if calculated at the Exchange Rate, such dollar denominated restriction shall be deemed not to have been exceeded so long as (a) such refinancing or renewal Indebtedness is denominated in the same currency as such Indebtedness being refinanced or renewed and (b) the principal amount of such refinancing or renewal Indebtedness does not exceed the principal amount of such Indebtedness being refinanced or renewed, except as permitted under Section 6.1. All certificates, reports and notices delivered under this Agreement shall express any amounts, calculations or determinations in US Dollars or the US Dollar Equivalent. Wherever in this Agreement and the other Loan Documents in connection with a borrowing, conversion, continuation or prepayment of a Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in US Dollars, but such Loan or Letter of Credit is to be denominated in Canadian Dollars, such amount shall be the same dollar figure but denominated in Canadian Dollars.

1.10 **Reserved.**

1.11 **Divisions.** For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

1.12 **Rates.** Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, CDOR or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 2.12(d)(iii), will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, CDOR or any other Benchmark, prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to a Borrower. Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

2. LOANS AND TERMS OF PAYMENT.

2.1 **Revolving Loans**.

(a) Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each US Lender agrees (severally, not jointly or jointly and severally) to make revolving

loans in Dollars ("US Revolving Loans") to US Borrowers from time to time so long as after giving effect thereto the outstanding amount does not exceed the lesser of:

(i) such Lender's US Commitment, or

(ii) such Lender's Pro Rata Share of the amount equal to the lesser of:

(A) the US Maximum Credit, minus the sum of (1) the Letter of Credit Usage of US Borrowers at such time, plus (2) the principal amount of the US Swing Loans outstanding at such time, and

(B) the US Borrowing Base as of such date minus the sum of (1) the Letter of Credit Usage of the US Borrowers at such time, plus (2) the principal amount of the US Swing Loans to the US Borrowers outstanding at such time;

provided, that, for purposes of clauses (A) and (B) above, such amounts shall be reduced by the then outstanding US Revolving Loans as such term is defined in the Pre-Petition ABL Credit Agreement.

(b) Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Canadian Lender agrees (severally, not jointly or jointly and severally) to make revolving loans in Dollars and Canadian Dollars ("Canadian Revolving Loans", and together with US Revolving Loans, "Revolving Loans") to Canadian Borrowers from time to time so long as after giving effect thereto the outstanding amount does not exceed the lesser of:

(i) such Lender's Canadian Commitment, or

(ii) such Lender's Pro Rata Share of the amount equal to the lesser of: (A) the Canadian Maximum Credit minus the sum of (1) the Letter of Credit Usage of Canadian Borrowers at such time, plus (2) the principal amount of the Canadian Swing Loans outstanding at such time, and (B) the Canadian Borrowing Base as of such date minus the sum of (1) the Letter of Credit Usage of Canadian Borrowers at such time, plus (2) the principal amount of the Canadian Swing Loans outstanding at such time;

provided, that, for purposes of clauses (A) and (B) above, such amounts shall be reduced by the then outstanding Canadian Revolving Loans as such term is defined in the Pre-Petition ABL Credit Agreement.

(c) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Revolving Loans, together with interest accrued and unpaid thereon, shall constitute Obligations and shall be due and payable on the Maturity Date or, if earlier, on the date on which they otherwise become due and payable pursuant to the terms of this Agreement.

(d) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right (but not the obligation), in the exercise of its Permitted Discretion, to establish and increase or decrease Receivable Reserves, Inventory Reserves, Bank Product Reserves, Priority Payables Reserves and other Reserves against the US Borrowing Base or the Canadian Borrowing Base, as applicable. The amount of any Receivable Reserve, Inventory Reserve, Bank Product Reserve, Priority Payables Reserve or other Reserve established by Agent shall have a reasonable relationship to the event, condition, other circumstance, or fact that is the basis for such Reserve and shall not be duplicative of any other Reserve established and currently maintained or eligibility criteria to the extent addressed thereby. Upon

establishment or increase in Reserves, Agent agrees to make itself available to discuss the reserve or increase, and Borrowers may take such action as may be required so that the event, condition, circumstance, or fact that is the basis for such Reserve or increase no longer exists, in a manner and to the extent reasonably satisfactory to Agent in the exercise of its Permitted Discretion. In no event shall such opportunity limit the right of Agent to establish or change such Receivable Reserve, Inventory Reserve, Bank Product Reserve, Priority Payables Reserve or other Reserves, unless Agent shall have determined, in its Permitted Discretion, that the event, condition, other circumstance, or fact that was the basis for such Receivable Reserve, Inventory Reserve, Bank Product Reserve, Priority Payable Reserve or other Reserves or such change no longer exists or has otherwise been adequately addressed by Borrowers. Agent will provide notice to Administrative Borrower three (3) Business Days' prior to the establishment of any new categories of Reserves after the date hereof or any change in the methodology for the calculation of an existing Reserve after the date hereof, except that such notice shall not be required, but Agent may endeavor to provide prior notice (i) if in the good faith determination of Agent, it is necessary to act sooner to preserve or protect the Collateral or its value or the rights of Agent therein or to otherwise address any event, condition or circumstance that, in the good faith judgment of the Agent, is reasonably likely to cause a diminution in the value of the Collateral or to threaten the ability to realize upon any portion of the Collateral or (ii) if after giving effect to any such new category of reserves or change in methodology there would be an Overadvance.

2.2 **Reserved**.

2.3 **Borrowing Procedures and Settlements**.

(a) Procedure for Borrowing Revolving Loans.

(i) Each Borrowing shall be made by a written request by a Responsible Officer delivered to Agent (which may be delivered through Agent's electronic platform or portal) and received by Agent no later than 11:00 a.m. (provided, that, Agent may, in its sole discretion, elect to accept as timely requests that are received later than 11:00 a.m. on the applicable Business Day): (i) on the Business Day that is the requested Funding Date in the case of a request for a Swing Loan, (ii) on the Business Day that is one (1) Business Day prior to the requested Funding Date in the case of a request for a Base Rate Loan, and (iii) on the Business Day that is three (3) Business Days prior to the requested Funding Date in the case of all other requests. Each Borrowing request shall specify the following information:

(A) the name of the applicable Borrower;

(B) the Available Currency of the requested Revolving Loan;

(C) the aggregate principal amount of the Revolving Loan to be made pursuant to such request (stated in the applicable currency);

(D) the Funding Date (which shall be a Business Day);

(E) whether the Revolving Loan requested will consist of a US Revolving Loan or Canadian Revolving Loan;

(F) in the case of Revolving Loans denominated in US Dollars, whether such Revolving Loans are to be US Base Rate Loans or SOFR Loans, or in the case of Revolving Loans denominated in Canadian Dollars whether such Revolving Loans are to be Canadian Base Rate Loans or Canadian BA Rate Loans; and

(G) in the case of Revolving Loans that are Canadian BA Rate Loans or SOFR Loans, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period."

(ii) All Borrowing requests which are not made on-line via Agent's electronic platform or portal shall be subject to (and unless Agent elects otherwise in the exercise of its sole discretion, such Borrowing shall not be made until the completion of) Agent's authentication process (with results satisfactory to Agent) prior to the funding of any such requested Revolving Loan. At Agent's option, Agent may elect to accept telephonic notice of any such request by the required time. Any such telephonic request shall be irrevocable and to the extent required by Agent, shall be confirmed in writing by hand delivery, facsimile (or other form of electronic transmission, including on-line via Agent's electronic platform or portal, as Agent may specify for such purpose) to Agent within twenty-four (24) hours of the giving of such telephonic notice and signed (or otherwise authenticated) by the Borrower making such request or Administrative Borrower on behalf of such Borrower. The failure to provide such written confirmation shall not affect the validity of the request.

(iii) If no election as to whether a US Revolving Loan is to be a US Base Rate Loan or a SOFR Loan is contained in the applicable request, then the requested Revolving Loan shall be a US Base Rate Loan. If no election as to whether a Canadian Revolving Loan denominated in Canadian Dollars is to be a Canadian BA Rate Loan or Canadian Base Rate Loan is contained in the applicable request, then the requested Revolving Loan shall be a Canadian Base Rate Loan. If no Interest Period is specified with respect to any request for a SOFR Loan or Canadian BA Rate Loan in the applicable request, then the requested Revolving Loan shall be deemed to have an Interest Period of one (1) month's duration.

(b) Making of Swing Loans.

(i) In the case of a request for a Revolving Loan and so long as either (A) the aggregate amount of Swing Loans made since the last Settlement Date, minus all payments or other amounts applied to Swing Loans since the last Settlement Date, plus the amount of the requested Swing Loan does not exceed $2,500,000 or (B) in the case of a US Swing Loan, US Swing Lender, in its sole discretion, agrees to make a US Swing Loan in the Available Currency notwithstanding the foregoing limitation, US Swing Lender shall make a US Revolving Loan (any such US Revolving Loan made by US Swing Lender pursuant to this Section 2.3(b) being referred to as a "US Swing Loan" and all such Revolving Loans being referred to as "US Swing Loans") available to US Borrowers or (C) in the case of a Canadian Swing Loan, Canadian Swing Lender, in its sole discretion, agrees to make a Canadian Swing Loan in the Available Currency notwithstanding the foregoing limitation, Canadian Swing Lender shall make a Canadian Revolving Loan (any such Canadian Revolving Loan made by Canadian Swing Lender pursuant to this Section 2.3(b) being referred to as a "Canadian Swing Loan" and all such Revolving Loans being referred to as "Canadian Swing Loans," and together with US Swing Loans, collectively, "Swing Loans") available to Canadian Borrowers, in each case on the Funding Date applicable thereto by transferring immediately available funds in the amount of such requested Borrowing to the applicable Designated Account. Each Swing Loan shall be deemed to be a Revolving Loan hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other Revolving Loans, except that all payments (including interest) on any Swing Loan shall be payable to the applicable Swing Lender solely for its own account.

(ii) Subject to the provisions of Section 2.3(d)(ii), Swing Lender shall not make and shall not be obligated to make any Swing Loan if Swing Lender has actual knowledge that (A) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (B) as of the date of such Funding Date and after giving effect to the requested Borrowing, either (1) the Revolver Usage would exceed the lesser of the Maximum

Credit or the Combined Borrowing Base, (2) the US Revolver Usage would exceed the US Borrowing Base, (3) the US Revolver Usage would exceed the lesser of the US Maximum Credit or the US Borrowing Base, or (4) the Canadian Revolver Usage would exceed the lesser of the Canadian Maximum Credit or the Canadian Borrowing Base. A Swing Lender shall not otherwise be required to determine whether the applicable conditions precedent set forth in Section 3 have been satisfied on the Funding Date applicable thereto prior to making any Swing Loan. The Swing Loans shall be secured by Agent's Liens, constitute Revolving Loans and Obligations, and bear interest at the rate applicable from time to time to Revolving Loans that are Base Rate Loans.

(c) **Making of Revolving Loans.** In the event that a Swing Lender is not obligated to make a Swing Loan and elects not to do so or a Borrower makes a request for a Revolving Loan (other than a Swing Loan), then after receipt of a request for a Borrowing pursuant to Section 2.3(a), Agent shall notify the Lenders by telecopy, telephone, email, or other electronic form of transmission, of the requested Borrowing; such notification to be sent on the Business Day or US Government Securities Business Day, as applicable, that is (A) in the case of a Base Rate Loan, at least one Business Day prior to the requested Funding Date, or (B) in the case of a SOFR Loan, prior to 11:00 a.m. at least three US Government Securities Business Days prior to the requested Funding Date. If Agent has notified the Lenders of a requested Borrowing on the Business Day that is one Business Day prior to the Funding Date, then each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, not later than 10:00 a.m. on the Business Day that is the requested Funding Date. After Agent's receipt of the proceeds of such Revolving Loans from the Lenders, Agent shall make the proceeds thereof available to Borrowers in the Available Currency on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the applicable Designated Account; provided, that, subject to the provisions of Section 2.3(d)(ii), no Lender shall have an obligation to make any Revolving Loan, if (1) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived, (2) as of the date of the requested Borrowing and after giving effect thereto, the Revolver Usage would exceed the lesser of the Combined Borrowing Base or the Maximum Credit, (3) the US Revolver Usage would exceed the US Borrowing Base, (4) the US Revolver Usage would exceed the lesser of the US Borrowing Base or the US Maximum Credit, or (5) Canadian Revolver Usage would exceed the lesser of the Canadian Borrowing Base or the Canadian Maximum Credit.

(i) Unless Agent receives notice from a Lender prior to 9:30 a.m. on the Business Day that is the requested Funding Date relative to a requested Borrowing as to which Agent has notified the Lenders of a requested Borrowing that such Lender will not make available as and when required hereunder to Agent for the account of Borrowers the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrowers a corresponding amount. If, on the requested Funding Date, any Lender shall not have remitted the full amount that it is required to make available to Agent in immediately available funds and if Agent has made available to Borrowers such amount on the requested Funding Date, then such Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to the Agent Payment Account, no later than 10:00 a.m. on the Business Day that is the first Business Day after the requested Funding Date (in which case, the interest accrued on such Lender's portion of such Borrowing for the Funding Date shall be for Agent's separate account). If any Lender shall not remit the full amount that it is required to make available to Agent in immediately available funds as and when required hereby and if Agent has made available to Borrowers such amount, then that Lender shall be obligated to immediately remit such amount to Agent, together with interest at the Defaulting Lender Rate for each day until the date on which such amount is so remitted. A notice submitted by Agent to any Lender with

respect to amounts owing under this Section 2.3(c)(ii) shall be conclusive, absent manifest error. If the amount that a Lender is required to remit is made available to Agent, then such payment to Agent shall constitute such Lender's Revolving Loan for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify Administrative Borrower of such failure to fund and, upon demand by Agent, Borrowers shall pay such amount to Agent for the Agent Payment Account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Revolving Loans composing such Borrowing.

(d) Protective Advances and Optional Overadvances.

(i) Any contrary provision of this Agreement or any other Loan Document notwithstanding, but subject to Section 2.3(d)(iv), at any time (A) after the occurrence and during the continuance of a Default or an Event of Default, or (B) that any of the other applicable conditions precedent set forth in Section 3 are not satisfied, Agent hereby is authorized by Borrowers and the Lenders, from time to time, in Agent's sole discretion, to make Revolving Loans in any Available Currency to, or for the benefit of, Borrowers, on behalf of the Lenders, that Agent, in its Permitted Discretion, deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, or (2) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations) (the Revolving Loans described in this Section 2.3(d)(i) shall be referred to as "Protective Advances"). Notwithstanding the foregoing, the aggregate amount of all Protective Advances outstanding at any one time shall not exceed ten percent (10%) of the Maximum Credit.

(ii) Any contrary provision of this Agreement or any other Loan Document notwithstanding, but subject to Section 2.3(d)(iv), the Lenders hereby authorize Agent, US Swing Lender or Canadian Swing Lender, as applicable, and either Agent, US Swing Lender or Canadian Swing Lender, as applicable, may, but is not obligated to, knowingly and intentionally, continue to make Revolving Loans (including Swing Loans) to Borrowers notwithstanding that an Overadvance exists or would be created thereby, so long as (A) after giving effect to such Revolving Loans, the outstanding Revolver Usage does not exceed the Combined Borrowing Base by more than ten percent (10%) of the Maximum Credit, and (B) after giving effect to such Revolving Loans, the outstanding Revolver Usage (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) does not exceed the Maximum Credit. In the event Agent obtains actual knowledge that the Revolver Usage exceeds the amounts permitted by the immediately foregoing provisions, regardless of the amount of, or reason for, such excess, Agent shall notify the Lenders as soon as practicable (and prior to making any (or any additional) intentional Overadvances (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) unless Agent determines that prior notice would result in imminent harm to the Collateral or its value, in which case Agent may make such Overadvances and provide notice as promptly as practicable thereafter), and the Lenders thereupon shall, together with Agent, jointly determine the terms of arrangements that shall be implemented with Borrowers intended to reduce, within a reasonable time, the outstanding principal amount of the Revolving Loans to Borrowers to an amount permitted by the preceding sentence. In such circumstances, if any Lender with a Commitment objects to the proposed terms of reduction or repayment of any Overadvance, the terms of reduction or repayment thereof shall be implemented according to the determination of the Required Lenders. The foregoing provisions are meant for the benefit of the Lenders and Agent and are not meant for the benefit of Borrowers, which shall continue to be bound by the provisions of Section 2.4(e)(1). Each Lender with a Commitment shall be obligated to settle with Agent as provided in Section 2.3(e) (or Section 2.3(g), as applicable) for the amount of such Lender's Pro Rata Share of any unintentional Overadvances by Agent reported to such Lender, any intentional Overadvances made as permitted under this Section 2.3(d)(ii), and any Overadvances resulting from the charging to the Loan Account of interest, fees, or Lender Group Expenses.

(iii) Each Protective Advance and each Overadvance (each, a "Special Advance") shall be deemed to be a Revolving Loan hereunder, except that no Special Advance shall be eligible to be a SOFR Loan or a Canadian BA Rate Loan and, prior to Settlement therefor, all payments on the Special Advances shall be payable to Agent solely for its own account. The Special Advances shall be repayable on demand, secured by Agent's Liens, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to Revolving Loans that are US Base Rate Loans in the case of a Special Advance denominated in US Dollars or Canadian Base Rate Loans in the case of a Special Advance denominated in Canadian Dollars. The provisions of this Section 2.3(d) are for the exclusive benefit of Agent, each Swing Lender, and the Lenders and are not intended to benefit Borrowers (or any other Loan Party) in any way.

(iv) Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary: (A) no Special Advance may be made by Agent if such Special Advance would cause the aggregate principal amount of Special Advances outstanding to exceed an amount equal to ten percent (10%) of the Maximum Credit; and (B) to the extent that the making of any Special Advance causes the aggregate Revolver Usage to exceed the Maximum Credit, such portion of such Special Advance shall be for Agent's sole and separate account and not for the account of any Lender and shall be entitled to priority in repayment in accordance with Section 2.4(b).

(e) **Settlement**. It is agreed that each Lender's funded portion of the Revolving Loans is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Revolving Loans. Such agreement notwithstanding, Agent, Swing Lender, and the other Lenders agree (which agreement shall not be for the benefit of Borrowers) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Lenders as to the Revolving Loans (including Swing Loans and Special Advances) shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("Settlement") with the Lenders on a weekly basis, or on a more frequent basis if so determined by Agent in its sole discretion (A) on behalf of Swing Lender, with respect to the outstanding Swing Loans, (B) for itself, with respect to the outstanding Special Advances, and (C) with respect to any Loan Party's or any of their Subsidiaries' payments or other amounts received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 2:00 p.m. on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Revolving Loans (including Swing Loans and Special Advances) for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(g)): (1) if the amount of the Revolving Loans (including Swing Loans and Special Advances) made by a Lender that is not a Defaulting Lender exceeds such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Special Advances) as of a Settlement Date, then Agent shall, by no later than 12:00 p.m. on the Settlement Date, transfer in immediately available funds to a Deposit Account of such Lender (as such Lender may designate), an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans and Special Advances), and (2) if the amount of the Revolving Loans (including Swing Loans and Special Advances) made by a Lender is less than such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Special Advances) as of a Settlement Date, such Lender shall no later than 12:00 p.m. on the Settlement Date transfer in immediately available funds to the Agent Payment Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans and Special Advances). Such amounts made available to Agent under clause (2) of the immediately preceding sentence shall be applied against the amounts of the applicable Swing Loans or Special Advances and, together with the portion of such Swing

Loans or Special Advances representing Swing Lender's Pro Rata Share thereof, shall constitute Revolving Loans of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Lender's balance of the Revolving Loans (including Swing Loans and Special Advances) is less than, equal to, or greater than such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Special Advances) as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Borrowers and allocable to the Lenders hereunder, and proceeds of Collateral.

(iii) Between Settlement Dates, Agent, to the extent Special Advances or Swing Loans are outstanding, may pay over to Agent or Swing Lender, as applicable, any payments or other amounts received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to the Special Advances or Swing Loans. Between Settlement Dates, Agent, to the extent no Special Advances or Swing Loans are outstanding, may pay over to Swing Lender any payments or other amounts received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to Swing Lender's Pro Rata Share of the Revolving Loans. If, as of any Settlement Date, payments or other amounts of the Loan Parties or their Subsidiaries received since the then immediately preceding Settlement Date have been applied to Swing Lender's Pro Rata Share of the Revolving Loans other than to Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Agent for the accounts of the Lenders, and Agent shall pay to the Lenders (other than a Defaulting Lender if Agent has implemented the provisions of Section 2.3(g)), to be applied to the outstanding Revolving Loans of such Lenders, an amount such that each such Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Revolving Loans. During the period between Settlement Dates, Swing Lender with respect to Swing Loans, Agent with respect to Special Advances, and each Lender with respect to the Revolving Loans other than Swing Loans and Special Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Agent, or the Lenders, as applicable.

(iv) Anything in this Section 2.3(e) to the contrary notwithstanding, in the event that a Lender is a Defaulting Lender, Agent shall be entitled to refrain from remitting settlement amounts to the Defaulting Lender and, instead, shall be entitled to elect to implement the provisions set forth in Section 2.3(g).

(f) **Notation**. Consistent with Section 13.1(h), Agent, as a non-fiduciary agent for Borrowers, shall maintain a register showing the principal amount and stated interest of the Revolving Loans owing to each Lender, including the Swing Loans owing to Swing Lender, and Special Advances owing to Agent, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(g) **Defaulting Lenders**.

(i) Notwithstanding the provisions of Section 2.4(b)(ii) or Section 2.4(b)(iii), Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrowers to Agent for the Defaulting Lender's benefit or any proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, Agent shall transfer any such payments (A) first, to Agent to the extent of any Special Advances that were made by

Agent and that were required to be, but were not, paid by Defaulting Lender, (B) second, to Swing Lender to the extent of any Swing Loans that were made by Swing Lender and that were required to be, but were not, paid by the Defaulting Lender, (C) third, to Issuing Bank, to the extent of the portion of a Letter of Credit Disbursement that was required to be, but was not, paid by the Defaulting Lender, (D) fourth, to each Non-Defaulting Lender ratably in accordance with their Commitments (but, in each case, only to the extent that such Defaulting Lender's portion of a Revolving Loan (or other funding obligation) was funded by such other Non-Defaulting Lender), (E) fifth, in Agent's sole discretion, to a suspense account maintained by Agent, the proceeds of which shall be retained by Agent and may be made available to be re-advanced to or for the benefit of Borrowers (upon the request of Borrowers and subject to the conditions set forth in Section 3.2) as if such Defaulting Lender had made its portion of Revolving Loans (or other funding obligations) hereunder, and (F) sixth, from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender in accordance with tier (M) of Section 2.4(b)(ii) and Section 2.4(b)(iii). Subject to the foregoing, Agent may hold and, in its discretion, re-lend to Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Pro Rata Share in connection therewith) and for the purpose of calculating the fee payable under Section 2.10(b), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero; provided, that, the foregoing shall not apply to any of the matters governed by Section 14.1(a)(i) through (iii). The provisions of this Section 2.3(g) shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which all of the Non-Defaulting Lenders, Agent, Issuing Bank, and Borrowers shall have waived, in writing, the application of this Section 2.3(g) to such Defaulting Lender, or (z) the date on which such Defaulting Lender makes payment of all amounts that it was obligated to fund hereunder, pays to Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by Agent, provides adequate assurance of its ability to perform its future obligations hereunder (on which earlier date, so long as no Event of Default has occurred and is continuing, any remaining cash collateral held by Agent pursuant to Section 2.3(g)(ii) shall be released to Borrowers). The operation of this Section 2.3(g) shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by any Borrower of its duties and obligations hereunder to Agent, Issuing Bank, or to the Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Borrowers, at their option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being paid its share of the outstanding Obligations (other than Bank Product Obligations, but including (1) all interest, fees, and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Pro Rata Share of its participation in the Letters of Credit); provided, that, any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or Borrowers' rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 2.3(g) and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3(g) shall control and govern.

(ii) If any Swing Loan or Letter of Credit is outstanding at the time that a Lender becomes a Defaulting Lender then:

(A) such Defaulting Lender's Swing Loan Exposure and Letter of Credit Exposure shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares but only to the extent (x) the sum of all Non-Defaulting Lenders' Pro Rata Share of Revolver Usage plus such Defaulting Lender's Swing Loan Exposure and Letter of Credit Exposure does not exceed the total of all Non-Defaulting Lenders' Commitments and (y) the conditions set forth in Section 3.2 are satisfied at such time;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, Borrowers shall within one Business Day following notice by the Agent (x) first, prepay such Defaulting Lender's Swing Loan Exposure (after giving effect to any partial reallocation pursuant to clause (A) above), and (y) second, cash collateralize such Defaulting Lender's Letter of Credit Exposure (after giving effect to any partial reallocation pursuant to clause (A) above), pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to the Agent, for so long as such Letter of Credit Exposure is outstanding; provided, that, Borrowers shall not be obligated to cash collateralize any Defaulting Lender's Letter of Credit Exposure if such Defaulting Lender is also Issuing Bank;

(C) if Borrowers cash collateralize any portion of such Defaulting Lender's Letter of Credit Exposure pursuant to this Section 2.3(g)(ii), Borrowers shall not be required to pay any Letter of Credit Fees to Agent for the account of such Defaulting Lender pursuant to Section 2.6(b) with respect to such cash collateralized portion of such Defaulting Lender's Letter of Credit Exposure during the period such Letter of Credit Exposure is cash collateralized;

(D) to the extent the Letter of Credit Exposure of the Non-Defaulting Lenders is reallocated pursuant to this Section 2.3(g)(ii), then the Letter of Credit Fees payable to the Non-Defaulting Lenders pursuant to Section 2.6(b) shall be adjusted in accordance with such Non-Defaulting Lenders' Letter of Credit Exposure;

(E) to the extent any Defaulting Lender's Letter of Credit Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.3(g)(ii), then, without prejudice to any rights or remedies of Issuing Bank or any Lender hereunder, all Letter of Credit Fees that would have otherwise been payable to such Defaulting Lender under Section 2.6(b) with respect to such portion of such Letter of Credit Exposure shall instead be payable to Issuing Bank until such portion of such Defaulting Lender's Letter of Credit Exposure is cash collateralized or reallocated;

(F) so long as any Lender is a Defaulting Lender, the Swing Lender shall not be required to make any Swing Loan and Issuing Bank shall not be required to issue, amend, or increase any Letter of Credit, in each case, to the extent (x) the Defaulting Lender's Pro Rata Share of such Swing Loans or Letter of Credit cannot be reallocated pursuant to this Section 2.3(g)(ii), or (y) the Swing Lender or Issuing Bank, as applicable, has not otherwise entered into arrangements reasonably satisfactory to the Swing Lender or Issuing Bank, as applicable, and Borrowers to eliminate the Swing Lender's or Issuing Bank's risk with respect to the Defaulting Lender's participation in Swing Loans or Letters of Credit; and

(G) Agent may release any cash collateral provided by Borrowers pursuant to this Section 2.3(g)(ii) to Issuing Bank and Issuing Bank may apply any such cash collateral to the payment of such Defaulting Lender's Pro Rata Share of any Letter of Credit Disbursement that is not reimbursed by Borrowers pursuant to Section 2.11(d). Subject to Section 17.14, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising

from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(h) **Independent Obligations**. All Revolving Loans (other than Swing Loans and Special Advances) shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Revolving Loan (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

(i) **Loan Management Service.** If Borrowers and Agent have separately agreed that Borrowers may use the Loan Management Service (and such agreement is still in effect), Borrowers shall not request and Agent shall no longer honor a request for a Borrowing made in accordance with Section 2.3(a), and all Borrowings will instead be initiated by Agent and credited to the applicable Designated Account as Borrowings as of the end of each Business Day in an amount sufficient to maintain an agreed upon ledger balance in the applicable Designated Account, subject only to the limitations provided in Section 2.1. If Agent terminates Borrowers' access to the Loan Management Service, Borrowers may continue to request Borrowings as provided in Section 2.3(a), subject to the other terms and conditions of this Agreement. Agent shall have no obligation to make a Borrowing through the Loan Management Service after the occurrence and during the continuance of a Default or an Event of Default, or in an amount in excess of the limitations provided in Section 2.1, and may terminate the Loan Management Service at any time in its sole discretion.

2.4 **Payments; Reductions of Commitments; Prepayments**.

(a) **Payments by Borrowers**.

(i) Except as otherwise expressly provided herein, all payments by Borrowers shall be made to the Agent Payment Account for the account of the Lender Group and shall be made in immediately available funds, no later than 1:30 p.m. on the date specified herein. Any payment received by Agent later than 1:30 p.m. shall be deemed to have been received (unless Agent, in its sole discretion, elects to credit it on the date received) on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from Borrowers prior to the date on which any payment is due to the Lenders that Borrowers will not make such payment in full as and when required, Agent may assume that Borrowers have made (or will make) such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrowers do not make such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(b) **Apportionment and Application**.

(i) So long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all principal and interest payments received by Agent shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and

expenses received by Agent (other than fees or expenses that are for Agent's separate account or for the separate account of Issuing Bank) shall be apportioned ratably among the Lenders. Subject to Section 2.4(b)(iii), Section 2.4(e)(ii) and Section 2.4(f), all payments to be made hereunder by Borrowers shall be remitted to Agent and all such payments, and all proceeds of Collateral received by Agent, shall be applied, so long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, to reduce the balance of the Revolving Loans outstanding and, thereafter, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law, except that such proceeds shall be applied to the Pre-Petition ABL Obligations as provided in the Financing Orders or herein.

(ii) Subject to the terms of the Financing Orders, at any time that an Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all payments remitted to Agent from or on behalf of US Loan Parties and all proceeds of US Collateral received by Agent or any Lender (but in the case of payments or Collateral of US Guarantors subject to such allocation between this clause (b)(ii) and clause (b)(iii) of this Section 2.4 as Agent may determine) shall be applied as follows:

(A) first, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent from any US Borrower or US Guarantor under the Loan Documents, until paid in full, provided, that, to the extent any Pre-Petition ABL Obligations are then outstanding, before application to any Lender Group Expenses, such amount shall be applied to the payment in full of the Pre-Petition ABL Obligations and then to the Lender Group Expenses and in the order provided for in this clause (ii);

(B) second, to pay any fees or premiums then due to Agent from any US Loan Party under the Loan Documents until paid in full,

(C) third, to pay interest due in respect of all Protective Advances made to or related to any US Loan Party until paid in full,

(D) fourth, to pay the principal of all Protective Advances made to or related to any US Loan Party until paid in full,

(E) fifth, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Lenders from any Loan Party under the Loan Documents, until paid in full,

(F) sixth, ratably, to pay any fees or premiums then due to any of the Lenders from any US Loan Party under the Loan Documents until paid in full,

(G) seventh, to pay interest accrued in respect of the US Swing Loans to a US Borrower until paid in full,

(H) eighth, to pay the principal of all US Swing Loans to a US Borrower until paid in full,

(I) ninth, ratably, to pay interest accrued in respect of the US Revolving Loans (other than Protective Advances) until paid in full,

(J) tenth, ratably

(1) to pay the principal of all US Revolving Loans (other than Protective Advances) until paid in full,

(2) to Agent, to be held by Agent, for the benefit of Issuing Bank (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of Issuing Bank, a share of each Letter of Credit Disbursement), as cash collateral in an amount up to one hundred three percent (103%) of the Letter of Credit Usage for the account of any US Borrower (to the extent permitted by applicable law, such cash collateral shall be applied to the reimbursement of any Letter of Credit Disbursement as and when such disbursement occurs and, if a Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Letter of Credit shall, to the extent permitted by applicable law, be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (A) hereof),

(3) up to the amount (after taking into account any amounts previously paid pursuant to this clause (3) during the continuation of the applicable Application Event) of the most recently established Bank Product Reserve to (y) the Bank Product Providers based upon amounts then certified by the applicable Bank Product Provider to Agent (in form and substance satisfactory to Agent) to be due and payable to such Bank Product Providers on account of Bank Product Obligations of US Borrowers, and (z) with any balance to be paid to Agent, to be held by Agent, for the ratable benefit of the Bank Product Providers, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to Bank Product Obligations owed by any US Loan Party to the applicable Bank Product Provider as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in respect of such Bank Product Obligations shall be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (A) hereof,

(K) eleventh, to pay all Canadian Obligations until paid in full (pursuant the priority of application of payments set forth in Section 2.4(b)(ii) and Section 2.4(b)(iii)),

(L) twelfth, to pay any other US Obligations other than US Obligations owed to Defaulting Lenders,

(M) thirteenth, ratably to pay any US Obligations owed to Defaulting Lenders; and

(N) fourteenth, to US Borrowers (to be wired to the applicable Designated Account) or such other Person entitled thereto under applicable law.

(iii) At any time that an Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all payments remitted to Agent from or on behalf of Canadian Loan Parties and all proceeds of Canadian Collateral received by Agent shall be applied as follows:

(A) first, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent from any Canadian Loan Party under the Loan Documents, until paid in full, provided, that, to the extent any Pre-Petition ABL Obligations are then outstanding, before application to any Lender Group Expenses, such amount shall be applied to the payment in full of the Pre-Petition ABL Obligations and then to the Lender Group Expenses and in the order provided for in this clause (iii);

(B) second, to pay any fees or premiums then due to Agent from any Canadian Loan Party under the Loan Documents until paid in full,

(C) third, to pay interest due in respect of all Protective Advances made to or related to any Canadian Loan Party until paid in full,

(D) fourth, to pay the principal of all Protective Advances made to or related to any Canadian Loan Party until paid in full,

(E) fifth, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Lenders from any Canadian Loan Party under the Loan Documents, until paid in full,

(F) sixth, ratably, to pay any fees or premiums then due to any of the Lenders from any Canadian Loan Party under the Loan Documents until paid in full,

(G) seventh, to pay interest accrued in respect of the Canadian Swing Loans until paid in full,

(H) eighth, to pay the principal of all Canadian Swing Loans until paid in full,

(I) ninth, ratably, to pay interest accrued in respect of the Canadian Revolving Loans (other than Protective Advances) until paid in full,

(J) tenth, ratably

(1) to pay the principal of all Canadian Revolving Loans (other than Protective Advances) until paid in full,

(2) to Agent, to be held by Agent, for the benefit of Issuing Bank (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of Issuing Bank, a share of each Letter of Credit Disbursement), as cash collateral in an amount up to one hundred three percent (103%) of the Letter of Credit Usage for the account of any Canadian Loan Party (to the extent permitted by applicable law, such cash collateral shall be applied to the reimbursement of any Letter of Credit Disbursement as and when such disbursement occurs and, if a Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Letter of Credit shall, to the extent permitted by applicable law, be reapplied pursuant to this 2.4(b)(iii), beginning with tier (A) hereof),

(3) up to the amount (after taking into account any amounts previously paid pursuant to this clause (3) during the continuation of the applicable Application Event) of the most recently established Bank Product Reserve to (y) the Bank Product Providers based upon amounts then certified by the applicable Bank Product Provider to Agent (in form and substance satisfactory to Agent) to be due and payable to such Bank Product Providers on account of Bank Product Obligations of any Canadian Loan Party, and (z) with any balance to be paid to Agent, to be held by Agent, for the ratable benefit of the Bank Product Providers, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to Bank Product Obligations owed to the applicable Bank Product Provider by any Canadian Loan Party as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in respect of such Bank Product Obligations shall be reapplied pursuant to this 2.4(b)(iii), beginning with tier (A) hereof,

(K) eleventh, to pay any US Obligations that remain outstanding after the proceeds of substantially all of the ABL Priority Collateral of US Borrowers have been applied to the US Obligations pursuant to Section 2.4(b)(ii) above,

(L) twelfth, to pay any other Canadian Obligations other than Canadian Obligations owed to Defaulting Lenders,

(M) thirteenth, ratably to pay any Canadian Obligations owed to Defaulting Lenders; and

(N) fourteenth, to Canadian Borrowers (to be wired to the applicable Designated Account) or such other Person entitled thereto under applicable law.

(iv) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(e).

(v) In each instance, so long as no Application Event has occurred and is continuing, Section 2.4(b)(i) shall not apply to any payment made by Borrowers to Agent and specified by Borrowers to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement or any other Loan Document.

(vi) For purposes of Section 2.4(b)(ii) and Section 2.4(b)(iii), "paid in full" of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(vii) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, if the conflict relates to the provisions of Section 2.3(g) and this Section 2.4, then the provisions of Section 2.3(g) shall control and govern, and if otherwise, then the terms and provisions of this Section 2.4 shall control and govern.

(viii) Notwithstanding anything to the contrary set forth herein or in any of the other Loan Documents, (A) payments and collections received in any currency other than the currency in which any outstanding Obligations are denominated will be accepted and/or applied at the Permitted Discretion of Agent, (B) in the event that Agent elects to accept and apply such amounts when there are no Obligations (other than Letters of Credit or other contingent Obligations) then outstanding in the same currency, Agent may, in its Permitted Discretion (but is not obligated to), convert such currency received to the currency in which the Obligations are denominated at the Exchange Rate on such date and (C) in such event, Borrowers shall pay the costs of such conversion (or Agent may, in its Permitted Discretion, charge such costs to the Loan Account of any Borrower maintained by Agent) and (D) to the extent any Borrower or Guarantor, directly or indirectly, uses any proceeds of the applicable Loans or Letters of Credit to acquire rights in or the use of any Collateral or to repay any Indebtedness used to acquire rights in or the use of any Collateral, payments in respect of the Obligations shall be deemed applied first to the Obligations arising from Loans and Letters of Credit that were not used for such purposes and second to the Obligations arising from Loans and Letters of Credit the proceeds of which were used to acquire

rights in or the use of any Collateral in the chronological order in which such Borrower acquired such rights in or the use of such Collateral.

(c) **Reduction of Commitments.** The Commitments shall terminate on the Maturity Date. Borrowers may reduce the Commitments, without premium or penalty, to an amount (which may be zero) not less than the sum of (i) in the case of a reduction in the US Commitments, (A) the US Revolver Usage as of such date, plus (B) the principal amount of all US Revolving Loans not yet made as to which a request has been given by Borrowers under Section 2.3(a), plus (C) the amount of all Letters of Credit for the account of any US Loan Party not yet issued as to which a request has been given by Borrowers pursuant to Section 2.11(a) and (ii) in the case of a reduction in the Canadian Commitments, (A) the Canadian Revolver Usage as of such date, plus (B) the principal amount of all Canadian Revolving Loans not yet made as to which a request has been given by Borrowers under Section 2.3(a), plus (C) the amount of all Letters of Credit for the account of any Canadian Loan Party not yet issued as to which a request has been given by Borrowers pursuant to Section 2.11(a). Each such reduction shall be in an amount which is not less than $5,000,000 (unless the Commitments are being reduced to zero and the amount of the Commitments in effect immediately prior to such reduction are less than $5,000,000), shall be made by providing not less than five (5) Business Days (or such lesser time as Agent may agree) prior written notice to Agent, and shall be irrevocable; provided, that, in the event that any such notice expressly states that the reduction of the applicable Commitments is conditioned upon the consummation of other credit facilities or other transactions permitted under this Agreement, the proceeds of which are intended to be used to repay Obligations, such notice may be revoked by the Borrowers (by notice to the Agent on or prior to the specified date of consummation) if such condition is not satisfied. Once reduced, the Commitments may not be increased. Each such reduction of the Commitments shall reduce the Commitments of each Lender proportionately in accordance with its ratable share thereof. In connection with any reduction in the Commitments prior to the Maturity Date, if any Loan Party or any of its Subsidiaries owns any Margin Stock, Borrowers shall deliver to Agent an updated Form U-1 (with sufficient additional originals thereof for each Lender), duly executed and delivered by Borrowers, together with such other documentation as Agent shall reasonably request, in order to enable Agent and the Lenders to comply with any of the requirements under Regulations T, U or X of the Board of Governors.

(d) **Optional Prepayments.** Borrowers may prepay the principal of any Revolving Loan at any time in whole or in part, without premium or penalty.

(e) Mandatory Prepayments.

(i) **Borrowing Base.** If, at any time, either (A) the Revolver Usage on such date exceeds the lesser of the Maximum Credit or the Combined Borrowing Base as then in effect, (B) the US Revolver Usage on such date exceeds the lesser of the US Maximum Credit or the US Borrowing Base as then in effect, or (C) the Canadian Revolver Usage on such date exceeds the lesser of the Canadian Maximum Credit or the Canadian Borrowing Base as then in effect, then in each case Borrowers shall promptly, but in any event, within one (1) Business Day, prepay the Obligations in accordance with Section 2.4(f)(i) in an aggregate amount equal to the amount of such excess.

(ii) **Dispositions**. Subject to the terms of the Financing Orders, within three (3) Business Days of the date of receipt by any Loan Party or any of its Subsidiaries of the Net Cash Proceeds of any voluntary or involuntary sale or other disposition of assets of any Loan Party or any of its Subsidiaries consisting of ABL Priority Collateral, or any other Collateral to the extent such Net Cash Proceeds are not required to be, or are not, paid to the Pre-Petition Term Loan Agent under the terms of the Financing Orders which Net Cash Proceeds are from Permitted Dispositions under clauses (o) or (t) of the definition of Permitted Dispositions, subject to the terms of the Intercreditor Agreement and the

Financing Orders, Borrowers shall prepay the Pre-Petition ABL Obligations and the outstanding principal amount of the Obligations in accordance with Section 2.4(f)(ii) in an amount equal to one hundred percent (100%) of such Net Cash Proceeds received by such Person in connection with such sales or dispositions; provided, that, so long as (A) no Default or Event of Default shall have occurred and is continuing or would result therefrom, (B) Borrowers shall have given Agent prior written notice of Borrowers' intention to apply such monies to the costs of replacement of the properties or assets that are the subject of such sale or disposition or the cost of purchase or construction of other assets useful in the business of such Loan Party or its Subsidiaries, (C) the monies that are proceeds of ABL Priority Collateral are held in a Deposit Account in which Agent has a perfected first-priority security interest, and (D) such Loan Party or its Subsidiary, as applicable, completes such replacement, purchase, or construction within three hundred sixty-five (365) days after the initial receipt of such monies, then the Loan Party or such Loan Party's Subsidiary whose assets were the subject of such disposition shall have the option to apply such monies to the costs of replacement of the assets that are the subject of such sale or disposition unless and to the extent that such applicable period shall have expired without such replacement, purchase, or construction being made or completed, in which case, any amounts remaining in the Deposit Account referred to in clause (C) above shall be paid to Agent and applied in accordance with Section 2.4(f)(ii). Nothing contained in this Section 2.4(e)(ii) shall permit any Loan Party or any of its Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 6.4.

(iii) [intentionally omitted]**.**

(iv) **Indebtedness**. Subject to the terms of the Financing Orders, within three (3) Business Days of the date of receipt of Net Cash Proceeds from the incurrence by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), to the extent such Net Cash Proceeds are not required to be, or are not, paid to the Pre-Petition Term Loan Agent under the terms of the Financing Orders, Borrowers shall prepay the Pre-Petition ABL Obligations and the outstanding principal amount of the Obligations in accordance with Section 2.4(f)(ii) in an amount equal to one hundred percent (100%) of the Net Cash Proceeds received by such Person in connection with such incurrence. The provisions of this Section 2.4(e)(iv) shall not be deemed to be implied consent to any such incurrence otherwise prohibited by the terms of this Agreement.

(v) **Equity**. Subject to the terms of the Financing Orders, within three (3) Business Days of the date of receipt of Net Cash Proceeds from the issuance by any Loan Party or any of its Subsidiaries of any Disqualified Equity Interests to the extent such Net Cash Proceeds are not required to be, or are not, paid to the Pre-Petition Term Loan Agent under the terms of the Financing Orders, Borrowers shall prepay the Pre-Petition ABL Obligations and the outstanding principal amount of the Obligations in accordance with Section 2.4(f)(ii) in an amount equal to one hundred percent (100%) of the Net Cash Proceeds received by such Person in connection with such issuance. The provisions of this Section 2.4(e)(v) shall not be deemed to be implied consent to any such issuance otherwise prohibited by the terms of this Agreement.

(f) **Application of Payments**.

(i) Each prepayment pursuant to Section 2.4(e)(i) shall, subject to the Intercreditor Agreement and the Financing Orders, (A) so long as no Application Event shall have occurred and be continuing, be applied, first, to the Pre-Petition ABL Obligations, second, to the outstanding principal amount of the Revolving Loans until paid in full, and third, to cash collateralize the Letters of Credit in an amount equal to one hundred three percent (103%) of the then outstanding Letter of Credit Usage, except that such amounts shall be applied to the Pre-Petition ABL Obligations to the extent provided herein or in the Financing Orders and (B) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(ii) and Section 2.4(b)(iii).

(ii) Each prepayment pursuant to Section 2.4(e)(ii), 2.4(e)(iii), 2.4(e)(iv), or 2.4(e)(v), shall, subject to the Intercreditor Agreement and the Financing Orders, (A) so long as no Application Event shall have occurred and be continuing, be applied, first, to the Pre-Petition ABL Obligations, second, to the outstanding principal amount of the Revolving Loans, until paid in full, and third, to cash collateralize the Letters of Credit in an amount equal to one hundred three percent (103%) of the then outstanding Letter of Credit Usage, and (B) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(ii) and Section 2.4(b)(iii).

2.5 **Promise to Pay; Promissory Notes**.

(a) Borrowers agree to pay the Lender Group Expenses on the earlier of (i) the first day of the month following the date on which the applicable Lender Group Expenses were first incurred, or (ii) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of Section 2.6(d) shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (ii)). Borrowers promise to pay all of the Obligations (including principal, interest, premiums, if any, fees, costs, and expenses (including Lender Group Expenses)) in full on the Maturity Date or, if earlier, on the date on which the Obligations (other than the Bank Product Obligations) become due and payable pursuant to the terms of this Agreement. Borrowers agree that their obligations contained in the first sentence of this Section 2.5(a) shall survive payment or satisfaction in full of all other Obligations.

(b) Any Lender may request that any portion of its Commitments or the Loans made by it be evidenced by one or more promissory notes. In such event, Borrowers shall execute and deliver to such Lender the requested promissory notes payable to the order of such Lender and its registered assigns in a form furnished by Agent and reasonably satisfactory to Borrowers. Thereafter, the portion of the Commitments and Loans evidenced by such promissory notes and interest thereon shall at all times be represented by one or more promissory notes in such form payable to the order of the payee named therein and its registered assigns.

2.6 **Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations**.

(a) **Interest Rates.** Except as provided in Section 2.6(c), all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest as follows:

(i) if the relevant Obligation is a SOFR Loan, at a per annum rate equal to Adjusted Term SOFR plus the Applicable Margin, and;

(ii) Canadian Revolving Loans (A) denominated in Canadian Dollars shall bear interest at (1) the Canadian Base Rate plus the Applicable Margin or (2) the Canadian BA Rate plus the Applicable Margin and (B) denominated in US Dollars shall bear interest at (1) the US Base Rate plus the Applicable Margin or (2) Adjusted Term SOFR plus the Applicable Margin; and

(iii) any Swingline Loan shall bear interest at the applicable Base Rate plus the Applicable Margin.

Administrative Borrower, on behalf of the applicable Borrowers, shall select the rate of interest and Interest Period, if any, applicable to any Revolving Loan at the time a Borrowing request is made or at the time of a notice of conversion or continuation. Any Revolving Loan or any portion thereof denominated in US Dollars as to which Administrative Borrower has not duly specified an interest rate as provided

herein shall be deemed a Base Rate Loan. Any Canadian Revolving Loan or any portion thereof denominated in Canadian Dollars as to which Administrative Borrower, on behalf of the Canadian Borrowers, has not duly specified an interest rate as provided herein shall be deemed a Canadian Base Rate Loan. Subject to Section 2.6(c), any SOFR Loan or Canadian BA Rate Loan or any portion thereof as to which Administrative Borrower has not duly specified an Interest Period as provided herein shall be deemed a SOFR Loan or Canadian BA Rate Loan, as applicable, with an Interest Period of one (1) month.

(b) **Letter of Credit Fee**. Borrowers shall pay Agent (for the ratable benefit of the Lender s), a Letter of Credit fee (the "Letter of Credit Fee") (which fee shall be in addition to the fronting fees and commissions, other fees, charges and expenses set forth in Section 2.11(k)) that shall accrue at a per annum rate equal to the Applicable Margin for SOFR Loans times the average amount of the Letter of Credit Usage during the immediately preceding month.

(c) **Default Rate.** Upon the occurrence and during the continuation of any Event of Default, at the direction of Agent or the Required Lenders, and upon written notice by Agent to Administrative Borrower of such direction (provided, that, such notice shall not be required for any Event of Default under Section 8.1), (A) all Loans and all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest at a per annum rate equal to two percentage points above the per annum rate otherwise applicable thereunder, and (B) the Letter of Credit Fee shall be increased to two percentage points above the per annum rate otherwise applicable hereunder.

(d) **Payment**. Except to the extent provided to the contrary in Section 2.10, Section 2.11(k) or Section 2.12(a), (i) all interest and all other fees payable hereunder or under any of the other Loan Documents (other than Letter of Credit Fees) shall be due and payable, in arrears, on the first day of each month, (ii) all Letter of Credit Fees payable hereunder, and all fronting fees and all commissions, other fees, charges and expenses provided for in Section 2.11(k) shall be due and payable, in arrears, on the first Business Day of each month, and (iii) all costs and expenses payable hereunder or under any of the other Loan Documents, and all other Lender Group Expenses shall be due and payable on the earlier of (x) the first day of the month following the date on which the applicable costs, expenses, or Lender Group Expenses were first incurred, or (y) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of the following sentence shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (y)). Borrowers hereby authorize Agent, from time to time without prior notice to Borrowers, to charge to the Loan Account (A) on the first day of each month, all interest accrued during the prior month on the Revolving Loans hereunder, (B) on the first Business Day of each month, all Letter of Credit Fees accrued or chargeable hereunder during the prior month, (C) as and when incurred or accrued, all fees and costs provided for in Section 2.10(a) or (c), (D) on the first day of each month, the Unused Line Fee accrued during the prior month pursuant to Section 2.10(b), (E) as and when due and payable, all other fees payable hereunder or under any of the other Loan Documents, (F) as and when incurred or accrued, all other Lender Group Expenses, and (G) as and when due and payable all other payment obligations payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Bank Products). All amounts (including interest, fees, costs, expenses, Lender Group Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement) charged to the Loan Account shall thereupon constitute Revolving Loans hereunder, shall constitute Obligations hereunder, and shall initially accrue interest at the rate then applicable to Revolving Loans that are Base Rate Loans (unless and until converted into SOFR Loans or Canadian BA Rate Loan in accordance with the terms of this Agreement).

(e) **Computation.** Interest shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed, other than for Canadian BA Rate Loans and Base Rate Loans which shall be calculated on the basis of three hundred sixty-five (365) or three hundred sixty-six (366) day year, as applicable, and actual days elapsed. All fees chargeable under the Loan Documents shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed in the period during which the fees accrue. In the event the Base Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Base Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Base Rate.

(f) **Intent to Limit Charges to Maximum Lawful Rate.** In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law (including, without limitation, the Criminal Code (Canada), to the extent applicable) that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrowers and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, that, anything contained herein to the contrary notwithstanding, if such rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, ipso facto, as of the date of this Agreement, Borrowers are and shall be liable only for the payment of such maximum amount as is allowed by law, and payment received from Borrowers in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

(g) **Interest Act (Canada).** Each Borrower hereby acknowledges that the rate or rates of interest applicable to SOFR Loans denominated in US Dollars and fees as specified hereunder may be computed on the basis of a year of three hundred sixty (360) days and paid for the actual number of days elapsed in the period during which the interest or fees accrue. For purposes of the Interest Act (Canada), if interest computed on the basis of a three hundred sixty (360) day year is payable for any part of the calendar year, the equivalent yearly rate of interest may be determined by multiplying the specified rate of interest by the number of days (three hundred sixty-five (365) or three hundred sixty-six (366)) in such calendar year and dividing such product by three hundred sixty (360). For the purpose of the Interest Act (Canada) and any other purpose, (i) the principle of deemed reinvestment shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

(h) **Term SOFR Conforming Changes.** In connection with the use or administration of Term SOFR, Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. Agent will promptly notify Administrative Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

2.7 **Crediting Payments**. The receipt of any payment item by Agent shall not be required to be considered a payment on account unless such payment item is a wire transfer of immediately available funds made to the Agent Payment Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrowers shall be deemed not to have made such payment. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into the Agent Payment Account on a Business Day on or before 1:30 p.m. If any payment item is received into the Agent Payment Account on a non-Business Day or after 1:30 p.m. on a Business Day (unless Agent, in its sole discretion, elects to credit it on the date received), it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

2.8 **Designated Account**. Agent is authorized to make the Revolving Loans, and Issuing Bank is authorized to issue, amend and extend the Letters of Credit, under this Agreement based upon telephonic or other instructions received from anyone purporting to be a Responsible Officer or, without instructions, if pursuant to Section 2.6(d). Borrowers agree to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the Revolving Loans requested by Borrowers and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and Administrative Borrowers or otherwise expressly provided for herein, any Revolving Loan or Swing Loan requested by Borrowers and made by Agent or the Lenders hereunder shall be made to the Designated Account.

2.9 **Maintenance of Loan Account; Statements of Obligations**. Agent shall maintain an account on its books in the name of Borrowers (the "Loan Account") on which Borrowers will be charged all Revolving Loans (including Special Advances and Swing Loans) made by Agent, Swing Lender, or the Lenders to a Borrower or for a Borrower's account, the Letters of Credit issued or arranged by Issuing Bank for a Borrower's account, and with all other payment Obligations hereunder or under the other Loan Documents, including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with Section 2.7, the Loan Account will be credited with all payments received by Agent from any Borrower or for a Borrower's account. Agent shall make available to Administrative Borrower monthly statements regarding the Loan Account, including the principal amount of the Revolving Loans, interest accrued hereunder, fees accrued or charged hereunder or under the other Loan Documents, and a summary itemization of all charges and expenses constituting Lender Group Expenses accrued hereunder or under the other Loan Documents, and each such statement, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and the Lender Group unless, within thirty (30) days after Agent first makes such a statement available to Borrowers, Borrowers shall deliver to Agent written objection thereto describing the error or errors contained in such statement.

2.10 **Fees**.

(a) **Agent Fees**. Borrowers shall pay to Agent, for the account of Agent, as and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter.

(b) **Unused Line Fee**. Borrowers shall pay to Agent, for the ratable account of the Lenders, an unused line fee (the "Unused Line Fee") in an amount equal to the Applicable Unused Line Fee Percentage per annum times the result of (i) the Maximum Credit, less (ii) the Average Revolver Usage during the immediately preceding month (or portion thereof), which Unused Line Fee shall be due and payable, in arrears, on the first day of each month from and after the Closing Date up to the first day of the month prior to the date on which the Obligations are paid in full and on the date on which the Obligations are paid in full. Swing Loans will not be considered in the calculation of the Unused Line Fee.

(c) **Field Examination and Other Fees.** Borrowers shall pay to Agent field examination, appraisal, and valuation fees and charges, as and when incurred or chargeable, subject to Section 5.7, as follows (i) a fee of $1,000 per day, per examiner, plus reasonable, documented (if available) out-of-pocket expenses (including travel, meals, and lodging) for each field examination of any Borrower performed by personnel employed by Agent, and (ii) the fees or charges paid or incurred by Agent (but, in any event, no less than a charge of $1,000 per day, per Person, plus reasonable, documented (if available) out-of-pocket expenses (including travel, meals, and lodging)) if it elects to employ the services of one or more third Persons to perform field examinations of any Borrower or its Subsidiaries, to establish electronic collateral reporting systems, to appraise the Collateral, or any portion thereof, or to assess the business valuation or Holdings or any of its Subsidiaries.

2.11 **Letters of Credit**.

(a) Subject to the terms and conditions of this Agreement, upon the request of the applicable Borrowers made in accordance herewith, and prior to the Maturity Date, Issuing Bank agrees to issue, or, in the case of Canadian Letters of Credit, to cause a Canadian Underlying Issuer (including as a Canadian Lender's agent), a requested standby Letter of Credit or a sight commercial Letter of Credit for the account of the applicable Borrowers. On the Closing Date, the Existing Letters of Credit shall be deemed to be Letters of Credit hereunder. If Issuing Bank, at its option, elects to cause a Canadian Underlying Issuer to issue a requested Canadian Letter of Credit, then Canadian Issuing Lender agrees that it will enter into arrangements relative to the reimbursement of such Canadian Underlying Issuer (which may include, among other means, by becoming an applicant with respect to such Canadian Letter of Credit or entering into undertakings or other arrangements that provide for reimbursement of such Canadian Underlying Issuer with respect to drawings under such Canadian Letter of Credit; each such obligation or undertaking, irrespective of whether in writing, a "Canadian Reimbursement Undertaking") with respect to Canadian Letters of Credit issued by such Canadian Underlying Issuer. By submitting a request to Issuing Bank for the issuance of a Letter of Credit, the applicable Borrower shall be deemed to have requested that Issuing Bank issue the requested Letter of Credit. By submitting a request to Agent and Canadian Issuing Lender for the issuance of a Canadian Letter of Credit, Borrowers shall be deemed to have requested that (i) Canadian Issuing Lender issue or (ii) a Canadian Underlying Issuer issue the requested Canadian Letter of Credit (and, in such case, to have requested Canadian Issuing Lender to issue a Canadian Reimbursement Undertaking with respect to such requested Canadian Letter of Credit). Canadian Borrowers acknowledge and agree that Canadian Borrowers are and shall be deemed to be applicants (within the meaning of Section 5-102(a)(2) of the UCC) with respect to each Canadian Underlying Letter of Credit. Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be (i) irrevocable and made in writing by a Responsible Officer, (ii) delivered to Agent and Issuing Bank via telefacsimile or other electronic method of transmission reasonably acceptable to Agent and Issuing Bank and reasonably in advance of the requested date of issuance, amendment, renewal, or extension, and (iii) subject to Issuing Bank's authentication procedures with results satisfactory to Issuing Bank. Each such request shall be in form and substance reasonably satisfactory to Agent and Issuing Bank and (i) shall specify (A) the amount and Available Currency of such Letter of Credit, (B) the date of issuance, amendment, renewal, or extension of such Letter of Credit, (C) the proposed expiration date of such Letter of Credit, (D) the name and address of the beneficiary of the Letter of Credit, and (E) such other information (including, the conditions to drawing, and, in the case of an amendment, renewal, or extension, identification of the Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Letter of Credit, and (ii) shall be accompanied by such Issuer Documents as Agent, Issuing Bank or Canadian Underlying Issuer may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that Issuing Bank or Canadian Underlying Issuer generally requests for Letters of Credit in similar circumstances. Issuing Bank's records of the content of any such request will be conclusive. Anything contained herein to the contrary notwithstanding, Issuing Bank may, but shall not be obligated to, issue or cause the issuance of a Letter of Credit or to issue a Canadian Reimbursement Undertaking in respect of a Canadian Underlying Letter of Credit that supports the obligations of a Loan Party or one of its Subsidiaries in respect of (x) a lease of real property to the extent that the face amount of such Letter of Credit exceeds the highest rent (including all rent-like charges) payable under such lease for a period of one (1) year, or (y) an employment contract to the extent that the face amount of such Letter of Credit exceeds the highest compensation payable under such contract for a period of one (1) year.

(b) Issuing Bank shall have no obligation to issue a Letter of Credit or Canadian Reimbursement Undertaking in respect of a Canadian Underlying Letter of Credit if any of the following would result after giving effect to the requested issuance:

(i) the Letter of Credit Usage would exceed the Letter of Credit Sublimit, or

(ii) the Letter of Credit Usage would exceed the Maximum Credit less the then outstanding principal amount of Revolving Loans (including Swing Loans) at such time, or

(iii) the Letter of Credit Usage would exceed the Combined Borrowing Base at such time less the then outstanding principal amount of the Revolving Loans (including Swing Loans) at such time, or

(iv) the Letter of Credit Usage for Letters of Credit for the account of US Borrowers would exceed the US Maximum Credit less the then outstanding principal amount of US Revolving Loans (including US Swing Loans) at such time, or

(v) the Letter of Credit Usage for Letters of Credit for the account of US Borrowers would exceed the US Borrowing Base at such time less the then outstanding principal amount of the US Revolving Loans (including US Swing Loans) at such time, or

(vi) the Letter of Credit Usage for Letters of Credit for the account of the US Borrowers would exceed the US Borrowing Base at such time less the then outstanding principal amount of the US Revolving Loans (including US Swing Loans to the US Borrowers) at such time, or

(vii) the Letter of Credit Usage for Letters of Credit for the account of Canadian Borrowers would exceed the Canadian Maximum Credit less the then outstanding principal amount of Canadian Revolving Loans (including Canadian Swing Loans) at such time, or

(viii) the Letter of Credit Usage for Letters of Credit for the account of Canadian Borrowers would exceed the Canadian Borrowing Base at such time less the then outstanding principal amount of the Canadian Revolving Loans (including Canadian Swing Loans) at such time.

(c) In the event there is a Defaulting Lender as of the date of any request for the issuance of a Letter of Credit, the Issuing Bank shall not be required to issue or arrange for such Letter of Credit or Canadian Reimbursement Undertaking to the extent (i) the Defaulting Lender's Letter of Credit Exposure with respect to such Letter of Credit may not be reallocated pursuant to Section 2.3(g)(ii) or (ii) the Issuing Bank has not otherwise entered into arrangements reasonably satisfactory to it and Borrowers to eliminate the Issuing Bank's risk with respect to the participation in such Letter of Credit or any applicable Canadian Reimbursement Undertaking of the Defaulting Lender, which arrangements may include Borrowers cash collateralizing such Defaulting Lender's Letter of Credit Exposure in accordance with Section 2.3(g)(ii). Additionally, Issuing Bank shall have no obligation to issue a Letter of Credit or a Canadian Reimbursement Undertaking in respect of a Canadian Underlying Letter of Credit, in either case, of if (A) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain Issuing Bank from issuing such Letter of Credit or Canadian Reimbursement Undertaking or Canadian Underlying Issuer from issuing such Canadian Letter of Credit, or any law applicable to Issuing Bank or Canadian Underlying Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Issuing Bank or Canadian Underlying Issuer shall prohibit or request that Issuing Bank or Canadian Underlying Issuer refrain from the issuance of letters of credit generally or such Letter of Credit or Canadian Reimbursement Undertaking (as applicable) in particular, (B) the issuance of such Letter of Credit or Canadian Reimbursement Undertaking would violate one or more policies of Issuing Bank or Canadian Underlying Issuer applicable to letters of credit generally, or (C) if amounts demanded to be paid under any Letter of Credit will or may not be in the applicable Available Currency.

(d) Any Issuing Bank (other than Wells Fargo or any of its Affiliates) shall notify Agent in writing no later than the Business Day immediately following the Business Day on which such Issuing Bank issued any Letter of Credit or Canadian Reimbursement Undertaking; provided, that, (i) until Agent advises any such Issuing Bank that the provisions of Section 3.2 are not satisfied, or (ii) unless the aggregate amount of the Letters of Credit issued in any such week exceeds such amount as shall be agreed by Agent and such Issuing Bank, such Issuing Bank shall be required to so notify Agent in writing only once each week of the Letters of Credit issued by such Issuing Bank during the immediately preceding week as well as the daily amounts outstanding for the prior week, such notice to be furnished on such day of the week as Agent and such Issuing Bank may agree. Each Letter of Credit shall be in form and substance reasonably acceptable to Issuing Bank and Canadian Underlying Issuer, as applicable, including the requirement that the amounts payable thereunder must be payable in Dollars or Canadian Dollars. If Issuing Bank makes a payment under a Letter of Credit or Canadian Reimbursement Undertaking, Borrowers shall pay to Agent an amount in the applicable Available Currency equal to the applicable Letter of Credit Disbursement on the Business Day such Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be a Revolving Loan hereunder in US Dollars (or in the case of any Letter of Credit Disbursement in any Available Currency, in US Dollars based on the US Dollar Equivalent for such amount) (notwithstanding any failure to satisfy any condition precedent set forth in Section 3) and, initially, shall bear interest at the rate then applicable to Revolving Loans that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be a Revolving Loan hereunder, Borrowers' obligation to pay the amount of such Letter of Credit Disbursement to Issuing Bank shall be automatically converted into an obligation to pay the resulting Revolving Loan. Promptly following receipt by Agent of any payment from Borrowers pursuant to this paragraph, Agent shall distribute such payment to Issuing Bank or, to the extent that Lenders have made payments pursuant to Section 2.11(e) to reimburse Issuing Bank, then to such Lenders and Issuing Bank as their interests may appear.

(e) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.11(d), each Lender agrees to fund its Pro Rata Share of any Revolving Loan deemed made pursuant to Section 2.11(d) on the same terms and conditions as if Borrowers had requested the amount thereof as a Revolving Loan and Agent shall promptly pay to Issuing Bank the amounts so received by it from the Lenders. By the issuance of a Letter of Credit or Canadian Reimbursement Undertaking (or an amendment, renewal, or extension of a Letter of Credit or Canadian Reimbursement Undertaking, (as applicable)) and without any further action on the part of Issuing Bank or the Lenders, Issuing Bank shall be deemed to have granted to each Lender, and each Lender shall be deemed to have purchased, a participation in each Letter of Credit or Canadian Reimbursement Undertaking, as applicable, issued by Issuing Bank, in an amount equal to its Pro Rata Share of such Letter of Credit or Canadian Reimbursement Undertaking, as applicable, and each such Lender agrees to pay to Agent, for the account of Issuing Bank, such Lender 's Pro Rata Share of any Letter of Credit Disbursement made by Issuing Bank or a Canadian Underlying Issuer under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to Agent, for the account of Issuing Bank, such Lender 's Pro Rata Share of each Letter of Credit Disbursement made by Issuing Bank or Canadian Underlying Issuer and not reimbursed by Borrowers on the date due as provided in Section 2.11(d), or of any reimbursement payment that is required to be refunded (or that Agent or Issuing Bank elects, based upon the advice of counsel, to refund) to Borrowers for any reason. Each Lender acknowledges and agrees that its obligation to deliver to Agent, for the account of Issuing Bank, an amount equal to its respective Pro Rata Share of each Letter of Credit Disbursement pursuant to this Section 2.11(e) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such Lender fails to make available to Agent the amount of such Lender's Pro Rata Share of a Letter of Credit Disbursement as provided in this Section, such Lender shall be deemed to be a Defaulting Lender and Agent (for the account of Issuing Bank) shall be entitled to

recover such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(f) Each Borrower agrees to indemnify, defend and hold harmless each member of the Lender Group (including Issuing Bank and its branches, Affiliates, and correspondents), each Canadian Underlying Issuer and each such Person's respective directors, officers, employees, attorneys and agents (each, including Issuing Bank, a "Letter of Credit Related Person") (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), which may be incurred by or awarded against any such Letter of Credit Related Person (other than Taxes, which shall be governed by Section 16) (the "Letter of Credit Indemnified Costs"), and which arise out of or in connection with, or as a result of:

(i) any Letter of Credit or Canadian Reimbursement Undertaking for the account of such Borrower or any pre-advice of its issuance;

(ii) any transfer, sale, delivery, surrender or endorsement (or lack thereof) of any Drawing Document at any time(s) held by any such Letter of Credit Related Person in connection with any Letter of Credit or Canadian Reimbursement Undertaking for the account of such Borrower;

(iii) any action or proceeding arising out of, or in connection with, any Letter of Credit or Canadian Reimbursement Undertaking for the account of such Borrower (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under any Letter of Credit or Canadian Reimbursement Undertaking, or for the wrongful dishonor of, or honoring a presentation under, any such Letter of Credit;

(iv) any independent undertakings issued by the beneficiary of any Letter of Credit;

(v) any unauthorized instruction or request made to Issuing Bank or Canadian Underlying Issuer in connection with any Letter of Credit or requested Letter of Credit or Canadian Reimbursement Undertaking, or any error, omission, interruption or delay in such instruction or request, whether transmitted by mail, courier, electronic transmission, SWIFT, or any other telecommunication including communications through a correspondent;

(vi) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated in connection with any Letter of Credit or Canadian Reimbursement Undertaking for the account of such Borrower;

(vii) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds or holder of an instrument or document for the account of such Borrower;

(viii) in connection with any Letter of Credit or Canadian Reimbursement Undertaking for the account of such Borrower, the fraud, forgery or illegal action of parties other than the Letter of Credit Related Person;

(ix) any prohibition on payment or delay in payment of any amount payable by Issuing Bank or Canadian Underlying Issuer to a beneficiary or transferee beneficiary of a Letter of Credit or

Canadian Reimbursement Undertaking arising out of Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions;

(x) Issuing Bank's performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation;

(xi) any foreign language translation provided to Issuing Bank in connection with any Letter of Credit;

(xii) any foreign law or usage as it relates to Issuing Bank's or Canadian Underlying Issuer's issuance of a Letter of Credit or Canadian Reimbursement Undertaking in support of a foreign guaranty including without limitation the expiration of such guaranty after the related Letter of Credit or Canadian Reimbursement Undertaking expiration date and any resulting drawing paid by Issuing Bank or Canadian Underlying Issuer in connection therewith; or

(xiii) the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto governmental or regulatory authority or cause or event beyond the control of the Letter of Credit Related Person related to any Letter of Credit or Canadian Reimbursement Undertaking for the account of such Borrower;

provided, that, such indemnity shall not be available to any Letter of Credit Related Person claiming indemnification under clauses (i) through (x) above to the extent that such Letter of Credit Indemnified Costs may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from bad faith, the gross negligence or willful misconduct of the Letter of Credit Related Person claiming indemnity. Borrowers hereby agree to pay the Letter of Credit Related Person claiming indemnity on demand from time to time all amounts owing under this Section 2.11(f). If and to the extent that the obligations of Borrowers under this Section 2.11(f) are unenforceable for any reason, Borrowers agree to make the maximum contribution to the Letter of Credit Indemnified Costs permissible under applicable law. This indemnification provision shall survive termination of this Agreement and all Letters of Credit or Canadian Reimbursement Undertaking.

(g) The liability of Issuing Bank (or any other Letter of Credit Related Person) under, in connection with or arising out of any Letter of Credit or Canadian Reimbursement Undertaking (or pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by Borrowers that are caused directly by Issuing Bank's gross negligence or willful misconduct in (i) honoring a presentation under a Letter of Credit that on its face does not at least substantially comply with the terms and conditions of such Letter of Credit, (ii) failing to honor a presentation under a Letter of Credit that strictly complies with the terms and conditions of such Letter of Credit, or (iii) retaining Drawing Documents presented under a Letter of Credit. Borrowers' aggregate remedies against Issuing Bank and any Letter of Credit Related Person for wrongfully honoring a presentation under any Letter of Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by Borrowers to Issuing Bank in respect of the honored presentation in connection with such Letter of Credit under Section 2.11(d), plus interest at the rate then applicable to Base Rate Loans hereunder. Borrowers shall take action to avoid and mitigate the amount of any damages claimed against Issuing Bank or any other Letter of Credit Related Person, including by enforcing its rights against the beneficiaries of the Letters of Credit. Any claim by Borrowers under or in connection with any Letter of Credit shall be reduced by an amount equal to the sum of (A) the amount (if any) saved by Borrowers as a result of the breach or alleged wrongful conduct complained of, and (B) the amount (if any) of the loss that would have been avoided had Borrowers taken all reasonable steps to mitigate any loss, and in case of a claim of wrongful dishonor, by specifically and timely authorizing Issuing Bank or Canadian Reimbursement Undertaking to effect a cure.

(h) The applicable Borrowers are responsible for the final text of the Letter of Credit as issued by Issuing Bank or Canadian Underlying Issuer, irrespective of any assistance Issuing Bank or Canadian Underlying Issuer may provide such as drafting or recommending text or by Issuing Bank's or Canadian Underlying Issuer's use or refusal to use text submitted by Borrowers. Borrowers understand that the final form of any Letter of Credit may be subject to such revisions and changes as are deemed necessary or appropriate by Issuing Bank or Canadian Underlying Issuer, and Borrowers hereby consent to such revisions and changes not materially different from the application executed in connection therewith. The applicable Borrower is solely responsible for the suitability of the Letter of Credit for Borrower's purposes. If a Borrower (or Administrative Borrower on behalf of such Borrower) requests Issuing Bank to issue a Letter of Credit for an affiliated or unaffiliated third party (an "Account Party"), (i) such Account Party shall have no rights against Issuing Bank or Canadian Underlying Issuer; (ii) Borrowers shall be responsible for the application and obligations under this Agreement; and (iii) communications (including notices) related to the respective Letter of Credit shall be among Issuing Bank or Canadian Underlying Issuer and Borrowers. The applicable Borrower will examine the copy of the Letter of Credit and any other documents sent by Issuing Bank in connection therewith and shall promptly notify Issuing Bank (not later than three (3) Business Days following such Borrower's receipt (or Administrative Borrower's receipt on behalf of such Borrower) of documents from Issuing Bank) of any non-compliance with the instructions from such Borrower (or Administrative Borrower on behalf of such Borrower) and of any discrepancy in any document under any presentment or other irregularity. Borrowers understand and agree that neither Issuing Bank nor Canadian Underlying Issuer is required to extend the expiration date of any Letter of Credit for Canadian Reimbursement Undertaking for any reason. With respect to any Letter of Credit or Canadian Reimbursement Undertaking containing an "automatic amendment" to extend the expiration date of such Letter of Credit or Canadian Reimbursement Undertaking, Issuing Bank, in its sole and absolute discretion, may give notice of nonrenewal of such Letter of Credit or Canadian Reimbursement Undertaking and, if a Borrower does not at any time want the then current expiration date of such Letter of Credit or Canadian Reimbursement Undertaking to be extended, such Borrower (or Administrative Borrower on behalf of such Borrower) will so notify Agent and Issuing Bank at least thirty (30) calendar days before Issuing Bank is required to notify the beneficiary of such Letter of Credit or any advising bank of such non-extension pursuant to the terms of such Letter of Credit.

(i) The reimbursement and payment obligations of each Borrower under this Section 2.11 are absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including:

(i) any lack of validity, enforceability or legal effect of any Letter of Credit any Canadian Reimbursement Undertaking, any Issuer Document, this Agreement, or any Loan Document, or any term or provision therein or herein;

(ii) payment against presentation of any draft, demand or claim for payment under any Drawing Document that does not comply in whole or in part with the terms of the applicable Letter of Credit or which proves to be fraudulent, forged or invalid in any respect or any statement therein being untrue or inaccurate in any respect, or which is signed, issued or presented by a Person or a transferee of such Person purporting to be a successor or transferee of the beneficiary of such Letter of Credit;

(iii) Issuing Bank or any of its branches or Affiliates or Canadian Underlying Issuer being the beneficiary of any Letter of Credit;

(iv) Issuing Bank or any correspondent or Canadian Underlying Issuer honoring a drawing against a Drawing Document up to the amount available under any Letter of Credit even if such Drawing Document claims an amount in excess of the amount available under the Letter of Credit;

(v) the existence of any claim, set-off, defense or other right that any Loan Party or any of its Subsidiaries may have at any time against any beneficiary or transferee beneficiary, any assignee of proceeds, Issuing Bank or Canadian Underlying Issuer or any other Person;

(vi) Issuing Bank or any correspondent or Canadian Underlying Issuer honoring a drawing upon receipt of an electronic presentation under a Letter of Credit or Canadian Reimbursement Undertaking requiring the same, regardless of whether the original Drawing Documents arrive at Issuing Bank's counters or are different from the electronic presentation;

(vii) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing that might, but for this Section 2.11(i), constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, any Borrower's or any of its Subsidiaries' reimbursement and other payment obligations and liabilities, arising under, or in connection with, any Letter of Credit, whether against Issuing Bank, or Canadian Underlying Issuer, the beneficiary or any other Person; or

(viii) the fact that any Default or Event of Default shall have occurred and be continuing;

provided, that, subject to Section 2.11(g) above, the foregoing shall not release Issuing Bank or Canadian Underlying Issuer from such liability to the applicable Borrower as may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction against Issuing Bank or Canadian Underlying Issuer following reimbursement or payment of the obligations and liabilities, including reimbursement and other payment obligations, of the applicable Borrower to Issuing Bank arising under, or in connection with, this Section 2.11 or any Letter of Credit or Canadian Reimbursement Undertaking.

(j) Without limiting any other provision of this Agreement, Issuing Bank and each other Letter of Credit Related Person (if applicable) shall not be responsible to any Borrower for, and Issuing Bank's and Canadian Issuing Lender's rights and remedies against a Borrower and the obligation of a Borrower to reimburse Issuing Bank for each drawing under each Letter of Credit and each Canadian Reimbursement Undertaking shall not be impaired by:

(i) honor of a presentation under any Letter of Credit that on its face substantially complies with the terms and conditions of such Letter of Credit, even if the Letter of Credit requires strict compliance by the beneficiary;

(ii) honor of a presentation of any Drawing Document that appears on its face to have been signed, presented or issued (A) by any purported successor or transferee of any beneficiary or other Person required to sign, present or issue such Drawing Document or (B) under a new name of the beneficiary;

(iii) acceptance as a draft of any written or electronic demand or request for payment under a Letter of Credit, even if nonnegotiable or not in the form of a draft or notwithstanding any requirement that such draft, demand or request bear any or adequate reference to the Letter of Credit;

(iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness or legal effect of any Drawing Document (other than Issuing Bank's or Canadian Underlying Issuer's determination that such Drawing Document appears on its face substantially to comply with the terms and conditions of the Letter of Credit);

(v) acting upon any instruction or request relative to a Letter of Credit or requested Letter of Credit that Issuing Bank and Canadian Underlying Issuer in good faith believes to have been given by a Person authorized to give such instruction or request;

(vi) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation or any delay in giving or failing to give notice to any Borrower;

(vii) any acts, omissions or fraud by, or the insolvency of, any beneficiary, any nominated person or entity or any other Person or any breach of contract between any beneficiary and any Borrower or any of the parties to the underlying transaction to which the Letter of Credit relates;

(viii) assertion or waiver of any provision of the ISP or UCP that primarily benefits an issuer of a letter of credit, including any requirement that any Drawing Document be presented to it at a particular hour or place;

(ix) payment to any presenting bank (designated or permitted by the terms of the applicable Letter of Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice applicable to it;

(x) acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable to where Issuing Bank or Canadian Underlying Issuer has issued, confirmed, advised or negotiated such Letter of Credit, as the case may be;

(xi) honor of a presentation after the expiration date of any Letter of Credit notwithstanding that a presentation was made prior to such expiration date and dishonored by Issuing Bank or Canadian Underlying Issuer if subsequently Issuing Bank or Canadian Underlying Issuer or any court or other finder of fact determines such presentation should have been honored;

(xii) dishonor of any presentation that does not strictly comply or that is fraudulent, forged or otherwise not entitled to honor; or

(xiii) honor of a presentation that is subsequently determined by Issuing Bank or Canadian Underlying Issuer to have been made in violation of international, federal, state, provincial or local restrictions on the transaction of business with certain prohibited Persons.

(k) The applicable Borrower shall pay promptly upon demand to Agent for the account of Issuing Bank as non-refundable fees, commissions, and charges (it being acknowledged and agreed that any charging of such fees, commissions, and charges to the Loan Account pursuant to the provisions of Section 2.6(d) shall be deemed to constitute a demand for payment thereof for the purposes of this Section 2.11(k)): (i) a fronting fee which shall be imposed by Issuing Bank equal to one hundred twenty-five hundredth of one percent (0.125%) per annum times the average amount of the Letter of Credit Usage during the immediately preceding month, plus (ii) any and all other customary commissions, fees and charges then in effect imposed by, and any and all expenses incurred by, Issuing Bank, or Canadian Underlying Issuer or by any adviser, confirming institution or entity or other nominated person, relating to Letters of Credit, at the time of issuance of any Letter of Credit and upon the occurrence of any other activity with respect to any Letter of Credit (including transfers, assignments of proceeds, amendments, drawings, renewals or cancellations). Canadian Borrowers shall also pay directly to Canadian Underlying Issuer all of its fees, commissions and charges in respect of Canadian Letters of Credit issued by such Canadian Underlying Issuer upon written demand.

(l) If by reason of (x) any Change in Law, or (y) compliance by Issuing Bank or Canadian Underlying Issuer or any other member of the Lender Group with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Board of Governors as from time to time in effect (and any successor thereto):

(i) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit or Canadian Reimbursement Undertaking issued or caused to be issued hereunder or hereby, or any Loans or obligations to make Loans hereunder or hereby, or

(ii) there shall be imposed on Issuing Bank or Canadian Underlying Issuer or any other member of the Lender Group any other condition regarding any Letter of Credit, Canadian Reimbursement Undertaking, Loans, or obligations to make Loans hereunder,

and the result of the foregoing is to increase, directly or indirectly, the cost to Issuing Bank or Canadian Underlying Issuer or any other member of the Lender Group of issuing, making, participating in, or maintaining any Letter of Credit, Canadian Reimbursement Undertaking or to reduce the amount receivable in respect thereof, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Borrowers, and Borrowers shall pay within thirty (30) days after demand therefor, such amounts as Agent may specify to be necessary to compensate Issuing Bank or any other member of the Lender Group or Canadian Underlying Issuer for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, that, (A) Borrowers shall not be required to provide any compensation pursuant to this Section 2.11(l) for any such amounts incurred more than one hundred eighty (180) days prior to the date on which the demand for payment of such amounts is first made to Borrowers, and (B) if an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Agent of any amount due pursuant to this Section 2.11(l), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(m) Each standby Letter of Credit shall expire not later than the date that is twelve (12) months after the date of the issuance of such Letter of Credit; provided, that, any standby Letter of Credit may provide for the automatic extension thereof for any number of additional periods each of up to one (1) year in duration; provided further, that with respect to any Letter of Credit which extends beyond the Maturity Date, Letter of Credit Collateralization shall be provided therefor on or before the date that is five (5) Business Days prior to the Maturity Date. Each commercial Letter of Credit shall expire on the earlier of (i) one hundred twenty (120) days after the date of the issuance of such commercial Letter of Credit and (ii) five (5) Business Days prior to the Maturity Date.

(n) If (i) any Event of Default shall occur and be continuing, or (ii) Excess Availability shall at any time be less than zero, then on the Business Day following the date when the Administrative Borrower receives notice from Agent or the Required Lenders (or, if the maturity of the Obligations has been accelerated, Lenders with Letter of Credit Exposure representing greater than fifty percent (50%) of the total Letter of Credit Exposure) demanding Letter of Credit Collateralization pursuant to this Section 2.11(n) upon such demand, Borrowers shall provide Letter of Credit Collateralization with respect to the then existing Letter of Credit Usage. If Borrowers fail to provide Letter of Credit Collateralization as required by this Section 2.11(n), the Lenders may (and, upon direction of Agent, shall) advance, as Revolving Loans the amount of the cash collateral required pursuant to the Letter of Credit Collateralization provision so that the then existing Letter of Credit Usage is cash collateralized in

accordance with the Letter of Credit Collateralization provision (whether or not the Commitments have terminated, an Overadvance exists or the conditions in Section 3 are satisfied).

(o) Unless otherwise expressly agreed by Issuing Bank and Borrowers when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit.

(p) Issuing Bank or Canadian Underlying Issuer shall be deemed to have acted with due diligence and reasonable care if Issuing Bank's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement.

(q) In the event of a direct conflict between the provisions of this Section 2.11 and any provision contained in any Issuer Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.11 shall control and govern.

(r) The provisions of this Section 2.11 shall survive the termination of this Agreement and the repayment in full of the Obligations with respect to any Letters of Credit or Canadian Reimbursement Undertaking that remain outstanding.

(s) At Borrowers' costs and expense, Borrowers shall execute and deliver to Issuing Bank or Canadian Underlying Issuer such additional certificates, instruments and/or documents and take such additional action as may be reasonably requested by Issuing Bank or Canadian Underlying Issuer to enable Issuing Bank or Canadian Underlying Issuer to issue any Letter of Credit or Canadian Reimbursement Undertaking pursuant to this Agreement and related Issuer Document, to protect, exercise and/or enforce Issuing Banks' and Canadian Underlying Issuer's rights and interests under this Agreement or to give effect to the terms and provisions of this Agreement or any Issuer Document. Each Borrower irrevocably appoints Issuing Bank and Canadian Underlying Issuer as its attorney-in-fact and authorizes Issuing Bank, and Canadian Underlying Issuer, without notice to Borrowers, to execute and deliver ancillary documents and letters customary in the letter of credit business that may include but are not limited to advisements, indemnities, checks, bills of exchange and issuance documents. The power of attorney granted by the Borrowers is limited solely to such actions related to the issuance, confirmation or amendment of any Letter of Credit and Canadian Reimbursement Undertakings and to ancillary documents or letters customary in the letter of credit business. This appointment is coupled with an interest.

2.12 **SOFR and Canadian BA Rate Option.**

(a) **Interest and Interest Payment Dates.** In the case of a Loan denominated in US Dollars, in lieu of having interest charged at the rate based upon the US Base Rate, Borrowers shall have the option, subject to Section 2.12(b) below (the "SOFR Option") to have interest on all or a portion of the Loans be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Base Rate Loan to a SOFR Loan, or upon continuation of a SOFR Loan as a SOFR Loan) at a rate of interest based upon Adjusted Term SOFR. In the case of a Loan denominated in Canadian Dollars, in lieu of having interest charged at the rate based upon the Canadian Base Rate, Borrowers shall have the option, subject to Section 2.12(b) below (the "Canadian BA Rate Option") to have interest on all or a portion of the Loans be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Canadian Base Rate Loan to a Canadian BA Rate Loan, or upon continuation of a Canadian BA Rate Loan as a Canadian BA Rate Loan) at a rate of interest based upon the Canadian BA Rate. Interest on SOFR Loans and Canadian BA Rate Loans shall be payable on the earliest of (i) the last

day of the Interest Period applicable thereto; provided, that, subject to the following clauses (ii) and (iii), in the case of any Interest Period greater than three (3) months in duration, interest shall be payable at three (3) month intervals after the commencement of the applicable Interest Period and on the last day of such Interest Period), (ii) the date on which all or any portion of the Obligations are accelerated pursuant to the terms hereof, or (iii) the date on which this Agreement is terminated pursuant to the terms hereof. On the last day of each applicable Interest Period, unless Borrowers have properly exercised the SOFR Option or Canadian BA Rate Option with respect thereto, as applicable, the interest rate applicable to such SOFR Loan or Canadian BA Rate Loan, as applicable, automatically shall convert to the rate of interest then applicable to US Base Rate Loans or Canadian Base Rate Loans, as the case may be, of the same type hereunder. At any time that an Event of Default has occurred and is continuing, Borrowers no longer shall have the option to request that Revolving Loans bear interest at a rate based upon the SOFR or Canadian BA Rate without the consent of Agent and Required Lenders.

(b) SOFR and Canadian BA Rate Election.

(i) Borrowers may, at any time and from time to time, so long as no Event of Default has occurred and is continuing unless consented to by Agent and Required Lenders, elect to exercise the SOFR Option for Loans denominated in US Dollars or the Canadian BA Rate for Loans denominated in Canadian Dollars by notifying Agent prior to 11:00 a.m. at least three (3) Business Day prior to the commencement of the proposed Interest Period (the "SOFR/Canadian BA Rate Deadline"). Notice of Borrowers' election of the SOFR Option or Canadian BA Rate Option, as the case may be, for a permitted portion of the Revolving Loans and an Interest Period pursuant to this Section shall be made by delivery to Agent of a SOFR Notice in the case of the SOFR Option or a Canadian BA Rate Notice in the case of the Canadian BA Rate Option received by Agent before the SOFR/Canadian BA Rate Deadline, or by telephonic notice received by Agent before the SOFR/Canadian BA Rate Deadline (to be confirmed by delivery to Agent of a SOFR Notice or Canadian BA Rate Notice received by Agent prior to 5:00 p.m. on the same day). Promptly upon its receipt of each such SOFR Notice or Canadian BA Rate Notice, as applicable, Agent shall provide a copy thereof to each of the affected Lenders.

(ii) Each SOFR Notice and Canadian BA Rate Notice shall be irrevocable and binding on Borrowers. In connection with each SOFR Loan or Canadian BA Rate Loan, as the case may be, each Borrower shall indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense actually incurred by Agent or any Lender as a result of (A) the payment of any principal of any SOFR Loan or Canadian BA Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any SOFR Loan or Canadian BA Rate Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any SOFR Loan or Canadian BA Rate Loan on the date specified in any SOFR Notice or Canadian BA Rate Notice delivered pursuant hereto (such losses, costs, or expenses, "Funding Losses"). A certificate of Agent or a Lender delivered to Borrowers setting forth in reasonable detail any amount or amounts that Agent or such Lender is entitled to receive pursuant to this Section 2.12 shall be conclusive absent manifest error. Borrowers shall pay such amount to Agent or the Lender, as applicable, within thirty (30) days of the date of its receipt of such certificate.

(iii) Unless Agent, in its sole discretion, agrees otherwise, Borrowers shall not have more than five (5) SOFR Loans or three (3) Canadian BA Rate Loans in effect at any given time. Borrowers may only exercise the SOFR Option for proposed SOFR Loans of not less than US$1,000,000 and may only exercise the Canadian BA Rate Option for proposed Canadian BA Rate Loans of not less than Cdn$1,000,000.

(c) **Conversion.** Borrowers may convert SOFR Loans to US Base Rate Loans at any time or Canadian BA Rate Loans to Canadian Base Rate Loans; provided, that, in the event that SOFR Loans or

Canadian Base Rate Loans, as the case may be, are converted or prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any prepayment through the required application by Agent of any payments or proceeds of Collateral in accordance with Section 2.4(b) or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, each Borrower shall indemnify, defend, and hold Agent and the Lenders and their Participants harmless against any and all Funding Losses in accordance with Section 2.12(b)(ii).

(d) Special Provisions Applicable to Adjusted Term SOFR and Canadian BA Rate.

(i) Adjusted Term SOFR and Canadian BA Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any (A) additional or increased costs to such Lender of maintaining or obtaining any eurodollar or Canadian dollar deposits, or (B) increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including any Changes in Law (including any changes in Tax Laws (except changes of general applicability in corporate income Tax Laws) and changes in the reserve requirements imposed by the Board of Governors, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at Adjusted Term SOFR or Canadian BA Rate, provided, that, the increased costs described in clauses (A) and (B) shall not include any (1) Indemnified Taxes, (2) Taxes described in clauses (ii) through (iv) of the definition of Excluded Taxes or (3) Connection Income Taxes. In any such event, the affected Lender shall give Administrative Borrower and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (A) require such Lender to furnish to Administrative Borrower a statement setting forth in reasonable detail the basis for adjusting such Adjusted Term SOFR or Canadian BA Rate, as applicable, and the method for determining the amount of such adjustment, or (B) repay the SOFR Loans or Canadian BA Rate Loans, as the case may be, of such Lender with respect to which such adjustment is made (together with any amounts due under Section 2.12(b)(ii)).

(ii) Subject to the provisions set forth in Section 2.12(d)(iii) below, in the event that any change in market conditions or any Change in Law shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain SOFR Loans (or Base Rate Loans determined with reference to Adjusted Term SOFR) or to continue such funding or maintaining, or to determine or charge interest rates at the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or SOFR, such Lender shall give notice of such changed circumstances to Agent and Administrative Borrower and Agent promptly shall transmit the notice to each other Lender and (y)(i) in the case of any SOFR Loans of such Lender that are outstanding, such SOFR Loans of such Lender will be deemed to have been converted Base Rate Loans on the last day of the Interest Period of such SOFR Loans, if such Lender may lawfully continue to maintain such SOFR Loans, or immediately, if such Lender may not lawfully continue to maintain such SOFR Loans, and thereafter interest upon the SOFR Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans (and if applicable, without reference to the Adjusted Term SOFR component thereof) and (ii) in the case of any such Base Rate Loans of such Lender that are outstanding and that are determined with reference to Adjusted Term SOFR, interest upon the Base Rate Loans of such Lender after the date specified in such Lender's notice shall accrue interest at the rate then applicable to Base Rate Loans without reference to the Adjusted Term SOFR component thereof and (z) Borrowers shall not be entitled to elect the SOFR Option and Base Rate Loans shall not be determined with reference to the Adjusted Term SOFR component thereof, in each case, until such Lender determines that it would no longer be unlawful or impractical to do so.

(iii) In the event that any change in market conditions or any Change in Law shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain SOFR Loans or Canadian BA Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at Adjusted Term SOFR or Canadian BA Rate, as applicable, such Lender shall give notice of such changed circumstances to Agent and Administrative Borrower and Agent promptly shall transmit the notice to each other Lender and (A) in the case of any SOFR Loans or Canadian BA Rate Loan of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such SOFR Loans or Canadian BA Rate Loans, and interest upon the SOFR Loans or Canadian BA Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to US Base Rate Loans in the case of Loans denominated in US Dollars and Canadian Base Rate Loans in the case of Loans denominated in Canadian Dollars, and (B) Borrowers shall not be entitled to elect the SOFR Option or Canadian BA Rate Option, in either case, until such Lender determines that it would no longer be unlawful or impractical to do so.

(iv) **Benchmark Replacement Setting**.

(A) **Benchmark Replacement**. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, Agent and Administrative Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after Agent has posted such proposed amendment to all affected Lenders and Administrative Borrower so long as Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.12(d)(iii) will occur prior to the applicable Benchmark Transition Start Date.

(B) **Benchmark Replacement Conforming Changes**. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(C) **Notices; Standards for Decisions and Determinations**. Agent will promptly notify Administrative Borrower and the Lenders of (1) the implementation of any Benchmark Replacement and (2) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Agent will notify Administrative Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.12(d)(iii)(D) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.12(d)(iii), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.12(d)(iii).

(D) **Unavailability of Tenor of Benchmark**. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (1) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate or the Canadian BA Rate) and either (I) any tenor for such Benchmark is

not displayed on a screen or other information service that publishes such rate from time to time as selected by Agent in its reasonable discretion or (II) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (2) if a tenor that was removed pursuant to clause (1) above either (I) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (II) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(E) **Benchmark Unavailability Period**. Upon Administrative Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (1) Administrative Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans or Canadian BA Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, Administrative Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans and (2) any outstanding affected SOFR Loans or Canadian BA Rate Loans will be deemed to have been converted to Base Rate Loans at the end of the applicable Interest Period. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate. Upon any such prepayment or conversion, Borrowers shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.12(b)(ii). During a Benchmark Unavailability Period with respect to any Benchmark or at any time that a tenor for any then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark that is the subject of such Benchmark Unavailability Period or such tenor for such Benchmark, as applicable, will not be used in any determination of the applicable Base Rate.

2.13 **Capital Requirements**.

(a) If, after the date hereof, Issuing Bank or any Lender determines that (i) any Change in Law regarding capital, liquidity or reserve requirements for banks or bank holding companies, or (ii) compliance by Issuing Bank or such Lender, or their respective parent bank holding companies, with any guideline, request or directive of any Governmental Authority regarding capital adequacy or liquidity requirements (whether or not having the force of law), has the effect of reducing the return on Issuing Bank's, such Lender's, or such holding companies' capital or liquidity as a consequence of Issuing Bank's or such Lender's commitments, Loans, participations or other obligations hereunder to a level below that which Issuing Bank, such Lender, or such holding companies could have achieved but for such Change in Law or compliance (taking into consideration Issuing Bank's, such Lender's, or such holding companies' then existing policies with respect to capital adequacy or liquidity requirements and assuming the full utilization of such entity's capital) by any amount deemed by Issuing Bank or such Lender to be material, then Issuing Bank or such Lender may notify Borrowers and Agent thereof. Following receipt of such notice, Borrowers agree to pay Issuing Bank or such Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within thirty (30) days after presentation by Issuing Bank or such Lender of a statement in the amount and setting forth in reasonable detail Issuing Bank's or such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, Issuing Bank or such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of Issuing Bank or any Lender to demand compensation pursuant to

this Section shall not constitute a waiver of Issuing Bank's or such Lender's right to demand such compensation; provided, that, Borrowers shall not be required to compensate Issuing Bank or a Lender pursuant to this Section for any reductions in return incurred more than one hundred eighty (180) days prior to the date that Issuing Bank or such Lender notifies Borrowers of such Change in Law giving rise to such reductions and of such Lender's intention to claim compensation therefor; provided further, that if such claim arises by reason of the Change in Law that is retroactive, then the one hundred eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof and no Borrower shall be required to compensate Issuing Bank or a Lender pursuant to this Section 2.13(a) for any Taxes to the extent such Taxes are subject to Section 16 hereof.

(b) If Issuing Bank or any Lender requests additional or increased costs referred to in Section 2.11(l) or Section 2.12(d)(i) or amounts under Section 2.13(a) or sends a notice under Section 2.12(d)(ii) relative to changed circumstances (such Issuing Bank or Lender, an "Affected Lender"), then, at the request of Administrative Borrower, such Affected Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable, or would eliminate the illegality or impracticality of funding or maintaining SOFR Loans or Canadian Base Rate Loans, and (ii) in the reasonable judgment of such Affected Lender, such designation or assignment would not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. Borrowers agree to pay all reasonable out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment. If, after such reasonable efforts, such Affected Lender does not so designate a different one of its lending offices or assign its rights to another of its offices or branches so as to eliminate Borrowers' obligation to pay any future amounts to such Affected Lender pursuant to Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable, or to enable Borrowers to obtain SOFR Loans or Canadian BA Rate Loans, then Borrowers (without prejudice to any amounts then due to such Affected Lender under Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable) may, unless prior to the effective date of any such assignment the Affected Lender withdraws its request for such additional amounts under Section 2.11(l), Section 2.12(d)(i) or Section 2.13(a), as applicable, or indicates that it is no longer unlawful or impractical to fund or maintain SOFR Loans or Canadian Base Rate Loans, may designate a different Issuing Bank or substitute a Lender or prospective Lender, in each case, reasonably acceptable to Agent to purchase the Obligations owed to such Affected Lender and such Affected Lender's commitments hereunder (a "Replacement Lender"), and if such Replacement Lender agrees to such purchase, such Affected Lender shall assign to the Replacement Lender its Obligations and commitments, and upon such purchase by the Replacement Lender, which such Replacement Lender shall be deemed to be "Issuing Bank" or a "Lender" (as the case may be) for purposes of this Agreement and such Affected Lender shall cease to be "Issuing Bank" or a "Lender" (as the case may be) for purposes of this Agreement.

(c) Notwithstanding anything herein to the contrary, the protection of Sections 2.11(l), 2.12(d), and 2.13 shall be available to Issuing Bank and each Lender (as applicable) regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, judicial ruling, judgment, guideline, treaty or other change or condition which shall have occurred or been imposed, so long as it shall be customary for issuing banks or lenders affected thereby to comply therewith. Notwithstanding any other provision herein, neither Issuing Bank nor any Lender shall demand compensation pursuant to this Section 2.13 if it shall not at the time be the general policy or practice of Issuing Bank or such Lender (as the case may be) to demand such compensation in similar circumstances under comparable provisions of other credit agreements, if any.

2.14 **Reserved**.

2.15 **Joint and Several Liability of Borrowers.**

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lender Group under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.15), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligation until such time as all of the Obligations are paid in full.

(d) The Obligations of each Borrower under the provisions of this Section 2.15 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower, irrespective of the validity, regularity or enforceability of the provisions of this Agreement (other than this Section 2.15(d)) or any other circumstances whatsoever, as such enforceability may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(e) Except as otherwise expressly provided in this Agreement, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of any Revolving Loans or Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except in each case as otherwise provided in this Agreement). Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of any Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.15 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.15, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.15 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.15 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any other Borrower or any Agent or Lender.

(f) Each Borrower represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of the other Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) The provisions of this Section 2.15 are made for the benefit of Agent, each member of the Lender Group, each Bank Product Provider, and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Borrowers as often as occasion therefor may arise and without requirement on the part of Agent, any member of the Lender Group, any Bank Product Provider, or any of their successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.15 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.15 will forthwith be reinstated in effect, as though such payment had not been made.

(h) Each Borrower hereby agrees that it will not enforce any of its rights that arise from the existence, payment, performance or enforcement of the provisions of this Section 2.15, including rights of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of Agent, any other member of the Lender Group, or any Bank Product Provider against any Borrower, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any Borrower, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to any Agent or any member of the Lender Group hereunder or under any of the Bank Product Agreements are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor. If any amount shall be paid to any Borrower in violation of the immediately preceding sentence, such amount shall be held in trust for the benefit of Agent, for the benefit of the Lender Group and the Bank Product Providers, and shall forthwith be paid to Agent to be credited and applied to the Obligations and all other amounts payable under this Agreement, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Obligations or other amounts payable under this Agreement thereafter arising. Notwithstanding anything to the contrary contained in this Agreement, no Borrower may exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and may not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (the "Foreclosed Borrower"), including after payment in full of the Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Equity Interests of such Foreclosed Borrower whether pursuant to this Agreement or otherwise.

2.16 **Pre-Petition ABL Obligations**.

(a) Continuation of Liens. Subject to the terms of the Interim US Financing Order or the Final US Financing Order, as applicable, or in the case of the Canadian Borrower, the Initial CCAA Order or the Amended Initial CCAA Order, as applicable, until (i) the indefeasible payment in full in cash of the Obligations (and the Pre-Petition ABL Obligations), (ii) all objections and challenges (including, without limitation, any Challenge Proceeding (as defined in the Interim US Financing Order)) to (A) the liens, security interests and claims of the Pre-Petition ABL Agent (including, without limitation, liens granted for adequate protection purposes) and/or (B) the Pre-Petition ABL Obligations have been waived, denied or barred, and (iii) all of the Debtors' Stipulations (as defined in the Interim US Financing Order) have become binding on their estates and parties in interest in accordance with the Interim US Financing Order, all liens, security interests and claims of the Pre-Petition ABL Agent (including, without limitation, liens granted for adequate protection purposes) shall remain valid and enforceable with the same continuing priority as described herein and the Pre-Petition ABL Loan Documents shall remain in full force and effect; provided, that, (1) subject to the results of any applicable Challenge Proceeding (as defined in the Interim US Financing Order), to the extent that Pre-Petition ABL Obligations have been paid pursuant to this Agreement and have become and are Obligations, such Pre-Petition ABL Obligations shall not be due or owing separately under the Pre-Petition ABL Loan Documents, (2) nothing in the foregoing clause (1) shall alter or diminish, or be deemed to alter or diminish, the Adequate Protection (as defined in the Financing Order) of the Pre-Petition ABL Agent and the Pre-Petition ABL Lenders and (3) the "US Commitment" and "Canadian Commitment" (as each of such terms is defined in the Pre-Petition ABL Credit Agreement) of each Pre-Petition ABL Lender shall be terminated.

(b) Avoided Payments. In the event that Pre-Petition ABL Agent or any of the Pre-Petition ABL Lenders are required to repay or disgorge to any Loan Party or any representatives of the Loan Parties' estate (as agents, with derivative standing or otherwise) all or any portion of the Pre-Petition ABL Obligations authorized and directed to be repaid pursuant to the Interim US Financing Order or the Final US Financing Order, or in the case of the Canadian Borrower, this Agreement, the Initial CCAA Order or Amended Initial CCAA Order, or any payment on account of the Pre-Petition ABL Obligations made to Pre-Petition ABL Agent or any Pre-Petition ABL Lender is rescinded for any reason whatsoever, including, but not limited to, as a result of any Avoidance Action, or any other action, suit, proceeding or claim brought under any other provision of any applicable Bankruptcy Code, the CCAA or other applicable debtor relief law or any applicable state law, or any other similar provisions under any other state or federal statutory or common Law (all such amounts being hereafter referred to as the "Avoided Payments"), then, in such event, unless otherwise expressly ordered by the applicable Bankruptcy Court, the Loan Parties shall prepay the Revolving Loans, in an amount equal to one hundred percent (100%) of such Avoided Payments immediately upon receipt of the Avoided Payments by any Loan Party or any representative of the Loan Parties' estate.

3. **CONDITIONS; TERM OF AGREEMENT**.

3.1 **Conditions Precedent to the Initial Extension of Credit**. The obligation of each Lender to make the initial extensions of credit provided for hereunder is subject to the fulfillment, to the satisfaction of Agent and each Lender, of each of the conditions precedent set forth on Schedule 3.1 to this Agreement (the making of such initial extensions of credit by a Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent).

3.2 **Conditions Precedent to all Extensions of Credit**. The obligation of the Lender Group (or any member thereof) to make any Revolving Loans hereunder (or to extend any other credit hereunder) at any time shall be subject to the following conditions precedent:

(a) the representations and warranties of each Loan Party or its Subsidiaries contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date); and

(b) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof; and

(c) after giving effect to the requested Revolving Loan or other extension of credit hereunder, the US Revolver Usage shall not exceed the lesser of the US Maximum Credit or the US Borrowing Base then in effect; and

(d) after giving effect to the requested Revolving Loan or other extension of credit hereunder, the Canadian Revolver Usage shall not exceed the lesser of the Canadian Maximum Credit or the Canadian Borrowing Base then in effect; and

(e) after giving effect to the requested Revolving Loan or other extension of credit hereunder, the Revolver Usage shall not exceed the lesser of the Maximum Credit or the Combined Borrowing Base then in effect; and

(f) Agent shall have received with respect to the week in which such Loan is to be made, (i) if applicable, the DIP Budget Compliance Certificate for such week required to be delivered to Agent pursuant to Section 5.20 (attaching the DIP Budget Variance Report for the prior week) and (ii) the DIP Budget for such week required to be delivered to Agent pursuant to Section 5.20;

(g) the Interim US Financing Order or the Final US Financing Order, as applicable, shall not have been vacated, stayed, reversed, modified, or amended without Agent's prior written consent and shall otherwise be in full force and effect and no motion for reconsideration of the Interim US Financing Order or the Final US Financing Order, as applicable, shall have been timely filed by Colors Holdings or any of its Subsidiaries;

(h) the Initial CCAA Order or the Amended Initial CCAA Order, as applicable, shall not have been vacated, stayed, reversed, modified, or amended without Agent's prior written consent and shall otherwise be in full force and effect and no motion for reconsideration, termination or amendment of the approval of the DIP ABL Credit Facility shall have been filed by Canadian Borrower;

(i) after giving effect to such proposed Loan, (i) no Protective Advance shall be outstanding, and (ii) there shall not exist or have occurred since the Petition Date, any event or circumstance that could reasonably be expected to have a Material Adverse Effect.

3.3 **Maturity**. The Commitments shall continue in full force and effect until the Maturity Date (unless terminated earlier in accordance with the terms hereof).

3.4 **Effect of Maturity**. On the Maturity Date, all commitments of the Lender Group to provide additional credit hereunder shall automatically be terminated and all of the Obligations (other than Hedge Obligations) immediately shall become due and payable without notice or demand and

Borrowers shall be required to repay all of the Obligations (other than Hedge Obligations) in full. No termination of the obligations of the Lender Group (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full. When all of the Obligations have been paid in full, Agent will, at Borrowers' sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent.

3.5 **Early Termination by Borrowers**. Borrowers have the option, at any time upon five (5) Business Days prior written notice to Agent, to make payment in full of the Obligations and terminate the Commitments. Upon receipt by Agent and the Lender Group of payment in full of the Obligations, the Loan Documents shall terminate except for those terms and provisions that by their terms survive termination. or as may otherwise be determined by a court. The foregoing notwithstanding, (a) Borrowers may rescind termination notices relative to proposed payments in full of the Obligations with the proceeds of third party Indebtedness or from the sale of all of the assets or Equity Interests of the Loan Parties if the closing for such issuance, incurrence or sale does not happen on or before the date of the proposed termination (in which case, a new notice shall be required to be sent in connection with any subsequent termination), and (b) Borrowers may extend the date of termination at any time with the consent of Agent (which consent shall not be unreasonably withheld or delayed).

3.6 **Post-Closing Matters**. Loan Parties shall deliver each of the items set forth in Schedule 3.6 of this Agreement within the time periods set forth therein (or such later date as Agent may agree in writing), which Agent may do without obtaining the consent of the other members of the Lender Group and the obligation of the Lender Group (or any member thereof) to continue to make Revolving Loans (or otherwise extend credit hereunder) is subject to the fulfillment, on or before the date applicable thereto, of the conditions subsequent set forth on Schedule 3.6 to this Agreement (the failure by Borrowers to so perform or cause to be performed such conditions subsequent as and when required by the terms thereof (unless such date is extended, in writing, by Agent, which Agent may do without obtaining the consent of the other members of the Lender Group), shall constitute an Event of Default).

4. REPRESENTATIONS AND WARRANTIES.

In order to induce the Lender Group to enter into this Agreement, each Loan Party makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality or Material Adverse Effect in the text thereof), as of the Closing Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality or Material Adverse Effect in the text thereof), as of the date of the making of each Revolving Loan (or other extension of credit) made thereafter (other than a Protective Advance mad after an Event of Default), as though made on and as of the date of such Revolving Loan (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date), and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1 **Due Organization and Qualification; Subsidiaries**.

(a) Each Loan Party and each of its Subsidiaries (other than DCC US which is subject to pending dissolution/withdrawal proceedings) (i) is duly organized and existing and in good standing under the laws of the jurisdiction of its organization (or in the case of DCL BV is duly organized and existing under the laws of the jurisdiction of its organization), (ii) is qualified to do business in any state or province, as applicable, where the failure to be so qualified could reasonably be expected to result in a Material Adverse Effect, and (iii) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) Set forth on Schedule 4.1(b) to this Agreement is a complete and accurate description of the authorized Equity Interests of each Loan Party, by class, as of the Closing Date and, as of the Closing Date, a description of the number of shares of each such class that are issued and outstanding.

(c) Set forth on Schedule 4.1(c) to this Agreement is a complete and accurate list as of the Closing Date of the Loan Parties' direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and preferred Equity Interests outstanding for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by Holdings. All of the authorized Equity Interests of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(d) Except as set forth on Schedule 4.1(d) to this Agreement, as of the Closing Date, there are no subscriptions, options, warrants, or calls relating to any shares of Holdings or any of its Subsidiaries' Equity Interests, including any right of conversion or exchange under any outstanding security or other instrument. No Loan Party is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Equity Interests or any security convertible into or exchangeable for any of its Equity Interests.

4.2 **Due Authorization; No Conflict**.

(a) Subject to entry of the Interim US Financing Order or the Final US Financing Order, as applicable, as to US Borrowers and the Initial CCAA Order or the Amended Initial CCAA Order, as applicable as to Canadian Borrower, as to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Loan Party.

(b) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party do not and will not (i) violate any material provision of federal, state, provincial or local law or regulation applicable to any Loan Party or its Subsidiaries, the Organization Documents of any Loan Party or its Subsidiaries, or any order, judgment, or decree of any court or other Governmental Authority binding on any Loan Party or its Subsidiaries, (ii) except as otherwise excused by the Bankruptcy Code and the CCAA, conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material agreement of any Loan Party or its Subsidiaries where any such conflict, breach or default could individually or in the aggregate reasonably be expected to have a Material Adverse Effect, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Loan Party, other than Permitted Liens, or (iv) require any approval of any holder of Equity Interests of a Loan Party or any approval or consent of any Person under any material agreement of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect and except, in the case of material agreements, for consents or approvals, the failure to obtain do not, and could not, individually or in the aggregate reasonably be expected to cause a Material Adverse Effect.

4.3 **Governmental Consents**. Subject to entry of the Interim US Financing Order or the Final US Financing Order, as applicable, as to US Borrowers and the Initial CCAA Order or the Amended Initial CCAA Order, as applicable as to Canadian Borrower, the execution, delivery, and performance by each Loan Party of the Loan Documents to which such Loan Party is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority, other than (a) registrations, consents, approvals, notices, or other actions that have been obtained and that are still in force and effect, (b) filings and recordings with respect to the Collateral to be made, or otherwise delivered to Agent for filing or recordation, as of the Closing Date, and (c) registrations, consents and approvals which the failure to obtain do not, and could not, individually or in the aggregate reasonably be expected to cause a Material Adverse Effect.

4.4 **Binding Obligations; Perfected Liens**.

(a) Subject to entry of the Interim US Financing Order or the Final US Financing Order, as applicable, as to US Borrowers, and the Initial CCAA Order or the Amended Initial CCAA Order, as applicable as to Canadian Borrower, each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(b) Subject to entry of the Interim US Financing Order or the Final US Financing Order, as applicable, as to US Borrowers, and the Initial CCAA Order or the Amended Initial CCAA Order, as applicable as to Canadian Borrower, Agent's Liens are validly created, perfected (other than (i) in respect of motor vehicles that are subject to a certificate of title, (ii) money, (iii) letter-of-credit rights (other than supporting obligations, (iv) commercial tort claims (other than those that, by the terms of the US Security Agreement or the Canadian Security Agreement are required to be perfected), (v) any Deposit Accounts and Securities Accounts not subject to a Control Agreement as permitted by Section 7(k)(iv) of the US Security Agreement and (vi) as otherwise agreed in the US Security Agreement or the Canadian Security Agreement, and except to the extent not required under the Financing Orders, subject only to the filing of financing statements, the recordation of the Trademark Security Agreement and the Patent Security Agreement, and the recordation of the Copyright Security Agreement, in each case, in the appropriate filing offices and obtaining "control" of Deposit Accounts (other than those located in Canada, which are perfected by the filing of a financing statement under the PPSA or in other jurisdictions outside of the United States or Canada, in which case, subject to obtaining the applicable agreements if any required under applicable law) and Securities Accounts (other than those that are not required to be subject to a Control Agreement in accordance with the terms of Section 7(k)(iv) of the US Security Agreement or under the Canadian Security Agreement), letter of credit rights and electronic chattel paper, if applicable), and first priority Liens on the Collateral, subject as to priority only to Permitted Liens which are non-consensual Permitted Liens that by operation of law have priority, permitted purchase money Liens, the interests of lessors under Capital Leases or Liens on Term Loan Priority Collateral securing obligations under the Pre-Petition Term Loan Documents to the extent set forth in the Intercreditor Agreement and the Financing Orders, except (a) as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement, or (b) as the result of an action or failure to act on the part of Agent.

4.5 **Title to Assets; No Encumbrances**. Each Loan Party and its Subsidiaries has (a) good, sufficient and legal title to, (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Section 5.1 (or until such financial statements are delivered hereunder, the most recent financial statements delivered

under the Pre-Petition ABL Credit Agreement), that are necessary or material to their business, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens and minor irregularities or deficiencies in title that, individually or in the aggregate, do not interfere with its ability to conduct its business as currently conducted or to utilize such property for its intended purpose, in each case, in any material respect or which may be insured over by a title insurance policy.

4.6 **Litigation**.

(a) There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority, and no arbitration proceeding or governmental investigation, now pending or, to the knowledge of any Loan Party or its Subsidiaries, threatened in writing against any Loan Party or any business, property or rights of any Loan Party or its Subsidiaries (a) that involve any Loan Document or any of the Transactions or (b) that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, except for the Bankruptcy Cases.

(b) Schedule 4.6(b) to this Agreement sets forth a complete and accurate description of each of the actions, suits, or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, $100,000 that, as of the Closing Date, is pending or, to the knowledge of any Loan Party or its Subsidiaries is threatened in writing against a Loan Party or any of its Subsidiaries.

4.7 **Compliance with Laws**. No Loan Party nor any of its Subsidiaries (a) is in violation of any applicable laws, rules, regulations, executive orders, or codes (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.8 **Reserved.**

4.9 **Reserved.**

4.10 **Employee Benefits; Canadian Pension Plans**.

(a) Each Employee Benefit Plan is in compliance in all respects with the applicable provisions of ERISA, the IRC and other applicable Federal or state Laws, except to the extent that could not reasonably be expected to have a Material Adverse Effect. Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the IRC has received a favorable determination or opinion letter from the Internal Revenue Service or an application for such a letter is currently being processed by the Internal Revenue Service with respect thereto (or such Employee Benefit Plan or the prototype sponsor in respect of such Employee Benefit Plan has remaining a period of time under the IRC or pronouncements of the Internal Revenue Service in which to apply for such a determination and make any amendments necessary to obtain a favorable determination or opinion, as applicable, as to the qualified status of such Employee Benefit Plan) and, to the knowledge of any Loan Party, nothing has occurred which would prevent, or cause the loss of, such qualification. Each Loan Party has made all required contributions to each Employee Benefit Plan subject to Section 412 of the IRC, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the IRC has been made with respect to any Employee Benefit Plan.

(b) Each Loan Party and each of the ERISA Affiliates has complied in all material respects with ERISA, the IRC and all applicable laws regarding each Employee Benefit Plan.

(c) Each Employee Benefit Plan is, and has been, maintained in substantial compliance with ERISA, the IRC, all applicable laws and the terms of each such Employee Benefit Plan.

(d) Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the IRC has received a favorable determination letter from the Internal Revenue Service or is entitled to rely on an opinion letter provided under a volume submitted program. To the best knowledge of each Loan Party and the ERISA Affiliates after due inquiry, nothing has occurred which would prevent, or cause the loss of, such qualification.

(e) No liability to the PBGC (other than for the payment of current premiums which are not past due) by any Loan Party or ERISA Affiliate has been incurred or is expected by any Loan Party or ERISA Affiliate to be incurred with respect to any Pension Plan.

(f) No Notification Event, Canadian Defined Benefit Pension Reserve Event or Canadian Pension Event exists.

(g) No Loan Party or ERISA Affiliate has provided any security under Section 436 of the IRC.

(h) As of the Closing Date, Schedule 4.10 lists all Canadian Pension Plans maintained or contributed to by each Loan Party. None of the Canadian Pension Plans is a "multi-employer pension plan," as defined in the Pension Benefits Act (Ontario) or an equivalent plan under the pension standards legislation of any other applicable jurisdiction in Canada. The Canadian Pension Plans are duly registered under the Income Tax Act (Canada) (if such registration is required) and under all other applicable laws which require registration and no event has occurred which would reasonably be expected to cause the loss of such registered status. All obligations of Canadian Borrower (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Pension Plans and the funding agreements therefor have been performed on a timely basis and in compliance with the terms of such plans and agreements, any applicable collective bargaining agreement and all laws, except to the extent that any failure to do so would not reasonably be expected to have a Material Adverse Effect. All employer and employee payments, contributions or premiums to be remitted, paid to or in respect of each Canadian Pension Plan have been paid or remitted in a timely fashion in accordance with the terms thereof, any funding agreement and all applicable laws. As of the Closing Date, the only Canadian Defined Benefit Pension Plans for which a Loan Party has any liability are the DCL Corporation Salaried Pension Plan, Registration No. 0989616 (the "Salaried Plan") and the DCL Corporation Hourly Pension Plan, Registration No. 0401455 (the "Hourly Plan"). The Salaried Plan has been closed to new entrants since January 1, 2005 and the Hourly Plan has been closed to new entrants since February 19, 2006. As of the Closing Date, no Loan Party has incurred, or could reasonably be expected to incur, any obligation or liability in connection with the termination of any Canadian Defined Benefit Pension Plan (including Canadian Defined Benefit Pension Plans in existence at any time during the five-year period prior to the Closing Date) except as individually or in the aggregate could not reasonably be expected to result in a Material Adverse Effect. None of the Canadian Pension Plans is a supplemental pension plan or other retirement plan providing benefits in excess of those retirement benefits provided under a Canadian Defined Benefit Pension Plan. The Salaried Plan and the Hourly Plan are fully funded on a solvency basis, as set forth in the most recent Actuarial Reports which were prepared as at December 31, 2021 and filed with the FSRA and the Canada Revenue Agency. True, accurate and complete copies of such Actuarial Reports have been provided to the Agent. In respect of the Salaried Plan and the Hourly Plan, no material changes (other than changes in interest rates or other

macro-economic conditions or actuarial factors over which the Canadian Borrower has no control) have occurred since December 31, 2021 which could reasonably be expected to have a Material Adverse Effect. Any assessments owed in respect of the Canadian Defined Benefit Pension Plans to the Pension Benefits Guarantee Fund established under the Pension Benefits Act (Ontario), or other assessments or payments required under similar legislation in any other jurisdiction, have been paid when due.

4.11 **Environmental Condition**. Except as set forth on Schedule 4.11 to this Agreement, (a) to the knowledge of each Loan Party, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been used by a Loan Party, its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to the knowledge of each Loan Party or its Subsidiaries, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) no Loan Party nor any of its Subsidiaries has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned or operated by a Loan Party or its Subsidiaries, and (d) no Loan Party nor any of its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.12 **Complete Disclosure**. All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of any Loan Party or its Subsidiaries) furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, including each DIP Budget and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of any Loan Party or its Subsidiaries) hereafter furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete in any material respect by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Projections delivered to Agent on [December ___, 2022] represent, and as of the date on which any other Projections are delivered to Agent, such additional Projections represent, Borrowers' good faith estimate, on the date such Projections are delivered, of the Loan Parties' and their Subsidiaries' future performance for the periods covered thereby based upon assumptions believed by Borrowers to be reasonable at the time of the delivery thereof to Agent (it being understood that such Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and their Subsidiaries, and no assurances can be given that such Projections will be realized, and although reflecting Borrowers' good faith estimate, projections or forecasts based on methods and assumptions which Borrowers believed to be reasonable at the time such Projections were prepared, are not to be viewed as facts, and that actual results during the period or periods covered by the Projections may differ materially from projected or estimated results). As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

4.13 **Patriot Act**. To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) Uniting and Strengthening America

by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001, as amended) (the "Patriot Act") and (c) Canadian Anti-Terrorism Laws.

4.14 **Indebtedness**. Set forth on Schedule 4.14 to this Agreement is a true and complete list of all Indebtedness of each Loan Party and each of its Subsidiaries outstanding on the Closing Date, other than Permitted Indebtedness (except for Permitted Indebtedness under clause (b) of the definition of such term).

4.15 **Payment of Taxes**. Except as otherwise permitted under Section 5.5, all federal, state and provincial Tax returns and reports of each Loan Party and its Subsidiaries required to be filed by any of them have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all other material Taxes imposed upon a Loan Party and its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable, except for Taxes subject to a Permitted Protest. Each Loan Party and each of its Subsidiaries have made adequate provision in accordance with GAAP for all material Taxes not yet due and payable. No Loan Party knows of any proposed material Tax assessment against a Loan Party or any of its Subsidiaries that is not being actively contested by such Loan Party or such Subsidiary diligently, in good faith, and by appropriate proceedings; provided, that, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.16 **Margin Stock**. Neither any Loan Party nor any of its Subsidiaries owns any Margin Stock or is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the loans made to Borrowers will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors. Neither any Loan Party nor any of its Subsidiaries expects to acquire any Margin Stock.

4.17 **Governmental Regulation**. No Loan Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Loan Party nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18 **OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws**. No Loan Party or any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries nor, to the knowledge of such Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any Loan made or Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law or Anti-Money Laundering Law by any Person (including any Lender, Bank Product Provider, or other individual or entity participating in any transaction).

4.19 **Employee and Labor Matters**. There is (a) no unfair labor practice complaint pending or, to the knowledge of any Borrower, threatened against any Loan Party or its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Loan Party or its Subsidiaries which arises out of or under any collective bargaining agreement and that could reasonably be expected to result in a material liability, (b) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened in writing against any Loan Party or its Subsidiaries that could reasonably be expected to result in a material liability, or (c) to the knowledge of any Loan Party or its Subsidiaries, no union representation question existing with respect to the employees of any Loan Party or its Subsidiaries and no union organizing activity taking place with respect to any of the employees of any Loan Party or its Subsidiaries. None of any Loan Party or its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state or other applicable law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of each Loan Party and its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All material payments due from any Loan Party or its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Holdings or any of its Subsidiaries, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

4.20 **Holdings and Colors Holdings as a Holding Company**. Holdings is a holding company and does not have any material liabilities (other than liabilities arising under the Loan Documents, the Pre-Petition ABL Loan Documents and the Pre-Petition Term Loan Documents), own any material assets (other than the Equity Interests of Loan Parties and their Subsidiaries) or engage in any operations or business (other than the ownership of Loan Parties and their Subsidiaries). Colors Holdings is a holding company and does not have any material liabilities (other than liabilities arising under the Loan Documents), own any material assets (other than the Equity Interests of Holdings) or engage in any operations or business (other than the ownership of Holdings).

4.21 **Leases**. Each Loan Party enjoys peaceful and undisturbed possession under all leases necessary for or material to their business, when taken as a whole, and to which they are parties or under which they are operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no material default by the applicable Loan Party or its Subsidiaries exists under any of them.

4.22 **Eligible Accounts**. As to each Account that is identified by Borrowers as an Eligible Account in a Borrowing Base Certificate submitted to Agent, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of services to such Account Debtor in the ordinary course of a Borrower's business, (b) owed to a Borrower without any known defenses, disputes, offsets, counterclaims, or rights of return or cancellation, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Accounts.

4.23 **Eligible Inventory**. As to each item of Inventory that is identified by Borrowers as Eligible Inventory, Eligible In-Transit Inventory or Eligible Inventory consisting of work-in-process in a Borrowing Base Certificate submitted to Agent, such Inventory is (a) of good and merchantable quality, free from known defects, and (b) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Inventory (or in the case of Eligible In-Transit Inventory, after giving effect to any exclusions therefrom specified in the definition of Eligible In-Transit Inventory).

4.24 **Reserved**.

4.25 **Reserved**.

4.26 **Inventory Records**. Each Borrower keeps correct and accurate records itemizing and describing the type, quality, and quantity of its and its Subsidiaries' Inventory and the book value thereof.

4.27 **Reserved**.

4.28 **Reserved.**

4.29 **Financial Statements; Projections; Conduct of Business**.

(a) Historical Financial Statements.

(i) The Audited Financial Statements (A) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (B) fairly present the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (C) show all Indebtedness and other liabilities, direct or contingent, of Holdings and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(ii) The unaudited Consolidated and consolidating balance sheet of Holdings and its Subsidiaries dated August 31, 2022, and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for the fiscal month ended on that date (A) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (B) fairly present the financial condition of Holding and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (A) and (B), to the absence of footnotes and to normal year-end audit adjustments.

(iii) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect (other than as customarily occurs as a result of events leading up to and following the commencement of a proceeding under Chapter 11 of the Bankruptcy Code by the Loan Parties and the commencement of the Bankruptcy Cases).

(b) Forecasts. The forecasts of financial performance of the Companies furnished to Agent, including the DIP Budget, have been prepared in good faith based on assumptions that were believed by Borrowers to be reasonable at the time made (it being understood that forecasts are not to be viewed as facts or a guarantee of performance and are subject to significant uncertainties and contingencies, many of which are beyond the control of the Companies, and no assurance can be given that such forecasts will be realized and that actual results may differ from the projected results and such differences may be material).

4.30 **Hedge Agreements**. On each date that any Hedge Agreement is executed by any Hedge Provider, Borrower and each other Loan Party satisfy all eligibility, suitability and other requirements under the Commodity Exchange Act (7 U.S.C. §1, et seq., as in effect from time to time) and the Commodity Futures Trading Commission regulations.

4.31 **Material Contracts**. Set forth on Schedule 4.31 is a reasonably detailed description of the Material Contracts of each Loan Party and its Subsidiaries as of the Closing Date. Borrowers have delivered true, correct and complete copies of such Material Contracts to Agent on or before the Closing Date other than individual purchase orders and such Material Contracts listed on Schedule 4.31 which Material Contracts, by their terms, prohibit disclosure to third parties (and are identified as such on Schedule 4.31). Each Material Contract (a) is in full force and effect and is binding upon and enforceable against the applicable Loan Party and, to the Borrowers' knowledge, each other Person that is a party thereto in accordance with its terms, in each case, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally, (b) has not been otherwise amended or modified unless disclosed to Agent in accordance with Section 5.1, and (c) other than in the case of the Pre-Petition Term Loan Agreement and the Pre-Petition ABL Credit Agreement, is not in default in any material respect due to the action or inaction of any Loan Party (other than with respect to their commencement of the Bankruptcy Cases).

4.32 **DIP Budget**. Each of the initial DIP Budget, attached hereto as Annex A, which was delivered to Agent on or prior to the Closing Date, and the then-applicable DIP Budget, has been prepared in good faith upon assumptions Borrowers believe to be reasonable assumptions on the date of delivery of the then-applicable DIP Budget or update thereto. To the knowledge of Loan Parties, no facts exist that (individually or in the aggregate) would result in any material change in the then-applicable DIP Budget.

4.33 **Bankruptcy Cases; Super-Priority Administrative Expense Claim**.

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable Law and proper notice thereof was given for (i) the motion seeking approval of the Loan Documents, the Interim US Financing Order, and the Final US Financing Order, (ii) the hearing for the entry of the Interim US Financing Order, and (iii) the hearing for the entry of the Final US Financing Order. The CCAA Case was commenced on the Petition Date in accordance with applicable Law and proper notice thereof was given (or validated or abridged by the Canadian Bankruptcy Court) for the motion seeking approval of the Loan Documents and the Initial CCAA Order. Canadian Borrower shall give proper notice of the hearing for the entry of the Amended Initial CCAA Order. Borrowers shall give, on a timely basis as specified in the Initial CCAA Order or the Amended Initial CCAA Order, as applicable, all notices required to be given to all parties specified in the Initial CCAA Order or Amended Initial CCAA Order, as applicable.

(b) In the case of US Loan Parties, after the entry of the Interim US Financing Order, and pursuant to, and to the extent permitted in, the Interim US Financing Order and the Final US Financing Order, the Obligations will at all times constitute allowed super-priority administrative expense claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against Loan Parties now existing or hereafter arising, of any kind whatsoever, including all administrative expense claims of the kind specified in Sections 105, 326, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under section 364(c)(l) of the Bankruptcy Code, subject to the Carve-Out and such other exceptions, if any, as are set forth in the Interim US Financing Order and the Final US Financing Order, as applicable. In the case of Canadian Borrower, after issuance of the Amended Initial CCAA Order, all Obligations shall constitute super-priority secured claims in the CCAA Case having priority over all other claims of any kind (including, without limitation, any potential statutory deemed trusts arising under section 57(4) of the Pension Benefits Act (Ontario)) against the ABL Priority Collateral other than the Administration Charge which may be provided for in the Initial CCAA Order and the Amended Initial CCAA Order, as applicable.

(c) After the entry of the Interim US Financing Order and pursuant to and to the extent provided in the Interim US Financing Order and the Final US Financing Order, as applicable, the Obligations will be secured by a valid and perfected first priority Lien on all of the Collateral of US Loan Parties, subject, as to priority, only to (i) in the case of US Loan Parties, the Carve-Out, and (ii) such other exceptions as are set forth in the Interim US Financing Order and the Final US Financing Order, as applicable. After the entry of the Initial CCAA Order and pursuant to and to the extent provided in the Initial CCAA Order and the Amended Initial CCAA Order, as applicable, the Obligations will be secured by a valid and perfected first priority Lien on all of the Collateral of Canadian Borrower, subject, as to priority, only to (i) in the case of Canadian Borrower, the Administration Charge, and (ii) such other exceptions as are set forth in the Initial CCAA Order and the Amended Initial CCAA Order, as applicable.

5. **AFFIRMATIVE COVENANTS**.

Each Loan Party covenants and agrees that, until the termination of all of the Commitments and payment in full of the Obligations:

5.1 **Financial Statements, Reports, Certificates**. Borrowers (a) will deliver to Agent, with copies to each Lender, each of the financial statements, reports, and other items set forth on Schedule 5.1 to this Agreement no later than the times specified therein, (b) agree that no Subsidiary of a Loan Party will have a fiscal year different from that of Holdings, (c) agree to maintain a system of accounting that enables Holdings and its Subsidiaries to produce financial statements in accordance with GAAP, and (d) agree that they will, and will cause each other Loan Party to, (i) keep a reporting system that shows all additions, sales, claims, returns, and allowances with respect to their and their Subsidiaries' sales, and (ii) maintain their billing systems and practices substantially as in effect as of the Closing Date and shall only make material modifications thereto with notice to, and with the consent of, Agent.

5.2 **Reporting**. Borrowers (a) will deliver to Agent (and if so requested by Agent, with copies for each Lender) each of the reports set forth on Schedule 5.2 to this Agreement at the times specified therein, and (b) agree to use commercially reasonable efforts in cooperation with Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule. In addition to the other information and reports to be delivered to Agent pursuant to Section 5.1 and this Section 5.2, each Loan Party shall also provide Agent with copies of all financial reports, schedules and other materials and documents at any time filed by or on behalf of any Loan Party with a Bankruptcy Court or the US Trustee or distributed by or on behalf of any Loan Party to any Committee or the US Trustee, substantially concurrently with the delivery thereof to such Bankruptcy Court, Committee or the US Trustee, as the case may be. Without limitation of the generality of the foregoing, each Loan Party shall deliver or shall cause to be delivered to Agent or to occur, as applicable:

(a) within three (3) days prior to the filing thereof with any Bankruptcy Court by or on behalf of the Loan Parties (or such shorter period as agreed to by Agent in its reasonable discretion), proposed forms of each Financing Order, all other proposed orders and pleadings related to the DIP ABL Credit Facility, any 363 sale, any plan of reorganization or liquidation, and any disclosure statement related to such plan;

(b) on Friday of each week, the Loan Parties and the Financial Advisor shall have a call with Agent to give Agent an update as to the business of the Loan Parties, including without limitation, updates on operations, production volumes, sales, collections, vendor management, employee matters, recent cash disbursements, budget variances, and upcoming expected spending;

(c) promptly upon the written (including e-mail) request of Agent from time to time, and at such times as it may deliver such report to Pre-Petition Term Loan Agent, the Investment Bank shall deliver a report in form acceptable to Agent (the "Investment Bank Report") which shall include: (i) updates on the process of securing potential investors and/or purchasers, (ii) a list of contacted and target potential investors and/or purchasers, (iii) material feedback from such potential investors and/or purchasers, (iv) upcoming process and discussion in respect of Milestones, (v) copies of all final marketing materials associated with a potential Sale Transaction and (vi) copies of any term sheets, bona fide proposals or other relevant information and materials relating to any Sale Transaction;

(d) on Friday of each week, the Loan Parties and the Investment Bank shall have a call with Agent to give Agent an update as to the current marketing process, along with a follow up email on such date with any requested marketing materials, correspondence and other material information regarding the sales process;

(e) at least three (3) Business Days' prior written notice to Agent and its advisors (or such shorter period as agreed to by Agent in its reasonable discretion) prior to any assumption or rejection by any Loan Party or any Subsidiary of a Material Contract or material non-residential real property lease pursuant to Section 365 of the Bankruptcy Code, and no such contract or lease shall be assumed or rejected, if such assumption or rejection adversely impacts the Collateral or any Liens thereon (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens);

(f) (i) as soon as practicable (and, in any event, at least three (3) Business Days or such shorter period as agreed to by Agent in its reasonable discretion) in advance of filing with any Bankruptcy Court or delivering to the Committee appointed in a Chapter 11 Case, if any (or the professionals to any such Committee), or to the US Trustee, as the case may be, the proposed Final US Financing Order and all other proposed orders and pleadings related to the DIP ABL Credit Facility, any other financing or any use of cash collateral, any sale or other disposition of Collateral outside the ordinary course (and including any sale contemplated in accordance with the Milestones), cash management, adequate protection, any plan of reorganization and/or any disclosure statement related thereto (all of which must be in form and substance satisfactory to Agent), and (ii) substantially simultaneously with the filing with any Bankruptcy Court or delivering to the Committee appointed in any Chapter 11 Case, if any (or the professionals to any such Committee), or to the US Trustee, as the case may be, monthly written operating reports and all other written notices, filings, motions, pleadings or other written information concerning the financial condition of the Loan Parties or their Subsidiaries that may be filed with any Bankruptcy Court or delivered to the Committee appointed in any Chapter 11 Case, if any (or the professionals to any such Committee), or to the US Trustee or the Monitor, or, to the extent not required to be delivered pursuant to clause (i) above, any request for relief under Section 363, 365, 1113 or 1114 of the Bankruptcy Code or section 9019 of the Federal Rules of Bankruptcy Procedure that may be filed with any Bankruptcy Court or delivered to the Committee appointed in any Chapter 11 Case, if any (or the professionals to any such committee).

5.3 **Existence**. Except as otherwise permitted under Section 6.3 or Section 6.4, each Loan Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect such Person's valid existence and good standing in its jurisdiction of organization and, except as could not reasonably be expected to result in a Material Adverse Effect, good standing with respect to all other jurisdictions in which it is qualified to do business and any rights, franchises, permits, licenses, accreditations, authorizations, or other approvals material to their businesses.

5.4 **Maintenance of Properties**. Each Loan Party will, and will cause each of its Subsidiaries to, maintain and preserve all of its assets that are necessary in the proper conduct of its

business in good working order and condition, ordinary wear, tear, casualty, and condemnation and Permitted Dispositions excepted.

5.5 **Taxes**. Each Loan Party will, and will cause each of its Subsidiaries to,

(a) pay, discharge or otherwise satisfy, promptly when due all income and other material Taxes imposed upon it or upon its income or profits or in respect of its property or businesses, before the same shall become delinquent or in default, except to the extent, in each case, those Taxes with respect to which the validity or amount thereof shall be subject to a Permitted Protest and the applicable Company shall have set aside on its books adequate reserves or other appropriate provisions with respect thereto in accordance with GAAP, and

(b) timely and correctly file all income and other material Tax Returns required to be filed by it, except to the extent the failure to timely or correctly file such Tax Returns shall be subject to a Permitted Protest and the applicable Company shall have set aside on its books adequate reserves or other appropriate provisions with respect thereto in accordance with GAAP.

5.6 **Insurance**. Each Loan Party will, and will cause each of its Subsidiaries to, at Borrowers' expense, maintain insurance respecting each of each Loan Party's and its Subsidiaries' assets wherever located, covering liabilities, losses or damages as are customarily are insured against by other Persons engaged in same or similar businesses and similarly situated and located. All such policies of insurance shall be with financially sound and reputable insurance companies reasonably acceptable to Agent (it being agreed that, as of the Closing Date, CAN, Liberty Mutual and CAN Insurance Company are acceptable to Agent) and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and, in any event, in amount, adequacy, and scope reasonably satisfactory to Agent (it being agreed that the amount, adequacy, and scope of the policies of insurance of Borrowers in effect as of the Closing Date are acceptable to Agent). All property insurance policies are to be made payable to Agent for the benefit of Agent and the Lenders, as their interests may appear, in case of loss, pursuant to a standard lender's loss payable endorsement with a standard non-contributory "lender" or "secured party" clause and are to contain such other provisions as Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Agent, with the lender's loss payable and additional insured endorsements in favor of Agent and shall provide for not less than thirty (30) days (ten (10) days in the case of non-payment) prior written notice to Agent of the exercise of any right of cancellation. If any Loan Party or its Subsidiaries fails to maintain such insurance, Agent may arrange for such insurance, but at Borrowers' expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Borrowers shall give Agent prompt notice of any loss exceeding $250,000 covered by the casualty or business interruption insurance of any Loan Party or its Subsidiaries. Upon the occurrence and during the continuance of an Event of Default, Agent shall have the sole right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

5.7 **Inspection**.

(a) Each Loan Party will, and will cause each of its Subsidiaries to, permit Agent, any Lender, and each of their respective duly authorized representatives or agents from time to time upon prior reasonable notice and at such times during normal business hours, all at the expense of Borrowers,

to visit any of its properties and inspect any of its assets or books and records, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees (provided, that, an authorized representative of a Borrower may, if they choose, be present at or participate in any such discussions present).

(b) Upon the request of Agent after reasonable prior notice, each Loan Party will, and will cause each of its Subsidiaries to, permit Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by Agent to conduct commercial finance examinations and other evaluations, including, without limitation, of (i) Borrowers' practices in the computation of the applicable Borrowing Base and (ii) the assets included in the applicable Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves. Loan Parties shall pay the reasonable and documented fees and expenses of Agent and such professionals with respect to such examinations and evaluations.

(c) Upon the request of Agent after reasonable prior notice, each Loan Party will, and will cause each of its Subsidiaries to, permit Agent or professionals (including appraisers) retained by Agent to conduct appraisals of the Collateral, including, without limitation, the assets included in the applicable Borrowing Base. Loan Parties shall pay the reasonable and documented fees and expenses of Agent and such professionals with respect to such appraisals.

5.8 **Compliance with Laws**. Each Loan Party will, and will cause each of its Subsidiaries to, comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.9 **Environmental**. Each Loan Party will, and will cause each of its Subsidiaries to,

(a) keep any property either owned or operated by any Loan Party or its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens,

(b) comply, in all material respects, with Environmental Laws and provide to Agent documentation of such compliance which Agent reasonably requests,

(c) promptly notify Agent of any release of which any Loan Party has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by any Loan Party or its Subsidiaries and take any Remedial Actions required to abate said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law, and

(d) promptly, but in any event within five (5) Business Days of its receipt thereof, provide Agent with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of a Loan Party or its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against a Loan Party or its Subsidiaries, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority.

5.10 **Reserved**.

5.11 **Formation of Subsidiaries**.

(a) Subject to this Section 5.11, with respect to any property acquired after the Closing Date by any Loan Party that is intended to be subject to the Lien created by any Security Document but is not so subject, promptly (and in any event within thirty (30) days (or such longer period as may be agreed to by Agent) after the acquisition thereof), each Loan Party will:

(i) execute and deliver to Agent such amendments or supplements to the Canadian Security Agreement (in the case of any such property acquired by a Canadian Loan Party) or the US Security Agreement (in the case of any such property acquired by a US Loan Party) or such other documents as Agent shall reasonably deem necessary or advisable to grant to Agent, for its benefit and for the benefit of the other member of the Lender Group, a Lien on such property with the priority required by the Intercreditor Agreement and the Financing Orders subject to no Liens other than Permitted Liens, and

(ii) take all actions necessary to cause such Lien to be duly perfected to the extent required by such Security Document in accordance with all applicable laws, including the filing of financing statements in such jurisdictions as may be reasonably requested by Agent.

Each Loan Party shall otherwise take such actions and execute and/or deliver to Agent such documents as Agent shall reasonably require to confirm the validity, perfection and priority of the Lien of the Canadian Security Agreement (in the case of Canadian Loan Parties) or the US Security Agreement (in the case of US Loan Parties) on such after-acquired Collateral.

(b) With respect to any Person that (i) is or becomes a Subsidiary (other than an Excluded Subsidiary) after the Closing Date or (ii) ceases to be an Excluded Subsidiary, promptly (and in any event within (x) in the case of any Person described in clause (i) of the definition of "Excluded Subsidiary," three (3) days (or such longer period as may be agreed to by Agent) after such Person ceases to be an Excluded Subsidiary or (y) in the case of any other Person, thirty (30) days (or such longer period as may be agreed to by Agent) after such Person becomes a Subsidiary (other than an Excluded Subsidiary) or such Person ceases to be an Excluded Subsidiary, as applicable, each Loan Party will:

(A) deliver to Agent (or its bailee, including Pre-Petition Term Loan Agent) the certificates, if any, representing all of the Equity Interests of such Subsidiary, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and deliver to Agent all intercompany notes owing from such Subsidiary to any Loan Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Loan Party, in each case, as required by the Canadian Security Agreement (if such Loan Party is a Canadian Loan Party) or the US Security Agreement (if such Loan Party is a US Loan Party),

(B) cause such Subsidiary (1) to execute (x) in the case of any Subsidiary organized under the laws of a jurisdiction in Canada, a Joinder Agreement or such comparable documentation to become a Guarantor and party to the Canadian Security Agreement and any other applicable security agreement in such form as is reasonably acceptable to Agent or (y) in the case of any Subsidiary organized under the laws of a jurisdiction in the United States, a Joinder Agreement or such comparable documentation to become a Guarantor and party to the US Security Agreement, and each other applicable security agreement in such form as is reasonably acceptable to Agent) and (2) to take all actions necessary or advisable in the reasonable opinion of Agent to cause the Lien created by the Canadian Security Agreement (in the case of any Subsidiary organized under the laws of a jurisdiction in Canada) or the US Security Agreement (in the case of any Subsidiary organized under the laws of a jurisdiction in the United States) to be duly perfected to the extent required by such agreement in accordance with all applicable laws, including the filing of financing statements in such jurisdictions; provided, that, no Subsidiary that

is an Excluded Subsidiary shall be required to guarantee the Obligations of the applicable Borrower for so long as such Subsidiary remains an Excluded Subsidiary, and

(C) provide to Agent all other documentation, including the Organization Documents of such Subsidiary and one or more opinions of counsel reasonably satisfactory to Agent, which, in its opinion, is appropriate with respect to the execution and delivery of the applicable documentation referred to above.

Any document, agreement, or instrument executed or issued pursuant to this Section 5.11 shall constitute a Loan Document.

(c) Reserved.

(d) With respect to any Person that is or becomes a Subsidiary (regardless of whether an Excluded Subsidiary) after the Closing Date, promptly (and in any event within thirty (30) days or such longer period as may be agreed to by Agent) after such Person becomes a Subsidiary, cause such Subsidiary to execute and deliver a counterpart of the Intercompany Note and the endorsement thereto and to execute and deliver a joinder or otherwise become party to the Intercompany Subordination Agreement; provided, that, no Excluded Subsidiary shall be required to execute and deliver a counterpart of the endorsement to the Intercompany Note.

5.12 **Further Assurances**.

(a) Each Loan Party will, and will cause each of the other Loan Parties to, at any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, mortgages, deeds of trust, opinions of counsel, and all other documents (the "Additional Documents") that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfected or to better perfect Agent's Liens in all of the assets of each of the Loan Parties (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal) (other than any assets expressly excluded from the Collateral (as defined in the applicable Security Document) pursuant to Section 3 of such Security Document), and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by applicable law, if any Borrower or any other Loan Party refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time not to exceed five (5) Business Days following the request to do so, each Borrower and each other Loan Party hereby authorizes Agent to execute any such Additional Documents in the applicable Loan Party's name and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance of, and not in limitation of, the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of the Loan Parties, including all of the outstanding capital Equity Interests of each Borrower and its Subsidiaries (in each case, other than with respect to any assets expressly excluded from the Collateral pursuant to Section 3 of the applicable Security Document.

(b) Notwithstanding anything to the contrary contained herein (including Section 5.11 hereof and this Section 5.12) or in any other Loan Document, (i) Agent shall not accept delivery of any mortgages, charges, deeds of hypothec, deeds of trust, or deeds to secure debt, executed and delivered by a Loan Party or one of its Subsidiaries in favor of Agent that encumber the Real Property, from any Loan Party unless each of the Lenders has received forty-five (45) days' prior written notice thereof and Agent has received confirmation from each Lender that such Lender has completed its flood insurance diligence, has received copies of all flood insurance documentation and has confirmed that flood insurance

compliance has been completed as required by the Flood Laws or as otherwise satisfactory to such Lender and (ii) Agent shall not accept delivery of any joinder to any Loan Document with respect to any Subsidiary, if such Subsidiary that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation unless such Subsidiary has delivered a Beneficial Ownership Certification in relation to such Subsidiary and Agent has completed its Patriot Act and AML Legislation searches, OFAC/PEP searches and customary individual background checks for such Subsidiary, the results of which shall be satisfactory to Agent.

5.13 **Extraordinary Receipts**. If (a) Holdings or any direct or indirect parent thereof receives any Net Cash Proceeds from Extraordinary Receipts, Holdings or such parent, as the case may be, shall make a direct or (in the case of such parent) indirect cash contribution to one or more Borrowers in an amount equal to such Net Cash Proceeds or (b) any Company (other than Holdings or any Borrower) receives any Net Cash Proceeds from Extraordinary Receipts, such Company shall make a direct or indirect cash distribution to one or more Borrowers in an amount equal to such Net Cash Proceeds, in each case within two (2) Business Days of receipt of such Net Cash Proceeds.

5.14 **Location of Inventory; Chief Executive Office**. Each Loan Party will keep (a) their Inventory only at the locations identified on Schedule 4.25 to this Agreement (provided, that, Borrowers may amend Schedule 4.25 to this Agreement so long as such amendment occurs by written notice to Agent not less than ten (10) days prior to the date on which such Inventory is moved to such new location and so long as Agent has consented to such amendment), and (b) their respective chief executive offices (and registered offices in the case of the Canadian Loan Parties) only at the locations identified on Schedule 7 to the US Security Agreement as to US Loan Parties and Schedule 7 to the Canadian Security Agreement as to Canadian Loan Parties. Each Loan Party will use their commercially reasonable efforts to obtain Collateral Access Agreements for each of their locations identified on Schedule 7 to the US Security Agreement, Schedule 7 to the Canadian Security Agreement, and Schedule 4.25 to this Agreement.

5.15 **OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws**. Each Loan Party will, and will cause each of its Subsidiaries to comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries shall implement and maintain in effect policies and procedures designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties shall and shall cause their respective Subsidiaries to comply with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

5.16 **Compliance with ERISA and the IRC and Canadian Pension Plan Legislation.** In addition to and without limiting the generality of Section 5.8, each Loan Party will (a) comply in all material respects with its obligations under applicable provisions of (i) ERISA and the IRC with respect to all Employee Benefit Plans and (ii) the Pension Benefits Act (Ontario) and all other applicable Canadian pension benefits legislation and the Income Tax Act (Canada), (b) without the prior written consent of Agent and the Required Lenders, not take any action or fail to take action with respect to its obligations under applicable provisions of ERISA, the IRC, applicable Canadian pension benefits legislation and the Income Tax Act (Canada) or other applicable law the result of which could reasonably be expected to result in a Loan Party or ERISA Affiliate incurring a material liability to the PBGC or to a Multiemployer Plan (other than to pay contributions or premiums payable in the ordinary course) or to a Canadian Governmental Authority or the applicable Canadian Pension Plan, (c) not participate in any non-exempt prohibited transaction that could reasonably be expected to result in a Material Adverse Effect, and (d) furnish to Agent upon Agent's written request such additional reasonable information within its control about any Employee Benefit Plan or Canadian Pension Plan with respect to which any

Loan Party or ERISA Affiliate could reasonably be expected to incur a Material Adverse Effect. With respect to each Pension Plan (other than a Multiemployer Plan) and Canadian Pension Plan, except as could not reasonably be expected to result in material liability to the Loan Parties and the ERISA Affiliates, the Loan Parties shall (i) satisfy in full and in a timely manner, without incurring any late payment or underpayment charge or penalty and without giving rise to any Lien, all of the contribution and funding requirements of the IRC and of ERISA, and the applicable Canadian pension benefits legislation and the Income Tax Act (Canada) and (ii) pay, or cause to be paid, in a timely manner, without incurring any late payment or underpayment charge or penalty, all required premiums.

5.17 **Canadian Defined Benefit Pension Plan Reporting Requirements**. With respect to Canadian Defined Benefit Pension Plans, promptly (a) after the filing thereof, a copy of: (i) all actuarial valuations and corresponding actuarial information summaries; (ii) all annual information returns; (iii) all summaries of contributions and revised summaries of contributions; (iv) all investment information summaries; and (v) statement of investment policies and procedures information summaries required to be filed with FSRA by Loan Parties pursuant to the Pension Benefits Act (Ontario), (b) after the receipt by the Borrower thereof, all audited financial statements prepared in respect of any of the Canadian Defined Benefit Pension Plans, (c) at any time after the occurrence of a Canadian Defined Benefit Pension Reserve Event, after receipt, a copy of any material correspondence from a Governmental Authority in respect of a Canadian Defined Benefit Pension Plan; and (d) notice of the occurrence of any Canadian Defined Benefit Pension Reserve Event, Canadian Defined Benefit Pension Termination Event or Canadian Pension Event. In addition, with respect to each Canadian Defined Benefit Pension Plan, the Borrowers shall deliver to the Agent: promptly upon receipt, copies of the final version of all actuarial valuation reports prepared for each Canadian Defined Benefit Pension Plan, whether or not such actuarial valuation report is filed with the appropriate Governmental Authority.

5.18 **Engagement and Retention of Investment Bank and Advisors**.

(a) Loan Parties shall retain on terms and conditions acceptable to Agent and at the sole cost and expense of Borrowers, Ankura Consulting Group, LLC, or such other Person acceptable to Agent, as its financial advisor and such additional advisors as may be reasonably requested by Agent, together with any such other advisors, the "Financial Advisor"), in each case on terms and conditions satisfactory to Agent. Each Loan Party agrees to cooperate, and to cause its representatives to cooperate, with the Financial Advisor and provide the Financial Advisor with access to the books and records of such Loan Party, all of the premises of such Loan Party and to all management of Loan Parties as and when deemed necessary or appropriate by the Financial Advisor. Each Loan Party shall not amend or modify, or terminate, the retention agreement with the Financial Advisor without the prior written consent of Agent (not to be unreasonably withheld). If the Financial Advisor resigns, Loan Parties shall immediately notify Agent in writing and provide Agent with a copy of any notice of resignation immediately upon the sending of such notice by the Financial Advisor. Any replacement or successor Financial Advisor shall be subject to approval by Agent, such approval not to be unreasonably withheld, and shall be retained pursuant to a new retention agreement on terms and conditions reasonably acceptable to Agent (in consultation with Administrative Borrower) within five (5) Business Days immediately following the notice of resignation of the resigning Financial Advisor, or within such longer period of time as Agent may agree in writing. Each Loan Party (i) authorizes and directs the Financial Advisor (or its agents or advisors) to communicate directly with Agent regarding any and all matters related to the Loan Parties and their Affiliates, including, without limitation, all financial reports and projections developed, reviewed or verified by Financial Advisor and all additional information, reports and statements requested by Agent (provided, that (A) representatives of the Loan Parties shall be given the opportunity to participate in any such communications and (B) if an issue is to be discussed or otherwise arises which, in the good faith judgment of the Loan Parties, cannot be discussed in the presence of such advisors and consultants in order to preserve an attorney-client or accountant-client privilege, then such issue may be

discussed without such advisor or consultant being present and may be redacted as necessary to preserve such privilege from any materials being distributed in connection with such communications), and (ii) authorizes and directs the Financial Advisor to provide Agent (or its agents or advisors) with copies of reports and other information or materials prepared or reviewed by Financial Advisor as Agent may reasonably request (in each case, subject to protection as necessary in respect of bona fide attorney-client privilege). Promptly following any request therefor, each Loan Party shall provide, and cause Financial Advisor to provide, Agent with such information regarding the operations, business affairs and financial condition of any Loan Party as Agent may request.

(b) Borrowers have retained the Investment Bank to assist Loan Parties in the sale of all or substantially all businesses and properties of Loan Parties, which shall, among other things, include assistance in the preparation of a confidential sale memorandum, the distribution to prospective purchasers of the confidential information memorandum and other disclosure materials and the solicitation and management of bids. Each Loan Party has authorized and directed the Investment Bank to share with Agent all reports and other information prepared by or in the possession of the Investment Bank relating to the sale process. At all times the Loan Parties shall continue to retain the Investment Bank, or any replacement thereof from time to time that is satisfactory to Agent and engaged promptly after the resignation or dismissal of the then existing Investment Bank, as their investment banker pursuant to the scope of engagement previously entered into on or before the Closing Date, between the Investment Bank and Administrative Borrower (the "Investment Bank Engagement Letter"), or a replacement scope of engagement upon substantially similar terms as the Investment Bank Engagement Letter or otherwise acceptable to Agent.

(c) Borrowers shall retain on terms and conditions acceptable to Agent and at the sole cost and expense of Borrowers, Ankura Consulting Group, LLC, or such other Person acceptable to Agent, as represented by Scott Davido, or such other Person acceptable to Agent as its chief restructuring officer (the "Chief Restructuring Officer"). The Chief Restructuring Officer shall be responsible for coordinating the turnaround, restructuring and transaction activities of the Loan Parties and engagement with internal and external stakeholders (such as any creditors' committee and Agent), including making decisions affecting the businesses of Loan Parties with respect to such matters, and shall, among other things, assist in the preparation of the DIP Budget and compliance with the terms and conditions set forth in the Loan Documents. The Chief Restructuring Officer shall report directly to the Board of Directors or Members, as applicable, of Loan Parties. Each Loan Party hereby authorizes and directs the Chief Restructuring Officer to consult with Agent and to share with Agent all budgets, records, projections, financial information, reports and other information prepared by or in the possession of the Chief Restructuring Officer relating to the Collateral, or the financial condition or operations of the business of Loan Parties and respond fully to any inquiries of Agent regarding the assets, prospects, business and operations of Loan Parties and communicate and fully cooperate with Agent in accordance with the terms of this Agreement and the other Loan Documents. Promptly following any request therefor, each Loan Party shall provide, and cause the Chief Restructuring Officer to provide, Agent with such information regarding the operations, business affairs and financial condition of any Loan Party as Agent may request (provided, that if a document, in the good faith judgment of the Loan Parties, cannot be provided in order to preserve an attorney-client privilege, then such document may be redacted as necessary to preserve such privilege). Each Loan Party agrees to provide the Chief Restructuring Officer with complete access to and supervision over all of the books and records of such Loan Party, all of the premises of such Loan Party and to all management and employees of such Loan Party as and when deemed necessary by the Chief Restructuring Officer. Each Loan Party shall not amend or modify, or terminate, the retention agreement with the Chief Restructuring Officer without the prior written consent of Agent. If the Chief Restructuring Officer resigns, Borrowers shall immediately notify Agent in writing and provide Agent with a copy of any notice of resignation immediately upon the sending of such notice by such Chief Restructuring Officer. Any replacement or successor Chief Restructuring Officer shall be acceptable to

Agent, and shall be retained pursuant to a new retention agreement on terms and conditions acceptable to Agent within five (5) Business Days immediately following the notice of resignation of the resigning Chief Restructuring Officer, or within such longer period of time as Agent may agree in writing.

5.19 **Sale Process**.

(a) Loan Parties shall, and shall cause the Investment Bank to, continue to market for sale the assets of the Loan Parties in a manner consistent with the information provided to Agent prior to the date hereof and shall cause the Investment Bank to actively identify and solicit bids from all appropriate buyers of such assets, including strategic buyers and financial buyers. Loan Parties shall, and shall cause the Investment Bank, to, at all times, act in accordance with any Bid Procedures which have been approved by a Bankruptcy Court under any Bid Procedures Order.

(b) Borrowers shall deliver to Agent a complete and correct copy of the DIP Asset Purchase Documents, including all schedules and exhibits thereto. The execution, delivery and performance of each of the DIP Asset Purchase Documents shall be duly authorized by all necessary action on the part of each Loan Party who is a party thereto. Each DIP Asset Purchase Document shall be the legal, valid and binding obligation of each Loan Party who is a party thereto, enforceable against each such Loan Party in accordance with its terms, in each case, except (i) as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting generally the enforcement of creditors' rights, and (ii) the availability of the remedy of specific performance or injunctive or other equitable relief is subject to the discretion of the court before which any proceeding therefor may be brought. No Loan Party shall be in default in the performance or compliance with any material provisions thereof. All representations and warranties made by a Loan Party in the DIP Asset Purchase Documents and in the certificates delivered in connection therewith shall be true and correct in all material respects. To the knowledge of each Loan Party, none of the representations or warranties by any party thereto in the DIP Asset Purchase Documents shall contain any untrue statement of a material fact or omit any fact necessary to make the statements therein not misleading in any material respect.

5.20 **DIP Budget**.

(a) Borrowers have prepared and delivered to Agent and Lenders the initial DIP Budget, which has been prepared by Borrowers in good faith and based upon Borrowers' best information as to the items contained therein. The initial DIP Budget sets forth projected receipts, disbursements, net cash flow, net sales, Eligible Accounts, Eligible Inventory, payable float, Loan balances and availability for the immediately following consecutive 13 weeks, set forth on a weekly basis for each of US Borrowers and Canadian Borrower, including the anticipated uses of the DIP ABL Credit Facility for such period. The initial DIP Budget is and shall be the DIP Budget unless and until replaced or amended in accordance with terms set forth below. Borrowers will act strictly in accordance with, and comply with, each DIP Budget that is in form and substance satisfactory to Agent and has been approved by it. Agent and Lenders have relied upon the initial DIP Budget in determining to enter into this Agreement and have relied upon, and will be relying on, in providing the DIP ABL Credit Facility. No DIP Budget shall be updated, amended or modified except with the prior written consent of Agent. In addition, except as Agent may otherwise hereafter agree, Borrowers shall deliver a revised DIP Budget for the period prior to the payment in full of the Obligations or such other period as Agent may specify, for review and approval by Agent on the date of the Milestone for the delivery of the DIP Asset Purchase Agreement, accompanied by such supporting documentation as requested by Agent. Upon written approval by Agent such revised DIP Budget shall become the DIP Budget for purposes hereof. Such revised DIP Budget thereto shall be prepared in good faith based upon assumptions which Borrowers believe to be reasonable at the time made. In the event Agent does not approve any such revised DIP Budget for the applicable

period, then the DIP Budget previously delivered and approved by Agent for the applicable period shall continue in effect.

(b) Borrowers shall deliver to Agent on or before 12:00 p.m. (Eastern time) on Friday of each week commencing on the Friday of the second full calendar week following the Petition Date an updated DIP Budget for the next succeeding 13-week period each in form satisfactory to Agent and with any revisions projected in the DIP Budget for the same periods covered by the prior DIP Budget (any such revision being a "DIP Budget Modification") required to be reasonably satisfactory to, and approved in writing by, Agent; provided, that, (i) in the event Agent does not approve any such DIP Budget Modification for the applicable period, then the DIP Budget previously delivered and approved by Agent for the applicable period shall continue in effect, and (ii) in the case of a DIP Budget Modification that constitutes an adverse change with respect to ending cash or Excess Availability, or any change with respect to ending cash or Excess Availability as a result of delays in the making of disbursements shall be satisfactory to, and approved by, Agent. Each DIP Budget Modification included in a DIP Budget shall be accompanied by such supporting documentation as requested by Agent. Upon Agent's written approval of any DIP Budget Modification, the DIP Budget shall be deemed updated to include the revisions constituting such DIP Budget Modification. The DIP Budget and each DIP Budget Modification thereto shall be prepared in good faith based upon assumptions which Borrowers believe to be reasonable at the time made.

(c) Borrowers shall deliver to Agent on or before 12:00 p.m. (Eastern time) on Friday of each week commencing on the Friday of the fourth full calendar week following the Petition Date a DIP Budget Compliance Certificate and such DIP Budget Compliance Certificate shall include such detail as is satisfactory to Agent, signed by a Responsible Officer of Administrative Borrower (i) certifying that (A) Borrowers are in compliance with the covenant contained in clause (d) of this Section 5.20, as applicable, and (B) no Default or Event of Default has occurred or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, and (ii) attaching a DIP Budget Variance Report for the prior week and for the period from the commencement of the initial DIP Budget to the end of the prior week.

(d) Commencing on the fourth calendar week following the Petition Date (and including the week in which the Petition Date occurs as the first week for such purpose), Borrowers shall not permit:

(i) the total aggregate disbursements (excluding disbursements for professional fees and expenses) during any DIP Measurement Period to exceed the aggregate amount for such disbursements for such DIP Measurement Period in the applicable DIP Budget by more than fifteen percent (15%),

(ii) the total aggregate sales receipts during any DIP Measurement Period to be less than eighty percent (80%) of the aggregate amount thereof for such DIP Measurement Period in the applicable DIP Budget,

(iii) as of the Friday of every third calendar week following the Petition Date (and including the week in which the Petition Date occurs as the first week of such three-week period), the Excess Availability to be more than fifteen percent (15%) less than the amount thereof as of such time in the DIP Budget, or

(iv) the Loan balance under the DIP ABL Credit Facility (together with any then outstanding loans under the Pre-Petition ABL Credit Facility) as of the Friday of any week to exceed the amount thereof as of such time in the DIP Budget by more than fifteen percent (15%) of such amount in the DIP Budget.

(e) Agent and Lenders (i) may assume that Loan Parties will comply with the DIP Budget, (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay any unpaid expenses incurred or authorized to be incurred pursuant to any DIP Budget. The line items in the DIP Budget for payment of interest, expenses and other amounts to Agent and the Lenders are estimates only, and the Loan Parties remain obligated to pay any and all Obligations in accordance with the terms of the Loan Documents and the applicable Order regardless of whether such amounts exceed such estimates. Nothing in any DIP Budget (including any estimates of a loan balance in excess of a Borrowing Base) shall constitute an amendment or other modification of any Loan Document or a Borrowing Base or other limitations set forth herein. Notwithstanding any projected amounts set forth in any DIP Budget relating to the costs and expenses of Agent or any Lender that are reimbursable by any Loan Party or any other amounts owing by any Loan Party to Agent of any Lender (including, without limitation, attorneys and consulting fees and expenses) in accordance with this Agreement and the other Loan Documents, such projections shall not limit, impair, modify or waive the obligations of any Loan Party to pay the actual amounts due to Agent or such Lender in respect of such costs, expenses and other amounts owing to Agent and such Lender in accordance with this and the other Loan Documents. Agent and Lenders shall not be responsible for, or have any liability or obligation to ensure the payment of, any costs and expenses set forth in any DIP Budget or any other claims asserted or incurred in connection with any Loan Parties' business or in the Chapter 11 Cases, or CCAA Case, and nothing in this Agreement or otherwise shall be construed to obligate Agent or any Lender in any way, to pay, fund, or ensure that any Loan Party has sufficient funds to pay any such costs and expenses.

(f) Notwithstanding anything to the contrary herein or in the other Loan Documents, or otherwise, all Revolving Loans shall be used by Borrowers only in accordance with the then applicable DIP Budget and it shall be an additional Event of Default hereunder if Borrowers use proceeds of any Revolving Loans made by or on behalf of Agent or any Lender on and after the Closing Date for any expense that is not set forth in the DIP Budget for the period of time on or before the date such expense is to be paid in the applicable DIP Budget, except as Agent may consent in writing.

5.21 **Compliance with Financing Orders, Etc**. Each Loan Party will, and will cause each of its Subsidiaries to, comply (a) in all respects, after entry thereof, with all of the requirements and obligations set forth in the Financing Orders and the Cash Management Order, as each such order may be amended and in effect from time to time in accordance with this Agreement, (b) in all material respects, after entry thereof, with any Bid Procedures Order and any Sale Order, as each such order may be amended and in effect from time to time in accordance with this Agreement, (c) in all material respects, after entry thereof, any other order entered by any Bankruptcy Court that (i) is in form and substance reasonably satisfactory to Agent, (ii) has not been vacated, reversed or stayed and (iii) has not been amended or modified except in a manner reasonably satisfactory to Agent, and including after entry thereof, the orders approving the "first day" and "second day" relief obtained in any Bankruptcy Cases, and (d) in a timely manner with its obligations and responsibilities as a debtor-in-possession or debtor under the Bankruptcy Code, the Bankruptcy Rules, the CCAA and any other order of any Bankruptcy Court.

5.22 **Milestones**. Each Loan Party shall deliver or shall cause to be delivered to Agent or to occur, as applicable, each of the Milestones set forth on Schedule 5.22 at the times (or at such later dates as Agent may agree in writing) and in the manner set forth on such Schedule. The failure of such events to occur at such times and such manner shall constitute an Event of Default. Without limitation of any other rights of Agent or Lenders, any DIP Asset Purchase Agreement and other DIP Asset Purchase Documents, and all related motions with respect thereto, shall be on terms and in form and substance satisfactory to Agent and the failure to deliver such DIP Asset Purchase Documents and motions that are satisfactory in all respects to Agent by the applicable Milestone shall constitute an Event of Default.

5.23 **Advisors to Agent and Lenders**. Without limitation of any rights or remedies of Agent and Lenders under this Agreement, the other Loan Documents or applicable Law, (a) Agent, on behalf of itself and the Lenders, shall be entitled to retain or to continue to retain (either directly or through counsel) one or more financial advisor, auditor or any other consultant as it may deem reasonably necessary (collectively, the "Agent Advisors") on terms and conditions acceptable to Agent or its counsel to provide advice, analysis and reporting for the benefit of Agent and Lenders, (b) Loan Parties shall pay all reasonable and documented fees and expenses of each Agent Advisor and all such reasonable and documented fees and expenses shall constitute Obligations and be secured by the Collateral, provided, that, the applicable DIP Budget shall be updated to include such fees and expenses of the Agent Advisors, and Agent shall be deemed to have consented to such change to the DIP Budget, (c) Agent may charge such fees and expenses to the Loan Account of Borrowers, and such amounts shall be payable on demand, and (d) Loan Parties and their advisors (including the Financial Advisor and Investment Bank) shall grant access to, and cooperate with, Agent, Lenders, the Agent Advisors, and any other representatives of the foregoing and provide all information that such parties may request in a timely manner (other than communications that are subject to attorney/client or other forms of legal privilege, provided, that, Administrative Borrower shall immediately notify Agent if it is withholding any such information for such reason and shall deliver a redacted copy of, or detailed summary of, such information that can be disclosed without loss of privilege), including allowing reasonable access to the books and records of the Loan Parties, all of the premises of the Loan Parties, and to all management of the Loan Parties as and when deemed necessary by Agent or such Agent Advisor, in each case with reasonable advance notice to any Borrower.

5.24 **Waiver of Certain Rights**. Each Loan Party hereby agrees that it shall not, and hereby waives any right that it may have to, seek authority to, (a) use cash collateral of Agent and Lenders under Section 363 of the Bankruptcy Code except to the extent provided in any Financing Order, without the prior written consent of Agent, (b) obtain post-petition loans or other financial accommodations, other than from Agent and Lenders, pursuant to Sections 364(c) or 364(d) of the Bankruptcy Code that does not provide for the indefeasible payment in full and satisfaction in cash of all Obligations and Pre-Petition ABL Obligations without the prior written consent of Agent, (c) challenge, contest or otherwise seek to impair or object to the validity, extent, enforceability or priority of Agent's post-petition liens and claims, (d) to challenge the application of any payments or collections received by Agent or Lenders to the obligations of Loan Parties as provided for herein, (e) propose or support a plan of reorganization that does not provide for the indefeasible payment in full and satisfaction in cash of all Obligations and all Pre-Petition ABL Obligations (to the extent still outstanding) on the effective date of such plan, (f) subject to entry of the Final US Financing Order, surcharge the Collateral pursuant to Section 506(c) of the Bankruptcy Code, (g) seek relief under the Bankruptcy Code, including, without limitation, under Section 105 of the Bankruptcy Code, to the extent such relief would restrict or impair the rights and remedies of Agent or any Lender as set forth herein, the other Loan Documents or any Financing Order, or (h) take any action to amend or modify the rights or remedies of Agent or Lenders under the DIP Loan Documents, the US Financing Orders or the Existing Credit Facility, or that has the effect of amending or modifying such rights or remedies, without the prior written consent of Agent.

6. NEGATIVE COVENANTS.

Each Loan Party covenants and agrees that, until the termination of all of the Commitments and the payment in full of the Obligations:

6.1 **Indebtedness**. Each Loan Party will not, and will not permit any of its Subsidiaries to, create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

6.2 **Liens**. Each Loan Party will not, and will not permit any of its Subsidiaries to, create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens. Notwithstanding anything in this Section 6.2 to the contrary, other than as set forth in the Financing Orders, after the Closing Date, in no event shall any Lien be granted in any Collateral to secure any Indebtedness other than the Obligations hereunder and under the Pre-Petition ABL Credit Agreement or, subject to the Intercreditor Agreement and the Financing Orders, the Pre-Petition Term Loan Obligations. Without limitation of the foregoing, no Loan Party will, or will permit any of its Subsidiaries to, or to support directly or indirectly any Committee or other party in interest in the Bankruptcy Cases, to seek to prime or create pari passu to any claims, Liens or interests of (A) Agent and Lenders or (B) until the indefeasible payment in full in cash of the Pre-Petition ABL Obligations, the Pre-Petition ABL Agent and the Pre-Petition ABL Lenders, any Lien, in each case, other than as set forth in the applicable Financing Order and irrespective of whether such claims, Liens or interests may be "adequately protected".

6.3 **Restrictions on Fundamental Changes**. Each Loan Party will not, and will not permit any of its Subsidiaries to, wind up, liquidate or dissolve its affairs or enter into any transaction of merger, amalgamation or consolidation, except that the following shall be permitted:

(a) (i) any US Loan Party may merge or consolidate with any other Loan Party, provided, that, (i) US Borrower is the surviving Person in the case of any merger or consolidation involving a US Borrower, or involving a US Guarantor (and not a US Borrower), the US Guarantor is the surviving Person and remains a Subsidiary of a US Borrower in any other case and (ii) the Lien on and security interest in such property granted or to be granted in favor of Agent under the applicable Security Document shall be maintained or created in accordance with the provisions of Section 5.11;

(b) (i) any Canadian Loan Party may merge, amalgamate or consolidate with any other Canadian Loan Party, provided, that, (i) Canadian Borrower is the surviving person in the case of any merger, amalgamation or consolidation involving Canadian Borrower and (ii) the Lien on and security interest in such property granted or to be granted in favor of Agent under the applicable Security Document shall be maintained or created in accordance with the provisions of Section 5.11;

(c) any non-Loan Party may merge, amalgamate or consolidate (as the case may be) with another non-Loan Party; and

(d) (i) the liquidation or dissolution of Subsidiaries of Holdings (other than any Borrower) with nominal assets and nominal liabilities, (ii) the liquidation or dissolution of a Loan Party (other than Holdings or the Borrowers) or any of its Subsidiaries (other than any Borrower) so long as all of the assets (including any interest in any Equity Interests) of such liquidating or dissolving Loan Party or Subsidiary are transferred to (A) in the case of a liquidating or dissolving Canadian Loan Party or Subsidiary of a Canadian Borrower, a Canadian Loan Party that is not liquidating or dissolving or (B) in the case of a liquidating or dissolving US Loan Party, a US Loan Party (other than Holdings) that is not liquidating or dissolving (or, in each case of clauses (ii)(A) and (ii)(B), are otherwise disposed of in a manner permitted under Section 6.4 or a disposition not constituting a Permitted Disposition), or (iii) the liquidation or dissolution of a Subsidiary of a Canadian Borrower that is not a Loan Party so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Subsidiary of the Canadian Borrower that is not liquidating or dissolving (and, in the case of a liquidating or dissolving Subsidiary the Equity Interests of which (or any portion thereof) are subject to a Lien in favor of Agent, to a Subsidiary of a Canadian Borrower the Equity Interests of which (in an equivalent or greater percentage) are subject to a Lien in favor of Agent).

6.4 **Disposal of Assets**.

(a) Each Loan Party will not, and will not permit any of its Subsidiaries to, convey, sell, lease, license, assign, transfer, or otherwise dispose of any of its or their assets, except for Permitted Dispositions or transactions expressly permitted by Sections 6.3 or 6.9.

(b) Except in connection with a sale, assignment, transfer, lease, conveyance or other disposition (in a single transaction or a series of related transactions) of all, or substantially all, of the assets of Holdings and its Subsidiaries, with the prior written consent of Agent and subject to the Financing Orders, the applicable Company whose assets are subject to such sale, assignment, transfer, lease conveyance or other disposition may apply such Net Cash Proceeds to make Capital Expenditures or to acquire replacement properties and assets or properties and assets that are used or will be useful in the business of such Company; provided that, the applicable Borrower shall deliver a Reinvestment Notice to Agent on or prior to the date prepayment of the Loans with such Net Cash Proceeds would otherwise be required pursuant to Section 2.09(b)(i) of the Pre-Petition Term Loan Agreement or Section 2.4(e)(ii) of this Agreement. Pending the final application of any Net Cash Proceeds, subject to the Financing Orders, (i) any Net Cash Proceeds resulting from a Permitted Disposition of any Term Loan Priority Collateral shall be deposited and maintained in the segregated deposit account established and used exclusively for receiving such proceeds and (ii) any other Net Cash Proceeds shall be paid to Agent for application to the Obligations.

6.5 **Nature of Business**. Each Loan Party will not, and will not permit any of its Subsidiaries to, engage in any business other than any business or activity conducted by them on the Closing Date, or any business or activities incidental or reasonably related thereto, or any business or activity that is reasonably similar thereto or a reasonable extension (including new product line extensions within the same industry), development or expansion thereof or ancillary thereto, including the consummation of the Transactions.

6.6 **Prepayments and Amendments**.

(a) Each Loan Party will not, and will not permit any of its Subsidiaries to, except in connection with Refinancing Indebtedness permitted by Section 6.1,

(i) optionally prepay, redeem, defease, purchase, or otherwise acquire any Indebtedness of any Loan Party or its Subsidiaries, other than (A) the Obligations in accordance with this Agreement, (B) Hedge Obligations, and (C) Permitted Intercompany Advances, or

(ii) make any payment on account of Indebtedness that is expressly required by this Agreement to be, or that otherwise by its express terms is, subordinated in right of payment to the Obligations, if such payment is not permitted at such time under the subordination provisions applicable thereto (and such subordination provisions do not expressly provide that payments are only permitted subject to this Agreement).

Without limiting any other provision hereof, except pursuant to the DIP Budget, without express prior written consent of Agent and pursuant to an order of any Bankruptcy Court (including any Financing Order) after notice and a hearing, no Loan Party shall make any payment or transfer with respect to any Lien or Indebtedness incurred or arising prior to the Petition Date that is subject to the automatic stay provisions of any Bankruptcy Court whether by way of "adequate protection" under the Bankruptcy Code or otherwise.

(b) Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, amend, modify, or change any of the terms or provisions of:

(i) the DCL Pension Earnout, the Lansco Acquisition Seller Note, the Sponsor Note, the Management Agreement, the Canadian Intercompany Agreement or the European Intercompany Agreement in any manner (taken as a whole) adverse in any material respect to the interests of the Lenders (it being agreed that, with respect to the DCL Pension Earnout, the Lansco Acquisition Seller Note, the Sponsor Note, and the Management Agreement, any amendment, modification, alteration or change in terms that increases any amounts due to the holders thereof or the Sponsor and its Affiliates, as applicable, or to make such payments earlier or more frequently than the dates required as in effect on the date hereof or as of the date of the execution thereof, shall in each case be deemed adverse in a material respect to the interests of the Lenders),

(ii) the Pre-Petition Term Loan Documents in violation of the provisions of the Intercreditor Agreement; provided, that, the Borrowers shall promptly notify Agent of any proposed amendments, supplements or modifications of the Pre-Petition Term Loan Documents and shall deliver to Agent an Officer's Certificate prior to entering into any amendment, supplement or modification to the Pre-Petition Term Loan Documents to the effect that such changes are permitted by the terms of this Agreement,

(iii) the DIP Asset Purchase Documents (and including any exhibits to the DIP Asset Purchase Agreement) in any material respect, without the prior written consent of Agent,

(iv) the Organization Documents of any Loan Party or any of its Subsidiaries if the effect thereof, either individually or in the aggregate, could reasonably be expected to be materially adverse to the interests of Agent or Lenders,

(c) Directly or indirectly make any cash payments or payments made with any other consideration (other than common Equity Interests or preferred Equity Interests that do not constitute Disqualified Equity Interests) in respect of any Earn-Outs.

6.7 **Restricted Payments**. Each Loan Party will not, and will not permit any of its Subsidiaries to, make any Restricted Payment; provided, that, so long as it is permitted by Law,

(a) [reserved];

(b) the declaration and payment of dividends to, or the making of loans to, Holdings in amounts required for Holdings to pay (or to make Restricted Payments to allow any direct or indirect holding parent of Holdings to pay), without duplication, any of the following:

(i) fees, Taxes and expenses necessary to maintain its corporate or other organizational existence or the corporate or other organizational existence of Holdings,

(ii) Permitted Tax Distributions; and

(iii) reasonable general corporate overhead expenses to the extent such expenses are attributable to the ownership or operation of the Borrowers and their respective Subsidiaries not to exceed $500,000 in any fiscal year of Holdings;

(c) cashless repurchases of Equity Interests deemed to occur upon the exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(d) the payment of dividends or other distributions by any US Loan Party to any other US Loan Party, or by any Canadian Loan Party to any other Loan Party;

(e) dividends or distributions by any Company payable in Equity Interests (other than Disqualified Equity Interests unless permitted under Section 6.1) or in options, warrants or other rights to purchase such equity interests (other than Disqualified Equity Interests unless permitted under Section 6.1);

(f) [reserved];

(g) [reserved];

(h) (i) payments in cash of the DCL Pension Earnout, each in accordance with its terms, and (ii) payments in cash of the DCL EBITDA Earnout in accordance with its terms;

(i) [reserved].

Notwithstanding anything to the contrary set forth in this Section 6.7, or otherwise herein or in any other Loan Document, no such Restricted Payments shall be permitted after the Petition Date unless such Restricted Payments are made strictly in accordance with the DIP Budget.

6.8 **Accounting Methods**. Each Loan Party will not, and will not permit any of its Subsidiaries to, modify or change its fiscal year or its method of accounting (other than as may be required to conform to GAAP) without the prior written consent of Agent, provided, that, each of US Borrowers and their Subsidiaries and the Canadian Borrower and its Subsidiaries may change their respective fiscal years to be the same.

6.9 **Investments**. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment except for Permitted Investments.

6.10 **Transactions with Affiliates**. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction with any Affiliate of any Loan Party or any of its Subsidiaries except for:

(a) transactions (other than fees of the type described in and permitted under Section 6.7(c)) between one or more Companies, on the one hand, and any Affiliate of any Company, on the other hand, so long as

(i) if such transaction involves (A) an amount equal to or greater than $200,000 but less than $2,000,000, the terms of such transaction shall be set forth in writing and a majority of the Board of Directors of Holdings disinterested with respect to such transaction shall have determined in good faith that the criteria set forth in clause (ii) below are satisfied and have approved such transaction as evidenced by a resolution of the Board of Directors of Holdings delivered to Agent or (B) an amount equal to or greater than $2,000,000, Agent shall have (1) provided its written consent or (2) received a copy of an opinion as to the fairness to such Companies from a financial point of view issued by an Independent Financial Advisor, and

(ii) such transactions are no less favorable, taken as a whole, to such Companies than would be obtained in an arm's length transaction with a non-Affiliate; transaction with a non-Affiliate;

(b) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise, pursuant to, or the funding of, employment arrangements, stock options, stock ownership plans and other compensatory arrangements for directors, officers and employees entered into in the ordinary course of business and, with respect to any such arrangements (other than benefit arrangements) with directors or executive officers, approved by the Board of Directors, and other ordinary course payments under employee compensation arrangements or severance arrangements;

(c) the payment of compensation and reasonable and customary fees to, and indemnities provided on behalf of, officers and directors of any Company in the ordinary course of business;

(d) any transaction between the Companies expressly permitted by another provision of this Agreement, provided, that, any transaction between a Loan Party and an Affiliate that is not a Loan Party shall be on terms no less favorable to the Loan Party that would be obtained in an arms' length transaction with a Person that is not an Affiliate;

(e) consummation of the Transactions;

(f) [reserved];

(g) the issuance of Equity Interests (other than any Disqualified Equity Interests unless permitted under Section 6.1) of any Company not otherwise prohibited by the Loan Documents;

(h) any Restricted Payment permitted pursuant to Section 6.7 of this Agreement;

(i) transactions between the Companies, on the one hand, and officers, directors, employees and consultants on the other hand, expressly permitted by another provision of this Agreement;

(j) (i) performance of the obligations under the Management Agreement, and amendments, modifications, alterations or changes to the terms thereof to the extent permitted by Section 6.6(b) and (ii) transactions pursuant to the agreements set forth on Schedule 6.10, or any amendment, modification, supplement or replacement thereto (so long as any such amendment, modification, supplement or replacement is not (A) taken as a whole, adverse in any material respect to the interests of the Lenders (it being agreed that any amendment, modification, supplement or replacement that increases any amounts payable by the Companies or requires the earlier payment thereof or more frequent payment thereof shall in each case be deemed adverse in a material respect to the interests of the Lenders) or (B) disadvantageous in any material respect to any Company when taken as a whole as compared to the applicable agreement as in effect on the Closing Date);

(k) [reserved]; and

(l) the Sponsor Note.

Notwithstanding anything to the contrary set forth in this Section 6.10, or otherwise herein or in any Loan Document, no dividends, distributions, payments on the Sponsor Note or any other return of capital in any form whatsoever may be made to the Sponsor (including its Controlled Investment Affiliates) and no other payments referred to above shall be permitted after the Petition Date unless such payments are made strictly in accordance with the DIP Budget. Nothing in this Agreement or any Loan Document, or any act or omission by or on behalf of Agent or any Lender (or Pre-Petition Agent or any Pre-Petition Lender)

shall be construed as a consent or authorization to the transfer of title to any assets by a Loan Party to another Loan Party in any manner that adversely affects the Lien of Agent (or Pre-Petition Agent) or waiver of any rights or remedies of Agent (or Pre-Petition Agent) with respect thereto.

6.11 **Use of Proceeds**.

(a) Subject to Section 6.11(b) below, in the Chapter 11 Cases, each Loan Party will not, and will not permit any of its Subsidiaries to, use the proceeds of any Loan made hereunder for any purpose other than (a) to repay obligations of Borrowers under the Pre-Petition ABL Facility in accordance with the Financing Orders and to repay or discharge other debt as set forth in the Financing Orders, (b) to pay costs, expenses and fees in connection with the DIP ABL Credit Facility (including Lender Group Expenses as defined herein and Lender Group Expenses as defined in the Pre-Petition ABL Credit Agreement), and (c) for working capital, capital expenditures and other general corporate purposes of Borrowers (including allowed administrative expenses incurred during the Bankruptcy Cases), in each case only in accordance with the applicable DIP Budget; provided, that, (i) no part of the proceeds of the Loans will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors, (ii) no part of the proceeds of any Loan or Letter of Credit will be used, directly or to Borrowers' knowledge, indirectly, to make any payments to a Sanctioned Entity or a Sanctioned Person, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of Sanctions by any Person, and (iii) no part of the proceeds of any Loan or Letter of Credit will be used, directly or to Borrowers' knowledge, indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws. Without limiting the foregoing, Loan Parties shall not be permitted to use the proceeds of Loans or Letters of Credit in contravention of the provisions of the terms hereof, the applicable Financing Order or the Bankruptcy Code, or CCAA, including any restrictions or limitations on the use of proceeds contained therein. Any Post-Petition payment of Pre-Petition ABL Obligations, including principal, interest, fees, penalties or recoverable costs, due and payable in connection with the Pre-Petition ABL Credit Agreement with the proceeds of the Collateral (as defined herein) or Collateral (as defined in the Pre-Petition ABL Credit Agreement) shall be made in accordance herewith and with the US Financing Orders or the terms hereof.

(b) In the CCAA Case, the Canadian Borrower shall not use proceeds of the DIP ABL Credit Facility other than solely for the following purposes and in the following order, in each case in accordance with the applicable DIP Budget:

(i) to pay the reasonable and documented professional and advisory fees and expenses of (i) Canadian Borrower, (ii) the Monitor, and (iii) Agent and Lenders pursuant to the terms of the Loan Documents;

(ii) to pay the interest, fees and other amounts owing to Agent and Lenders under the DIP ABL Credit Facility; and

(iii) to fund, in accordance with the DIP Budget, Canadian Borrower's funding requirements during the CCAA Case.

(c) For greater certainty, Borrowers may not use the proceeds of the DIP ABL Credit Facility to pay any obligations that are not included in the then applicable DIP Budget without the written consent

of Agent. Notwithstanding anything herein to the contrary, no portion or proceeds of the Loans or the Collateral, and no disbursements set forth in the DIP Budget, shall be used for the payments or purposes which would violate the terms of the Financing Orders.

(d) In addition, notwithstanding the foregoing, proceeds of Loans and Letters of Credit shall not be used by the Loan Parties to affirmatively commence or support, or to pay any professional fees incurred in connection with, any adversary proceeding, motion or other action that seeks to challenge, contest or otherwise seek to impair or object to the validity, extent, enforceability or priority of the Liens of Agent or Pre-Petition ABL Agent, or claims and rights under the Pre-Petition ABL Credit Facility; provided, that, in the Chapter 11 Cases, the Carve-Out and such collateral proceeds and Revolving Loan proceeds may be used for allowed fees and expenses in an amount not to exceed, subject to the Final US Financing Order, $50,000 in the aggregate, incurred solely by the Committee appointed in the Chapter 11 Cases, if any. Notwithstanding anything to the contrary above, nothing in this Section 6.11 shall be construed to prohibit the Monitor or its counsel from complying with its court-ordered or statutory obligations or receiving payment of reasonable and documented fees approved by the Canadian Bankruptcy Court in relation thereto, which have been approved by the Canadian Bankruptcy Court on proper notice to Agent and other necessary parties. Nothing contained herein shall be construed to limit the rights of Agent in connection with the approval of such fees.

6.12 **Limitation on Issuance of Equity Interests**. Except for the issuance or sale of Qualified Equity Interests by Holdings, each Loan Party will not, and will not permit any of its Subsidiaries to, issue or sell any of its Equity Interests.

6.13 **Inventory with Bailees**. Each Borrower will not, and will not permit any of its Subsidiaries to, store its Inventory at any time with a bailee, warehouseman, or similar party except as set forth on Schedule 4.25 (as such Schedule may be amended in accordance with Section 5.14).

6.14 **Holding Company.**

(a) Holdings will not engage in any business or activity other than (i) the ownership of all outstanding Equity Interests in Administrative Borrower, (ii) maintaining its corporate existence, including general and corporate overhead, provided, that, Holdings may change its form of organization, so long as (A) it is organized under the laws of the United States of America, any State thereof or the District of Columbia and (B) its guarantee of the Obligations and the Lien on or security interest in any Collateral held by it under the Loan Documents shall remain in effect to the same extent as immediately prior to such change, (iii) activities required to comply with applicable Laws, (iv) participating in tax, accounting and other administrative activities as the parent of the consolidated group of companies comprising of the Loan Parties, (v) the receipt of Restricted Payments to the extent permitted by Section 6.7 and the making of Restricted Payments, (vi) to the extent not otherwise covered by the other clauses of this Section 6.14, any of the activities of Holdings referred to in Section 6.7, (vii) compliance with its obligation under the Loan Documents, the execution and delivery of the Loan Documents to which it is a party and the performance of its obligations thereunder, (viii) incurring guarantees of Indebtedness permitted to be incurred by Administrative Borrower or any other Loan Party hereunder, provided such guarantee shall be subordinated to the Obligations to the same extent as such other Indebtedness, and (ix) activities incidental to the applicable businesses or activities described in clauses (i) through (viii) of this Section.

(b) Colors Holdings will not own any assets or engage in any business or activity other than (i) the ownership of all outstanding Equity Interests in Holdings, and (ii) maintaining its corporate existence. Colors Holdings will not receive any Restricted Payments, Permitted Investments or any assets of any Loan Party or its Subsidiaries.

6.15 **Reserved.**

6.16 **Employee Benefits; Canadian Pension Plan**. Each Loan Party will not, and will not permit any of its Subsidiaries to:

(a) terminate, or permit any ERISA Affiliate to terminate, any Pension Plan in a manner, or take any other action with respect to any Plan, which could reasonably be expected to result in any liability of any Loan Party or ERISA Affiliate to the PBGC;

(b) fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Benefit Plan or Canadian Pension Plan, agreement relating thereto or applicable Law, any Loan Party or ERISA Affiliate is required to pay if such failure could reasonably be expected to have a Material Adverse Effect.

(c) permit to exist, or allow any ERISA Affiliate to permit to exist, any accumulated funding deficiency within the meaning of section 302 of ERISA or section 412 of the UCC, whether or not waived, with respect to any Plan which with respect to all Pension Plans in the aggregate could reasonably be expected to result in a Material Adverse Effect;

(d) acquire, or permit any ERISA Affiliate to acquire, an interest in any Person that causes such Person to become an ERISA Affiliate with respect to a Loan Party or with respect to any ERISA Affiliate if such Person sponsors, maintains, or contributes to, or at any time in the six (6) year period preceding such acquisition has sponsored, maintained, or contributed to, (i) any Pension or (ii) any Multiemployer Plan;

(e) contribute to or assume an obligation to contribute to, or permit any ERISA Affiliate to contribute to or assume an obligation to contribute to, any Multiemployer Plan not set forth on Schedule 4.10;

(f) amend, or permit any ERISA Affiliate to amend, a Pension Plan resulting in a material increase in current liability such that a Loan Party or ERISA Affiliate is required to provide security to such Plan under the IRC;

(g) establish, maintain, contribute to, sponsor, administer, assume an obligation to contribute to or otherwise become liable in respect of any Canadian Defined Benefit Pension Plan not set forth on Schedule 4.10, other than a Canadian Defined Benefit Pension Plan permitted under clause (h) below;

(h) amalgamate with or acquire any interest in any Person that maintains, sponsors, contributes to, or otherwise has a liability with respect to, any Canadian Defined Benefit Pension Plan;

(i) take any action which could reasonably be expected to result in the occurrence of a Canadian Pension Event;

(j) take any action which could reasonably be expected to result in the occurrence of a Canadian Defined Benefit Pension Termination Event; or

(k) reopen either the Salaried Plan or Hourly Plan to new entrants.

6.17 **Reclamation Claims; Pre-Petition Payables**.

(a) Each Loan Party will not, and will not permit any of its Subsidiaries to, except as set forth in the DIP Budget, enter into any agreement to return any of its Inventory to any of its creditors for application against any Pre-Petition Indebtedness, Pre-Petition trade payables or other Pre-Petition claims under section 546(c) of the Bankruptcy Code or any similar provision of the CCAA, or allow any creditor to take any setoff or recoupment against any of its Pre-Petition Indebtedness, Pre-Petition trade payables or other Pre-Petition claims based upon any such return pursuant to Section 553(b)(1) of the Bankruptcy Code, any similar provision of the CCAA or otherwise.

(b) No Loan Party shall pay any Pre-Petition claim arising under Section 503(b)(9) of the Bankruptcy Code or otherwise except to the extent specifically set forth in the DIP Budget or with the consent of Agent, and as applicable in the CCAA Case, the Monitor.

6.18 **Insolvency Proceeding Claims**. Each Loan Party will not, and will not permit any of its Subsidiaries to, incur, create, assume, suffer to exist or permit any other super-priority administrative claim which is pari passu with or senior to the claim of Agent or Lenders (or Pre-Petition ABL Agent or Pre-Petition ABL Lenders) against the Loan Parties or to file any motion or otherwise support any other Person seeking such a claim, except as set forth in the applicable Financing Order.

6.19 **Bankruptcy Actions**. Each Loan Party will not, and will not permit any of its Subsidiaries to, seek, consent to, or permit to exist, without the prior written consent of Agent, any order granting authority to take any action that is prohibited by the terms of this Agreement, any Financing Order or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement, any Financing Order or any of the other Loan Documents.

6.20 **Reserved.**

6.21 **Carve-Out and Administration Charge**. The Carve-Out and the Administration Charge shall not include, apply to, or be available for any fees or expenses incurred by any party, including any Loan Party, any Committee or any professional, in connection with (a) the investigation, initiation or prosecution of any claims or defenses in connection with the Pre-Petition ABL Facility or the DIP ABL Credit Facility, or preventing, hindering, or delaying the assertion of enforcement of any lien, claim, right or security interest or realization upon any Collateral in connection with the Pre-Petition ABL Facility or DIP ABL Credit Facility (except solely to the extent of such fees incurred for a motion by Loan Parties asserting that an Event of Default does not exist in which a final, non-appealable order of the applicable Bankruptcy Court determines that such Event of Default does not exist), including, in each case, without limitation, for any claim relating to lender liability or pursuant to Section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code or any similar provisions of the CCAA, applicable non-bankruptcy law or otherwise, (b) in the Chapter 11 Cases, a request to use cash collateral (as such term is defined in Section 363 of the Bankruptcy Code) except as may be provided for in the Loan Documents or the Financing Orders, without the prior written consent of Agent, (c) a request, without the prior written consent of Agent, for authorization to obtain debtor-in-possession financing or other financial accommodations pursuant to Section 364(c) or (d) of the Bankruptcy Code or otherwise under the CCAA that does not indefeasibly repay in full in cash the Pre-Petition ABL Obligations and the Obligations on terms and conditions acceptable to Agent, (d) seeking relief under the Bankruptcy Code, including, without limitation, in each case under Section 105 of the Bankruptcy Code, to the extent such relief would restrict or impair the rights and remedies of Agent or any Lender as set forth herein, the other Loan Documents or any Financing Order, or (e) taking any action to amend or modify the rights or remedies of Agent or Lenders under the Loan Documents, the US Financing Orders or the Pre-Petition ABL Credit Facility, or that has the effect of amending or modifying such rights or remedies, without the prior written consent of Agent. Notwithstanding anything to the contrary above, nothing in this Section 6.21 shall be construed to prohibit the Monitor or its counsel from complying with its court-ordered or

statutory obligations or receiving payment of reasonable and documented fees approved by the Canadian Bankruptcy Court in relation thereto which have been approved by the Canadian Bankruptcy Court on proper notice to Agent and other necessary parties. Nothing contained herein shall be construed to limit the rights of Agent in connection with the approval of such fees.

7. **[RESERVED].**

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

8.1 **Payments**. If Borrowers fail to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), and such failure continues for a period of three (3) Business Days, (b) all or any portion of the principal of the Loans, or (c) any amount payable to Issuing Bank in reimbursement of any drawing under a Letter of Credit;

8.2 **Covenants**. If any Loan Party or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 3.6, 5.1, 5.2, 5.3 (solely if any Loan Party is not in good standing in its jurisdiction of organization), 5.6, 5.7 (solely if any Loan Party does not allow Agent or its representatives or agents to visit any Loan Party's properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss a Loan Party's affairs, finances, and accounts with officers and employees of any Loan Party) or 5.15 of this Agreement, (ii) Section 6 of this Agreement, (iii) Section 7 of this Agreement, or (iv) Section 7 of the US Security Agreement, or (v) Section 7 of the Canadian Security Agreement;

(b) fails to perform or observe any covenant or other agreement contained in any of Sections 5.3 (other than if any Borrower is not in good standing in its jurisdiction of organization), 5.11, 5.12 and 5.14 of this Agreement and such failure continues for a period of ten (10) days after the earlier of (i) the date on which such failure shall first become known to any officer of any Loan Party, or (ii) the date on which written notice thereof is given to Administrative Borrower by Agent; or

(c) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of thirty (30) days after the earlier of (i) the date on which such failure shall first become known to any officer of any Loan Party, or (ii) the date on which written notice thereof is given to Administrative Borrower by Agent;

8.3 **Judgments**. If one or more judgments, orders, requirements to pay issued by any Canadian Governmental Authority or awards for the payment of money involving an aggregate amount of $1,000,000, or more (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against a Loan Party or any of its Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of forty-five (45) consecutive days at any time after the entry of any such judgment, order, or

award during which (i) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (ii) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award;

8.4 **Voluntary Bankruptcy, etc**. If an Insolvency Proceeding is commenced by DCL BV or DCL UK;

8.5 **Involuntary Bankruptcy, etc.** If an Insolvency Proceeding is commenced against DCL BV or DCL UK;

8.6 **Default Under Other Agreements**. If there is (a) a default in one or more agreements to which a Loan Party or any of its Subsidiaries is a party with one or more third Persons relative to a Loan Party's or any of its Subsidiaries' Indebtedness involving an aggregate amount of $2,500,000 or more, and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder, or (b) an event of default in or an involuntary early termination of one or more Hedge Agreements to which a Loan Party or any of its Subsidiaries is a party involving an aggregate amount of $2,500,000 or more; provided, that, it shall not constitute an Event of Default under this Section 8.6 to the extent that (i) any default with respect to such Indebtedness as described in this Section 8.6, is solely as a result of the commencement of the Bankruptcy Cases or (ii) such default occurred prior to the Petition Date, so long as any action as a result of such default is stayed during the Bankruptcy Cases (except as Agent may otherwise agree);

8.7 **Representations, etc**. If any warranty, representation, certificate, statement, or Record made herein or in any other Loan Document or delivered in writing to Agent or any Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

8.8 **Guaranty**. If the obligation of any Guarantor under the guaranty contained in the US Security Agreement or the Canadian Security Agreement is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement) or if any Guarantor repudiates or revokes or purports to repudiate or revoke any such guaranty;

8.9 **Security Documents**. If the US Security Agreement, Canadian Security Agreement or any other Loan Document that purports to create a Lien, shall, for any reason, fail or cease to create a valid and perfected and, (except to the extent of Permitted Liens which are non-consensual Permitted Liens, permitted purchase money Liens or the interests of lessors under Capital Leases) first priority Lien on the Collateral covered thereby, except (a) as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement, (b) with respect to Collateral the aggregate value of which, for all such Collateral, does not exceed at any time, $250,000;

8.10 **Loan Documents**. The validity or enforceability of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Agent) be declared to be null and void, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document;

8.11 **Subordination; Intercreditor Agreement**. (a) The subordination provisions of the documents evidencing or governing any subordinated Indebtedness or provisions of the Intercreditor Agreement (or any other intercreditor agreement entered into by Agent after the date hereof with respect to Indebtedness of the Loan Parties) (any such provisions, the "Intercreditor Provisions"), shall, in whole or in any material part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Indebtedness, except in each case to the extent permitted by the terms of the applicable documentation or as otherwise agreed in writing by Agent; or (ii) any Loan Party shall disavow or contest in writing (A) the effectiveness, validity or enforceability of any of the Intercreditor Provisions, (B) that the Intercreditor Provisions exist for the benefit of Agent and Lenders, or (C) in the case of subordinated Indebtedness referred to in clause (a) above, that all payments of principal of or premium and interest on the applicable subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Intercreditor Provisions or in the case of any secured Indebtedness, that the Liens are subject to the priorities set forth in the applicable Intercreditor Provisions;

8.12 **Change of Control**. A Change of Control shall occur, whether directly or indirectly;

8.13 **ERISA and Canadian Pension Plans**. The occurrence of any of the following events: (a) any Loan Party or ERISA Affiliate fails to make full payment when due of all amounts which any Loan Party or ERISA Affiliate is required to pay as contributions, installments, or otherwise to or with respect to a Pension Plan, Canadian Pension Plan or Multiemployer Plan, and such failure could reasonably be expected to result in a Material Adverse Effect either individually or in the aggregate, (b) an accumulated funding deficiency or funding shortfall occurs or exists, whether or not waived, with respect to any Pension Plan or Canadian Pension Plan, which could reasonably be expected to result in a Material Adverse Effect either individually or in the aggregate, (c) a Notification Event, a Canadian Defined Benefit Pension Reserve Event, a Canadian Defined Benefit Termination Event or Canadian Pension Event, which could reasonably be expected to result in a Material Adverse Effect either individually or in the aggregate, or (d) any Loan Party or ERISA Affiliate completely or partially withdraws from one or more Multiemployer Plans and incurs Withdrawal Liability which could reasonably be expected to result in a Material Adverse Effect either individually or in the aggregate or fails to make any Withdrawal Liability payment when due; or.

8.14 **Chapter 11/CCAA Defaults**.

(a) conversion of (i) the Chapter 11 Cases to Chapter 7 case(s), or any Loan Party shall file a motion or other pleading seeking the conversion of the Chapter 11 Cases to chapter 7 of the Bankruptcy Code in each case, without the prior written consent of Agent; or (ii) the CCAA Case to a receivership or to a bankruptcy under the BIA, or any Loan Party shall file a motion or other pleading seeking the conversion of the CCAA Case to a receivership or a bankruptcy under the BIA, without the consent of Agent;

(b) the dismissal of (i) the Chapter 11 Cases (or any subsequent Chapter 7 case) or the CCAA Case, or any Loan Party shall file a motion or other pleading seeking the dismissal of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code in each case, without the prior written consent of Agent, or (ii) the CCAA Case, or any Loan Party shall file a motion or other pleading seeking the dismissal of the CCAA Case, without the prior written consent of Agent;

(c) the dismissal of the Chapter 11 Cases (or any subsequent Chapter 7 case) or the CCAA Case, or any Loan Party shall file a motion or other pleading seeking the dismissal of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code in each case, without the prior written consent of Agent;

(d) any violation, breach, or default by any Loan Party with respect to any of its obligations under any Financing Order;

(e) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents or any Financing Order without the written consent of Agent or the filing of a motion by the Loan Parties or their Affiliates for any such order, or any Financing Order shall otherwise not be in full force and effect or without the prior written consent of Agent, any Financing Order is revoked, remanded, vacated, reversed, stayed or rescinded or modified (other than, in the case of a modification as consented to by Agent);

(f) appointment or election of a trustee under Chapter 11 of the Bankruptcy Code, a receiver or trustee in bankruptcy under the BIA, or a responsible officer or examiner or disinterested person with expanded powers to operate or manage the financial affairs, the business or reorganization of any Loan Party, or any administrative expense claim is allowed having priority or ranking in parity with the rights of Agent (other than the Carve-Out and Administration Charge, as applicable);

(g) (i) the filing of any plan of reorganization or disclosure statement attendant thereto, or any amendment to such plan or disclosure statement, by a Loan Party that does not propose to indefeasibly repay in full in cash the Obligations and the Pre-Petition ABL Obligations (or any amendment that has such effect), or any of the Loan Parties or their Subsidiaries, seek, support or fail to contest in good faith the filing or confirmation of any such plan or entry of any such order, (ii) the entry of any order terminating any Loan Party's exclusive right to file a plan of reorganization, or (iii) the expiration of any Loan Party's exclusive right to file a plan of reorganization in the Chapter 11 Cases;

(h) the payment of or granting of adequate protection with respect to the Pre-Petition Term Loan Facility, other than to the extent permitted, and in a manner consistent with, the Intercreditor Agreement and the Financing Orders, or as otherwise agreed by Agent and approved by each Bankruptcy Court;

(i) the payment of, or application for authority to pay, any Pre-Petition claim without Agent's prior written consent unless in accordance with the DIP Budget or pursuant to an order of the applicable Bankruptcy Court;

(j) Liens or super-priority claims with respect to the DIP ABL Credit Facility or the Pre-Petition ABL Credit Facility shall at any time cease to be valid, perfected and enforceable in all respects with the priority described herein;

(k) the entry of an order in the Chapter 11 Cases or CCAA Case avoiding or permitting recovery of any portion of the payments made on account of the Obligations or any of the Pre-Petition ABL Obligations;

(l) subject to the entry of the Final US Financing Order, an order in the Chapter 11 Cases shall be entered charging any of the Collateral under Section 506(c) of the Bankruptcy Code against Agent, the Secured Parties or with respect to any Collateral (including, without limitation, an allowance of any claim thereunder);

(m) (i) the total aggregate disbursements (excluding disbursements for professional fees and expenses) during any DIP Measurement Period to exceed the aggregate amount for such disbursements for such DIP Measurement Period in the applicable DIP Budget by more than fifteen percent (15%), (ii) the total aggregate sales receipts during any DIP Measurement Period to be less than eighty percent (80%) of the aggregate amount thereof for such DIP Measurement Period in the applicable DIP Budget, (iii) as

of the Friday of every third calendar week following the Petition Date (and including the week in which the Petition Date occurs as the first week of such three-week period), the Excess Availability to be more than fifteen percent (15%) less than the amount thereof as of such time in the DIP Budget, or (iv) the Loan balance under the DIP ABL Credit Facility (together with any then outstanding loans under the Pre-Petition ABL Credit Facility) as of the Friday of any week to exceed the amount thereof as of such time in the DIP Budget by more than fifteen percent (15%) of such amount in the DIP Budget;

(n) the making of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto by any of the Loan Parties in the Chapter 11 Cases: (i) to obtain additional financing under Section 364(c) or Section 364(d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (ii) to grant any Lien other than Liens permitted pursuant to Section 6.2 upon or affecting any Collateral; (iii) except as provided in the Interim US Financing Order or the Final US Financing Order, as the case may be, to use cash collateral of Agent and the other Secured Parties under Section 363(c) of the Bankruptcy Code without the prior written consent of Agent; or (iv) any other action or actions materially adverse to Agent and the Lenders or their rights and remedies hereunder, under any other Loan Document, or their interest in the Collateral;

(o) any Loan Party shall file a motion or other pleading in any court seeking an order that any material provision of any Financing Order is not valid and binding on it or its assets, without the prior written consent of Agent;

(p) any Loan Party shall challenge, support or encourage a challenge of any payments made to Agent or any Lender with respect to the Obligations, or without the prior written consent of Agent, the filing of any motion by any Loan Party seeking approval of (or the entry of an order by any Bankruptcy Court approving) adequate protection to the Pre-Petition Term Loan Agent or the Pre-Petition Term Loan Lenders that is inconsistent with any Financing Order or the Intercreditor Agreement; provided that the Loan Parties' response to any information requests, diligence, requests for production, or subpoenas by a party in interest shall not constitute "support"

(q) entry of an order granting any super-priority claim which is senior to or pari passu with the claims of Agent and Lenders under the DIP ABL Credit Facility or the Pre-Petition ABL Credit Facility without the prior written consent of Agent (or the filing of any motion by any Loan Party seeking such relief);

(r) the Final US Financing Order is not entered on or prior to that date that is thirty (30) days after the Petition Date (or such other date as Agent may agree);

(s) the Amended Initial CCAA Order is not granted on terms satisfactory to Agent at the comeback hearing in the CCAA Case prior to the date that is ten (10) days after the Petition Date (or such other date as Agent may agree); or

(t) the failure to comply with the Milestones.

9. RIGHTS AND REMEDIES.

9.1 **Rights and Remedies**. Upon the occurrence and during the continuation of an Event of Default, subject to the Financing Orders (including the Remedies Notice Period and related notice provisions) and the terms thereof, Agent may, and, at the instruction of the Required Lenders, shall, in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable law, do any one or more of the following:

(a) by written notice to Administrative Borrower, (i) declare the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents to be immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by each Borrower, and (ii) direct Borrowers to provide (and Borrowers agree that upon receipt of such notice Borrowers will provide) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations for drawings that may subsequently occur under issued and outstanding Letters of Credit;

(b) by written notice to Administrative Borrower, declare the Commitments terminated, whereupon the Commitments shall immediately be terminated together with (i) any obligation of any Lender to make Revolving Loans, (ii) the obligation of the Swing Lender to make Swing Loans, and (iii) the obligation of Issuing Bank to issue Letters of Credit;

(c) subject to the Remedies Notice Period, direct any or all of the Loan Parties to sell or otherwise dispose of any or all of the Collateral (subject to the Financing Orders and the Intercreditor Agreement to the extent applicable) on terms and conditions acceptable to Agent pursuant to Section 363, Section 365 and other applicable provisions of the Bankruptcy Code and the CCAA (and, in the Chapter 11 Cases, without limiting the foregoing, direct any Loan Party to assume and assign any lease or executory contract included in the Collateral (subject to the Financing Orders) to Agent's designees in accordance with and subject to section 365 of the Bankruptcy Code);

(d) subject to the Remedies Notice Period, (i) exercise on behalf of itself and the Secured Parties all rights and remedies available to it and the Secured Parties under the Loan Documents or applicable Law or (ii) take any and all actions described in the Financing Orders, including, without limitation, those actions specified in the Financing Orders; and/or

(e) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law or in equity.

Subject to the Financing Orders, the automatic stay of Section 362 of the Bankruptcy Code shall be modified and vacated to permit Agent and the Lenders to exercise all rights and remedies under this Agreement, the other Loan Documents or applicable Law, without further notice, motion or application to, hearing before, or order from, any Bankruptcy Court.

Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions with respect to the Remedies Notice Period set forth in the Interim US Financing Order or the Final US Financing Order, as the case may be, notwithstanding anything to the contrary contained herein or in any other Loan Document, upon the Maturity Date (whether by acceleration or otherwise) of any of the Obligations, Agent and Lenders shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder or under applicable Law, without further notice, motion or application to, hearing before, or order from, the US Bankruptcy Court.

Agent (together with its agents, representatives and designees) is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of the Loan Parties, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral, in each

case, after the occurrence and during the continuance of an Event of Default, subject to the rights, remedies and priorities of the Pre-Petition Term Loan Agent under the Financing Orders. Agent (together with its agents, representatives and designees) is hereby granted a non-exclusive right to have access to, and a rent-free right to use, any and all owned or leased locations (including, without limitation, warehouse locations and distribution centers) for the purpose of arranging for and effecting the sale or disposition of Collateral, subject to the Financing Orders, including the production, completion, packaging and other preparation of such Collateral for sale or disposition, and to engage in bulk sales of Collateral, which rights shall be subject to the Financing Orders. It is further understood and agreed that Agent and its representatives (and persons employed on their behalf) may continue to operate, service, maintain, process and sell the Collateral, subject to the Financing Orders. Upon the occurrence and the continuance of an Event of Default and the exercise by Agent or Lenders of their rights and remedies under this Agreement and the other Loan Documents, the Loan Parties shall assist Agent and Lenders in effecting a sale or other disposition of the Collateral upon such terms as are reasonably acceptable to Agent, subject to the Financing Orders.

9.2 **Remedies Cumulative**. The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the UCC, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Default or Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

9.3 **Reserved**.

10. WAIVERS; INDEMNIFICATION.

10.1 **Demand; Protest; etc**. Each Loan Party waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which any Borrower may in any way be liable.

10.2 **The Lender Group's Liability for Collateral**. Each Loan Party hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the UCC, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Loan Parties.

10.3 **Indemnification**. Each Loan Party shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, the Issuing Bank, and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery (provided, that, Loan Parties shall not be liable for costs and expenses (including attorneys' fees) of any Lender (other than Wells Fargo) incurred in advising, structuring, drafting, reviewing, administering or syndicating the Loan Documents), enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, any of the Pre-Petition ABL Loan Documents or the

transactions contemplated hereby or thereby or the monitoring of compliance by any Loan Party and its Subsidiaries with the terms of the Loan Documents, and any refinancing of the DIP ABL Credit Facility or any "exit financing" requested by or on behalf of the Loan Parties in connection with the Chapter 11 Cases or Successor Cases (whether or not the transactions contemplated hereby or thereby shall be consummated), (provided, that, the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Lenders that do not involve any acts or omissions of any Loan Party, or (ii) disputes solely between or among the Lenders and their respective Affiliates that do not involve any acts or omissions of any Loan Party; it being understood and agreed that the indemnification in this clause (a) shall extend to Agent (but not the Lenders unless the dispute involves an act or omission of a Loan Party) relative to disputes between or among Agent on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand, or (iii) any claims for Taxes, which shall be governed by Section 16, other than Taxes which relate to primarily non-Tax claims), (b) with respect to any actual or prospective investigation, litigation, or proceeding related to this Agreement, any other Loan Document, the making of any Loans or issuance of any Letters of Credit hereunder, or the use of the proceeds of the Loans or the Letters of Credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by any Loan Party or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of any Loan Party or any of its Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, no Borrower shall have any obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys, or agents. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrowers were required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrowers with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

11. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to any Loan Party or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to any Loan Party:	Dominion Colour Corporation 1 Concorde Gate Suite 608, Toronto, Ontario, Canada M3C 3N6 Attention: Scott Davido, Chief Restructuring Officer Telephone No.: (416) 791-4212

Email: Scott.Davido@ankura.com

with copies to:

H.I.G. Capital, LLC
500 Boylston Street
Boston, Massachusetts 02116
Attention: Michael Koichopolos
Telephone No.: (617) 262-8455 x1327
Telecopier No.: (305) 381-4199
Email: MKoichopolos@higcapital.com

and

King & Spalding LLP
1185 Avenue of the Americas
New York, New York 10036
Attention: Michael R. Handler, Esq.
Telephone No.: (212) 556-2286
Email: mhandler@kslaw.com

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000
Toronto ON M5L 1A9
Attention: Linc Rogers, Esq.
Telephone No.: (416) 863-4168
Email: linc.rogers@blakes.com

If to Agent:

Wells Fargo Bank, National Association, as Agent
Bay Adelaide East
22 Adelaide Street West, Suite 2200
Toronto, Ontario M5C 1X3
Attn: Portfolio Manager--Dominion
Telecopier No.: (855) 241-2146

with copies to:

Otterbourg P.C.
230 Park Avenue
New York, New York 10169
Attn: David W. Morse, Esq.
Fax No.: 212-684-6102
Email: dmorse@otterbourg.com

Goodmans LLP
Bay Adelaide Centre - West Tower
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7
Attn: Joseph Latham, Esq.
Telephone No: (416) 587-2202
Email: jlatham@goodmans.ca

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or three (3) Business Days after the deposit thereof in the mail; provided, that, (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

(a) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE AND THE CCAA.

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED IN THE CASE OF US LOAN PARTIES, ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK OR THE US BANKRUPTCY COURT AND IN THE CASE OF CANADIAN LOAN PARTIES, THE CANADIAN BANKRUPTCY COURT; PROVIDED, THAT, ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH LOAN PARTY AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH LOAN PARTY AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). EACH LOAN PARTY AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH

LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) EACH LOAN PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK AND THE STATE OF NEW YORK AND IN THE CASE OF US LOAN PARTIES, THE US BANKRUPTCY COURT AND IN THE CASE OF CANADIAN LOAN PARTIES, THE CANADIAN BANKRUPTCY COURT, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(e) NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST THE AGENT, THE SWING LENDER, ANY OTHER LENDER, ISSUING BANK, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

13. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.

13.1 **Assignments and Participations**.

(a) Subject to the conditions set forth in Section 13.1(a)(ii) below, any Lender may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Obligations owed to it and its Commitments) to one or more assignees so long as such prospective assignee is an Eligible Transferee (each, an "Assignee"), with the prior written consent (such consent not be unreasonably withheld or delayed) of:

(i) Administrative Borrower; provided, that, (A) no consent of Administrative Borrower shall be required (1) if a Default or Event of Default exists or has occurred and is continuing, or (2) in connection with an assignment to a Person that is a Lender or an Affiliate (other than natural persons) of a Lender and (B) Borrowers shall be deemed to have consented to a proposed assignment unless they object thereto by written notice to Agent within five (5) Business Days after having received notice thereof; and

(ii) Agent, Swing Lender and Issuing Bank.

(b) Assignments shall be subject to the following additional conditions:

(i) no assignment may be made to a natural person,

(ii) no assignment may be made to a Loan Party, an Affiliate of a Loan Party, or any Sponsor Affiliated Entity or Disqualified Lender,

(iii) the amount of the Commitments and the other rights and obligations of the assigning Lender hereunder and under the other Loan Documents subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Agent) shall be in a minimum amount (unless waived by Agent) of $5,000,000 (except such minimum amount shall not apply to (A) an assignment or delegation by any Lender to any other Lender, an Affiliate of any Lender, or a Related Fund of such Lender, or (B) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least $5,000,000),

(iv) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement,

(v) the parties to each assignment shall execute and deliver to Agent an Assignment and Acceptance; provided, that, Borrowers and Agent may continue to deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Borrowers and Agent by such Lender and the Assignee,

(vi) unless waived by Agent, the assigning Lender or Assignee has paid to Agent, for Agent's separate account, a processing fee in the amount of $3,500;

(vii) the assignee, if it is not a Lender, shall deliver to Agent an Administrative Questionnaire in a form approved by Agent (the "Administrative Questionnaire"); and

(viii) in the case of an assignment or transfer by a Lender holding a Canadian Commitment, there is a corresponding assignment or transfer by the related Lender holding a US Commitment (which may, in certain circumstances, be the same institution or an Affiliate thereof) to an Assignee (which may, in certain circumstances, be the same institution or an Affiliate thereof) of an amount which bears the same proportion to the related US Commitment as the amount assigned or transferred by the Lender bears to the Canadian Commitment, and vice versa in the case of an assignment or transfer of a US Commitment.

(c) From and after the date that Agent receives the executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, that, nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

(d) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(e) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender pro tanto.

(f) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, that, (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decreases the amount or postpones the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, (v) no participation shall be sold to a natural person, (vi) no participation shall be sold to a Loan Party, an Affiliate of a Loan Party, or any Sponsor Affiliated Entity, and (vii) all amounts payable by Borrowers hereunder shall be determined as if such Lender had not sold such participation, except that,

if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrowers, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(g) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to any Loan Party and its Subsidiaries and their respective businesses.

(h) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement to secure obligations of such Lender, including any pledge in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, or the Bank of Canada and such Federal Reserve Bank or the Bank of Canada may enforce such pledge or security interest in any manner permitted under applicable law; provided, that, no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(i) Agent (as a non-fiduciary agent on behalf of Borrowers) shall maintain, or cause to be maintained at one of its offices in the United States, a register (the "Register") on which it enters the name and address of each Lender as the registered owner of the Revolving Loans (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). Other than in connection with an assignment by a Lender of all or any portion of its portion of the Revolving Loans to an Affiliate of such Lender or a Related Fund of such Lender (i) a Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any evidencing the same), Borrowers shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a Lender of all or any portion of its Revolving Loans to an Affiliate of such Lender or a Related Fund of such Lender, and which assignment is not recorded in the Register, the assigning Lender, on behalf of Borrowers, shall maintain a register comparable to the Register.

(j) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Borrowers, shall maintain (or cause to be maintained) a register on which it enters the name of all participants in the Registered Loans held by it (and the principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations)

(the "Participant Register"). A Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. No Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(k) Agent shall make a copy of the Register (and each Lender shall make a copy of its Participant Register to the extent it has one) available for review by Borrowers from time to time as Borrowers may reasonably request.

13.2 **Successors**.

(a) This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, that, no Loan Party may assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void ab initio. No consent to assignment by the Lenders shall release any Loan Party from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1, no consent or approval by any Loan Party is required in connection with any such assignment.

(b) This Agreement, the other Loan Documents, and all Liens created pursuant to any Loan Document shall be binding upon each Loan Party, the estate of each Loan Party, and any trustee or successor in interest of any Loan Party in any Chapter 11 Case or CCAA Case or any Successor Case or under any other bankruptcy or insolvency laws, and shall not be subject to Section 365 of the Bankruptcy Code or any similar provision of the CCAA. The Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of any Chapter 11 Case or any other bankruptcy case of any Loan Party to a case under chapter 7 of the Bankruptcy Code or of the CCAA Case to a receivership or a bankruptcy under the BIA, or in the event of dismissal of any Bankruptcy Case or the release of any Collateral from the jurisdiction of any Bankruptcy Court for any reason, without the necessity that Agent or any Lender file financing statements or otherwise perfect its security interests or Liens under applicable Law.

14. AMENDMENTS; WAIVERS.

14.1 **Amendments and Waivers**.

(a) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than the Fee Letter), and no consent with respect to any departure by any Loan Party therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent with the consent or approval of the Required Lenders) and the Loan Parties that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and

for the specific purpose for which given; provided, that, no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

(i) increase the amount of or extend the expiration date of any Commitment of any Lender or amend, modify, or eliminate the last sentence of Section 2.4(c)(i),

(ii) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document,

(iii) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except in connection with the waiver of applicability of Section 2.6(c) (which waiver shall be effective with the written consent of the Required Lenders),

(iv) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,

(v) amend, modify, or eliminate Section 3.1 or 3.2,

(vi) amend, modify, or eliminate Section 15.11,

(vii) other than as permitted by Section 15.11, release or contractually subordinated Agent's Lien in and to any of the Collateral or subordination of the payment of the Obligations,

(viii) amend, modify, or eliminate the definitions of "Required Lenders", Supermajority Lenders or "Pro Rata Share",

(ix) other than in connection with a merger, amalgamation, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release any Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by any Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents,

(x) amend, modify, or eliminate any of the provisions of Section 2.4(b)(i), (ii) or (iii) or Section 2.4(e) or (f), or

(xi) amend, modify, or eliminate any of the provisions of Section 13.1 with respect to assignments to, or participations with, Persons who are Loan Parties, Affiliates of a Loan Party, or Sponsor Affiliated Entities;

(b) No amendment, waiver, modification, or consent shall amend, modify, waive, or eliminate,

(i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Agent and Borrowers (and shall not require the written consent of any of the Lenders),

(ii) any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrowers, and the Required Lenders;

(c) No amendment, waiver, modification, elimination, or consent shall amend, without written consent of Agent, Borrowers and the Supermajority Lenders, modify, or eliminate the definition of Borrowing Base or any of the defined terms (including the definitions of Eligible Accounts or Eligible Inventory) that are used in such definition (except for the definition of the term Reserves) to the extent that any such change results in more credit being made available to Borrowers based upon the Borrowing Base, but not otherwise;

(d) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Bank, or any other rights or duties of Issuing Bank under this Agreement or the other Loan Documents, without the written consent of Issuing Bank, Agent, Borrowers, and the Required Lenders;

(e) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Swing Lender, or any other rights or duties of Swing Lender under this Agreement or the other Loan Documents, without the written consent of Swing Lender, Agent, Borrowers, and the Required Lenders; and

(f) Anything in this Section 14.1 to the contrary notwithstanding, (i) any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of any Loan Party, shall not require consent by or the agreement of any Loan Party, and (ii) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over the objection of, any Defaulting Lender other than any of the matters governed by Section 14.1(a)(i) through (iii) that affect such Lender.

14.2 **Replacement of Certain Lenders**.

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders affected thereby, or (ii) any Lender makes a claim for compensation under Section 16, then Borrowers or Agent, upon at least five (5) Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a "Non-Consenting Lender") or any Lender that made a claim for compensation (a "Tax Lender") with one or more Replacement Lenders, and the Non-Consenting Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Non-Consenting Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than fifteen (15) Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Non-Consenting Lender or Tax Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Non-Consenting Lender or Tax Lender, as applicable, being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever, but including (i) all interest, fees and other amounts that may be due in payable in respect thereof, (ii) an assumption of its Pro Rata Share of participations in the Letters of Credit, and (iii) Funding Losses). If the Non-Consenting Lender or Tax Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name or and on behalf of the Non-Consenting Lender or Tax Lender, as applicable, and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Non-Consenting Lender or Tax Lender, as applicable,

shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Non-Consenting Lender or Tax Lender, as applicable, shall be made in accordance with the terms of Section 13.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Non-Consenting Lender or Tax Lender, as applicable, hereunder and under the other Loan Documents, the Non-Consenting Lender or Tax Lender, as applicable, shall remain obligated to make the Non-Consenting Lender's or Tax Lender's, as applicable, Pro Rata Share of Revolving Loans and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of participations in such Letters of Credit.

14.3 **No Waivers; Cumulative Remedies**. No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by any Loan Party of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

15. AGENT; THE LENDER GROUP.

15.1 **Appointment and Authorization of Agent**. Each Lender hereby designates and appoints Wells Fargo as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Providers) on the conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, payments and proceeds of Collateral, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, or

to take any other action with respect to any Collateral or Loan Documents which may be necessary to perfect, and maintain perfected, the security interests and Liens upon Collateral pursuant to the Loan Documents, (c) make Revolving Loans, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute payments and proceeds of the Collateral as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to any Loan Party or its Subsidiaries, the Obligations, the Collateral, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

15.2 **Delegation of Duties**. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3 **Liability of Agent**. None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders (or Bank Product Providers) for any recital, statement, representation or warranty made by any Loan Party or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Loan Party or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders (or Bank Product Providers) to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of any Loan Party or its Subsidiaries. No Agent-Related Person shall have any liability to any Lender, and Loan Party or any of their respective Affiliates if any request for a Loan, Letter of Credit or other extension of credit was not authorized by the applicable Borrower. Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable law or regulation.

15.4 **Reliance by Agent**. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrowers or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and, if it so elects, the Bank Product Providers) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance

with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and Bank Product Providers).

15.5 **Notice of Default or Event of Default**. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrowers referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, that, unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6 **Credit Decision**. Each Lender (and Bank Product Provider) acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of any Loan Party and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrowers. Each Lender also represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to any Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement).

15.7 **Costs and Expenses; Indemnification**. Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and

fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys' fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from payments or proceeds of the Collateral received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders (or Bank Product Providers). In the event Agent is not reimbursed for such costs and expenses by the Loan Parties and their Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so) from and against any and all Indemnified Liabilities; provided, that, no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make a Revolving Loan or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8 **Agent in Individual Capacity**. Wells Fargo and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though Wells Fargo were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, Wells Fargo or its Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include Wells Fargo in its individual capacity.

15.9 **Successor Agent**. Agent may resign as Agent upon thirty (30) days (ten (10) days if an Event of Default has occurred and is continuing) prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Borrowers (unless such notice is waived by Borrowers or a Default or Event of Default has occurred and is continuing) and without any notice to the Bank Product Providers. If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned), appoint a successor Agent for the Lenders (and the Bank Product Providers). If, at the time that Agent's resignation is effective, it is acting as Issuing Bank or the Swing Lender, such resignation shall also operate to effectuate its resignation as Issuing Bank or the Swing

Lender, as applicable, and it shall automatically be relieved of any further obligation to issue Letters of Credit, or to make Swing Loans. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Borrowers, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

15.10 **Lender in Individual Capacity**. Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Providers). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11 **Collateral Matters**.

(a) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by the Loan Parties and their Subsidiaries of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrowers certify to Agent that the sale or disposition is permitted under Section 6.4 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which no Loan Party or any of its Subsidiaries owned any interest at the time Agent's Lien was granted nor at any time thereafter, (iv) constituting property leased or licensed to a Loan Party or its Subsidiaries under a lease or license that has expired or is terminated in a transaction permitted under this Agreement, or (v) in connection with a credit bid or purchase authorized under this Section 15.11. The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, based upon the instruction of the Required Lenders, to (a) consent to the sale of, credit bid, or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code or in connection with any other Insolvency Proceeding, (b) credit bid or

purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC or the PPSA, or (c) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any other sale or foreclosure conducted or consented to by Agent in accordance with applicable law in any judicial action or proceeding or by the exercise of any legal or equitable remedy. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders and the Bank Product Providers shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not impair or unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such contingent or unliquidated claims cannot be estimated without impairing or unduly delaying the ability of Agent to credit bid at such sale or other disposition, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the Collateral that is the subject of such credit bid or purchase) and the Lenders and the Bank Product Providers whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the Collateral that is the subject of such credit bid or purchase (or in the Equity Interests of the any entities that are used to consummate such credit bid or purchase), and (ii) Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate such credit bid or purchase and in connection therewith Agent may reduce the Obligations owed to the Lenders and the Bank Product Providers (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration; provided, that, Bank Product Obligations not entitled to the application set forth in Section 2.4(b)(ii)(J) or Section 2.4(b)(iii)(J) shall not be entitled to be, and shall not be, credit bid, or used in the calculation of the ratable interest of the Lenders and Bank Product Providers in the Obligations which are credit bid. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders (without requiring the authorization of the Bank Product Providers), or (z) otherwise, the Required Lenders (without requiring the authorization of the Bank Product Providers). Upon request by Agent or Borrowers at any time, the Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, that, (1) anything to the contrary contained in any of the Loan Documents notwithstanding, Agent shall not be required to execute any document or take any action necessary to evidence such release on terms that, in Agent's opinion, could expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly released) upon (or obligations of Borrowers in respect of) any and all interests retained by any Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Each Lender further hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to irrevocably authorize) Agent, at its option and in its sole discretion, to subordinate (by contract or otherwise) any Lien granted to or held by Agent on any property under any Loan Document (a) to the holder of any Permitted Lien on such property if such Permitted Lien secures purchase money Indebtedness (including Capitalized Lease Obligations) which constitute Permitted Indebtedness and (b) to the extent Agent has the authority under this Section 15.11 to release its Lien on such property.

(b) Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) (i) to verify or assure that the Collateral exists or is owned by a Loan Party or any of its Subsidiaries or is cared for, protected, or insured or has been encumbered, (ii) to verify or assure that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, (iii) to verify or assure that any particular items of Collateral meet

the eligibility criteria applicable in respect thereof, (iv) to impose, maintain, increase, reduce, implement, or eliminate any particular reserve hereunder or to determine whether the amount of any reserve is appropriate or not, or (v) to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise expressly provided herein.

15.12 **Restrictions on Actions by Lenders; Sharing of Payments**.

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to any Loan Party or its Subsidiaries or any deposit accounts of any Loan Party or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, that, to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13 **Agency for Perfection**. Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the UCC or the applicable provisions of the PPSA or Canadian securities transfer legislation or can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14 **Payments by Agent to the Lenders**. All payments to be made by Agent to the Lenders (or Bank Product Providers) shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent.

Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15 **Concerning the Collateral and Related Loan Documents**. Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider).

15.16 **Field Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information**. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field examination report respecting any Loan Party or its Subsidiaries (each, a "Report") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any field examination will inspect only specific information regarding the Loan Parties and their Subsidiaries and will rely significantly upon Holdings' and its Subsidiaries' books and records, as well as on representations of Borrowers' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Loan Parties and their Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing, (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by any Loan Party or its Subsidiaries to Agent that has not been contemporaneously provided by such Loan Party or such Subsidiary to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from any Loan Party or its Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon

Agent promptly shall request of Borrowers the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from such Loan Party or such Subsidiary, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrowers a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

15.17 **Several Obligations; No Liability**. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

16. WITHHOLDING TAXES.

16.1 **Payments**. All payments made by any Loan Party under any Loan Document will be made free and clear of, and without deduction or withholding for, any Taxes, except as otherwise required by applicable law, and in the event any deduction or withholding of Taxes is required, the applicable Loan Party or other applicable withholding agent shall make the requisite withholding, promptly pay over to the applicable Governmental Authority the withheld tax, and furnish to Agent as promptly as possible after the date the payment of any such Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by the Loan Parties. Furthermore, if any such Tax is an Indemnified Taxes or an Indemnified Tax is so levied or imposed, the Loan Parties agree to pay the full amount of such Indemnified Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16.1 after withholding or deduction for or on account of any Indemnified Taxes, will not be less than the amount provided for herein. The Loan Parties will promptly pay any Other Taxes or reimburse Agent for such Other Taxes upon Agent's demand. The Loan Parties shall, subject to Section 2.15(j), jointly and severally indemnify each Indemnified Person (as defined in Section 10.3) (collectively a "Tax Indemnitee") for the full amount of Indemnified Taxes arising in connection with this Agreement or any other Loan Document or breach thereof by any Loan Party (including, without limitation, any Indemnified Taxes imposed or asserted on, or attributable to, amounts payable under this Section 16) imposed on, or paid by, such Tax Indemnitee and all reasonable costs and expenses related thereto (including reasonable fees and disbursements of attorneys and other tax professionals), as and when they are incurred and irrespective of whether suit is brought, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than Indemnified Taxes and additional amounts that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Tax Indemnitee). The obligations of the Loan Parties under this Section 16 shall survive the termination of this Agreement, the resignation and replacement of the Agent, and the repayment of the Obligations.

16.2 **Exemptions**.

(a) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) and the Administrative Borrower on behalf of all Borrowers one of the following before receiving its first payment under this Agreement:

(i) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to the portfolio interest exception, (A) a statement of the Lender or Participant, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a ten percent (10%) shareholder of Administrative Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrowers within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN, Form W-8BEN-E or Form W-8IMY (with proper attachments as applicable);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN or Form W-8BEN-E, as applicable;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (including a withholding statement and copies of the tax certification documentation for its beneficial owner(s) of the income paid to the intermediary, if required based on its status provided on the Form W-8IMY); or

(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax.

(b) Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If a Lender or Participant claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent and Borrowers, to deliver to Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, or the providing of or delivery of such forms in the Lender's reasonable judgment would not subject such Lender to any material unreimbursed cost or expense or materially prejudice the legal or commercial position of such Lender (or its Affiliates); provided, further, that nothing in this Section 16.2(c) shall require a Lender or Participant to disclose any information that it deems to be confidential (including without limitation, its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent and Administrative Borrower (or, in the case of a

Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender or Participant, such Lender or Participant agrees to notify Agent and Administrative Borrower (or, in the case of a sale of a participation interest, to the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender or Participant. To the extent of such percentage amount, Agent and Administrative Borrower will treat such Lender's or such Participant's documentation provided pursuant to Section 16.2(a) or 16.2(c) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 16.2(a) or 16.2(c), if applicable. Borrowers agree that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto and such Participant agrees to be subject to Section 14.2 as if it were a Lender.

(e) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable due diligence and reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Lender shall deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) at the time or times prescribed by law and at such time or times reasonably requested by Agent (or, in the case of a Participant, the Lender granting the participation) such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Agent (or, in the case of a Participant, the Lender granting the participation) as may be necessary for Agent or Borrowers to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) If the Agent is not a Person organized under the laws of the United States or any state thereof, on or before the Closing Date, and thereafter upon the reasonable request of the Administrative Borrower, Agent shall provide to the Administrative Borrower an IRS Form W-8IMY certifying (A) its status as a "Qualified Intermediary" as defined in United States Treasury Regulation section 1.1441-1(e)(5)(ii), (B) its assumption of primary U.S. federal income tax withholding responsibility for purposes of chapter 3 and chapter 4 of the IRC and (C) its assumption of primary IRS Form 1099 reporting and U.S. federal income backup withholding responsibility

16.3 **Reductions**.

(a) If a Lender or a Participant is subject to an applicable withholding tax, Agent (or, in the case of a Participant, the Lender granting the participation) may withhold from any payment to such Lender or such Participant an amount equivalent to the applicable withholding tax. If the forms or other documentation required by Section 16.2(a) or 16.2(c) are not delivered to Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(b) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not

properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys' fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

16.4 **Refunds**. If Agent or a Lender determines, in its sole discretion, exercised in good faith, that it has received a refund of any Indemnified Taxes to which the Loan Parties have paid additional amounts pursuant to this Section 16, it shall pay over to Agent for application to the Loans with any excess amounts paid over to Administrative Borrower (but only to the extent of payments made, or additional amounts paid, by the Loan Parties under this Section 16 with respect to Indemnified Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the applicable Governmental Authority with respect to such a refund); provided, that, the Loan Parties, upon the request of Agent or such Lender, agrees to repay the amount paid over to the Loan Parties (plus any penalties, interest or other charges, imposed by the applicable Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent or Lender hereunder as finally determined by a court of competent jurisdiction) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to Loan Parties or any other Person or require Agent or any Lender to pay any amount to an indemnifying party pursuant to Section 16.4, the payment of which would place Agent or such Lender (or their Affiliates) in a less favorable net after-Tax position than such Person would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

17. GENERAL PROVISIONS.

17.1 **Effectiveness**. This Agreement shall be binding and deemed effective when executed by each Loan Party, Agent, and each Lender whose signature is provided for on the signature pages hereof.

17.2 **Section Headings**. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3 **Interpretation**. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or any Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4 **Severability of Provisions**. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5 **Bank Product Providers**. Each Bank Product Provider in its capacity as such shall be deemed a third-party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents. It is understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the applicable Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the applicable Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Borrowers may obtain Bank Products from any Bank Product Provider, although Borrowers are not required to do so. Each Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

17.6 **Debtor-Creditor Relationship**. The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7 **Counterparts; Electronic Execution**. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Execution of any such counterpart may be by means of (a) an electronic

signature that complies with the federal Electronic Signatures in Global and National Commerce Act, as in effect from time to time, state enactments of the Uniform Electronic Transactions Act, as in effect from time to time, or any other relevant and applicable electronic signatures law; (b) an original manual signature; or (c) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Agent reserves the right, in its discretion, to accept, deny, or condition acceptance of any electronic signature on this Agreement. Any party delivering an executed counterpart of this Agreement by faxed, scanned or photocopied manual signature shall also deliver an original manually executed counterpart, but the failure to deliver an original manually executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement. The foregoing shall apply to each other Loan Document, and any notice delivered hereunder or thereunder, *mutatis mutandis*.

17.8 **Revival and Reinstatement of Obligations; Certain Waivers**. If any member of the Lender Group or any Bank Product Provider repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to such member of the Lender Group or such Bank Product Provider in full or partial satisfaction of any Obligation or on account of any other obligation of any Loan Party under any Loan Document or any Bank Product Agreement, because the payment, transfer, or the incurrence of the obligation so satisfied is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a "Voidable Transfer"), or because such member of the Lender Group or Bank Product Provider elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that such member of the Lender Group or Bank Product Provider elects to repay, restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys' fees of such member of the Lender Group or Bank Product Provider related thereto, (i) the liability of the Loan Parties with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist, and (ii) Agent's Liens securing such liability shall be effective, revived, and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) Agent's Liens shall have been released or terminated, or (B) any provision of this Agreement shall have been terminated or cancelled, Agent's Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Loan Party in respect of such liability or any Collateral securing such liability. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations.

17.9 **Confidentiality**.

(a) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding the Loan Parties and their Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers); provided, that, any such Subsidiary or Affiliate

shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided, that, (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrowers with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrowers pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrowers, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process; provided, that, (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrowers with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrowers pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement; provided, that, prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information either subject to the terms of this Section 17.9 or pursuant to confidentiality requirements substantially similar to those contained in this Section 17.9 (and such Person may disclose such Confidential Information to Persons employed or engaged by them as described in clause (i) above), (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that, prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than any Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrowers with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Agent may disclose information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services or in its marketing or promotional materials, with such information to consist of deal terms and other information customarily found in such publications or marketing or promotional materials and may otherwise use the name, logos, and other insignia of any Borrower or the other Loan Parties and the Commitments provided hereunder in any "tombstone" or other advertisements, on its website or in other marketing materials of the Agent.

(c) Each Loan Party agrees that Agent may make Borrower Materials available to the Lenders by posting the Communications on IntraLinks, SyndTrak or a substantially similar secure electronic transmission system (the "Platform"). The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of the Borrower Materials, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by Agent in connection with the Borrower Materials or the Platform. In no event shall Agent or any of the Agent-Related Persons have any liability to the Loan Parties, any Lender or any other person for damages of any kind, including direct or indirect, special, incidental or consequential

damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or Agent's transmission of communications through the Internet, except to the extent the liability of such person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such person's gross negligence or willful misconduct. Each Loan Party further agrees that certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties shall be deemed to have authorized Agent and its Affiliates and the Lenders to treat Borrower Materials marked "PUBLIC" or otherwise at any time filed with the SEC as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" (or another similar term). Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as "Public Investor" (or such other similar term).

17.10 **Survival**. All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent, Issuing Bank, or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of, or any accrued interest on, any Loan or any fee or any other amount payable under this Agreement is outstanding or unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or been terminated.

17.11 **Patriot Act; Due Diligence**. Each Lender that is subject to the requirements of the Patriot Act hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act. In addition, Agent and each Lender shall have the right to periodically conduct due diligence on all Loan Parties, their senior management and key principals and legal and beneficial owners. Each Loan Party agrees to cooperate in respect of the conduct of such due diligence and further agrees that the reasonable costs and charges for any such due diligence by Agent shall constitute Lender Group Expenses hereunder and be for the account of Borrowers.

17.12 **Integration**. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

17.13 **DCL USA as Agent for Borrowers**. Each Borrower hereby irrevocably appoints DCL USA as the borrowing agent and attorney-in-fact for all Borrowers (the "Administrative Borrower") which appointment shall remain in full force and effect unless and until Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (a) to provide Agent with all notices with respect to Revolving

Loans and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and the other Loan Documents (and any notice or instruction provided by Administrative Borrower shall be deemed to be given by Borrowers hereunder and shall bind each Borrower), (b) to receive notices and instructions from members of the Lender Group (and any notice or instruction provided by any member of the Lender Group to the Administrative Borrower in accordance with the terms hereof shall be deemed to have been given to each Borrower), (c) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Revolving Loans and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient and economical manner and at their request, and that Lender Group shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce the Lender Group to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify each member of the Lender Group and hold each member of the Lender Group harmless against any and all liability, expense, loss or claim of damage or injury, made against the Lender Group by any Borrower or by any third party whosoever, arising from or incurred by reason of (i) the handling of the Loan Account and Collateral of Borrowers as herein provided, or (ii) the Lender Group's relying on any instructions of the Administrative Borrower, except that Borrowers will have no liability to the relevant Agent-Related Person or Lender-Related Person under this Section 17.13 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent-Related Person or Lender-Related Person, as the case may be.

17.14 **Canadian Anti-Terrorism Laws.**

(a) Each Loan Party acknowledges that, pursuant to the Canadian Anti-Terrorism Laws, Agent and Lenders may be required to obtain, verify and record information regarding each Loan Party, its respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of such Loan Party, and the transactions contemplated hereby. Each Loan Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by Agent or any Lender, or any prospective assignee or participant of Agent or a Lender, in order to comply with any applicable Canadian Anti-Terrorism Laws, whether now or hereafter in existence.

(b) If Agent has ascertained the identity of any Canadian Loan Party or any authorized signatories of any Canadian Loan Party for the purposes of Canadian Anti-Terrorism Laws, then Agent:

(i) shall be deemed to have done so as an agent for each Canadian Lender and this Agreement shall constitute a "written agreement" in such regard between each Canadian Lender and Agent within the meaning of the applicable Canadian Anti-Terrorism Laws; and

(ii) shall provide to each Canadian Lender, copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each Canadian Lender agrees that Agent has no obligation to ascertain the identity of the Canadian Loan Parties or any authorized signatories of the Canadian Loan Parties on behalf of any Canadian Lender, or to confirm the completeness or accuracy of any information it obtains from any Canadian Loan Party or any such authorized signatory in doing so.

17.15 **Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Loan Party in respect of any such sum due from it to Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to Agent or any Lender from any Loan Party in the Agreement Currency, such Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to Agent or any Lender in such currency, Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Loan Party (or to any other Person who may be entitled thereto under applicable law).

17.16 **Acknowledgement and Consent to Bail-In of EEA Financial Institutions**. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

17.17 **Intercreditor Agreement.** In the event of any conflict between the terms of any Loan Document and the terms of the Intercreditor Agreement, the terms of the Intercreditor Agreement shall govern.

17.18 **Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of

the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States): In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[Signature pages to follow.]

IN WITNESS WHEREOF, the undersigned parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

BORROWERS:

DCL CORPORATION (USA) LLC,
Debtor and Debtor-in-Possession

By: _____
Name:_____
Title: _____

DCL CORPORATION (BP), LLC,
Debtor and Debtor-in-Possession

By: _____
Name:_____
Title: _____

DCL CORPORATION,
Debtor

By: _____
Name:_____
Title: _____

GUARANTORS

DOMINION COLOUR CORPORATION (USA),
Debtor and Debtor-in-Possession

By: _____
Name:_____
Title: _____

DCL HOLDINGS (USA), INC.,
Debtor and Debtor-in-Possession

By: _____
Name:_____
Title: _____

H.I.G. COLORS HOLDINGS, INC.,
Debtor and Debtor-in-Possession

By: _____
Name:_____
Title: _____

H.I.G. COLORS, INC.,
Debtor and Debtor-in-Possession

By: _____
Name:_____
Title: _____

DCL CORPORATION (NL) B.V.

By: _____
Name:_____
Title: _____

DCL CORPORATION (EUROPE) LIMITED

By: _____
Name:_____
Title: _____

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Agent, as Sole Lead Arranger and Book Runner, and as a US Lender

By: _____
Name: _____
Its Authorized Signatory

WELLS FARGO CAPITAL FINANCE (CANADA),
as a Canadian Lender

By: _____
Name: _____
Its Authorized Signatory

Schedule C-1
to
Credit Agreement

Commitments

Wells Fargo Bank, National Association	
Wells Fargo Capital Finance (Canada)	$55,000,000.00

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

Affidavit of Scott Davido

sworn before me by video conference
this 20th day of December, 2022

A Commissioner, etc.

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

TM CAPITAL
SUCCESS. REALIZED.

PERSONAL & CONFIDENTIAL

September 6, 2022

Mr. John Von Bargen
Director
H.I.G. Colors Inc.

1 Concorde Gate, Suite 608
Toronto, Ontario, Canada
M3C 3N6

Dear John:

We are pleased to submit this letter which sets forth the terms and conditions whereunder H.I.G. Colors Inc., on behalf of itself and each of its subsidiaries (collectively, the "Company") shall retain TM Capital Corp. ("TM Capital") as its exclusive investment banker in connection with the proposed sale of the Company and/or its assets. In its capacity as investment banker, TM Capital will provide such services as the Company may request, which may include, among others, assistance in (i) preparing descriptive materials; (ii) identifying and contacting prospective acquirers; and (iii) structuring, negotiating and closing a proposed transaction.

In consideration of the services to be performed by TM Capital hereunder, the Company agrees to pay TM Capital non-refundable cash fees of $50,000 per month (the "Monthly Fee"), with the first payment commencing upon execution of this agreement; provided that the Monthly Fee shall reduce to $15,000 per month following the first 3 (three) payments. All Monthly Fees paid in respect of any months following the third month of the engagement shall be credited (without duplication) against any payable Transaction Fee (defined below).

Except as provided herein, if a transaction takes place involving the sale of all or a substantial part of the business and assets of the Company either by way of merger, stock or asset sale, recapitalization, other transaction or combination thereof (the "Transaction"), , the Company agrees to pay TM Capital a transaction fee (the "Transaction Fee") in cash at closing equal to the greater of (i) $1,500,000 and (ii) the sum of: (A) 2.00% (two percent) of any Consideration (as defined in the following paragraph) paid pursuant to the Transaction up to $100.0 million, plus (B) 3.5% (three and one-half percent) of any Consideration paid in excess of $100.0 million but less than $140.0 million, plus (C) 5.0% (five percent) of any Consideration paid in excess of $140.0 million. We understand that the Company is a party to that certain Credit Agreement, dated as of April 6, 2018 (as amended from time to time, the "Credit Agreement") by and among by and among H.I.G. Colors, Inc., a Delaware corporation, DCL Corporation (formerly known as Dominion Colour Corporation), a corporation organized under the laws of the Province of Ontario, DCL Holdings (USA), Inc. (formerly known as Lansco Holdings, Inc.), a Delaware corporation, the guarantors party thereto, the term lenders party thereto (the "Secured Lenders"), and Delaware Trust Company, not in its individual capacity but solely as administrative agent for the Lenders and as collateral agent for the Secured Lenders (the "Agent"). Any action (including a credit bid or article 9 foreclosure) by the Secured Lenders or the Agent at the direction of

the Secured Lenders pursuant to which the Secured Lenders acquire controlling ownership of the assets or equity interests of the Company shall not constitute a Transaction unless a third party submits a bid for substantially all of the Company's assets or equity that constitutes a "Qualified Bid" (to be defined in definitive sale documents but to have a customary meaning).

The Consideration for purposes of calculating the Transaction Fee shall be (i) in the case of the sale, exchange or purchase of equity interests in the Company, the total consideration paid for such interests, plus the implied value pursuant to the Transaction of any equity interests retained by current stockholders, plus the face value of the Company's indebtedness for borrowed money at closing; or (ii) in the case of a sale or disposition of the assets of the Company, the total consideration paid for such assets, plus the net book value of any assets liquidated by the Company, plus the face value of any indebtedness for borrowed money of the Company which is assumed by the buyer. If any of the Consideration is paid in the form of securities, the value of such securities, for purposes of calculating the Transaction Fee, shall be the fair market value thereof as the parties hereto shall mutually agree, on the day prior to the consummation of the Transaction; provided, however, that if such securities consist of securities with an existing public trading market, the value thereof shall be determined by the last sale price for such securities on the last trading day thereof prior to such consummation. For the avoidance of doubt, any amounts falling within romanettes (i) or (ii) of this paragraph and paid into escrow will be included as part of the Consideration, and fees on amounts paid into escrow will be payable upon the date or dates any such amounts are released from escrow (unless returned to buyer). Deferred or contingent payments, other than escrowed amounts, will be included as part of Consideration and fees relating to such payments will be payable as and when such payments are made. All Transaction Fees shall be paid in USD. For purposes of calculating the Transaction Fee on Consideration, which is not denominated in USD, the conversion rate of the foreign currency to USD from the date of closing shall be used.

Whether or not any fee is otherwise due pursuant to this agreement, the Company will reimburse TM Capital for all reasonable and documented expenses, including legal fees, incurred in connection with this agreement. TM Capital's travel policy includes business airfare for all international flights or flights longer than 4 hours in duration.

The Company hereby agrees to make and support a motion to approve TM Capital's retention on the terms outlined in this letter should the Company file for protection pursuant to bankruptcy laws.

In order to coordinate the efforts of the parties hereto, during the term of this agreement, neither the Company nor its management will initiate any discussions regarding the Transaction, except through TM Capital. In the event the Company receives any inquiry from any third party regarding the Transaction, the Company shall promptly inform TM Capital thereof.

From time to time, TM Capital may represent multiple clients serving or involving the same industries, products, services and/or potential acquirors. We will consult with you regarding any potential issues and will safeguard sensitive information as appropriate.

In accordance with regulatory compliance, TM Capital is required to obtain, verify and record information that will allow TM Capital to properly identify its clients.

This agreement may be terminated upon written notice by either party at any time without liability except for (i) any compensation earned or expenses incurred by TM Capital prior to termination of this agreement and (ii) any reimbursement, indemnity or contribution liability of the Company pursuant to

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the following paragraph. Notwithstanding anything contained in the preceding sentence, should the Transaction be completed within twelve months of such termination with any entity identified or contacted by TM Capital or the Company during the term of our engagement, the Company shall pay TM Capital its full Transaction Fee.

In the event that TM Capital becomes involved in any capacity in any action, proceeding or investigation in connection with any matter referred to in this agreement, the Company will reimburse TM Capital for its reasonable legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith. Such legal expenses will specifically include those incurred by TM Capital in any action between TM Capital and the Company relating to this agreement, provided that such action is not finally adjudicated in favor of the Company. The Company will also indemnify and hold TM Capital harmless against any losses, claims, damages or liabilities to which TM Capital may become subject in connection with any matter referred to in this agreement except to the extent that any such loss, claim, damage or liability results from the gross negligence, bad faith, or willful misconduct of TM Capital in performing the services which are the subject of this agreement. If for any reason the foregoing indemnification is unavailable to TM Capital or insufficient to hold it harmless, then the Company shall contribute to the amount paid or payable by TM Capital as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect not only the relative benefits received by the Company on the one hand and TM Capital on the other hand, but also the relative fault of the Company and TM Capital as well as any relevant equitable considerations. The reimbursement, indemnity and contribution obligations of the Company under this paragraph shall be in addition to any liability which the Company may otherwise have, shall extend upon the same terms and conditions to the employees and controlling persons of TM Capital and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Company, TM Capital and any such person. The foregoing provisions shall survive any termination of the authorization provided by this agreement.

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Please confirm that the foregoing is in accordance with your understanding by signing and returning to us this letter, which shall thereupon constitute a binding agreement.

Sincerely yours,

TM CAPITAL CORP.

_____

By: Anthony P. Giorgio
Managing Director

Confirmed:

HIG COLORS Inc.

Signature: _____

Name:_____

Title: _____

Date: _____

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TAB 3

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM	**)**	MONDAY, THE 19TH
	)	
JUSTICE CONWAY	**)**	DAY OF DECEMBER, 2022

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

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

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day via Zoom videoconference in Toronto, Ontario.

ON READING the affidavit of Scott Davido sworn December 19, 2022 and the Exhibits thereto (the "**Initial Affidavit**"), and the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicant (in such capacity, the "**Proposed Monitor**") dated December 19, 2022, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel to the Proposed Monitor and to those other parties listed on the Counsel Slip, and on reading the consent of the Proposed Monitor to act as the Monitor (in such capacity, the "**Monitor**"),

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for and method of service of the Notice of Application and the Application Record are hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Initial Affidavit.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, independent contractors, sub-contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants, as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the Initial Affidavit, or, with the consent of the Monitor and of the DIP Agent, replace it with another substantially similar

central cash management system (the "**Cash Management System**") and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents (as defined below) and the DIP Budget, the Applicant shall be entitled but not required to pay the following expenses and satisfy the following obligations whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, premiums for employee medical, dental, vision, insurance and similar benefit plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Applicant, pension benefits or contributions, vacation pay, expenses and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing practices,

compensation policies and arrangements (but not including termination or severance payments), and all other payroll processing and servicing expenses;

(b) all outstanding and future amounts owing to or in respect of individuals working as independent contractors in connection with the Business;

(c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges; and

(d) the fees and disbursements of Canadian counsel to the Pre-Filing ABL Agent and the DIP Agent in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents and the DIP Budget, the Applicant shall be entitled, but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course on or after the date of this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business (including the value thereof) including, without limitation, payments on account of insurance (including directors' and officers' insurance premiums), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order or, with the consent of the Monitor, payments to obtain the release or delivery of goods contracted for prior to the date of this Order.

8. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Applicant's employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. **THIS COURT ORDERS** that, until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord

under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, or as permitted by the Definitive Documents, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

NO PROCEEDINGS AGAINST THE APPLICANT, THE BUSINESS OR THE PROPERTY

11. **THIS COURT ORDERS** that until and including December 29, 2022, or such later date as this Court may order (the "**Stay Period**"), no proceeding, arbitration or enforcement process in or before any court, tribunal or other adjudicator (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property except with the written consent of the Applicant and the Monitor, or with leave of this Court. Any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that, during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall:

(a) empower the Applicant to carry on any business that the Applicant is not lawfully entitled to carry on;

(b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA;

(c) prevent the filing of any registration to preserve or perfect a security interest; or

(d) prevent the registration of a claim for a lien.

RELATED PARTY STAY

13. **THIS COURT ORDERS** that, during the Stay Period, no Person shall take, commence or continue any enforcement steps or remedial actions against the DCL USA LLC Inventory, including without limitation distraining, seizing, foreclosing, encumbering, repossessing or confiscating such property, except with the written consent of the Applicant, the DIP Agent and the Monitor, or with leave of this Court.

NO INTERFERENCE WITH RIGHTS

14. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right,

contract, agreement, lease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

15. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefits services, insurance, warranty services, vehicle and transportation services, temporary labour and staffing services, freight services, sub-contractors, trade suppliers, equipment vendors and rental companies, utility, customs, clearing, warehouse and logistics services or other services to the Business or in respect of the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods, services, trademarks and other intellectual property as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names and building and other permits, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

16. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor

shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

17. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

18. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

19. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property (other than the HSBC Cash Collateral), which charge shall not exceed an aggregate amount of CAD $1,000,000, as security for the indemnity provided in paragraph 18 of this Order. The Directors' Charge shall have the priority set out in paragraphs 37 and 39 herein.

20. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 18 of this Order.

APPOINTMENT OF MONITOR

21. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant’s receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Agent, of financial and other information as agreed to between the

Applicant and the DIP Agent which may be used in these proceedings including reporting on a basis to be agreed with the DIP Agent;

(d) advise the Applicant in its preparation of the Applicant's cash flow statements;

(e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Business and financial affairs or to perform its duties arising under this Order;

(f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(g) participate in and assist the Applicant, to the extent required by the Applicant, with any matters relating to any foreign proceeding commenced or impacting the Applicant, including, without limitation, the Chapter 11 Proceedings; and

(h) perform such other duties as are required by this Order or by this Court from time to time.

23. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof.

24. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

25. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Agent with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

26. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

27. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel to the Applicant on a bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant retainers in the aggregate amount up to $285,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

28. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property (other than the HSBC Cash Collateral), which charge shall not exceed an aggregate amount of USD $175,000 as security for their professional fees and disbursements incurred at their respective standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37 and 39 hereof.

CRO APPOINTMENT

30. **THIS COURT ORDERS** that

(a) the agreement (the "**CRO Engagement Letter**") dated as of November 16, 2022 pursuant to which the DCL Group has engaged Ankura Consulting Group, LLC

("**Ankura**") to provide the services of Scott Davido (the "**CRO**") to act as chief restructuring officer to the DCL Group, a copy of which is attached as Appendix E to the Pre-Filing Report, and the appointment of the CRO pursuant to the terms thereof is hereby approved, and the Applicant is hereby authorized and directed to pay its pro-rata share of the fees and expenses contemplated thereby as such amounts are determined in consultation with the Monitor;

(b) neither Ankura nor the CRO shall, as a result of the performance of their respective obligations and services in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation;

(c) Ankura and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the negligence or wilful misconduct on the part of Ankura or the CRO;

(d) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of Ankura and the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven days prior to the return date of any such motion for leave; and

(e) the obligations of the Applicant to Ankura and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any plan or proposal filed under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Applicant.

DIP FINANCING

31. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under the DIP ABL Credit Agreement in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such DIP ABL Credit Agreement shall not exceed the principal amount of USD $5,000,000 unless permitted by further Order of this Court.

32. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver (i) the DIP ABL Credit Agreement and to make such non-material alterations, changes, amendments, deletions or additions thereto after the execution thereof as may be agreed to by the parties with the consent of the Monitor, and (ii) such other agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, including the DIP ABL Credit Agreement, the "**Definitive Documents**"), as contemplated by the DIP ABL Credit Agreement or as may be reasonably required by the DIP Agent pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Agent and the DIP Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

33. **THIS COURT ORDERS** that the DIP Agent for and on behalf of itself and the DIP Lenders, shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Charge**") on

the Property (other than Excluded Collateral), which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 37 and 39 hereof.

34. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Charge, the DIP Agent may:

(i) immediately cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Agent to the Applicant against the obligations of the Applicant to the DIP Agent or the DIP Lenders under the Definitive Documents or the DIP Charge, make demand, accelerate payment and give other notices; and

(ii) upon 5 days' prior written notice to the Applicant, the Monitor and the Service List seek the Court's authorization to exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Definitive Documents and the DIP Charge, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

(c) the foregoing rights and remedies of the DIP Agent shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

35. **THIS COURT ORDERS AND DECLARES** that the DIP Agent and the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the BIA, with respect to any advances made under the Definitive Documents.

INTERCOMPANY LENDING

36. **THIS COURT ORDERS** that the Intercompany Agreements are hereby approved, *nunc pro tunc*, and the Applicant is authorized to make such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to by the parties with the consent of the Monitor and the DIP Agent, and that, to the extent that DCL USA LLC (in such capacity, the "**Intercompany Lender**") makes a DCL Canada Loan (as defined in the US/Canada Intercompany Agreement) after the date of this Order, the Intercompany Lender is hereby granted a charge (the "**Intercompany Charge**") on all of the Property (other than the HSBC Cash Collateral) in the amount of such aggregate Intercompany Loans. The Intercompany Charge shall have the priority set out in paragraphs 37 and 39.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Charge, the Intercompany Charge, the Directors' Charge (collectively, the "**Charges**"), the ABL Pre-Filing Security and the Term Loan Security, as among them, as against the Property shall be as follows:

With respect to ABL Priority Collateral (as defined in the Intercreditor Agreement):

Charge/Security Interest	**Rank/Priority**
Administration Charge	First
DIP Charge	Second
ABL Pre-Filing Security	Third
Term Loan Security	Fourth
Intercompany Charge (if any)	Fifth
Directors' Charge	Sixth

With respect to Term Loan Priority Collateral (as defined in the Intercreditor Agreement):

Charge/Security Interest	**Rank/Priority**
Administration Charge	First
Term Loan Security	Second
DIP Charge	Third
ABL Pre-Filing's Security	Fourth
Intercompany Charge (if any)	Fifth
Directors' Charge	Sixth

38. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property (other than Excluded Collateral with respect to the DIP Charge and HSBC Cash Collateral with respect to all other Charges) and such Charges shall rank in priority to all other security interests, trusts (including deemed or constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including, without limitation, any deemed trusts that may be created under any statute, including, without limitation, the Ontario *Pension Benefits Act*) (collectively, "**Encumbrances**") in favour of any Person, except

for any Person who is a "secured creditor" as defined in the CCAA that has not been served with the Notice of Application for this Order.

40. **THIS COURT ORDERS** that the Applicant shall be entitled, at the Comeback Hearing, on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges may not have obtained priority pursuant to this Order.

41. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the other affected beneficiaries of the Charges, ABL Pre-Filing Security and Term Loan Security, or further Order of this Court.

42. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing governing documents, loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any obligation or Agreement caused by or resulting from the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicant pursuant to this Order or the Definitive Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

44. **THIS COURT ORDERS** that service of the within application record, together with written confirmation of the date of such hearings, to the Notice Parties in respect of this Order constitutes notice of the Comeback Hearing and the Bidding Procedures Hearing.

45. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five (5) days' after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than CAD $1,000

(excluding any individual employees, former employees with pension and/or retirement savings or benefits plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plan), and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

46. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: https://www.alvarezandmarsal.com/DCLCanada (the "**Monitor's Website**").

47. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

48. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery, facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

49. **THIS COURT ORDERS** that the Applicant, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

50. **THIS COURT ORDERS** the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network and attached hereto as Schedule "**A**" are adopted to facilitate communications between this Court and the U.S. Bankruptcy Court.

51. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, restate or supplement this Order or for advice and directions concerning the discharge of its respective powers and duties under this Order.

52. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

53. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom, the Netherlands, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

54. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

55. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days'

notice to the Service List and any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

56. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

_____

SCHEDULE "A"

Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters

GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN COURTS IN CROSS-BORDER INSOLVENCY MATTERS

INTRODUCTION

A. The overarching objective of these Guidelines is to improve in the interests of all stakeholders the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction ("Parallel Proceedings") by enhancing coordination and cooperation amongst courts under whose supervision such proceedings are being conducted. These Guidelines represent best practice for dealing with Parallel Proceedings.

B. In all Parallel Proceedings, these Guidelines should be considered at the earliest practicable opportunity.

C. In particular, these Guidelines aim to promote:

(i) the efficient and timely coordination and administration of Parallel Proceedings;

(ii) the administration of Parallel Proceedings with a view to ensuring relevant stakeholders' interests are respected;

(iii) the identification, preservation, and maximisation of the value of the debtor's assets, including the debtor's business;

(iv) the management of the debtor's estate in ways that are proportionate to the amount of money involved, the nature of the case, the complexity of the issues, the number of creditors, and the number of jurisdictions involved in Parallel Proceedings;

(v) the sharing of information in order to reduce costs; and

(vi) the avoidance or minimisation of litigation, costs, and inconvenience to the parties[1] in Parallel Proceedings.

D. These Guidelines should be implemented in each jurisdiction in such manner as the jurisdiction deems fit[2].

E. These Guidelines are not intended to be exhaustive and in each case consideration ought to be given to the special requirements in that case.

F. Courts should consider in all cases involving Parallel Proceedings whether and how to implement these Guidelines. Courts should encourage and where necessary direct, if they have the power to do so, the parties to make the necessary applications to the court to facilitate such implementation by a protocol or order derived from these Guidelines, and encourage them to act so as to promote the objectives and aims of these Guidelines wherever possible.

[1] The term "parties" when used in these Guidelines shall be interpreted broadly.
[2] Possible modalities for the implementation of these Guidelines include practice directions and commercial guides.

ADOPTION & INTERPRETATION

Guideline 1: In furtherance of paragraph F above, the courts should encourage administrators in Parallel Proceedings to cooperate in all aspects of the case, including the necessity of notifying the courts at the earliest practicable opportunity of issues present and potential that may (a) affect those proceedings; and (b) benefit from communication and coordination between the courts. For the purpose of these Guidelines, "administrator" includes a liquidator, trustee, judicial manager, administrator in administration proceedings, debtor-in-possession in a reorganisation or scheme of arrangement, or any fiduciary of the estate or person appointed by the court.

Guideline 2: Where a court intends to apply these Guidelines (whether in whole or in part and with or without modification) in particular Parallel Proceedings, it will need to do so by a protocol or an order[3], following an application by the parties or pursuant to a direction of the court if the court has the power to do so.

Guideline 3: Such protocol or order should promote the efficient and timely administration of Parallel Proceedings. It should address the coordination of requests for court approvals of related decisions and actions when required and communication with creditors and other parties. To the extent possible, it should also provide for timesaving procedures to avoid unnecessary and costly court hearings and other proceedings.

Guideline 4: These Guidelines when implemented are not intended to:

(i) interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings including its authority or supervision over an administrator in those proceedings;

(ii) interfere with or derogate from the rules or ethical principles by which an administrator is bound according to any applicable law and professional rules;

(iii) prevent a court from refusing to take an action that would be manifestly contrary to the public policy of the jurisdiction; or

(iv) confer or change jurisdiction, alter substantive rights, interfere with any function or duty arising out of any applicable law, or encroach upon any applicable law.

Guideline 5: For the avoidance of doubt, a protocol or order under these Guidelines is procedural in nature. It should not constitute a limitation on or waiver by the court of any powers, responsibilities, or authority or a substantive determination of any matter in controversy before the court or before the other court or a waiver by any of the parties of any of their substantive rights and claims.

Guideline 6: In the interpretation of these Guidelines or any protocol or order under these Guidelines, due regard shall be given to their international origin and to the need to promote good faith and uniformity in their application.

[3] In the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.

COMMUNICATION BETWEEN COURTS

Guideline 7: A court may receive communications from a foreign court and may respond directly to them. Such communications may occur for the purpose of the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to any joint hearing where Annex A is applicable. Such communications may take place through the following methods or such other method as may be agreed by the two courts in a specific case:

(i) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings or other documents directly to the other court and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.

(ii) Directing counsel to transmit or deliver copies of documents, pleadings, affidavits, briefs or other documents that are filed or to be filed with the court to the other court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.

(iii) Participating in two-way communications with the other court, in which case Guideline 8 should be considered.

Guideline 8: In the event of communications between courts, unless otherwise directed by any court involved in the communications whether on an *ex parte* basis or otherwise, or permitted by a protocol, the following shall apply:

(i) In the normal case, parties may be present.

(ii) If the parties are entitled to be present, advance notice of the communications shall be given to all parties in accordance with the rules of procedure applicable in each of the courts to be involved in the communications and the communications between the courts shall be recorded and may be transcribed. A written transcript may be prepared from a recording of the communications that, with the approval of each court involved in the communications, may be treated as the official transcript of the communications.

(iii) Copies of any recording of the communications, of any transcript of the communications prepared pursuant to any direction of any court involved in the communications, and of any official transcript prepared from a recording may be filed as part of the record in the proceedings and made available to the parties and subject to such directions as to confidentiality as any court may consider appropriate.

(iv) The time and place for communications between the courts shall be as directed by the courts. Personnel other than judges in each court may communicate with each other to establish appropriate arrangements for the communications without the presence of the parties.

Guideline 9: A court may direct that notice of its proceedings be given to parties in proceedings in another jurisdiction. All notices, applications, motions, and other materials served for purposes of the proceedings before the court may be ordered to be provided to such other parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the court in accordance with the procedures applicable in the court.

APPEARANCE IN COURT

Guideline 10: A court may authorise a party, or an appropriate person, to appear before and be heard by a foreign court, subject to approval of the foreign court to such appearance.

Guideline 11: If permitted by its law and otherwise appropriate, a court may authorise a party to a foreign proceeding, or an appropriate person, to appear and be heard by it without thereby becoming subject to its jurisdiction.

CONSEQUENTIAL PROVISIONS

Guideline 12: A court shall, except on proper objection on valid grounds and then only to the extent of such objection, recognise and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in other jurisdictions without further proof. For the avoidance of doubt, such recognition and acceptance does not constitute recognition or acceptance of their legal effect or implications.

Guideline 13: A court shall, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in other jurisdictions were duly and properly made or entered on their respective dates and accept that such orders require no further proof for purposes of the proceedings before it, subject to its law and all such proper reservations as in the opinion of the court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such orders. Notice of any amendments, modifications, extensions, or appellate decisions with respect to such orders shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

Guideline 14: A protocol or order made by a court under these Guidelines is subject to such amendments, modifications, and extensions as may be considered appropriate by the court, and to reflect the changes and developments from time to time in any Parallel Proceedings. Notice of such amendments, modifications, or extensions shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

ANNEX A (JOINT HEARINGS)

Annex A to these Guidelines relates to guidelines on the conduct of joint hearings. Annex A shall be applicable to, and shall form a part of these Guidelines, with respect to courts that may signify their assent to Annex A from time to time. Parties are encouraged to address the matters set out in Annex A in a protocol or order.

ANNEX A: JOINT HEARINGS

A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following shall apply, or where relevant, be considered for inclusion in a protocol or order:

(i) The implementation of this Annex shall not divest nor diminish any court's respective independent jurisdiction over the subject matter of proceedings. By implementing this Annex, neither a court nor any party shall be deemed to have approved or engaged in any infringement on the sovereignty of the other jurisdiction.

(ii) Each court shall have sole and exclusive jurisdiction and power over the conduct of its own proceedings and the hearing and determination of matters arising in its proceedings.

(iii) Each court should be able simultaneously to hear the proceedings in the other court. Consideration should be given as to how to provide the best audio-visual access possible.

(iv) Consideration should be given to coordination of the process and format for submissions and evidence filed or to be filed in each court.

(v) A court may make an order permitting foreign counsel or any party in another jurisdiction to appear and be heard by it. If such an order is made, consideration needs to be given as to whether foreign counsel or any party would be submitting to the jurisdiction of the relevant court and/or its professional regulations.

(vi) A court should be entitled to communicate with the other court in advance of a joint hearing, with or without counsel being present, to establish the procedures for the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to the joint hearing.

(vii) A court, subsequent to the joint hearing, should be entitled to communicate with the other court, with or without counsel present, for the purpose of determining outstanding issues. Consideration should be given as to whether the issues include procedural and/or substantive matters. Consideration should also be given as to whether some or all of such communications should be recorded and preserved.

Court File No.:

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

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

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

INITIAL ORDER

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Lawyers for the Applicant

TAB 4

~~Revised: January 21, 2014~~

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE ~~—~~MADAM JUSTICE ~~—~~CONWAY	)))	~~WEEKDAY~~MONDAY, THE ~~#~~ 19TH DAY OF ~~MONTH~~DECEMBER, ~~20YR~~2022

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ~~[APPLICANT'S NAME]~~DCL CORPORATION (the ~~"~~"**Applicant**~~"~~")

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the ~~"~~"**CCAA**~~"~~") was heard this day ~~at 330 University Avenue,~~via Zoom videoconference in Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~Scott Davido sworn ~~[DATE]~~December 19, 2022 and the Exhibits thereto (the "**Initial Affidavit**"), and the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicant (in such capacity, the "**Proposed Monitor**") dated December 19, 2022, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for ~~[NAMES], no one appearing for [NAME][1] although duly served as~~

[1] ~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

~~appears from the affidavit of service of [NAME] sworn [DATE]~~the Applicant, counsel to the Proposed Monitor and to those other parties listed on the Counsel Slip, and on reading the consent of ~~[MONITOR'S NAME]~~the Proposed Monitor to act as the Monitor~~,~~ (in such capacity, the "**Monitor**"),

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for and method of service of the Notice of Application and the Application Record ~~is~~are hereby abridged and validated[2] so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Initial Affidavit.

APPLICATION

3. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

~~**PLAN OF ARRANGEMENT**~~

~~3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").~~

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and

~~[2] If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.~~

wherever situate, including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, independent contractors, sub-contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants, as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. ~~[~~**THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system[3] currently in place as described in the Initial Affidavit ~~of [NAME] sworn [DATE] or~~, or, with the consent of the Monitor and of the DIP Agent, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash

~~[3] This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

Management System, an unaffected creditor under ~~the Plan~~any plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.~~]~~

6. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents (as defined below) and the DIP Budget, the Applicant shall be entitled but not required to pay the following expenses and satisfy the following obligations whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, premiums for employee medical, dental, vision, insurance and similar benefit plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Applicant, pension benefits or contributions, vacation pay ~~and~~, expenses and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements (but not including termination or severance payments), and all other payroll processing and servicing expenses; ~~and~~

(b) all outstanding and future amounts owing to or in respect of individuals working as independent contractors in connection with the Business;

(c) ~~(b)~~ the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges; and

(d) the fees and disbursements of Canadian counsel to the Pre-Filing ABL Agent and the DIP Agent in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents and the DIP Budget, the Applicant shall be entitled, but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course on or after the date of this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business (including the value thereof) including, without limitation, payments on account of insurance (including directors' and officers' insurance premiums), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order or, with the consent of the Monitor, payments to obtain the release or delivery of goods contracted for prior to the date of this Order.

8. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Applicant's employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "~~"~~**Sales Taxes**~~"~~") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where

such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order~~,~~; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. **THIS COURT ORDERS** that, until a real property lease is disclaimed ~~**[or resiliated]**~~[4] in accordance with the CCAA, the Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and the landlord from time to time (~~"~~"**Rent**~~"~~"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

[4] ~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

10. **THIS COURT ORDERS** that, except as specifically permitted herein, or as permitted by the Definitive Documents, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

~~**RESTRUCTURING**~~

~~11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:~~

~~(a) permanently or temporarily cease, downsize or shut down any of its business or operations, **[and to dispose of redundant or non-material assets not exceeding $● in any one transaction or $● in the aggregate]**[5]~~

~~(b) **[terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate]**; and~~

~~(c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,~~

~~all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").~~

~~12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least~~

~~[5] Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

~~seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims **[or resiliates]** the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer **[or resiliation]** of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.~~

~~13. THIS COURT ORDERS that if a notice of disclaimer **[or resiliation]** is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer **[or resiliation]**, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer **[or resiliation]**, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.~~

NO PROCEEDINGS AGAINST THE APPLICANT, THE BUSINESS OR THE PROPERTY

11. ~~14.~~ **THIS COURT ORDERS** that until and including ~~[DATE MAX. 30 DAYS]~~December 29, 2022, or such later date as this Court may order (the ~~"~~"**Stay Period**~~"~~"), no proceeding, arbitration or enforcement process in or before any court ~~or~~, tribunal or other adjudicator (each, a ~~"~~"**Proceeding**~~"~~") shall be commenced or continued against or in respect of the Applicant or the Monitor or their respective employees and representatives acting in such

capacities, or affecting the Business or the Property~~,~~ except with the written consent of the Applicant and the Monitor, or with leave of this Court~~, and any~~. Any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

12. ~~15.~~ **THIS COURT ORDERS** that, during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being ~~"~~"**Persons**~~"~~" and each being a ~~"~~"**Person**~~"~~") against or in respect of the Applicant or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property~~,~~ are hereby stayed and suspended, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall ~~(i)~~ :

(a) empower the Applicant to carry on any business ~~which~~that the Applicant is not lawfully entitled to carry on~~, (ii)~~ ;

(b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA~~, (iii)~~ ;

(c) prevent the filing of any registration to preserve or perfect a security interest~~,~~; or ~~(iv)~~

(d) prevent the registration of a claim for a lien.

RELATED PARTY STAY

13. **THIS COURT ORDERS** that, during the Stay Period, no Person shall take, commence or continue any enforcement steps or remedial actions against the DCL USA LLC Inventory, including without limitation distraining, seizing, foreclosing, encumbering, repossessing or

confiscating such property, except with the written consent of the Applicant, the DIP Agent and the Monitor, or with leave of this Court.

NO INTERFERENCE WITH RIGHTS

14. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

15. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefits services, insurance, warranty services, vehicle and transportation services, ~~utility~~temporary labour and staffing services, freight services, sub-contractors, trade suppliers, equipment vendors and rental companies, utility, customs, clearing, warehouse and logistics services or other services to the Business or in respect of the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods ~~or~~, services, trademarks and other intellectual property as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names and building and other permits, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier

or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

16. ~~18.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of ~~lease~~leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.[6]

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

17. ~~19.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS~~'~~' AND OFFICERS~~'~~' INDEMNIFICATION AND CHARGE

~~[6] This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

18. ~~20.~~ **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,[7] except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

19. ~~21.~~ **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the ~~"~~"**Directors~~'~~ Charge~~"~~")[8] on the Property (other than the HSBC Cash Collateral), which charge shall not exceed an aggregate amount of CAD $~~●~~1,000,000, as security for the indemnity provided in paragraph ~~[20]~~18 of this Order. The Directors~~'~~ Charge shall have the priority set out in paragraphs ~~[38]~~37 and ~~[40]~~39 herein.

20. ~~22.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~[20]~~18 of this Order.

~~[7] The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

~~[8] Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

APPOINTMENT OF MONITOR

21. ~~23.~~ **THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22. ~~24.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant~~'~~'s receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP ~~Lender and its counsel on a [TIME INTERVAL] basis~~Agent, of financial and other information as agreed to between the Applicant and the DIP ~~Lender~~Agent which may be used in these proceedings including reporting on a basis to be agreed with the DIP ~~Lender~~Agent;

(d) advise the Applicant in its preparation of the Applicant~~'~~'s cash flow statements ~~and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic~~

basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;

(e) advise the Applicant in its development of the Plan and any amendments to the Plan;

(f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(e) (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's businessBusiness and financial affairs or to perform its duties arising under this Order;

(f) (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(g) participate in and assist the Applicant, to the extent required by the Applicant, with any matters relating to any foreign proceeding commenced or impacting the Applicant, including, without limitation, the Chapter 11 Proceedings; and

(h) (i) perform such other duties as are required by this Order or by this Court from time to time.

23. 25. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof.

24. ~~26.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, ~~"~~"**Possession**~~"~~") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the ~~"~~"**Environmental Legislation**~~"~~"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

25. ~~27.~~ **THIS COURT ORDERS** that ~~that~~ the Monitor shall provide any creditor of the Applicant and the DIP ~~Lender~~Agent with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

26. ~~28.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

27. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel ~~for~~to the Applicant on a ~~[TIME INTERVAL]~~bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant~~,~~ retainers in the aggregate amount~~[s] of~~ up to $● ~~[~~285,000~~, respectively,]~~ to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

28. ~~30.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

29. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any,~~ and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the ~~"~~"**Administration Charge**~~"~~") on the Property (other than the HSBC Cash Collateral), which charge shall not exceed an aggregate amount of USD $●~~,~~ 175,000 as security for their professional fees and disbursements incurred at ~~the~~their respective standard rates and charges ~~of the Monitor and such counsel~~, both before and after the making of this Order in respect of these

proceedings. The Administration Charge shall have the priority set out in paragraphs ~~[38]~~37 and ~~[40]~~39 hereof.

CRO APPOINTMENT

30. **THIS COURT ORDERS** that

(a) the agreement (the "**CRO Engagement Letter**") dated as of November 16, 2022 pursuant to which the DCL Group has engaged Ankura Consulting Group, LLC ("**Ankura**") to provide the services of Scott Davido (the "**CRO**") to act as chief restructuring officer to the DCL Group, a copy of which is attached as Appendix E to the Pre-Filing Report, and the appointment of the CRO pursuant to the terms thereof is hereby approved, and the Applicant is hereby authorized and directed to pay its pro-rata share of the fees and expenses contemplated thereby as such amounts are determined in consultation with the Monitor;

(b) neither Ankura nor the CRO shall, as a result of the performance of their respective obligations and services in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation;

(c) Ankura and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the negligence or wilful misconduct on the part of Ankura or the CRO;

(d) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of Ankura and

the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven days prior to the return date of any such motion for leave; and

(e) the obligations of the Applicant to Ankura and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any plan or proposal filed under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Applicant.

DIP FINANCING

31. ~~32.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under ~~a credit facility from [DIP LENDER'S NAME] (~~the ~~"~~DIP ~~Lender")~~ABL Credit Agreement in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such ~~credit facility~~DIP ABL Credit Agreement shall not exceed ~~$●~~the principal amount of USD $5,000,000 unless permitted by further Order of this Court.

~~33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed.~~

32. ~~34.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver ~~such credit~~(i) the DIP ABL Credit Agreement and to make such non-material alterations, changes, amendments, deletions or additions thereto after the execution thereof as

may be agreed to by the parties with the consent of the Monitor, and (ii) such other agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, ~~the "~~including the DIP ABL Credit Agreement, the "**Definitive Documents**~~"~~"), as ~~are~~ contemplated by the ~~Commitment Letter~~DIP ABL Credit Agreement or as may be reasonably required by the DIP ~~Lender~~Agent pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP ~~Lender~~Agent and the DIP Lenders under and pursuant to ~~the Commitment Letter and~~ the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

33. ~~35.~~ **THIS COURT ORDERS** that the DIP ~~Lender~~Agent for and on behalf of itself and the DIP Lenders, shall be entitled to the benefit of and is hereby granted a charge (the ~~"~~"**DIP ~~Lender's~~ Charge**~~"~~") on the Property (other than Excluded Collateral), which DIP ~~Lender's~~ Charge shall not secure an obligation that exists before this Order is made. The DIP ~~Lender's~~ Charge shall have the priority set out in paragraphs ~~[38]~~37 and ~~[40]~~39 hereof.

34. ~~36.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP ~~Lender~~Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP ~~Lender's~~ Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP ~~Lender's~~ Charge, the DIP ~~Lender, upon ● days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease~~

~~making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender~~Agent may:

(i) immediately cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Agent to the Applicant against the obligations of the Applicant to the DIP ~~Lender~~Agent or the DIP Lenders under ~~the Commitment Letter,~~ the Definitive Documents or the DIP ~~Lender's~~ Charge, ~~to make demand, accelerate payment and give other notices, or~~ make demand, accelerate payment and give other notices; and

(ii) upon 5 days' prior written notice to the Applicant, the Monitor and the Service List seek the Court's authorization to exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Definitive Documents and the DIP Charge, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

(c) the foregoing rights and remedies of the DIP ~~Lender~~Agent shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

35. ~~37.~~ **THIS COURT ORDERS AND DECLARES** that the DIP ~~Lender~~Agent and the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under ~~the *Bankruptcy and*~~

~~*Insolvency Act* of Canada (~~the ~~"~~BIA~~")~~, with respect to any advances made under the Definitive Documents.

INTERCOMPANY LENDING

36. **THIS COURT ORDERS** that the Intercompany Agreements are hereby approved, *nunc pro tunc,* and the Applicant is authorized to make such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to by the parties with the consent of the Monitor and the DIP Agent, and that, to the extent that DCL USA LLC (in such capacity, the "**Intercompany Lender**") makes a DCL Canada Loan (as defined in the US/Canada Intercompany Agreement) after the date of this Order, the Intercompany Lender is hereby granted a charge (the "**Intercompany Charge**") on all of the Property (other than the HSBC Cash Collateral) in the amount of such aggregate Intercompany Loans. The Intercompany Charge shall have the priority set out in paragraphs 37 and 39.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. ~~38.~~ **THIS COURT ORDERS** that the priorities of the ~~Directors' Charge, the~~ Administration Charge, the DIP Charge, the Intercompany Charge, the Directors' Charge (collectively, the "**Charges**"), the ABL Pre-Filing Security and the ~~DIP Lender's Charge~~Term Loan Security, as among them, as against the Property shall be as follows[9]:

[9] ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

With respect to ABL Priority Collateral (as defined in the Intercreditor Agreement):

Charge/Security Interest	**Rank/Priority**
~~First~~ Administration Charge ~~(to the maximum amount of $●);~~	First
DIP Charge	Second
ABL Pre-Filing Security	Third
Term Loan Security	Fourth
Intercompany Charge (if any)	Fifth
Directors' Charge	Sixth

With respect to Term Loan Priority Collateral (as defined in the Intercreditor Agreement):

Charge/Security Interest	**Rank/Priority**
Administration Charge	First
Term Loan Security	Second~~—~~
DIP ~~Lender's~~Charge	Third
ABL Pre-Filing's Security	Fourth
Intercompany Charge~~; and~~ (if any)	Fifth
~~Third —~~ Directors' Charge ~~(to the maximum amount of $●).~~	Sixth

38. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "~~Charges~~")~~ shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. ~~40.~~ **THIS COURT ORDERS** that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~Charges shall constitute a charge on the Property (other than Excluded Collateral with respect to the DIP Charge and HSBC Cash Collateral with respect to all other Charges) and such Charges shall rank in priority to all other security interests, trusts (including deemed or constructive trusts), liens,

charges and encumbrances, claims of secured creditors, statutory or otherwise (including, without limitation, any deemed trusts that may be created under any statute, including, without limitation, the Ontario *Pension Benefits Act*) (collectively, ""**Encumbrances**"") in favour of any Person, except for any Person who is a "secured creditor" as defined in the CCAA that has not been served with the Notice of Application for this Order.

40. **THIS COURT ORDERS** that the Applicant shall be entitled, at the Comeback Hearing, on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges may not have obtained priority pursuant to this Order.

41. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~Charges, unless the Applicant also obtains the prior written consent of the Monitor~~, the DIP Lender~~ and the other affected beneficiaries of the ~~Directors' Charge and the Administration Charge~~Charges, ABL Pre-Filing Security and Term Loan Security, or further Order of this Court.

42. **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge~~Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the ""**Chargees**"") ~~and/or the DIP Lender~~ thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA~~,~~ or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;

(d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing governing documents, loan documents, lease, sublease, offer to lease or other agreement (collectively, an "~~"~~**Agreement**~~"~~") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of ~~the Commitment Letter or~~ the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any obligation or Agreement caused by or resulting from ~~the Applicant entering into the Commitment Letter,~~ the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicant pursuant to this Order~~, the Commitment Letter~~ or the Definitive Documents~~,~~ and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

44. **THIS COURT ORDERS** that service of the within application record, together with written confirmation of the date of such hearings, to the Notice Parties in respect of this Order constitutes notice of the Comeback Hearing and the Bidding Procedures Hearing.

45. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall (~~i~~a) without delay, publish in ~~[newspapers specified by the Court]~~The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (~~ii~~b) within five (5) days' after the date of this Order, (~~A~~i) make this Order publicly available in the manner prescribed under the CCAA, (~~B~~ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than CAD $~~1000~~1,000 (excluding any individual employees, former employees with pension and/or retirement savings or benefits plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plan), and (~~C~~iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

46. ~~45.~~ **THIS COURT ORDERS** that the E-Service ~~Protocol~~Guide of the Commercial List (the "~~**Protocol**~~**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website at ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid

and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol~~Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the ~~Protocol~~Guide with the following URL ~~'<@>'~~: https://www.alvarezandmarsal.com/DCLCanada (the "**Monitor's Website**").

47. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

48. ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the ~~Protocol~~Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery ~~or~~, facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution ~~by courier, personal delivery or facsimile transmission~~ shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof, ~~or~~(b) if delivered by personal delivery, facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

49. **THIS COURT ORDERS** that the Applicant, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

50. **THIS COURT ORDERS** the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network and attached hereto as Schedule "**A**" are adopted to facilitate communications between this Court and the U.S. Bankruptcy Court.

51. ~~47.~~ **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, restate or supplement this Order or for advice and directions ~~in~~concerning the discharge of its respective powers and duties ~~hereunder~~under this Order.

52. ~~48.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

53. ~~49.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada ~~or in~~, the United Kingdom, the Netherlands, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the

terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

54. ~~50.~~ **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

55. ~~51.~~ **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Service List and any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

56. ~~52.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. ~~Eastern Standard/Daylight Time~~(Toronto time) on the date of this Order.

SCHEDULE "A"

Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters

[TO BE INSERTED]

Court File No.:

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

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

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

INITIAL ORDER

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Lawyers for the Applicant

Document comparison by Workshare Compare on Tuesday, December 20, 2022 8:40:59 AM

Input:	
Document 1 ID	PowerDocs://TOR_2024/13170734/1
Description	TOR_2024-#13170734-v1-Model_CCAA_Initial_Order
Document 2 ID	PowerDocs://TOR_2024/13165317/15
Description	TOR_2024-#13165317-v15-DCL-Initial_Order_(CCAA)_
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count

Insertions	359
Deletions	291
Moved from	10
Moved to	10
Style changes	0
Format changes	0
Total changes	670

TAB 5

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM	**)**	MONDAY, THE 19TH
	)	
JUSTICE CONWAY	**)**	DAY OF DECEMBER 2022

and restated on December 29, 2022

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

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

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day via Zoom videoconference in Toronto, Ontario.

ON READING the affidavit of Scott Davido sworn December 19, 2022 and the Exhibits thereto (the "**Initial Affidavit**"), and the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicant (in such capacity, the "**Proposed Monitor**") dated December 19, 2022, the First Report of A&M (the "**Pre-Filing Report**") in its capacity as monitor (in such capacity, the "**Monitor**") dated ___, 2022, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel to the Proposed Monitor and to those other parties listed on the Counsel Slip, and on reading the consent of the Proposed Monitor to act as the Monitor,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Initial Affidavit.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, independent contractors, sub-contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such

further Assistants, as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the Initial Affidavit, or, with the consent of the Monitor and of the DIP Agent (as defined herein), replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents (as defined below) and the DIP Budget, the Applicant shall be entitled but not required to pay the following expenses and satisfy the following obligations whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, premiums for employee medical, dental, vision, insurance and similar benefit plans or arrangements), amounts owing

under corporate credit cards issued to management and employees of the Applicant, pension benefits or contributions, vacation pay, expenses and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements (but not including termination or severance payments), and all other payroll processing and servicing expenses;

(b) all outstanding and future amounts owing to or in respect of individuals working as independent contractors in connection with the Business;

(c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges; and

(d) the fees and disbursements of Canadian counsel to the Pre-Filing ABL Agent and the DIP Agent in respect of these proceedings, at their standard rates and charges;

(e) with the consent of the Monitor and subject to the Definitive Documents (as defined below), amounts owing for goods or services supplied to the Applicant prior to the date of this Order if, in the opinion of the Applicant, following consultation with the Monitor, such payment is necessary to maintain the uninterrupted operations of the Business on trade terms that are satisfactory to the Applicant.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents and the DIP Budget, the Applicant shall be entitled, but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course on or after the date of this Order, and in carrying out the

provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business (including the value thereof) including, without limitation, payments on account of insurance (including directors' and officers' insurance premiums), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order or, with the consent of the Monitor, payments to obtain the release or delivery of goods contracted for prior to the date of this Order.

9. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Applicant's employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

10. **THIS COURT ORDERS** that, until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein or as permitted by the Definitive Documents, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP ABL Credit Agreement and the Definitive Documents, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of the Applicant's Business or operations, and to dispose of redundant or non-material assets, with the approval of the Monitor, not exceeding USD $100,000, in any one transaction or USD $500,000 in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) disclaim arrangements or agreements of any nature whatsoever with whomever, whether written or oral, as the Applicant deems appropriate, with the Monitor's consent or pursuant to further Order of the Court, in accordance with Section 32 of the CCAA; and

(d) pursue all avenues of financing or refinancing, restructuring, selling, assigning or in any other manner disposing of and/or reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material financing or refinancing, restructuring, sale, assignment, disposition or reorganization,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Applicant or the Business (the "**Restructuring**").

NO PROCEEDINGS AGAINST THE APPLICANT, THE BUSINESS OR THE PROPERTY

13. **THIS COURT ORDERS** that until and including ____, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding, arbitration or enforcement process in or before any court, tribunal or other adjudicator (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property except with the written consent of the Applicant and the Monitor, or with leave of this Court. Any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall:

(a) empower the Applicant to carry on any business that the Applicant is not lawfully entitled to carry on;

(b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA;

(c) prevent the filing of any registration to preserve or perfect a security interest; or

(d) prevent the registration of a claim for a lien.

RELATED PARTY STAY

15. **THIS COURT ORDERS** that during the Stay Period, no Person shall take, commence or continue any enforcement steps or remedial actions against the DCL USA LLC Inventory, including without limitation distraining, seizing, foreclosing, encumbering, repossessing or confiscating such property, except with the written consent of the Applicant, the DIP Agent and the Monitor, or with leave of this Court.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefits services, insurance, warranty services, vehicle and transportation services, temporary labour and staffing services, freight services, sub-contractors, trade suppliers, equipment vendors and rental companies, utility, customs, clearing, warehouse and logistics services or other services to the Business or in respect of the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods, services, trademarks and other intellectual property as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers,

internet addresses and domain names and building and other permits, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

APPROVAL OF INVESTMENT BANKER

19. **THIS COURT ORDERS** that

(a) the agreement dated as of September 6, 2022 pursuant to which the DCL Group has engaged TM Capital Corp. ("**TM Capital**") to provide the services to act as the exclusive investment banker to the DCL Group and the appointment of TM Capital pursuant to the terms thereof is hereby approved, and the Applicant is hereby authorized and directed to pay its pro-rata share of the fees and expenses contemplated thereby including the TM Monthly Fees and the TM Transaction Fees, as such amounts are determined in consultation with the Monitor;

(b) the obligations of the Applicant to TM Capital pursuant to the TM Engagement Letter shall be treated as unaffected and may not be compromised in any plan or

proposal filed under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Applicant.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property (other than the HSBC Cash Collateral), which charge shall not exceed an aggregate amount of CAD $1,700,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.

23. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

24. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant’s receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Agent, of financial and other information as agreed to between the

Applicant and the DIP Agent which may be used in these proceedings including reporting on a basis to be agreed with the DIP Agent;

(d) advise the Applicant in its preparation of the Applicant's cash flow statements;

(e) advise the Applicant in its development of the Plan and any amendments to the Plan, and in the Restructuring;

(f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(i) participate in and assist the Applicant, to the extent required by the Applicant, with any matters relating to any foreign proceeding commenced or impacting the Applicant, including, without limitation, the Chapter 11 Proceedings; and

(j) perform such other duties as are required by this Order or by this Court from time to time.

26. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof.

27. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Agent with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel to the Applicant on a bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant retainers in the aggregate amount up to USD $285,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property (other than the HSBC Cash Collateral), which charge shall not exceed an aggregate amount of USD $1,100,000 as security for their professional fees and disbursements incurred at their respective standard rates and charges, both before and after the

making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 40 and 42 hereof.

CRO APPOINTMENT

33. **THIS COURT ORDERS** that:

(a) the agreement (the "**CRO Engagement Letter**") dated as of November 16, 2022 pursuant to which the DCL Group has engaged Ankura Consulting Group, LLC ("**Ankura**") to provide the services of Scott Davido (the "**CRO**") to act as chief restructuring officer to the DCL Group, a copy of which is attached as Appendix E to the Pre-Filing Report, and the appointment of the CRO pursuant to the terms thereof is hereby approved, and the Applicant is hereby authorized and directed to pay its pro-rata share of the fees and expenses contemplated thereby as such amounts are determined in consultation with the Monitor;

(b) neither Ankura nor the CRO shall, as a result of the performance of their respective obligations and services in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation;

(c) Ankura and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the negligence or wilful misconduct on the part of Ankura or the CRO;

(d) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of Ankura and

the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven days prior to the return date of any such motion for leave; and

(e) the obligations of the Applicant to Ankura and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any plan or proposal filed under the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant.

DIP FINANCING

34. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under the DIP ABL Credit Agreement in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such DIP ABL Credit Agreement shall not exceed the principal amount of USD $55 million unless permitted by further Order of this Court.

35. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver (i) the DIP ABL Credit Agreement and to make such non-material alterations, changes, amendments, deletions or additions thereto after the execution thereof as may be agreed to by the parties with the consent of the Monitor, and (ii) such other agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, including the DIP ABL Credit Agreement, the "**Definitive Documents**"), as contemplated by the DIP ABL Credit Agreement or as may be reasonably

required by the DIP Agent pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Agent and the DIP Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. **THIS COURT ORDERS** that the DIP Agent for and on behalf of itself and the DIP Lenders, shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Charge**") (i) on the Property (other than Excluded Collateral) to secure the obligations of the Applicant under the Definitive Documents, and (ii) on the DCL USA LLC Inventory to secure the obligations of DCL USA LLC under the Definitive Documents, which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 40 and 42 hereof.

37. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Charge, the DIP Agent may:

(i) immediately cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Agent to the Applicant against the obligations of the Applicant to the DIP Agent or the DIP Lenders under the Definitive Documents or the DIP Charge, make demand, accelerate payment and give other notices; and

(ii) upon 5 days' prior written notice to the Applicant, the Monitor and the Service List seek the Court's authorization to exercise any and all of its rights and remedies against the Applicant, the Property (other than Excluded Collateral) and/or the DCL USA LLC Inventory, under or pursuant to the Definitive Documents and the DIP Charge, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, with respect to the Applicant, the Property and/or the DCL USA LLC Inventory, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

(c) the foregoing rights and remedies of the DIP Agent shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant, the Property (other than Excluded Collateral) and/or the DCL USA LLC Inventory.

38. **THIS COURT ORDERS AND DECLARES** that the DIP Agent and the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada, with respect to any advances made under Definitive Documents.

INTERCOMPANY LENDING

39. **THIS COURT ORDERS** that the Intercompany Agreements are hereby approved, *nunc pro tunc*, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to by the parties with the consent of the Monitor and the DIP Agent, and that, to the extent that DCL USA LLC (in such capacity, the "**Intercompany Lender**") after the date

of this Order makes a DCL Canada Loan (as defined in the US/Canada Intercompany Agreement), the Intercompany Lender is hereby granted a charge (the "**Intercompany Charge**") on all of the Property (other than the HSBC Cash Collateral) in the amount of such Intercompany Loans, in aggregate. The Intercompany Charge shall have the priority set out in paragraphs 40 and 42.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Charge, the Intercompany Charge, the Directors' Charge (collectively, the "**Charges**"), the ABL Pre-Filing Security and the Term Loan Security, as among them, as against the Property shall be as follows:

With respect to ABL Priority Collateral (as defined in the Intercreditor Agreement):

Charge/Security Interest	**Rank/Priority**
Administration Charge	First
DIP Charge	Second
ABL Pre-Filing Security	Third
Term Loan Security	Fourth
Intercompany Charge (if any)	Fifth
Directors' Charge	Sixth

With respect to Term Loan Priority Collateral (as defined in the Intercreditor Agreement):

Charge/Security Interest	**Rank/Priority**
Administration Charge	First
Term Loan Security	Second
DIP Charge	Third
ABL Pre-Filing's Security	Fourth
Intercompany Charge (if any)	Fifth
Directors' Charge	Sixth

41. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as

against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

42. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property (other than Excluded Collateral with respect to the DIP Charge and HSBC Cash Collateral with respect to all other Charges) and such Charges shall rank in priority to all other security interests, trusts (including deemed or constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including, without limitation, any deemed trusts that may be created under any statute, including, without limitation, the Ontario *Pension Benefits Act*) (collectively, "**Encumbrances**") in favour of any Person.

43. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the other affected beneficiaries of the Charges, ABL Pre-Filing Security and Term Loan Security or further Order of this Court.

44. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with

respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing governing documents, loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any obligation or Agreement caused by or resulting from the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicant pursuant to this Order or the Definitive Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

45. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

46. **THIS COURT ORDERS** that service of the within application record, together with written confirmation of the date of such hearings, to the Notice Parties in respect of this Order constitutes notice of the Comeback Hearing and the Bidding Procedures Hearing.

47. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five (5) days' after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than CAD $1,000 (excluding any individual employees, former employees with pension and/or retirement savings or benefits plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plan), and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

48. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: https://www.alvarezandmarsal.com/DCLCanada (the "**Monitor's Website**").

49. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

50. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery, facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

51. **THIS COURT ORDERS** that the Applicant, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

52. **THIS COURT ORDERS** the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network and attached hereto as Schedule "**A**" are adopted to facilitate communications between this Court and the U.S. Bankruptcy Court.

53. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, restate or supplement this Order or for advice and directions concerning the discharge of its respective powers and duties under this Order.

54. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

55. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom, the Netherlands, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

56. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the

terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

57. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Service List and any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

58. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

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SCHEDULE "A"

Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters

GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN COURTS IN CROSS-BORDER INSOLVENCY MATTERS

INTRODUCTION

A. The overarching objective of these Guidelines is to improve in the interests of all stakeholders the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction ("Parallel Proceedings") by enhancing coordination and cooperation amongst courts under whose supervision such proceedings are being conducted. These Guidelines represent best practice for dealing with Parallel Proceedings.

B. In all Parallel Proceedings, these Guidelines should be considered at the earliest practicable opportunity.

C. In particular, these Guidelines aim to promote:

(i) the efficient and timely coordination and administration of Parallel Proceedings;

(ii) the administration of Parallel Proceedings with a view to ensuring relevant stakeholders' interests are respected;

(iii) the identification, preservation, and maximisation of the value of the debtor's assets, including the debtor's business;

(iv) the management of the debtor's estate in ways that are proportionate to the amount of money involved, the nature of the case, the complexity of the issues, the number of creditors, and the number of jurisdictions involved in Parallel Proceedings;

(v) the sharing of information in order to reduce costs; and

(vi) the avoidance or minimisation of litigation, costs, and inconvenience to the parties[1] in Parallel Proceedings.

D. These Guidelines should be implemented in each jurisdiction in such manner as the jurisdiction deems fit[2].

E. These Guidelines are not intended to be exhaustive and in each case consideration ought to be given to the special requirements in that case.

F. Courts should consider in all cases involving Parallel Proceedings whether and how to implement these Guidelines. Courts should encourage and where necessary direct, if they have the power to do so, the parties to make the necessary applications to the court to facilitate such implementation by a protocol or order derived from these Guidelines, and encourage them to act so as to promote the objectives and aims of these Guidelines wherever possible.

[1] The term "parties" when used in these Guidelines shall be interpreted broadly.
[2] Possible modalities for the implementation of these Guidelines include practice directions and commercial guides.

ADOPTION & INTERPRETATION

Guideline 1: In furtherance of paragraph F above, the courts should encourage administrators in Parallel Proceedings to cooperate in all aspects of the case, including the necessity of notifying the courts at the earliest practicable opportunity of issues present and potential that may (a) affect those proceedings; and (b) benefit from communication and coordination between the courts. For the purpose of these Guidelines, "administrator" includes a liquidator, trustee, judicial manager, administrator in administration proceedings, debtor-in-possession in a reorganisation or scheme of arrangement, or any fiduciary of the estate or person appointed by the court.

Guideline 2: Where a court intends to apply these Guidelines (whether in whole or in part and with or without modification) in particular Parallel Proceedings, it will need to do so by a protocol or an order[3], following an application by the parties or pursuant to a direction of the court if the court has the power to do so.

Guideline 3: Such protocol or order should promote the efficient and timely administration of Parallel Proceedings. It should address the coordination of requests for court approvals of related decisions and actions when required and communication with creditors and other parties. To the extent possible, it should also provide for timesaving procedures to avoid unnecessary and costly court hearings and other proceedings.

Guideline 4: These Guidelines when implemented are not intended to:

(i) interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings including its authority or supervision over an administrator in those proceedings;

(ii) interfere with or derogate from the rules or ethical principles by which an administrator is bound according to any applicable law and professional rules;

(iii) prevent a court from refusing to take an action that would be manifestly contrary to the public policy of the jurisdiction; or

(iv) confer or change jurisdiction, alter substantive rights, interfere with any function or duty arising out of any applicable law, or encroach upon any applicable law.

Guideline 5: For the avoidance of doubt, a protocol or order under these Guidelines is procedural in nature. It should not constitute a limitation on or waiver by the court of any powers, responsibilities, or authority or a substantive determination of any matter in controversy before the court or before the other court or a waiver by any of the parties of any of their substantive rights and claims.

Guideline 6: In the interpretation of these Guidelines or any protocol or order under these Guidelines, due regard shall be given to their international origin and to the need to promote good faith and uniformity in their application.

[3] In the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.

COMMUNICATION BETWEEN COURTS

Guideline 7: A court may receive communications from a foreign court and may respond directly to them. Such communications may occur for the purpose of the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to any joint hearing where Annex A is applicable. Such communications may take place through the following methods or such other method as may be agreed by the two courts in a specific case:

(i) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings or other documents directly to the other court and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.

(ii) Directing counsel to transmit or deliver copies of documents, pleadings, affidavits, briefs or other documents that are filed or to be filed with the court to the other court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.

(iii) Participating in two-way communications with the other court, in which case Guideline 8 should be considered.

Guideline 8: In the event of communications between courts, unless otherwise directed by any court involved in the communications whether on an *ex parte* basis or otherwise, or permitted by a protocol, the following shall apply:

(i) In the normal case, parties may be present.

(ii) If the parties are entitled to be present, advance notice of the communications shall be given to all parties in accordance with the rules of procedure applicable in each of the courts to be involved in the communications and the communications between the courts shall be recorded and may be transcribed. A written transcript may be prepared from a recording of the communications that, with the approval of each court involved in the communications, may be treated as the official transcript of the communications.

(iii) Copies of any recording of the communications, of any transcript of the communications prepared pursuant to any direction of any court involved in the communications, and of any official transcript prepared from a recording may be filed as part of the record in the proceedings and made available to the parties and subject to such directions as to confidentiality as any court may consider appropriate.

(iv) The time and place for communications between the courts shall be as directed by the courts. Personnel other than judges in each court may communicate with each other to establish appropriate arrangements for the communications without the presence of the parties.

Guideline 9: A court may direct that notice of its proceedings be given to parties in proceedings in another jurisdiction. All notices, applications, motions, and other materials served for purposes of the proceedings before the court may be ordered to be provided to such other parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the court in accordance with the procedures applicable in the court.

APPEARANCE IN COURT

Guideline 10: A court may authorise a party, or an appropriate person, to appear before and be heard by a foreign court, subject to approval of the foreign court to such appearance.

Guideline 11: If permitted by its law and otherwise appropriate, a court may authorise a party to a foreign proceeding, or an appropriate person, to appear and be heard by it without thereby becoming subject to its jurisdiction.

CONSEQUENTIAL PROVISIONS

Guideline 12: A court shall, except on proper objection on valid grounds and then only to the extent of such objection, recognise and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in other jurisdictions without further proof. For the avoidance of doubt, such recognition and acceptance does not constitute recognition or acceptance of their legal effect or implications.

Guideline 13: A court shall, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in other jurisdictions were duly and properly made or entered on their respective dates and accept that such orders require no further proof for purposes of the proceedings before it, subject to its law and all such proper reservations as in the opinion of the court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such orders. Notice of any amendments, modifications, extensions, or appellate decisions with respect to such orders shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

Guideline 14: A protocol or order made by a court under these Guidelines is subject to such amendments, modifications, and extensions as may be considered appropriate by the court, and to reflect the changes and developments from time to time in any Parallel Proceedings. Notice of such amendments, modifications, or extensions shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

ANNEX A (JOINT HEARINGS)

Annex A to these Guidelines relates to guidelines on the conduct of joint hearings. Annex A shall be applicable to, and shall form a part of these Guidelines, with respect to courts that may signify their assent to Annex A from time to time. Parties are encouraged to address the matters set out in Annex A in a protocol or order.

ANNEX A: JOINT HEARINGS

A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following shall apply, or where relevant, be considered for inclusion in a protocol or order:

(i) The implementation of this Annex shall not divest nor diminish any court's respective independent jurisdiction over the subject matter of proceedings. By implementing this Annex, neither a court nor any party shall be deemed to have approved or engaged in any infringement on the sovereignty of the other jurisdiction.

(ii) Each court shall have sole and exclusive jurisdiction and power over the conduct of its own proceedings and the hearing and determination of matters arising in its proceedings.

(iii) Each court should be able simultaneously to hear the proceedings in the other court. Consideration should be given as to how to provide the best audio-visual access possible.

(iv) Consideration should be given to coordination of the process and format for submissions and evidence filed or to be filed in each court.

(v) A court may make an order permitting foreign counsel or any party in another jurisdiction to appear and be heard by it. If such an order is made, consideration needs to be given as to whether foreign counsel or any party would be submitting to the jurisdiction of the relevant court and/or its professional regulations.

(vi) A court should be entitled to communicate with the other court in advance of a joint hearing, with or without counsel being present, to establish the procedures for the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to the joint hearing.

(vii) A court, subsequent to the joint hearing, should be entitled to communicate with the other court, with or without counsel present, for the purpose of determining outstanding issues. Consideration should be given as to whether the issues include procedural and/or substantive matters. Consideration should also be given as to whether some or all of such communications should be recorded and preserved.

Court File No.:

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

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

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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Lawyers for the Applicant

TAB 6

~~Revised: January 21, 2014~~

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE ~~—~~MADAM JUSTICE ~~—~~CONWAY	)))	~~WEEKDAY~~MONDAY, THE #19TH DAY OF ~~MONTH~~DECEMBER 2022

and restated on December 29, ~~20YR~~2022

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ~~[APPLICANT'S NAME]~~DCL CORPORATION (the ~~"~~"**Applicant**~~"~~")

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the ~~"~~"**CCAA**~~"~~") was heard this day ~~at 330 University Avenue,~~via Zoom videoconference in Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~Scott Davido sworn ~~[DATE]~~December 19, 2022 and the Exhibits thereto (the "**Initial Affidavit**"), and the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicant (in such capacity, the "**Proposed Monitor**") dated December 19, 2022, the First Report of A&M (the "**Pre-Filing Report**") in its capacity as monitor (in such capacity, the "**Monitor**") dated ___, 2022, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for ~~[NAMES], no one~~

~~[1] Including for [NAME] although duly served as appears from the affidavit of service of [NAME]~~ ~~appearing for [NAME]~~ ~~may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2)~~

~~sworn [DATE]~~the Applicant, counsel to the Proposed Monitor and to those other parties listed on the Counsel Slip, and on reading the consent of ~~[MONITOR'S NAME]~~the Proposed Monitor to act as the Monitor,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated[2] so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Initial Affidavit.

APPLICATION

3. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

4. ~~3.~~ **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the ~~"~~"**Plan**~~"~~").

~~may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

~~[2] If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.~~

POSSESSION OF PROPERTY AND OPERATIONS

5. ~~4.~~ **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, independent contractors, sub-contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants, as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. ~~5. [~~**THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system[3] currently in place as described in the Initial Affidavit ~~of [NAME] sworn [DATE] or~~, or, with the consent of the Monitor and of the DIP Agent (as defined herein), replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be

[3] ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.]

7. 6. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents (as defined below) and the DIP Budget, the Applicant shall be entitled but not required to pay the following expenses and satisfy the following obligations whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, premiums for employee medical, dental, vision, insurance and similar benefit plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Applicant, pension benefits or contributions, vacation pay and, expenses and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements (but not including termination or severance payments), and all other payroll processing and servicing expenses; and

(b) all outstanding and future amounts owing to or in respect of individuals working as independent contractors in connection with the Business;

(c) (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges; and

(d) the fees and disbursements of Canadian counsel to the Pre-Filing ABL Agent and the DIP Agent in respect of these proceedings, at their standard rates and charges;

(e) with the consent of the Monitor and subject to the Definitive Documents (as defined below), amounts owing for goods or services supplied to the Applicant prior to the date of this Order if, in the opinion of the Applicant, following consultation with the Monitor, such payment is necessary to maintain the uninterrupted operations of the Business on trade terms that are satisfactory to the Applicant.

8. ~~7.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents and the DIP Budget, the Applicant shall be entitled, but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course on or after the date of this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business (including the value thereof) including, without limitation, payments on account of insurance (including directors' and officers' insurance premiums), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order or, with the consent of the Monitor, payments to obtain the release or delivery of goods contracted for prior to the date of this Order.

9. ~~8.~~ **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Applicant's employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, ~~"~~"**Sales Taxes**~~"~~") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order~~,~~; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

10. ~~9.~~ **THIS COURT ORDERS** that, until a real property lease is disclaimed ~~**[or resiliated]**~~[4] in accordance with the CCAA, the Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and the landlord from time to time (~~"~~"**Rent**~~"~~"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. ~~10.~~ **THIS COURT ORDERS** that, except as specifically permitted herein or as permitted by the Definitive Documents, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

[4] ~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

RESTRUCTURING

12. ~~11.~~ **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP ABL Credit Agreement and the Definitive Documents ~~(as hereinafter defined)~~, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of ~~its business~~the Applicant's Business or operations, ~~[~~and to dispose of redundant or non-material assets, with the approval of the Monitor, not exceeding USD $~~•~~100,000, in any one transaction or USD $~~•~~500,000 in the aggregate~~]~~[5];

(b) ~~[~~terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate~~]~~;

(c) disclaim arrangements or agreements of any nature whatsoever with whomever, whether written or oral, as the Applicant deems appropriate, with the Monitor's consent or pursuant to further Order of the Court, in accordance with Section 32 of the CCAA; and

(d) ~~(c)~~ pursue all avenues of financing or refinancing ~~of its~~, restructuring, selling, assigning or in any other manner disposing of and/or reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material financing or refinancing, restructuring, sale, assignment, disposition or reorganization,

~~[5] Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Applicant or the Business (the "**Restructuring**").

~~12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims **[or resiliates]** the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer **[or resiliation]** of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.~~

~~13. THIS COURT ORDERS that if a notice of disclaimer **[or resiliation]** is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer **[or resiliation]**, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer **[or resiliation]**, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith~~.

NO PROCEEDINGS AGAINST THE APPLICANT, THE BUSINESS OR THE PROPERTY

13. ~~14.~~ **THIS COURT ORDERS** that until and including ~~[DATE – MAX. 30 DAYS]~~ _____, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding, arbitration or enforcement process in or before any court ~~or~~, tribunal or other adjudicator (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property~~,~~ except with the written consent of the Applicant and the Monitor, or with leave of this Court~~, and any~~. Any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property~~,~~ are hereby stayed and suspended, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall ~~(i)~~ :

(a) empower the Applicant to carry on any business ~~which~~that the Applicant is not lawfully entitled to carry on~~, (ii)~~ ;

(b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA~~, (iii)~~ ;

(c) prevent the filing of any registration to preserve or perfect a security interest~~,~~; or

~~(iv)~~

(d) prevent the registration of a claim for a lien.

RELATED PARTY STAY

15. **THIS COURT ORDERS** that during the Stay Period, no Person shall take, commence or continue any enforcement steps or remedial actions against the DCL USA LLC Inventory, including without limitation distraining, seizing, foreclosing, encumbering, repossessing or confiscating such property, except with the written consent of the Applicant, the DIP Agent and the Monitor, or with leave of this Court.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefits services, insurance, warranty services, vehicle and transportation services, ~~utility~~temporary labour and staffing services, freight services, sub-contractors, trade suppliers, equipment vendors and rental companies, utility, customs, clearing, warehouse and logistics services or other services to the Business or in respect of the Applicant, are hereby restrained until further Order of this Court from discontinuing,

altering, interfering with or terminating the supply or license of such goods ~~or~~, services, trademarks and other intellectual property as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names and building and other permits, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.[6]

APPROVAL OF INVESTMENT BANKER

19. **THIS COURT ORDERS** that

(a) the agreement dated as of September 6, 2022 pursuant to which the DCL Group has engaged TM Capital Corp. ("**TM Capital**") to provide the services to act as the exclusive investment banker to the DCL Group and the appointment of TM

[6] ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

Capital pursuant to the terms thereof is hereby approved, and the Applicant is hereby authorized and directed to pay its pro-rata share of the fees and expenses contemplated thereby including the TM Monthly Fees and the TM Transaction Fees, as such amounts are determined in consultation with the Monitor;

(b) the obligations of the Applicant to TM Capital pursuant to the TM Engagement Letter shall be treated as unaffected and may not be compromised in any plan or proposal filed under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Applicant.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. ~~19.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. ~~20.~~ **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,[7] except to the extent that, with

[7] ~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. ~~21.~~ **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "~~"~~**Directors~~'~~ Charge**") [8] on the Property (other than the HSBC Cash Collateral), which charge shall not exceed an aggregate amount of CAD $~~●~~1,700,000, as security for the indemnity provided in paragraph ~~[20]~~21 of this Order. The Directors~~'~~ Charge shall have the priority set out in paragraphs ~~[38]~~40 and ~~[40]~~42 herein.

23. ~~22.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~[20]~~21 of this Order.

APPOINTMENT OF MONITOR

24. ~~23.~~ **THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall

~~[8] Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. ~~24.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant~~!~~'s receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP ~~Lender and its counsel on a [TIME INTERVAL] basis~~Agent, of financial and other information as agreed to between the Applicant and the DIP ~~Lender~~Agent which may be used in these proceedings including reporting on a basis to be agreed with the DIP ~~Lender~~Agent;

(d) advise the Applicant in its preparation of the Applicant~~'~~'s cash flow statements ~~and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender~~;

(e) advise the Applicant in its development of the Plan and any amendments to the Plan, and in the Restructuring;

(f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the ~~Applicant's business~~Business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(i) participate in and assist the Applicant, to the extent required by the Applicant, with any matters relating to any foreign proceeding commenced or impacting the Applicant, including, without limitation, the Chapter 11 Proceedings; and

(j) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

26. ~~25.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof.

27. ~~26.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, ~~"~~"**Possession**"") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "~~"~~**Environmental Legislation**~~"~~"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. ~~27.~~ **THIS COURT ORDERS** that ~~that~~ the Monitor shall provide any creditor of the Applicant and the DIP ~~Lender~~Agent with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

29. ~~28.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save

and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel ~~for~~to the Applicant on a ~~[TIME INTERVAL]~~bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant~~,~~ retainers in the aggregate amount~~[s] of~~ up to USD $● ~~[~~285,000~~, respectively,]~~ to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. ~~30.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any,~~ and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the ~~"~~"**Administration Charge**~~"~~") on the Property (other than the HSBC Cash Collateral), which charge shall not exceed an aggregate amount of USD $●~~,~~ 1,100,000 as security for their professional fees and disbursements incurred at ~~the~~their respective standard rates and charges ~~of the Monitor and such counsel~~, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~[38]~~40 and ~~[40]~~42 hereof.

CRO APPOINTMENT

33. **THIS COURT ORDERS** that:

(a) the agreement (the "**CRO Engagement Letter**") dated as of November 16, 2022 pursuant to which the DCL Group has engaged Ankura Consulting Group, LLC ("**Ankura**") to provide the services of Scott Davido (the "**CRO**") to act as chief restructuring officer to the DCL Group, a copy of which is attached as Appendix E to the Pre-Filing Report, and the appointment of the CRO pursuant to the terms thereof is hereby approved, and the Applicant is hereby authorized and directed to pay its pro-rata share of the fees and expenses contemplated thereby as such amounts are determined in consultation with the Monitor;

(b) neither Ankura nor the CRO shall, as a result of the performance of their respective obligations and services in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation;

(c) Ankura and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the negligence or wilful misconduct on the part of Ankura or the CRO;

(d) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of Ankura and the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or

with leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven days prior to the return date of any such motion for leave; and

(e) the obligations of the Applicant to Ankura and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any plan or proposal filed under the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant.

DIP FINANCING

34. ~~32.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under ~~a credit facility from [DIP LENDER'S NAME] (~~the ~~"~~DIP ~~Lender")~~ABL Credit Agreement in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such ~~credit facility~~DIP ABL Credit Agreement shall not exceed ~~$●~~the principal amount of USD $55 million unless permitted by further Order of this Court.

~~33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed.~~

35. ~~34.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver ~~such credit~~(i) the DIP ABL Credit Agreement and to make such non-material alterations, changes, amendments, deletions or additions thereto after the execution thereof as may be agreed to by the parties with the consent of the Monitor, and (ii) such other agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive

documents (collectively, ~~the "~~including the DIP ABL Credit Agreement, the "**Definitive Documents**~~"~~"), as ~~are~~ contemplated by the ~~Commitment Letter~~DIP ABL Credit Agreement or as may be reasonably required by the DIP ~~Lender~~Agent pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP ~~Lender~~Agent and the DIP Lenders under and pursuant to ~~the Commitment Letter and~~ the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. ~~35.~~ **THIS COURT ORDERS** that the DIP ~~Lender~~Agent for and on behalf of itself and the DIP Lenders, shall be entitled to the benefit of and is hereby granted a charge (the ~~"~~"**DIP ~~Lender's~~ Charge**~~"~~") (i) on the Property (other than Excluded Collateral) to secure the obligations of the Applicant under the Definitive Documents, and (ii) on the DCL USA LLC Inventory to secure the obligations of DCL USA LLC under the Definitive Documents, which DIP ~~Lender's~~ Charge shall not secure an obligation that exists before this Order is made. The DIP ~~Lender's~~ Charge shall have the priority set out in paragraphs ~~[38]~~40 and ~~[40]~~42 hereof.

37. ~~36.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP ~~Lender~~Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP ~~Lender's~~ Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP ~~Lender's~~ Charge, the DIP ~~Lender, upon ● days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease~~

~~making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender~~Agent may:

(i) immediately cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Agent to the Applicant against the obligations of the Applicant to the DIP ~~Lender~~Agent or the DIP Lenders under the ~~Commitment Letter, the~~ Definitive Documents or the DIP ~~Lender's~~ Charge, ~~to make demand, accelerate payment and give other notices, or~~ make demand, accelerate payment and give other notices; and

(ii) upon 5 days' prior written notice to the Applicant, the Monitor and the Service List seek the Court's authorization to exercise any and all of its rights and remedies against the Applicant, the Property (other than Excluded Collateral) and/or the DCL USA LLC Inventory, under or pursuant to the Definitive Documents and the DIP Charge, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, with respect to the Applicant, the Property and/or the DCL USA LLC Inventory, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

(c) the foregoing rights and remedies of the DIP ~~Lender~~Agent shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant ~~or~~, the Property (other than Excluded Collateral) and/or the DCL USA LLC Inventory.

38. ~~37.~~ **THIS COURT ORDERS AND DECLARES** that the DIP ~~Lender~~Agent and the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada ~~(the "BIA")~~, with respect to any advances made under ~~the~~ Definitive Documents.

INTERCOMPANY LENDING

39. **THIS COURT ORDERS** that the Intercompany Agreements are hereby approved, *nunc pro tunc*, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to by the parties with the consent of the Monitor and the DIP Agent, and that, to the extent that DCL USA LLC (in such capacity, the "**Intercompany Lender**") after the date of this Order makes a DCL Canada Loan (as defined in the US/Canada Intercompany Agreement), the Intercompany Lender is hereby granted a charge (the "**Intercompany Charge**") on all of the Property (other than the HSBC Cash Collateral) in the amount of such Intercompany Loans, in aggregate. The Intercompany Charge shall have the priority set out in paragraphs 40 and 42.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. ~~38.~~ **THIS COURT ORDERS** that the priorities of the ~~Directors' Charge, the~~ Administration Charge, the DIP Charge, the Intercompany Charge, the Directors' Charge (collectively, the "**Charges**"), the ABL Pre-Filing Security and the ~~DIP Lender's Charge~~Term Loan Security, as among them, as against the Property shall be as follows[9]:

[9] ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA~~

With respect to ABL Priority Collateral (as defined in the Intercreditor Agreement):

Charge/Security Interest	Rank/Priority
~~First —~~Administration Charge ~~(to the maximum amount of $●);~~	First
DIP Charge	Second
ABL Pre-Filing Security	Third
Term Loan Security	Fourth
Intercompany Charge (if any)	Fifth
Directors' Charge	Sixth

With respect to Term Loan Priority Collateral (as defined in the Intercreditor Agreement):

Charge/Security Interest	Rank/Priority
Administration Charge	First
Term Loan Security	Second~~—~~
DIP ~~Lender's~~Charge	Third
ABL Pre-Filing's Security	Fourth
Intercompany Charge~~; and~~ (if any)	Fifth
~~Third —~~Directors' Charge ~~(to the maximum amount of $●).~~	Sixth

41. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "~~Charges~~")~~ shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

42. ~~40.~~ **THIS COURT ORDERS** that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~Charges shall constitute a charge on the Property (other than Excluded Collateral with respect to the DIP

~~now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

Charge and HSBC Cash Collateral with respect to all other Charges) and such Charges shall rank in priority to all other security interests, trusts (including deemed or constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including, without limitation, any deemed trusts that may be created under any statute, including, without limitation, the Ontario *Pension Benefits Act*) (collectively, "~~"~~**Encumbrances**~~"~~") in favour of any Person.

43. ~~41.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~Charges, unless the Applicant also obtains the prior written consent of the Monitor~~, the DIP Lender~~ and the other affected beneficiaries of the ~~Directors' Charge and the Administration Charge,~~Charges, ABL Pre-Filing Security and Term Loan Security or further Order of this Court.

44. ~~42.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge~~Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "~~"~~**Chargees**~~"~~") ~~and/or the DIP Lender~~ thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA~~,~~ or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation

of Encumbrances, contained in any existing governing documents, loan documents, lease, sublease, offer to lease or other agreement (collectively, an "~~"~~**Agreement**~~"~~") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of ~~the Commitment Letter or~~ the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any obligation or Agreement caused by or resulting from ~~the Applicant entering into the Commitment Letter,~~ the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicant pursuant to this Order~~, the Commitment Letter~~ or the Definitive Documents~~,~~ and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

45. ~~43.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

46. **THIS COURT ORDERS** that service of the within application record, together with written confirmation of the date of such hearings, to the Notice Parties in respect of this Order constitutes notice of the Comeback Hearing and the Bidding Procedures Hearing.

47. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall (~~i~~a) without delay, publish in ~~[newspapers specified by the Court]~~The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (~~ii~~b) within five (5) days~~'~~ after the date of this Order, (~~A~~i) make this Order publicly available in the manner prescribed under the CCAA, (~~B~~ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than CAD $~~1000~~1,000 (excluding any individual employees, former employees with pension and/or retirement savings or benefits plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plan), and (~~C~~iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

48. ~~45.~~ **THIS COURT ORDERS** that the E-Service ~~Protocol~~Guide of the Commercial List (the "~~**Protocol**~~**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website at ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol~~Guide will be effective on transmission. This Court further orders

that a Case Website shall be established in accordance with the ~~Protocol~~Guide with the following URL ~~'<@>'~~: https://www.alvarezandmarsal.com/DCLCanada (the "**Monitor's Website**").

49. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

50. ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the ~~Protocol~~Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery ~~or~~, facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution ~~by courier, personal delivery or facsimile transmission~~ shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof, ~~or~~(b) if delivered by personal delivery, facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

51. **THIS COURT ORDERS** that the Applicant, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other

interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

52. **THIS COURT ORDERS** the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network and attached hereto as Schedule "**A**" are adopted to facilitate communications between this Court and the U.S. Bankruptcy Court.

53. ~~47.~~ **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, restate or supplement this Order or for advice and directions ~~in~~concerning the discharge of its respective powers and duties ~~hereunder~~under this Order.

54. ~~48.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

55. ~~49.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada ~~or in~~, the United Kingdom, the Netherlands, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this

Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

56. ~~50.~~ **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

57. ~~51.~~ **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Service List and any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

58. ~~52.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. ~~Eastern Standard/Daylight Time~~(Toronto time) on the date of this Order.

SCHEDULE "A"

Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters

[TO BE INSERTED]

Court File No.:

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

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

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

BLAKE, CASSELS & GRAYDON LLP
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Lawyers for the Applicant

Document comparison by Workshare Compare on Tuesday, December 20, 2022 8:44:46 AM

Input:	
Document 1 ID	PowerDocs://TOR_2024/13170734/1
Description	TOR_2024-#13170734-v1-Model_CCAA_Initial_Order
Document 2 ID	PowerDocs://TOR_2024/13165323/13
Description	TOR_2024-#13165323-v13-DCL-Amended_and_Restated_Initial_Order
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:

	Count
Insertions	389
Deletions	290
Moved from	8
Moved to	8
Style changes	0
Format changes	0
Total changes	695

TAB 7

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM	)	MONDAY, THE 19TH
	)	
JUSTICE CONWAY	)	DAY OF DECEMBER 2022
		and restated on December 29, 2022

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

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

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day via Zoom videoconference in Toronto, Ontario.

ON READING the affidavit of Scott Davido sworn December 19, 2022 and the Exhibits thereto (the "**Initial Affidavit**"), and the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicant (in such capacity, the "**Proposed Monitor**") dated December 19, 2022, the First Report of A&M (the "**Pre-Filing Report**") in its capacity as monitor (in such capacity, the "**Monitor**") dated ___, 2022, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel to the Proposed Monitor and to those other parties listed on the Counsel Slip, and on reading the consent of the

Proposed Monitor to act as the Monitor ~~(in such capacity, the "**Monitor**")~~,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for ~~and method of~~ service of the Notice of Application and the Application Record ~~are~~is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Initial Affidavit.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

5. ~~4.~~ **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, independent contractors, sub-contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain

such further Assistants, as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. ~~5.~~ **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the Initial Affidavit, or, with the consent of the Monitor and of the DIP Agent (as defined herein), replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under ~~any plan~~the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. ~~6.~~ **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents (as defined below) and the DIP Budget, the Applicant shall be entitled but not required to pay the following expenses and satisfy the following obligations whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, premiums for employee medical, dental, vision, insurance and similar benefit plans or arrangements), amounts owing

under corporate credit cards issued to management and employees of the Applicant, pension benefits or contributions, vacation pay, expenses and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements (but not including termination or severance payments), and all other payroll processing and servicing expenses;

(b) all outstanding and future amounts owing to or in respect of individuals working as independent contractors in connection with the Business;

(c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges; and

(d) the fees and disbursements of Canadian counsel to the Pre-Filing ABL Agent and the DIP Agent in respect of these proceedings, at their standard rates and charges;

(e) with the consent of the Monitor and subject to the Definitive Documents (as defined below), amounts owing for goods or services supplied to the Applicant prior to the date of this Order if, in the opinion of the Applicant, following consultation with the Monitor, such payment is necessary to maintain the uninterrupted operations of the Business on trade terms that are satisfactory to the Applicant.

8. ~~7.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents and the DIP Budget, the Applicant shall be entitled, but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course on or after the date of this Order, and in carrying out the

provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business (including the value thereof) including, without limitation, payments on account of insurance (including directors' and officers' insurance premiums), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order or, with the consent of the Monitor, payments to obtain the release or delivery of goods contracted for prior to the date of this Order.

9. ~~8.~~ **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Applicant's employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

10. ~~9.~~ **THIS COURT ORDERS** that, until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. ~~10.~~ **THIS COURT ORDERS** that, except as specifically permitted herein~~,~~ or as permitted by the Definitive Documents, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP ABL Credit Agreement and the Definitive Documents, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of the Applicant's Business or operations, and to dispose of redundant or non-material assets, with the approval of the Monitor, not exceeding USD $100,000, in any one transaction or USD $500,000 in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) disclaim arrangements or agreements of any nature whatsoever with whomever, whether written or oral, as the Applicant deems appropriate, with the Monitor's consent or pursuant to further Order of the Court, in accordance with Section 32 of the CCAA; and

(d) pursue all avenues of financing or refinancing, restructuring, selling, assigning or in any other manner disposing of and/or reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material financing or refinancing, restructuring, sale, assignment, disposition or reorganization,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Applicant or the Business (the "**Restructuring**").

NO PROCEEDINGS AGAINST THE APPLICANT, THE BUSINESS OR THE PROPERTY

13. ~~11.~~ **THIS COURT ORDERS** that until and including ~~December 29~~ ____, ~~2022~~2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding, arbitration or enforcement process in or before any court, tribunal or other adjudicator (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property except with the written consent of the Applicant and the Monitor, or with leave of this Court. Any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. ~~12.~~ **THIS COURT ORDERS** that~~,~~ during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall:

(a) empower the Applicant to carry on any business that the Applicant is not lawfully entitled to carry on;

(b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA;

(c) prevent the filing of any registration to preserve or perfect a security interest; or

(d) prevent the registration of a claim for a lien.

RELATED PARTY STAY

15. ~~13.~~ **THIS COURT ORDERS** that~~,~~ during the Stay Period, no Person shall take, commence or continue any enforcement steps or remedial actions against the DCL USA LLC Inventory, including without limitation distraining, seizing, foreclosing, encumbering, repossessing or confiscating such property, except with the written consent of the Applicant, the DIP Agent and the Monitor, or with leave of this Court.

NO INTERFERENCE WITH RIGHTS

16. ~~14.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefits services, insurance, warranty services, vehicle and transportation services, temporary labour and staffing services, freight services, sub-contractors, trade suppliers, equipment vendors and rental companies, utility, customs, clearing, warehouse and logistics services or other services to the Business or in respect of the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods,

services, trademarks and other intellectual property as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names and building and other permits, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. ~~16.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of ~~leased~~lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

APPROVAL OF INVESTMENT BANKER

19. **THIS COURT ORDERS** that

(a) the agreement dated as of September 6, 2022 pursuant to which the DCL Group has engaged TM Capital Corp. ("**TM Capital**") to provide the services to act as the exclusive investment banker to the DCL Group and the appointment of TM Capital pursuant to the terms thereof is hereby approved, and the Applicant is hereby authorized and directed to pay its pro-rata share of the fees and expenses contemplated thereby including the TM Monthly Fees and the TM Transaction Fees, as such amounts are determined in consultation with the Monitor;

(b) the obligations of the Applicant to TM Capital pursuant to the TM Engagement Letter shall be treated as unaffected and may not be compromised in any plan or proposal filed under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Applicant.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS~~'~~' AND OFFICERS~~'~~' INDEMNIFICATION AND CHARGE

21. ~~18.~~ **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. ~~19.~~ **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property (other than the HSBC Cash Collateral), which charge shall not exceed an aggregate amount of CAD $~~1,000,000~~1,700,000, as security for the indemnity provided in paragraph ~~18~~21

of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~37~~40 and ~~39~~42 herein.

23. ~~20.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~18~~21 of this Order.

APPOINTMENT OF MONITOR

24. ~~21.~~ **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. ~~22.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant’s receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the

Restructuring and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Agent, of financial and other information as agreed to between the Applicant and the DIP Agent which may be used in these proceedings including reporting on a basis to be agreed with the DIP Agent;

(d) advise the Applicant in its preparation of the Applicant's cash flow statements;

(e) advise the Applicant in its development of the Plan and any amendments to the Plan, and in the Restructuring;

(f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(g) ~~(e)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Business and financial affairs or to perform its duties arising under this Order;

(h) ~~(f)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(i) ~~(g)~~ participate in and assist the Applicant, to the extent required by the Applicant, with any matters relating to any foreign proceeding commenced or impacting the Applicant, including, without limitation, the Chapter 11 Proceedings; and

(j) ~~(h)~~ perform such other duties as are required by this Order or by this Court from time to time.

26. ~~23.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof.

27. ~~24.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. ~~25.~~ **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Agent with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information

disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

29. ~~26.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. ~~27.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel to the Applicant on a bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant retainers in the aggregate amount up to USD $285,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. ~~28.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the

"**Administration Charge**") on the Property (other than the HSBC Cash Collateral), which charge shall not exceed an aggregate amount of USD $~~175,000~~1,100,000 as security for their professional fees and disbursements incurred at their respective standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~37~~40 and ~~39~~42 hereof.

CRO APPOINTMENT

33. ~~30.~~ **THIS COURT ORDERS** that:

(a) the agreement (the "**CRO Engagement Letter**") dated as of November 16, 2022 pursuant to which the DCL Group has engaged Ankura Consulting Group, LLC ("**Ankura**") to provide the services of Scott Davido (the "**CRO**") to act as chief restructuring officer to the DCL Group, a copy of which is attached as Appendix E to the Pre-Filing Report, and the appointment of the CRO pursuant to the terms thereof is hereby approved, and the Applicant is hereby authorized and directed to pay its pro-rata share of the fees and expenses contemplated thereby as such amounts are determined in consultation with the Monitor;

(b) neither Ankura nor the CRO shall, as a result of the performance of their respective obligations and services in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation;

(c) Ankura and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or

liabilities result from the negligence or wilful misconduct on the part of Ankura or the CRO;

(d) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of Ankura and the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven days prior to the return date of any such motion for leave; and

(e) the obligations of the Applicant to Ankura and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any plan or proposal filed under the *Bankruptcy and Insolvency Act* (Canada~~) (the "BIA"~~) in respect of the Applicant.

DIP FINANCING

34. ~~31.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under the DIP ABL Credit Agreement in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such DIP ABL Credit Agreement shall not exceed the principal amount of USD $~~5,000,000~~55 million unless permitted by further Order of this Court.

35. ~~32.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver (i) the DIP ABL Credit Agreement and to make such non-material alterations, changes, amendments, deletions or additions thereto after the execution thereof as

may be agreed to by the parties with the consent of the Monitor, and (ii) such other agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, including the DIP ABL Credit Agreement, the "**Definitive Documents**"), as contemplated by the DIP ABL Credit Agreement or as may be reasonably required by the DIP Agent pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Agent and the DIP Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. ~~33.~~ **THIS COURT ORDERS** that the DIP Agent for and on behalf of itself and the DIP Lenders, shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Charge**") (i) on the Property (other than Excluded Collateral) to secure the obligations of the Applicant under the Definitive Documents, and (ii) on the DCL USA LLC Inventory to secure the obligations of DCL USA LLC under the Definitive Documents, which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs ~~37~~40 and ~~39~~42 hereof.

37. ~~34.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Charge, the DIP Agent may:

(i) immediately cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Agent to the Applicant against

the obligations of the Applicant to the DIP Agent or the DIP Lenders under the Definitive Documents or the DIP Charge, make demand, accelerate payment and give other notices; and

(ii) upon 5 days' prior written notice to the Applicant, the Monitor and the Service List seek the Court's authorization to exercise any and all of its rights and remedies against the Applicant ~~or~~, the Property (other than Excluded Collateral) and/or the DCL USA LLC Inventory, under or pursuant to the Definitive Documents and the DIP Charge, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, with respect to the Applicant, the Property and/or the DCL USA LLC Inventory, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

(c) the foregoing rights and remedies of the DIP Agent shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant ~~or~~, the Property (other than Excluded Collateral) and/or the DCL USA LLC Inventory.

38. ~~35.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Agent and the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the ~~BIA~~*Bankruptcy and Insolvency Act* of Canada, with respect to any advances made under ~~the~~ Definitive Documents.

INTERCOMPANY LENDING

39. ~~36.~~ **THIS COURT ORDERS** that the Intercompany Agreements are hereby approved, *nunc pro tunc*, ~~and the Applicant is authorized to make~~with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to by the parties with the consent of the Monitor and the DIP Agent, and that, to the extent that DCL USA LLC (in such capacity, the "**Intercompany Lender**") after the date of this Order makes a DCL Canada Loan (as defined in the US/Canada Intercompany Agreement) ~~after the date of this Order~~, the Intercompany Lender is hereby granted a charge (the "**Intercompany Charge**") on all of the Property (other than the HSBC Cash Collateral) in the amount of such ~~aggregate~~ Intercompany Loans, in aggregate. The Intercompany Charge shall have the priority set out in paragraphs ~~37~~40 and ~~39~~42.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. ~~37.~~ **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Charge, the Intercompany Charge, the Directors' Charge (collectively, the "**Charges**"), the ABL Pre-Filing Security and the Term Loan Security, as among them, as against the Property shall be as follows:

With respect to ABL Priority Collateral (as defined in the Intercreditor Agreement):

Charge/Security Interest	**Rank/Priority**
Administration Charge	First
DIP Charge	Second
ABL Pre-Filing Security	Third
Term Loan Security	Fourth
Intercompany Charge (if any)	Fifth
Directors' Charge	Sixth

With respect to Term Loan Priority Collateral (as defined in the Intercreditor Agreement):

Charge/Security Interest	**Rank/Priority**
Administration Charge	First
Term Loan Security	Second
DIP Charge	Third
ABL Pre-Filing's Security	Fourth
Intercompany Charge (if any)	Fifth
Directors' Charge	Sixth

41. ~~38.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

42. ~~39.~~ **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property (other than Excluded Collateral with respect to the DIP Charge and HSBC Cash Collateral with respect to all other Charges) and such Charges shall rank in priority to all other security interests, trusts (including deemed or constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including, without limitation,

any deemed trusts that may be created under any statute, including, without limitation, the Ontario *Pension Benefits Act*) (collectively, "**Encumbrances**") in favour of any Person~~, except for any Person who is a "secured creditor" as defined in the CCAA that has not been served with the Notice of Application for this Order.~~

~~40. **THIS COURT ORDERS** that the Applicant shall be entitled, at the Comeback Hearing, on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges may not have obtained priority pursuant to this Order~~.

43. ~~41.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the other affected beneficiaries of the Charges, ABL Pre-Filing Security and Term Loan Security~~,~~ or further Order of this Court.

44. ~~42.~~ **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing governing documents, loan documents, lease, sublease, offer to lease or other agreement

(collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any obligation or Agreement caused by or resulting from the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicant pursuant to this Order or the Definitive Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

45. ~~43.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

46. ~~44.~~ **THIS COURT ORDERS** that service of the within application record, together with written confirmation of the date of such hearings, to the Notice Parties in respect of this Order constitutes notice of the Comeback Hearing and the Bidding Procedures Hearing.

47. ~~45.~~ **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five (5) days' after the date of this Order, (i) make this Order publicly

available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than CAD $1,000 (excluding any individual employees, former employees with pension and/or retirement savings or benefits plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plan), and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

48. ~~46.~~ **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: https://www.alvarezandmarsal.com/DCLCanada (the "**Monitor's Website**").

49. ~~47.~~ **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the

"**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

50. ~~48.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery, facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

51. ~~49.~~ **THIS COURT ORDERS** that the Applicant, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

52. ~~50.~~ **THIS COURT ORDERS** the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network and attached hereto as Schedule "**A**" are adopted to facilitate communications between this Court and the U.S. Bankruptcy Court.

53. ~~51.~~ **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, restate or supplement this Order or for advice and directions concerning the discharge of its respective powers and duties under this Order.

54. ~~52.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

55. ~~53.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom, the Netherlands, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

56. ~~54.~~ **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in

carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

57. ~~55.~~ **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Service List and any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

58. ~~56.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

SCHEDULE "A"

Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters

[TO BE INSERTED]

Court File No.:

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

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

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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Document comparison by Workshare Compare on Tuesday, December 20, 2022 8:47:57 AM

Input:	
Document 1 ID	PowerDocs://TOR_2024/13165317/15
Description	TOR_2024-#13165317-v15-DCL-Initial_Order_(CCAA)_
Document 2 ID	PowerDocs://TOR_2024/13165323/13
Description	TOR_2024-#13165323-v13-DCL-Amended_and_Restated_Initial_Order
Rendering set	Standard

Legend:	
Insertion	
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Style change	
Format change	
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Deleted cell	
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Padding cell	

Statistics:

	Count
Insertions	127
Deletions	94
Moved from	3
Moved to	3
Style changes	0
Format changes	0
Total changes	227

TAB 8

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE [**MR/MADAM**]	**)**	[●], THE [●]
	)	
JUSTICE [●]	**)**	DAY OF **[JANUARY]**, 2022

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

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

BIDDING PROCEDURES ORDER

THIS MOTION, made by DCL Corporation (the "**Applicant**") for an Order, among other things, approving the bidding procedures attached hereto as Schedule "**A**" (the "**Bidding Procedures**") to be used in conjunction with the proposed conduct of a Court supervised sale process for the sale of the assets of the Applicant, and the Applicant's U.S. based related parties who are debtors under proceedings filed under Chapter 11 of Title 11 of the United States Code: (a) H.I.G. Colors, Inc., (b) H.I.G. Colors Holdings Inc., (c) DCL Holdings (USA), Inc., (d) DCL Corporation (USA) LLC, (e) DCL Corporation (BP), LLC, and (f) Dominion Colour Corporation (USA) (collectively, "**DCL US**" and together with the Applicant, the "**DCL Group**"), was heard this day by judicial video conference via Zoom in Toronto, Ontario due to the Covid-19 pandemic.

ON READING the material filed, including the Notice of Application, the affidavit of Scott Davido sworn December 19, 2022 and the Exhibits thereto, and the First Report of Alvarez

& Marsal Canada Inc. (the "**Monitor**") dated December 19, 2022, and on hearing the submissions of counsel for the Applicant and counsel for the Monitor, and on being advised that the Applicant's Service List was served with the Application Record herein;

1. **THIS COURT ORDERS** that all capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Bidding Procedures.

2. **THIS COURT ORDERS** that the Bidding Procedures are hereby approved and, subject to approval of the Bidding Procedures in substantially the same form by the United States Bankruptcy Court for the District of Delaware in the Bankruptcy Cases of DCL US, the Applicant, subject to the oversight of the Monitor, shall be authorized and directed to perform its obligations thereunder and to do all things reasonably necessary to perform its obligations thereunder, including to solicit Qualified Bids from Potential Bidders as contemplated by the Bidding Procedures.

3. **THIS COURT ORDERS** that pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, and pursuant to section 18 of the *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q. c P-39.1, the Applicant may disclose personal information of identifiable individuals to Potential Bidders for the Canadian Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Canadian Assets (each, a "**Sale**"). Each Potential Bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Applicant, or in the alternative destroy all such information.

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom, the

Netherlands, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

5. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that without derogating from any rights or protections afforded to the Monitor at law or pursuant to any other Order of this Court, the Monitor and its affiliates, partners, directors, employees, and agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the Bidding Procedures, except to the extent of losses, claims, damages or liabilities that arise or result from gross negligence or willful misconduct of the Monitor in performing its obligations under the Bidding Procedures, as determined by this Court.

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SCHEDULE "A"

(Bidding Procedures)

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL ASSETS OF DCL HOLDINGS (USA), INC. AND CERTAIN DEBTOR AFFILIATES

On [●], 2023, the United States Bankruptcy Court for the District of Delaware (the "U.S. Court") entered the *Order (I) Approving Bidding Procedures for the Sale of the Debtors' Assets, (II) Approving the Break-up Fee, (III) Scheduling Hearings and Objection Deadlines with Respect to the Sale, (IV) Scheduling Bid Deadlines and an Auction, (V) Approving the Form and Manner of Notice Thereof, (VI) Approving Contract Assumption and Assignment Procedures, and (VII) Granting Related Relief* [Docket No. __] (the "U.S. Bidding Procedures Order"),[1] by which the U.S. Court approved the following procedures. These Bidding Procedures, among other things, set forth the process by which the U.S. Debtors are authorized, in consultation with the Consultation Parties, to conduct an auction (the "Auction"), if any, for the sale of all or substantially all of the Debtors' assets (the "Assets") by which the U.S. Court approved the procedures set forth herein (the "U.S. Bidding Procedures") with respect to the U.S. Debtors[2] and their business and assets (collectively, the "U.S. Assets"), in the cases commenced by the U.S. Debtors under the provisions of chapter 11 of title 11 of the United States Code before the U.S. Court (the "Chapter 11 Cases").

On [●], 2023, the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court" and together with the U.S. Court, the "Bankruptcy Courts") granted an Order (the "Canadian Bidding Procedures Order" and together with the U.S. Bidding Procedures Order, the "Bidding Procedures Orders")[3], by which the Canadian Court approved these Bidding Procedures with respect to DCL Corporation (the "Canadian Debtor" and together with the U.S. Debtors, the "Debtors" or "the DCL Group") and its business and assets (collectively, the "Canadian Assets" and together with the U.S. Assets, the "Assets"), in the proceedings commenced by the Canadian

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[1] All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the applicable Bidding Procedures Order.

[2] The "U.S. Debtors" are H.I.G. Colours Holdings Inc, H.I.G. Color, Inc. DCL Corporation (BP), LLC, DCL Holdings (USA), Inc., DCL Corporation (USA) LLC, and Dominion Color Corporation (USA).

[3] All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the U.S. Bidding Procedures Order or Canadian Bidding Procedures Order, as applicable.

Debtor pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") before the Canadian Court (the "CCAA Proceedings" and together with the Chapter 11 Cases, the "Bankruptcy Cases").

Notwithstanding the coordination of these Bidding Procedures, all matters related to these Bidding Procedures as they relate to the U.S. Debtors and the U.S. Assets shall remain under the sole and exclusive jurisdiction of the U.S. Court and all matters related to these Bidding Procedures as they relate to the Canadian Debtor and the Canadian Assets shall remain under the sole and exclusive jurisdiction of the Canadian Court.

These Bidding Procedures set forth the process by which the Debtors are authorized, in consultation with the Consultation Parties, to sell all or substantially all of the Assets or their business through a going concern sale (or partial sales) of all, substantially all, or certain of the Assets of the DCL Group (the "Sale").

"Consultation Parties" in these Bidding Procedures shall be (i) Alvarez & Marsal Canada Inc., in its capacity as court-appointed monitor of the Canadian Debtor (the "CCAA Monitor"), (ii) Wells Fargo Bank, National Association, in its capacity as administrative agent under the debtor-in-possession credit agreement dated [●] with the Debtors in the Bankruptcy Cases (the "DIP Agent"), (iii) Wells Fargo Bank, National Association, in its capacity as administrative agent under the Debtors' prepetition credit agreement dated April 25, 2018, as amended (the "ABL Agent") and (iv) Pre-Petition Term Loan Agent (together with the DIP Agent and the ABL Agent, the "Agents"). For avoidance of doubt, the foregoing shall include the CCAA Monitor and Agents' respective advisors. Notwithstanding the forgoing or any other provision of these Bidding Procedures, the Agents shall only be consulted to the extent that the Agents confirm that neither they nor any of the lenders under their respective credit facilities intend to participate in these Bidding Procedures as a bidder.

To the extent that these Bidding Procedures require the Debtors to consult with any Consultation Party in connection with making a determination or taking any action, or in connection with any other matter related to these Bidding Procedures or at the Auction, if any, the Debtors shall do so in a regular and timely manner prior to making such determination or taking any such action.

Copies of the U.S. Bidding Procedures Order or other documents related thereto are available upon request to Kroll Restructuring Administration LLC by calling (888) 510-7189 (US/Canada toll free) or +1 (646) 440-4160 (International), emailing DCLInfo@ra.kroll.com, or visiting the Debtors' restructuring website at https://cases.ra.kroll.com/DCL.

Copies of the Canadian Bidding Procedures Order or other documents related thereto are available on the website of Alvarez & Marsal Canada Inc., in its capacity as monitor of the Canadian Debtor in the CCAA Proceedings, at https://www.alvarezandmarsal.com/DCLCanada.

Stalking Horse Bid

The Debtors will continue to solicit "stalking horse" bids (a "Stalking Horse Bid" and each entity, a "Stalking Horse Bidder") and enter into any asset purchase agreement memorializing the proposed transaction set forth in the Stalking Horse Bid (a "Stalking Horse APA"), which will be binding on such Bidder and set the floor for all Qualified Bids for the Assets at the Auction.

Key Dates

These Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Debtors and to submit competing bids for the Assets or business or any portions thereof. The Debtors shall assist interested parties in conducting their respective due diligence investigations and shall accept Bids until March 10, 2023 at 5:00 p.m. (prevailing Eastern time) (the "Bid Deadline").

The key dates for the Sale process are as follows:[4]

January 31, 2023 at 5:00 p.m. (prevailing Eastern time)	Deadline for Debtors to obtain Stalking Horse Bidder and enter into Stalking Horse APA
March 10, 2023 at 5:00 p.m. (prevailing Eastern time)	Bid Deadline - Due Date for Bids and Deposits
March 13, 2023 at 5:00 p.m. (prevailing Eastern time)	Debtors to determine which Bids are Qualified Bids and notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder (each as defined herein).
March 13, 2023 at 5:00 p.m. (prevailing Eastern time)	Debtors to provide the Stalking Horse Bidder (if any) and each Qualified Bidder a schedule setting forth (i) the highest or otherwise best fully binding offer for the Assets and/or (ii) the highest or otherwise best fully binding offer(s) for all or any portion of the Assets.
March 14, 2023 at 10:00 a.m. (prevailing Eastern time)	Auction (if necessary), which will be held at the offices of King & Spalding LLP, 1185 Avenue of the Americas, New York, NY.
March 17, 2023 at [●] [a./p].m. (prevailing Eastern time)	U.S. Sale Hearing (as defined herein), which will be held at the United States Bankruptcy Court for the District of Delaware, 824 Market Street N, Wilmington, Delaware 19801.

[4] These dates are subject to extension or adjournment as provided for herein.

March 17, 2023 at [●] [a./p].m. (prevailing Eastern time)	Canadian Sale Hearing (as defined herein), which will be held at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, Ontario M5G 1R7.

Unless otherwise approved by the Bankruptcy Courts, no modification, extension, waiver or addition to these Bidding Procedures shall be inconsistent with the Stalking Horse APA (if any), these Bidding Procedures Orders or any other Order of the Bankruptcy Courts, unless otherwise ordered by the Bankruptcy Courts.

All References to "business day" in these Bidding Procedures means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the applicable laws of, or are in fact closed in, the state of Delaware or the province of Ontario.

A. Submissions to the Debtors.

These Bidding Procedures set forth the terms by which prospective bidders, if any, may participate in the process set forth in these Bidding Procedures and qualify for and participate in an Auction, if any, thereby competing to make the highest or otherwise best offer for the Assets or any portion thereof. The Debtors will offer for sale the Assets, as well as consider other investment or other transactions, through an Auction. The Debtors, in consultation with the Consultation Parties, may consider non-overlapping bids from multiple bidders (including multiple non-overlapping bids submitted by the same bidder) for the Assets.

B. Potential Bidders.

To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, a person or entity interested in consummating a Sale (a "Potential Bidder") must deliver or have previously delivered to the Debtors:

(1) an executed confidentiality agreement on terms acceptable to the Debtors (a "Confidentiality Agreement"), to the extent not already executed;

(2) in a form acceptable to the Debtors and their advisors, in consultation with the Consultation Parties: (x) evidence of the financial capability to consummate the Sale, and (y) if required, a written commitment from the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with the Sale; and

(3) any other evidence the Debtors, in consultation with the Consultation Parties, may reasonably request to evaluate such person's or entity's fitness to participate in the process set forth in these Bidding Procedures.

C. Due Diligence.

Only Potential Bidders shall be eligible to receive due diligence information and access to the Debtors' electronic data room and to additional non-public information regarding the Debtors.

No Potential Bidder will be permitted to conduct any due diligence that includes confidential information without entering into a Confidentiality Agreement with the Debtors. The Debtors will provide to each Potential Bidder that satisfies the foregoing, commercially reasonable due diligence information, as requested by such Potential Bidder in writing, as soon as reasonably practicable after such request, and the Debtors shall post all written due diligence provided to any Potential Bidder to the Debtors' electronic data room. For all Potential Bidders, the due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline, the Debtors shall have no obligation to furnish any due diligence information.

The Debtors shall not furnish any confidential information relating to the Assets, liabilities of the Debtors, or the Sale to any person except to a Potential Bidder or to such Potential Bidder's duly authorized representatives to the extent provided in the applicable Confidentiality Agreement. The Debtors and their advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; *provided that* the Debtors may decline to provide such information to Potential Bidders who, at such time and in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, have not established, or who have raised doubt, that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale.

The Debtors also reserve the right to, in consultation with the Consultation Parties, withhold or redact any diligence materials that the Debtors determine in the Debtors' reasonable business judgment are sensitive or otherwise not appropriate for disclosure to a Potential Bidder who the Debtors determine is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder or who has not executed a Confidentiality Agreement with the Debtors.

All due diligence requests must be directed to TM Capital Corp., 641 Lexington Ave., 32nd Floor, New York, New York 10022, Attn: Anthony Giorgio (agiorgio@TMCapital.com).

(a) Communications with Potential Bidders.

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive communications related to Bids, the Sale or any transaction relating to the Debtors between and amongst Potential Bidders shall exclusively be through the Debtors and the Debtors' advisors. Communications between and amongst Potential Bidders is expressly prohibited unless the Debtors expressly consent in writing to such communication.

(b) Due Diligence of Potential Bidders.

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

The Debtors and each of their respective advisors and representatives shall be obligated to maintain in confidence any confidential information in accordance with any applicable Confidentiality Agreement, except as otherwise set forth in these Bidding Procedures. Each recipient of confidential information agrees to use, and to instruct their advisors and representatives to use, such confidential information only in connection with the evaluation of Bids during the bidding process or otherwise in connection with Bankruptcy Cases, in each case in accordance with the terms of any applicable Confidentiality Agreement.

Notwithstanding the foregoing and the provisions contained in any applicable Confidentiality Agreement, the Debtors and the Debtors' advisors may disclose confidential information: (i) with the prior written consent of the applicable Potential Bidder; (ii) to the applicable Potential Bidder; (iii) in accordance with these Bidding Procedures, including to any Consultation Party; and (iv) as otherwise required or allowed by any applicable Confidentiality Agreement with respect to a particular bidder or other agreement, law, court or other governmental order, or regulation, including, as appropriate, to regulatory agencies.

D. Qualified Bidders.

(a) A "Qualified Bidder" is a Potential Bidder (i) who demonstrates the financial capability to consummate the Sale (as determined by the Debtors in consultation with the Consultation Parties), (ii) whose Bid is a Qualified Bid, and (iii) that the Debtors, in consultation with the Consultation Parties, determine should be considered a Qualified Bidder. Within one (1) business days after the Bid Deadline, the Debtors' advisors will notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder (if any) shall be deemed a Qualified Bidder for all purposes under these Bidding Procedures and at all times.

(b) If any Potential Bidder is determined by the Debtors, in consultation with the Consultation Parties, not to be a Qualified Bidder, the Debtors will refund such Qualified Bidder's Deposit (as defined herein) and all accumulated interest thereon on or within five (5) business days after the Bid Deadline.

(c) For the avoidance of doubt, the Debtors, in consultation with the Consultation Parties, expressly reserve the right to notify a Potential Bidder after the Bid Deadline that its bid is not a Qualifying Bid (a "Non-Qualifying Bid") and permit a Potential Bidder to revise or supplement a Non-Qualifying Bid to make it a Qualified Bid.

(d) Between the date that the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, if any, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided that* any Qualified Bid

may also be improved at the Auction, if any, as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

E. Bid Requirements.

A proposal, solicitation, or offer (each, a "Bid") by a Qualified Bidder that is submitted in writing and satisfies each of the following requirements (the "Bid Requirements") as determined by the Debtors, in their reasonable business judgment and after consultation with the Consultation Parties, shall constitute a "Qualified Bid"). The Stalking Horse Bid (if any) shall be deemed a Qualified Bid for all purposes under these Bidding Procedures and at all times.

(a) Assets. Each Bid must clearly state which Assets that the Qualified Bidder is agreeing to purchase and assume.

(b) Assumption of Obligations. Each Bid must clearly state which liabilities and obligations of the Debtors the Qualified Bidder is agreeing to assume.

(c) Purchase Price. Each Bid must clearly set forth the purchase price to be paid for the Assets, including and identifying separately any cash and non-cash components, which non-cash components shall be limited only to credit-bids and assumed liabilities (the "Purchase Price"), which, for the avoidance of doubt, shall be no less than $[_____]. Each Bid must include an allocation of the Purchase Price between the U.S. Assets and the Canadian Assets. Except as may be provided in the Stalking Horse Bid (if any), Potential Bidders shall not include in their Bid a proposed use of any cash component of the Purchase Price that would be received by the Debtors if such Potential Bidder were the Successful Bidder (as defined herein).

(d) **Minimum Bid.** At a minimum, each Bid seeking to acquire all of the Assets that are the subject of the Stalking Horse Bid (if any) must have a Purchase Price that in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, has a monetary value equal or greater than the aggregate unadjusted Purchase Price payable to the Debtors under the Stalking Horse Bid, if any plus the amount of the Break-Up Fee of 3% ("Minimum Overbid"); *provided, however*, the Debtors may deem this criterion satisfied if non-overlapping Bids, in the aggregate, meet the Minimum Overbid (such bids, "Aggregate Bids") (the amount of the Minimum Overbid shall be confirmed by the Sale Advisor with Potential Bidders prior to the Bid Deadline).

(e) Markup of the Stalking Horse APA. Each Bid must be accompanied by an executed asset purchase or transaction agreement ("APA"), as well in the case of an asset purchase agreement, a redline of such agreement marked to reflect the amendments and modifications made to the form of the Stalking Horse APA (if any) or template APA provided by the Debtors to Potential Bidders, if applicable. Each such agreement must provide a representation that the Qualified Bidder will: (i) with respect to the U.S. Assets, (A) make all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"),

if applicable, and (B) submit and pay the fees associated with all necessary filings under the HSR Act as soon as reasonably practicable; understanding that the timing and likelihood of receiving HSR Act approval will be a consideration in determining the highest or otherwise best Bid; and (ii) with respect to the Canadian Assets, make all necessary filings under the (A) *Competition Act*, R.S.C., 1985, c. C-34, as amended (the "Competition Act"), and (B) *Investment Canada Act*, R.S. C., 1985, c. 28 (1st Supp.) (the "ICA"), if applicable, and submit and pay the fees associated with all necessary filings under the Competition Act as soon as reasonably practicable; understanding that the timing and likelihood of receiving Competition Act and ICA approval will be a consideration in determining the highest or otherwise best Bid or Bids in the case of an Aggregated Bid.

(f) Deposit. Each Bid, other than the Stalking Horse Bid (if any) which is a credit bid, must be accompanied by a cash deposit in the amount equal to ten percent (10%) of the aggregate cash Purchase Price of the Bid, to be held in an interest-bearing escrow account to be identified and established by the Debtors (the "Deposit").

(g) Qualified Bid Documents. Each Bid must include a duly executed, non-contingent APA, a schedule of assumed contracts to the extent applicable to the Bid, and a copy of the APA clearly marked to show all changes requested by the Qualified Bidder, including those related to the respective Purchase Price and assets to be acquired by such Qualified Bidder, as well as all other material documents integral to such bid (the "Qualified Bid Documents").

(h) Demonstrated Financial Capacity. A Qualified Bidder must have, in the Debtors' business judgment, after consultation with the Consultation Parties, the necessary financial capacity to consummate the proposed transactions required by its Bid. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder's capacity to consummate the transactions set forth in its Bid with cash on hand, each Bid must include written evidence of unconditional committed financing from a reputable financing institution, to the satisfaction of the Debtors in consultation with the Consultation Parties, that demonstrates that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder's Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the Assets and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the Debtors, in consultation with the Consultation Parties.

(i) Contingencies; No Financing or Diligence Outs. A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall be acceptable to the Debtors in their business judgment, after consultation with the Consultation Parties.

(j) Identity. Each Bid must fully disclose the identity of each entity that is bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Qualified Bidder if such Qualified Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Each Bid must also fully disclose whether any current or former officer, director or equity holder of the Debtors, or any entity affiliated with any current or former officer, director or equity holder of the Debtors, will be bidding or otherwise participating in connection with such Bid. Under no circumstances shall any undisclosed insiders, principals, equity holders, or financial backers of the Debtors be associated with any Bid (including any Overbid (as defined herein) at the Auction). Each Bid must also include contact information for the specific persons and counsel whom TM Capital Corp., King & Spalding LLP and Blake, Cassels & Graydon LLP should contact regarding such Bid. All information disclosed pursuant to this paragraph shall be made available by the Debtors to the Consultation Parties promptly upon the Debtors' receipt thereof but in any event no later than one (1) business day following the Bid Deadline.

(k) Adequate Assurance of Future Performance. Each Bid must (i) identify the executory contracts and unexpired leases to be assumed and assigned in connection with the proposed Sale; (ii) provide for the payment of all cure costs related to such executory contracts and unexpired leases by the Qualified Bidder; and (iii) demonstrate, in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, that the Qualified Bidder can provide adequate assurance of future performance under all such executory contracts and unexpired leases.

(l) Time Frame for Closing. A Bid by a Qualified Bidder must be reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame acceptable to the Debtors, after consultation with the Consultation Parties, which time frame shall include a closing by no later than March 31, 2023.

(m) Binding and Irrevocable. A Qualified Bidder's Bid for the Assets shall be irrevocable unless and until the Debtors accept a higher Bid for the Assets other than such Qualified Bidder's Bid and such Qualified Bidder is not selected as the Backup Bidder (as defined herein) for the Assets.

(n) Expenses; Disclaimer of Fees. Each Bid (other than the Stalking Horse Bid (if any), solely to the extent set forth in the applicable Stalking Horse APA (if any)) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder (if any), solely to the extent set forth in the Stalking Horse APA (if any)) will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction, if any, or otherwise, a break-up fee, expense reimbursement,

termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code; *provided, that,* the Stalking Horse Bidder shall not be entitled to a break-up fee or expense reimbursement if such Stalking Horse Bidder is credit bidding.

(o) Authorization. Each Bid must contain evidence that the Qualified Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors, in consultation with the Consultation Parties) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.

(p) As-Is, Where-Is. Each Bid must include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Debtors, their business and the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents, the Debtors and/or the Assets in making its Bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the Debtors' business, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Qualified Bidder's APA.

(q) Adherence to Bidding Procedures. By submitting its Bid, each Qualified Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction, if any.

(r) Government Approvals. Each Bid must include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale, together with evidence satisfactory to the Debtors, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals.

(s) Government Approvals Timeframe. Each Bid must set forth an estimated timeframe for obtaining any required internal, governmental, licensing, regulatory or other approvals or consents for consummating any proposed Sale.

(t) Consent to Jurisdiction. The Qualified Bidder must submit to the jurisdiction of the Bankruptcy Courts and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of bids, the Auction, if any, the construction and enforcement of these Bidding Procedures, the Sale documents, and the closing of the transactions contemplated thereby, as applicable.

(u) Bid Deadline. Each Bid must be transmitted via email (in .pdf or similar format) so as to be **actually received** on or before **5:00 p.m. (prevailing Eastern Time) on** March 10, 2023 by:

(i) **Debtors**. DCL Holdings (USA), Inc. and DCL Corporation, 1 Concorde Gate, Suite 608, Toronto, Ontario (Canada) M3C 3N6, Attn: Scott Davido (Scott.Davido@ankura.com).

(ii) **Debtors' U.S. Counsel**. King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309, Attn: Jeffrey R. Dutson (jdutson@kslaw.com).

(iii) **Debtors' U.S. Co-Counsel**. Richards, Layton & Finger, PA, 920 N King Street, Wilmington, Delaware 19801, Attn: Amanda R. Steele (steele@rlf.com).

(iv) **Debtors' Canadian Counsel.** Blake, Cassels & Graydon LLP, 199 Bay Street, Suite 4000, Commerce Court West, Toronto, Ontario, M5L 1A9, Attn: Linc Rogers (linc.rogers@blakes.com); Milly Chow (milly.chow@blakes.com).

(v) **Debtors' Financial Advisors**. Ankura Consulting Group, LLC, 485 Lexington Avenue, 10th Floor, New York, New York 10017, Attn: Scott Davido (Scott.Davido@ankura.com); Jonathan Morrison (Jonathan.Morrison@ankura.com).

(vi) **Debtors' Investment Banker**. TM Capital Corp., 641 Lexington Avenue, New York, New York 10022, Attn: Anthony Giorgio (agiorgio@TMCapital.com).

(vii) **CCAA Monitor**. Alvarez & Marsal Canada Inc., 200 Bay Street, Suite 2900, Royal Bank South Tower, Toronto Ontario M5J 2J1, Attn. Josh Nevsky (jnevsky@alvarezandmarsal.com); Steve Ferguson (sferguson@alvarezandmarsal.com).

F. Right to Credit Bid.

At the Auction, if any, any Qualified Bidder, who has a valid and perfected lien on any Assets (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code, as it relates to the U.S. Debtors, and applicable Canadian law, as it relates to the Canadian Debtor *provided*, *that*, nothing herein shall impact any parties' rights with respect to challenges to the liens or claims of any Secured Creditor.

G. Auction.

The Debtors shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' judgment, after consultation with the Consultation Parties, the highest or otherwise best Qualified Bid for the Assets (the "Baseline Bid"), and provide copies of the applicable Qualified

Bid Documents supporting the applicable Baseline Bid to each Qualified Bidder at or prior to the Auction. When determining the highest or otherwise best Qualified Bid, and selecting the winning bidder, as compared to other Qualified Bids, the Debtors may, in consultation with the Consultation Parties, consider the following factors in addition to any other factors that the Debtors deem appropriate after consultation with the Consulting Parties: (a) the number, type, and nature of any changes to the Stalking Horse APA (if any), if any, requested by the Qualified Bidder, including the type and amount of Assets sought and obligations to be assumed in the Qualified Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Qualified Bidder's ability to close the Sale and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid Documents; and (e) the tax consequences of such Qualified Bid; (collectively, the "Bid Assessment Criteria"). For the avoidance of doubt, (i) when determining the highest or otherwise best Qualified Bid, one dollar of credit bid amount shall be equal in all respects to one dollar of cash that may be bid by another Qualified Bidder and (ii) the Baseline Bid may be an Aggregated Bid comprised of more than one non-overlapping bids.

If no Qualified Bids other than the Stalking Horse Bid (if any) are received by the Bid Deadline, then the Debtors shall cancel the Auction, and shall designate the Stalking Horse Bid (if any) as the Successful Bid, and pursue entry of the order approving a Sale of the Assets to the Stalking Horse Bidder (if any) pursuant to the Stalking Horse APA (if any).

The Auction, if any, shall take place at 10:00 a.m. **(prevailing Eastern Time) on March 14, 2023** at the offices of King & Spalding LLP, 1185 Avenue of the Americas, New York, NY, or such later date and time as selected by the Debtors after consultation with the Consultation Parties, and subject to the consent of the Stalking Horse Bidder (if any). The Auction, if any, shall be conducted in a timely fashion according to the following procedures:

(a) The Debtors Shall Conduct the Auction.

The Debtors and their professionals shall direct and preside over the Auction, if any, in consultation with the Consultation Parties. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid(s). The Debtors explicitly reserve the right, in their business judgment and after consultation with the Consultation Parties, to exercise their discretion in conducting the Auction, including determining whether to adjourn the Auction to facilitate separate discussions between Qualified Bidders, the Debtors, and the Consultation Parties, as applicable. The Debtors shall maintain a written transcript of the Auction and all Bids made and announced at the Auction, if any, including the Baseline Bid, all applicable Overbids, and the Successful Bid.

Only Qualified Bidders and their legal and financial advisors, including the Stalking Horse Bidder (if any), the members and advisors of any official committee appointed by the Office of the United States Trustee pursuant to section 1102 of the Bankruptcy Code and the CCAA Monitor and its advisors, shall be entitled to attend the Auction, if any, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders shall be entitled to bid at the Auction, if any. Any creditor of the Debtors that has provided written notice of its intent to observe the Auction to the Debtors

(email is sufficient) at least one (1) business day prior to the start of the Auction shall be able to attend and observe the Auction.

(b) Terms of Overbids.

"Overbid" means any bid made at the Auction, if any, by a Qualified Bidder subsequent to the Debtors' announcement of the Baseline Bid(s). Each applicable Overbid must comply with the following conditions:

(i) **Minimum Overbid Increment.** The initial Overbid(s) for the Assets shall provide for total consideration to the Debtors with a value that exceeds the value of the consideration under the Baseline Bid by an incremental amount that is not less than $250,000, and successive Overbids higher than the previous bid, as Debtors shall, in consultation with the Consultation Parties, announce at the Auction (the "Minimum Overbid Increment").

The Debtors reserve the right, in consultation with the Consultation Parties, to announce reductions or increases in the Minimum Overbid Increment at any time during the Auction, if any. Additional consideration in excess of the amount set forth in the respective Baseline Bid may include: (a) cash; and (b) in the case of a Bid by a Secured Creditor, a credit bid of up to the full amount of the such secured creditors' allowed secured claim; *provided, however*, that nothing herein shall impact any parties' rights with respect to challenges to the liens or claims of a Secured Creditor.

(ii) **Conclusion of Each Overbid Round.** Upon the solicitation of each round of applicable Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, after consultation with the Consultation Parties, extend from time to time, the "Overbid Round Deadline") by which time any Overbids must be submitted to the Debtors.

(iii) **Overbid Alterations.** An applicable Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtors' estates than any prior Bid or Overbid, as determined in the Debtors' reasonable business judgment after consultation with the Consultation Parties, but shall otherwise comply with the terms of these Bidding Procedures.

(iv) **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified in the initial applicable Overbid round, an Overbid as being higher or otherwise better than the Initial Minimum Overbid, or in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the "Prevailing Highest Bid"). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid as well as the value attributable by

the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

(c) Consideration of Overbids.

The Debtors reserve the right, in their reasonable business judgment and after consultation with the Consultation Parties, to adjourn the Auction, if any, one or more times to, among other things: (i) facilitate discussions between and amongst the Debtors, the Qualified Bidders and the Consultation Parties, as appropriate; (ii) allow Qualified Bidders to consider how they wish to proceed; and (iii) provide Qualified Bidders the opportunity to provide the Debtors and the Consultation Parties with such additional evidence as the Debtors, in their reasonable business judgment, after consultation with the Consultation Parties, may require that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount.

(d) Closing the Auction.

(i) The Auction, if any, shall continue until there is one Bid or Aggregated Bid for the Assets that the Debtors determine, in their reasonable business judgment, after consultation with the Consultation Parties, to be the highest or otherwise best Bid for the Assets. Each such Bid shall be declared the "Successful Bid" and such Qualified Bidder(s), the "Successful Bidder," at which point the Auction will be closed. The Auction, if any, shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Bankruptcy Courts of the Successful Bid.

(ii) The Successful Bidder shall, within one (1) business day after the conclusion of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid. The Successful Bid may not be assigned to any party without the consent of the Debtors after consultation with the Consultation Parties.

(iii) For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtors from exercising their respective fiduciary duties under applicable law.

(iv) The Debtors shall not consider any Bids or Overbids submitted after the conclusion of the Auction, if any, and any such Bids or Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

(v) As soon as reasonably practicable after closing the Auction, if any, and in any event not less than one (1) business day following closing the Auction, the Debtors shall cause a notice of Successful Bid and Successful Bidder, and the Qualified Bid Documents for the Successful Bid and Backup Bid (as defined herein), to be filed with the Bankruptcy Courts.

(e) No Collusion; Good-Faith *Bona Fide* Offer.

Each Qualified Bidder participating at the Auction, if any, will be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the bidding; and (ii) its Bid is a good-faith, *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

H. Backup Bidder.

(a) Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted for the Assets, the Qualified Bidder (or Qualified Bidders holding an Aggregate Bid) with the next-highest or otherwise second-best Bid (or Aggregate Bid) at the Auction for such Assets, as determined by the Debtors in the exercise of their reasonable business judgment, after consultation with the Consultation Parties (the "Backup Bid"), shall be required to serve as a backup bidder(s) (the "Backup Bidder") for such Assets, and each Qualified Bidder(s) shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.

(b) The identity of the Backup Bidder and the amount and material terms of the Backup Bid shall be announced by the Debtors at the conclusion of the Auction, if any, at the same time the Debtors announce the identity of the Successful Bidder. The Backup Bidder shall be required to keep its Bid(s) (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. The Backup Bidder's Deposit shall be held in escrow until the closing of the transaction with the applicable Successful Bidder.

(c) If the Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtors may select the Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed the Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder's Deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance.

All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Debtors on and as of the date of approval of the Successful Bid and Backup Bid by the Bankruptcy Courts.

I. Reservation of Rights.

The Debtors reserve their rights to modify these Bidding Procedures, in their reasonable business judgment and after consultation with the Consultation Parties and the consent of the Stalking Horse Bidder (if any), in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, if any, additional customary terms and conditions on the Sale, including, without limitation: (a) extending the deadlines set forth in these Bidding

Procedures; (b) adjourning the Auction, at the Auction and/or adjourning the Sale Hearings (as defined herein) in open court without further notice; (c) modifying these Bidding Procedures and/or adding procedural rules or methods of bidding that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; (e) waiving, or imposing additional, terms and conditions set forth herein with respect to Potential Bidders and (f) rejecting any or all bids or Bids; *provided, however*, that any modification, extension, waiver, or addition to these Bidding Procedures shall not be inconsistent with the Stalking Horse APA (if any), the Bidding Procedures Orders, or any other Order of the Bankruptcy Courts, unless otherwise ordered by the Bankruptcy Courts.

J. Approval of Sale.

A hearing to consider approval of the Sale of the U.S. Assets to the Successful Bidder (the "**U.S. Sale Hearing**") is currently scheduled to take place on or before **[●] (prevailing Eastern Time) on March 17, 2023** before the Honorable [●], at the United States Bankruptcy Court for the District of Delaware, 824 Market Street N, 3rd Floor, Wilmington, Delaware 19801.

A hearing to consider approval of the Sale of the Canadian Assets to the Successful Bidder (the "Canadian Sale Hearing" and together with the U.S. Sale Hearing, the "Sale Hearings") is currently scheduled to take place on or before [●] **(prevailing Eastern Time) on [March 17], 2023** before the Honorable [●], at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, Ontario M5G 1R7.

The Sale Hearings may be a joint hearing in accordance with the applicable cross-border protocols and may be continued to a later date by the Debtors, after consultation with the Consultation Parties and the consent of the Successful Bidder, by sending notice prior to, or making an announcement at, the Sale Hearings. No further notice of any such continuance will be required to be provided to any party (including the Successful Bidder).

At the Sale Hearings, the Debtors, in consultation with the Consultation Parties, shall present the Successful Bid(s) to the Bankruptcy Courts for approval.

K. Return of Deposits

The Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Bankruptcy Courts or as expressly provided below. The Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearings. The Deposit of the Backup Bidder, if any, shall be returned to such Backup Bidder no later than three (3) business days after the closing of the transaction with the Successful Bidder. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder timely closes on its transaction, its Deposit shall be credited towards the applicable purchase price(s). If the Successful Bidder (or Backup Bidder, if applicable) fails to consummate a transaction because of a breach or failure to perform on the part of the Successful Bidder (or Backup Bidder, if applicable), the Debtors will not have any obligation to return the Deposit deposited by the Successful Bidder (or Backup Bidder, if applicable), and such Deposit shall

irrevocably become property of the Debtors and shall be divided as between the U.S. Debtors and the Canadian Debtor based on the Purchase Price allocation as set forth in the Stalking Horse APA (if any).

L. Fiduciary Out.

Nothing in these Bidding Procedures shall require the board of directors, board of managers, or such similar governing body of any of the Debtors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body determines, based on the written advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with its fiduciary obligations under applicable law; *provided, however*, that the Debtors shall provide the Consultation Parties and the Stalking Horse Bidder (if any) with advance written notice of such action or inaction within two (2) business days prior to taking such action or inaction.

Court File No.:

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

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

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

BIDDING PROCEDURES ORDER

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Lawyers for the Applicant

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

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

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

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

APPLICATION RECORD
(Returnable December 20, 2022)

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