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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
VOYAGER DIGITAL HOLDINGS, INC. <i>et al.</i> , ¹)	Case No. 22-10943 (MEW)
)	
Debtors.)	(Jointly Administered)
)	

**LIMITED OBJECTION TO DEBTORS’ MOTION SEEKING ENTRY OF AN ORDER
(I) APPROVING THE BIDDING PROCEDURES AND RELATED DATES AND
DEADLINES; (II) SCHEDULING HEARINGS AND OBJECTION DEADLINES WITH
RESPECT TO THE DEBTORS’ SALE, DISLCOSURE STATEMENT, AND PLAN
CONFIRMATION, AND (III) GRANTING RELATED RELIEF**

¹ The debtors in these chapter 11 cases (collectively, the “Debtors”), along with the last four digits of each debtor’s federal tax identification number are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (N/A); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

Emerald Ocean Isle LLC (“*Emerald*”), Amano Global Holdings, Inc. (“*Amano*”), Shingo Lavine (“*Shingo*”), and Adam Lavine (“*Adam*”; and together with Emerald, Amano, and Shingo, the “*Objecting Parties*”), by and through their counsel, Goldstein & McClintock LLLP and the Law Offices of Douglas T. Tabachnik, P.C., hereby submit their limited objection to *Debtors’ Motion Seeking Entry of an Order (I) Approving the Bidding Procedures and Related Dates and Deadlines, (II) Scheduling Hearings and Objection Deadlines with Respect to the Debtors’ Sale, Disclosure Statement, and Plan Confirmation, and (III) Granting Related Relief* (the “*Bid Procedures Motion*”) [Docket No. 126],² and in support thereof state as follows:

INTRODUCTION

Amano, Shingo, and Adam are equity holders in Voyager Digital, Ltd., and Shingo is a former board member and the Debtors’ former Chief Innovation Officer. Emerald, an entity that Adam and Shingo control, is a potential bidder or transaction partner that, for the reasons discussed below, could hold the keys to providing creditors in these cases (and even potentially equity holders) with a materially enhanced recovery.

Subject to the concerns raised below, the Objecting Parties do not generally object to the establishment of bidding procedures, or even to an expedited bidding process (though they believe a bit more time – on the order of a week to 10 days – would be beneficial).

Rather, the Objecting Parties file this Limited Objection due to serious concerns over their own treatment in the process thus far, as well as specific aspects of the Bidding Procedures that (a) prevent evaluation and consideration of creative alternative restructurings of the type the

² Undefined capitalized terms used herein shall have the meanings ascribed to them in the Bidding Procedures attached as Exhibit 1 to the proposed order to the Bid Procedures Motion.

Objecting Parties are uniquely situated to propose, structure, and execute, and (b) limit expedited judicial review of the Debtors' discretion under the Bidding Procedures.

This last point is informed by the fact that as discussed below, Emerald's experience in trying to gain access to diligence and be deemed an "Accepted Bidder" has – at least thus far – not been good. Precious time has been wasted, and the Objecting Parties are becoming more and more concerned about the combination of (a) Bidding Procedures that limit consideration of alternative plan structures and (b) the Debtors' apparent unwillingness to facilitate access for a group (Emerald and Shingo and Adam) that is most obviously and uniquely situated to propose such an alternative. Without ascribing a motive, the result of the foregoing would be to limit the competition to (a) cash bids (likely to be less than ideal) and (b) the internal restructuring proposed by the Debtors' existing management (with no economic detail) in the Plan.

If that is the case, it would be a disaster for creditors and interest holders, as it would preclude consideration of the very type of creative restructuring that can actually move the needle on recoveries. Given the timeline the Debtors are proposing, it is critical that over the next approximately 30 days all options are explored so the Debtors, Committee, and Court can evaluate a full set of alternatives.

BACKGROUND

I. The Objecting Parties and their involvement with the Debtors

Shingo started his first company, Ethos.io, at age 19 in his dorm as a student at Brown University. Adam, Shingo's father, is a lifelong entrepreneur who has built several successful companies and is an expert on building industry-leading platforms on limited budgets and turning around distressed organizations. Adam has also built numerous organizations and platforms over his career, including Ethos, with his son Shingo.

The primary retail application of Ethos was the Ethos Universal Wallet. Importantly, this was a robust *self-custody* platform that put the power of crypto directly into customer's hands, allowing them to safely store, swap, purchase, send, and receive hundreds of different digital assets.

The Ethos Universal Wallet was powered by Ethos Bedrock, a powerful high-performance blockchain abstraction architecture. Ethos Bedrock enables developers to build a variety of blockchain applications through a unique API set that unifies different blockchain protocols into a single interface. The vision for Ethos Bedrock was to create a foundational architecture for crypto services and make blockchain protocols as easy as internet protocols.

In 2018, after Shingo and Adam had grown Ethos to over 100,000 users, they sold certain of the Ethos assets to the Debtors. Amano, Shingo, and Adam became major shareholders in Voyager Digital, Ltd., and Shingo was appointed to the Debtors' board and assumed the role of Chief Innovation Officer. Today, Ethos Bedrock has been used to drive billions of dollars in transactions and still powers Voyager's crypto systems.

The combination of Ethos and Voyager – and the work Adam and Shingo put in along with the rest of the team to combine them in the form of a sleek easy-to-use app – was hugely successful. Growth exploded in 2020 and Voyager quickly went from a few hundred accounts to a few thousand. Then it became hundreds of thousands. Then millions.

By early 2021, however, Shingo disagreed with the company's direction and certain decisions that were being made. Due to these disagreements and associated concerns, Shingo resigned from the Board and left the company in February 2021.

In 2022, the company shuttered the Ethos Universal Wallet, moving the remaining self-custody customers onto the centralized trading platform. Rather than the cryptocurrency being held

safely in the hands of customers through self-custody, all assets were then in commingled accounts (and as we now know, lent out in the form of risky, uncollateralized loans).

II. The cause of the Voyager bankruptcy cases

The *Declaration of Stephen Ehrlich, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Motions* (the “*Ehrlich Declaration*”) [Docket No. 15], squarely blames the Debtors’ bankruptcy filings on the downturn in the cryptocurrency market and world economy. *See* First Day Declaration, ¶¶ 3, 37-56. Although Mr. Ehrlich is correct that the crypto market is suffering a (foreseeable) downturn – this explanation ignores the much more direct cause of the bankruptcy cases.

Specifically, the bankruptcy filings are a direct result of the Debtors’ management team’s decisions to: (a) commingle customer deposit accounts (including eliminating a self-custody wallet as an option) resulting in account holders being relegated to unsecured creditors; (b) fuel growth by promising increasingly high interest rates or “rewards” to depositors (up to 12%);³ and (c) use customer funds to make risky uncollateralized loans to cover costs (including the increasing costs of the rewards program). That is an extremely risky business model – bordering on unsustainable. In fact, Voyager’s rewards program does not appear to have ever been profitable despite the existential risk it was posing to the company. The downturn in the crypto market was just the “straw that broke the camel’s back” – not the cause.

“Between March 2021 and March 2022, the Company entered into 125 third party loans with 9 different counterparties, lending out cryptocurrency with an aggregative market value of \$5.15 billion.” Ehrlich Declaration, ¶ 54. There are material questions about how these loans were vetted. For example, the Three Arrows Capital (“3AC”) loan of 15,250 Bitcoins (valued at

³ Up to 12% interest on certain digital currencies, provided that such users maintain a minimum monthly balance and keep their assets on Voyager’s platform. *See* Ehrlich Declaration, ¶ 23.

approximately \$694 million USD at the time) and \$350 million USDC to 3AC was issued in March 2022 (just a few months before the bankruptcy filings) and was entirely drawn down. Ehrlich Declaration, ¶ 55.

The harm that all of this has caused to depositors is obviously massive, and directly impacted many depositors not prepared for such an event, as reflected in the dozens of letters filed on the Court's case docket. *See, e.g.*, Docket Nos. 63, 69, 75, 76, 140, 142, 146, etc.

III. The Debtors' Plan – and the problem of trust

It is important to remember that one of the main benefits of cryptocurrency is undisputable ownership, with blockchain technology making transactions open, secure, and immutable. This remains true if cryptocurrencies are controlled by a user via a self-custody solution but was turned on its head by the commingled approach taken by the Debtors. Whatever the fine print may have stated, the Voyager app UI showed that customers “owned” the crypto as in “You Own 2 Bitcoin” when viewing “their” assets. Many customers appear shocked to learn that not only did they not own that Bitcoin, but that they are in fact now “unsecured creditors.”

Even as late as June 14 – as 3AC was collapsing – Voyager released a press statement stating their lending program is “low risk”, strongly implying a lack of material contagion.

“Voyager differentiates itself through a straightforward, low-risk approach to lending and asset management by working with a select group of reputable counterparties, which are all vetted through extensive due diligence by its Risk Committee. The company does not participate in DeFi lending activities, algorithmic stablecoin staking and lending, or derivative assets, such as stETH. One of Voyager's important objectives is to make crypto as simple and safe as possible for consumer use. With that mission in mind, safeguarding customer assets is a top priority.”

See June 14, 2022 press release (<https://www.investvoyager.com/pressreleases/voyager-digital-provides-update-on-asset-and-risk-management>) attached as **Exhibit A**.

Putting aside the legal ramifications of all of this, trust in the platform has – rightly – been eviscerated. If the Debtors were to simply open up the platform with current senior management and essentially the same business model – as their “stalking horse” Plan seems to contemplate – it is hard to not see how almost all customers would seek to liquidate the remnants of their portfolios.

IV. The alternative solution being explored by Emerald

The alternative restructuring solution being explored by Emerald might be one of the only ways to truly create value for creditors – and potentially re-pay them in full.

Specifically, Emerald has been exploring submitting an alternative restructuring plan that, while similar to the Debtors’ plan in structure, would immediately re-build trust by changing management, re-implementing a robust self-custody solution, and focusing the business around trading: eliminating the lending and debit card platforms, paring back costs, and restructuring around a mission of building a best in class self-custody and integrated trading solution. Specifically, such an alternative plan structure would likely involve:

- 1) Replace management with a management team led by Shingo and Adam – *i.e.*, a crypto-centric and trusted management team that (a) was not supportive of the lending business and (b) built the very proprietary self-custody solution that existing management did away with (not to mention the Ethos Bedrock technology that is powering much of Voyager’s crypto platform today).
- 2) Institute a new culture based on innovation, transparency, and profitability. There is every reason to believe that key employees would be eager to back a crypto-centric and customer-focused restructuring plan.
- 3) Prioritize implementing a technical solution to ensure customer assets are safe and self-secured via Ethos SmartKey technology. In other words, re-build trust through a technological solution that ensures it.
- 4) Cease all lending activity.
- 5) Reboot the trading platform.

- 6) Integrate “Live Trading” to enable instant trades from self-custody.
- 7) Implement a sharded key vault to assist customers with key recovery and open up subscription business opportunities.
- 8) Provide major additional upside to unsecured creditors and incentivize customer retention through a “recovery token” in addition to VGX tokens.

Even with the vastly enhanced trust that would be engendered by such a plan, Emerald assumes that a large number of customers would likely leave the platform (though far less than under the Debtors’ Plan and likely any other). Even with assumed customer attrition, Emerald believes that enough would stay – as a direct result of a changed management, technology, shared community mission, and business plan – that a scaled down Voyager could be break-even to EBITDA cash-flow positive very quickly and provide an improved return on capital to stakeholders (*i.e.*, creditors).

Such a plan might also only require a portion of the company’s current capital, so a solution could involve maximizing immediate recoveries while also giving creditors the upside of equity in this new entity along with VGX and recovery tokens that could, for example, be bought back as the reorganized entity generates free cash (increasing their value).

To flesh out all of this – and propose a plan, financial projections, and an exact recovery structure – Emerald and its principals and professionals need access to the data room and Emerald needs to be able to participate under the Bidding Procedures as an “Approved Bidder.”

V. Emerald struggles to get access to information from the Debtors

Counsel to Emerald reached out to the Debtors’ counsel on July 19, 2022 to express Emerald’s interest in being involved in the process and to set up a call to understand the Debtors’ anticipated process and to obtain data room access. After multiple follow-up, a fairly terse call ultimately took place on July 21, 2022. Emerald’s counsel left the call understanding that Emerald

and its investment banker should coordinate with Moelis (the Debtors' investment banker) to obtain data room access.⁴

Although not mentioned on the call – Debtors' counsel would not discuss a contemplated timeline – later that same day the Debtors filed the Bid Procedures Motion proposing the *exact timeline* that Emerald's counsel had been trying to get a rough sense of on the call.

On July 24, 2022, Emerald submitted its "Bid Documents" (as contemplated by Section A of the Bidding Procedures) in order to be deemed a "Acceptable Bidder." *See* Exhibit 1 to the proposed order to the Bid Procedures Motion [Docket No. 126]. Per their own Bidding Procedures, the Debtors have 4 business days to confirm that a Potential Bidder that sends in Bid Documents has been deemed an "Acceptable Bidder." *Id.* As of the filing of this Limited Objection (the fourth business day after the Bid Documents were submitted), the Debtors have not yet deemed Emerald an "Acceptable Bidder" (an easy decision that could have avoided at least a portion of this Limited Objection).

Moreover, also on July 24, 2022, Emerald's investment banker followed-up by email with the Debtor's investment banker (Moelis) about data room access (as he understood was contemplated after the July 21, 2022 call). Notwithstanding another follow-up, Emerald has not received a response or access.

In a case without time pressure, this would be less important. But here the Debtors are pressing an extremely aggressive timeframe – and should be doing everything possible to get interested parties immersed in diligence. Yet the opposite seems to be happening at least with respect to a group that might propose an alternative to management's proposed reorganization Plan.

⁴ Emerald returned its non-disclosure agreement – materially unmodified from the form received by the Debtors – on July 21, 2022.

VI. The Bidding Procedures appear not to contemplate alternative restructuring options

The Bidding Procedures appear to be set up to only consider cash bids – not alternative restructuring proposals that may not involve an “asset sale.” Effectively this would result in a situation where at the end of the process, the Debtors, Committee, and Court are left to choose between the best of any cash bids (which may not be great given the situation), and the Debtors’ “stalking horse” Plan. Intentional or not, that would preclude alternative restructuring proposals by groups like Emerald, which for obvious reasons (some touched on above) could provide vastly better outcomes for creditors.

Equally concerning – given the foregoing and the Debtors’ delay in providing data room access and naming Emerald an “Acceptable Bidder” – the Bidding Procedures propose to grant the Debtors’ current management sole discretion to designate Acceptable Bidders without recourse to the bidder.

Emerald has provided comments to the Debtors (including via the redlined Bidding Procedures attached hereto as **Exhibit B**). Without getting into settlement discussions, the parties have to date been unable to resolve the issues raised. Accordingly, Emerald has no choice but to file this Limited Objection.

OBJECTION

VII. Bid Procedures must be designed to maximize value and must not favor existing management or any other party

In any bankruptcy sale, the “overarching objective” is to “maximize value to the estate.” *In re Metaldyne Corp.*, 409 B.R. 661, 667-68 (Bankr. S.D.N.Y. 2009); *see also In re GSC, Inc.*, 453 B.R. 132, 169 (Bankr. S.D.N.Y. 2011) (“The Trustee’s decision of what is best for the estate should be undertaken with the goal of maximizing the value of the estate.”). A debtor maximizes value for the estate and its creditors by selecting a bid with the highest and best purchase price.

GSC, Inc., 453 B.R. at 169-70 citing, *In re Fin. News Network, Inc.*, 126 B.R. 152, 157 (Bankr. S.D.N.Y. 1991), aff'd 980 F.2d 165 (2d Cir. 1992).

In turn, bid procedures must be reasonably calculated to attract all bidders and maximize value. See *In re Jon J. Peterson, Inc.*, 411 B.R. 131, 137 (Bankr. W.D.N.Y. 2009) (rejecting bid procedures that fail to maximize value and undermine principles of fair play). They cannot discourage competitive bidding. See *In re Diocese of Buffalo*, 637 B.R. 701, 705 (Bankr. W.D.N.Y. 2022) (sustaining committee objection and denying debtor's bid procedures because the bid procedures discouraged competitive bidding and were not designed to maximize value). Further, bid procedures cannot be structured to provide an advantage to the Debtors (or some other party) at the expense of another. See, e.g., *In re Blixseth*, No. 09-60452-7, 2010 Bankr. LEXIS 585 (Bankr. D. Mont. Feb. 23, 2010) (denying trustee's proposed procedures for selling property that limited number of entities that could bid on the property and favored a bid by creditor that held a secured interest in the property).

VIII. Given the tight timeframe, and the broad discretion the Debtors are proposing, Potential and Approved Bidders should have the right to seek emergency review of decisions they deem inappropriate

As drafted, the Bid Procedures grant the Debtors with sole discretion to make numerous decisions about potential bids, including deciding whether a Potential Bidder is "acceptable" as a gating issue. This provision (and others like it) would be cause for serious concern in any case. See, *In re Diocese of Buffalo*, 637 B.R. 704 (rejecting proposed bid procedures that gave debtor sole discretion to deem a bid unacceptable for any reason). But it is especially concerning where, as discussed above, a logical potential bidder / plan sponsor that knows the company, has the technological wherewithal to re-build trust, and actually built much of the technology

underpinning the Debtors' operations, has to this point been denied access to diligence and not deemed an "Acceptable Bidder."

In order to sufficiently protect the interests of all the Debtors' stakeholders and ensure maximum recovery, the Bid Procedures need to grant both Potential Bidders and Acceptable Bidders the ability to seek emergency Court intervention in the event they believe the Debtors have exercised their discretion improperly. *See In re Diocese of Buffalo*, 637 B.R. 704 (holding that with respect to determining whether a bidder is a qualified bidder, "the Court will not assign 'sole discretion' to the debtor without opportunity for judicial oversight.>").

The Court should require the language Emerald added in Sections A and N of the redlined Bid Procedures to be included prior to approving the Bidding Procedures. *See Exhibit B*, pp. 2, 12.

IX. The Bidding Procedures need to be flexible enough to contemplate and allow for alternative Plan proposals in addition to cash bids

As described above, an alternative plan scenario like what Emerald would propose would likely not be a cash bid (though it is possible it could involve a new capital component, and certainly would require a cash deposit sufficient to cover any Initial Overbid amount). Rather, such a plan would be similar to the Debtors' own Plan, but with new management, a new business plan, and a new technological solution for ensuring that customer assets are protected. This is wholly consistent with what the Debtors have professed that their objective is: putting the Plan out there as a "stalking horse" proposal to solicit other proposals to maximize value.

Unfortunately, as also noted, the Bidding Procedures as proposed do not appear to allow for such bids to be considered as part of the Auction. The requirements for submitted bids are heavily geared towards cash bids which would almost certainly cap creditor recoveries (quite possibly at a level that many will view as unsatisfactory). Again, this may result in a situation where the only alternatives at the end of this compressed process are the worst ones – low cash

bids for some or all assets and the Debtors' restructuring plan (which as noted, would suffer from serious trust issues).

The relatively minimal changes reflected in Sections D, G, and J of the redlined Bid Procedures (*see* Exhibit B, pp. 4-9, 11) would cure this, by at least allowing consideration of alternative structures alongside cash bids. The Court should require that these changes be included as a condition of approving the Bidding Procedures.

X. The Debtors should be required to provide details on their Plan

Right now, the Debtors' Plan provides no economic detail. Creditors have no idea what the Debtors believe a restructured entity would look like in a stand-alone reorganization, and thus what the equity or recovery tokens offered under the Plan (also not described with particularity), might be worth. Just as would be the case with Emerald if it submits an alternative plan proposal, or with a cash buyer, the Debtors should be required to provide the same level of detail by no later than the Bid Deadline. Again, the Debtors are the ones driving this expedited process, and at the end of it the Debtors, Committee, and the Court should be allowed to compare a full panoply of options with sufficient economic detail to do so in a meaningful way.

Dated: July 28, 2022

GOLDSTEIN & MCCLINTOCK LLLP

/s/ Harley J. Goldstein _____

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Lavine*

EXHIBIT A

Voyager Digital Provides Update on Asset and Risk Management

June 14, 2022 06:45 AM EST

Voyager Digital Ltd. ("Voyager" or the "Company") (TSX: VOYG; OTCQX: VYGVF; FRA: UCD2), one of the fastest-growing consumer cryptocurrency platforms in the United States, and one of the first public companies in the crypto industry, today provides an asset and risk management update in light of changing market conditions. As a public company, Voyager operates with a consistently high level of transparency, providing regular quarterly financial statements detailing the company's financial position and financial statement disclosure surrounding risk management practices and counterparty exposure.

Voyager differentiates itself through a straightforward, low-risk approach to lending and asset management by working with a select group of reputable counterparties, which are all vetted through extensive due diligence by its Risk Committee. The company does not participate in DeFi lending activities, algorithmic stablecoin staking and lending, or derivative assets, such as stETH. One of Voyager's important objectives is to make crypto as simple and safe as possible for consumer use. With that mission in mind, safeguarding customer assets is a top priority.

Although Voyager announced a prior partnership with Celsius in 2019, due to the company's ongoing due diligence and risk management process, Voyager currently has no customer assets at Celsius.

"Voyager holds a strong position in the crypto industry. Not only were we among the first to go

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Executive Officer and Co-Founder of Voyager. The company is well capitalized and in a good position to weather this market cycle and protect customer assets. It is Voyager's goal to continue to build secure products and services, as well as build trust and leadership in the cryptocurrency industry."

About Voyager Digital Ltd.

Voyager Digital Ltd.'s (TSX: VOYG) (OTCQX: VYGVF) (FRA: UCD2) US subsidiary, Voyager Digital, LLC, is a fast-growing cryptocurrency platform in the United States founded in 2018 to bring choice, transparency, and cost-efficiency to the marketplace. Voyager offers a secure way to trade over 100 different crypto assets using its easy-to-use mobile application. Through its subsidiary Coinify ApS, Voyager provides crypto payment solutions for both consumers and merchants around the globe. To learn more about the company, please visit <https://www.investvoyager.com>.

The TSX has not approved or disapproved of the information contained herein.

SOURCE Voyager Digital, Ltd.

Press Contacts

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- Terms Of Use
- Risk Disclosure
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- Tax Tool
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EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
VOYAGER DIGITAL HOLDINGS, INC. <i>et al.</i> , ¹)	Case No. 22-10943 (MEW)
Debtors.)	(Jointly Administered)

**BIDDING PROCEDURES FOR THE SUBMISSION, RECEIPT, AND
ANALYSIS OF BIDS IN CONNECTION WITH THE SALE OF THE DEBTORS**

On July 5, 2022, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

On [●], 2022, the Bankruptcy Court entered an order [Docket No. [●]] (the “Bidding Procedures Order”) approving, among other things, these bidding procedures (the “Bidding Procedures”). These Bidding Procedures set forth the process by which the Debtors are authorized to solicit the highest or otherwise best bids (each, a “Bid”) and conduct an auction (the “Auction”) for the sale (the “Sale”) of 100% of the Debtors’ equity or some or all of their assets (the “Assets”).

The Sale will be implemented pursuant to section 363 of the Bankruptcy Code or a chapter 11 plan of reorganization (as modified, amended, or supplemented from time to time, the “Plan”).

Copies of the Bidding Procedures Order or any other documents in the Debtors’ chapter 11 cases are available upon request to Stretto. Inc., by calling (855) 473-8665 (Toll-Free) or (949) 271-6507 (International). or by visiting www.cases.stretto.com/Voyager/ .
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A. Participation Requirements.

To participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in submitting a Bid (a “Potential Bidder”) must deliver (unless previously delivered) to each of (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C. (jsussberg@kirkland.com), Christopher Marcus, P.C. (cmarcus@kirkland.com), Christine A. Okike, P.C. (christine.okike@kirkland.com), and Allyson B. Smith (allyson.smith@kirkland.com); and (ii) the Debtors’ proposed financial advisor and investment banker to the Debtors, Moelis & Company

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors’ principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

LLC, 399 Park Avenue, 4th Floor, New York, New York 10022, Attn.: Jared Dermont (jared.dermont@moelis.com), Barak Klein (barak.klein@moelis.com), Mike DiYanni (michael.diyanni@moelis.com), and Brian Tichenor (brian.tichenor@moelis.com) (collectively, the “Notice Parties”):

- (i) a written disclosure of the identity of each entity that will be bidding for 100% of the Debtors’ equity or Assets or otherwise participating in connection with such Bid;
- (ii) an executed confidentiality agreement on terms reasonably acceptable to the Debtors (the “Confidentiality Agreement”), to the extent not already executed;
- (iii) a non-binding description of the Assets in which such Potential Bidder may be interested in placing a Bid and a non-binding estimate of the purchase price to be paid, with reasonable specificity, including treatment for the Account Holder Claims;² and
- (iv) proof by the Potential Bidder of its financial capacity to close a proposed transaction, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors and their advisors in their reasonable discretion ((i) through (iv), collectively, the “Bid Documents”).

Within four business days after a Potential Bidder delivers the Bid Documents, the Debtors will determine and notify that Potential Bidder, whether such Potential Bidder has submitted acceptable Bid Documents (any such Potential Bidder being referred to as an “Acceptable Bidder”).

If the Debtors deem that a Potential Bidder has not met the requirements for being deemed an Acceptable Bidder, and the Potential Buyer disagrees with such assessment, the Potential Bidder may file an emergency motion with the Bankruptcy Court seeking the reversal of such decision.

B. Due Diligence.

(i) Access to Due Diligence.

Only Acceptable Bidders will be eligible to receive due diligence and access to additional non-public information regarding the Assets and the Debtors. The Debtors will provide to each Acceptable Bidder reasonable due diligence information concerning those Assets that are the subject of such Acceptable Bidder’s Bid (or such other Assets if the list provided in accordance

² “Account Holder Claims” shall have the meaning ascribed to such term in the *Joint Plan of Reorganization of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 17].

with A.iii above is amended or modified), as requested by such Acceptable Bidder in writing, as soon as reasonably practicable after such request, but shall only extend to those Assets (or such other Assets if the list provided in accordance with A.iii above is amended or modified) that are the subject of such Acceptable Bidder's Bid. The Debtors will post substantially all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room. The due diligence period will end on the Bid Deadline (as defined herein), after which the Debtors will have no obligation to furnish any due diligence information.

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

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

The Debtors also reserve the right to withhold any diligence materials that the Debtors reasonably determine are sensitive, proprietary, or otherwise not appropriate for disclosure to an Acceptable Bidder who the Debtors reasonably determine is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives will be obligated to furnish information of any kind whatsoever to any person that is not determined to be an Acceptable Bidder.

Each Acceptable Bidder will be deemed to acknowledge and represent that it: (a) has had an opportunity to conduct any and all due diligence regarding the Debtors' Assets and liabilities that are the subject of the Auction to the extent of the Assets and liabilities that are the subject of their Bid prior to making any such Bids; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid; and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise regarding the Debtors' Assets or liabilities, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures. Neither the Debtors nor any of their employees, officers, directors, affiliates, subsidiaries, representatives, agents, advisors, or professionals are responsible for, and will bear no liability with respect to, any information obtained by Acceptable Bidders in connection with the Sale.

The Debtors have designated Moelis & Company LLC, 399 Park Avenue, 4th Floor, New York, New York 10022, Attn: Jared Dermont (jared.dermont@moelis.com), Mike DiYanni (michael.diyanni@moelis.com), Barak Klein (barak.klein@moelis.com, Brian Tichenor (brian.tichenor@moelis.com), Mike Mestayer (michael.mestayer@moelis.com) or Cullen Murphy
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(cullen.murphy@moelis.com), to coordinate all reasonable requests for additional information and due diligence access.

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

There must be no communications between and amongst Acceptable Bidders, unless the Debtors have previously authorized such communication in writing. The Debtors reserve the right, in their reasonable business judgment to disqualify any Acceptable Bidders that have communications between and amongst themselves; *provided* that any Acceptable Bidder that believes it has been wrongfully disqualified hereunder may file an emergency motion with the Bankruptcy Court seeking the reversal of such disqualification.

C. Stalking Horse Bidders and Bid Protections.

Upon entry of the Bidding Procedures Order and up until two calendar days prior to the Auction, the Debtors shall be authorized, but not obligated, in an exercise of their business judgment, to: (a) select one or more Acceptable Bidders to act as stalking horse bidders in connection with the Auction (each, a “Stalking Horse Bidder”); and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder (i) provide a breakup fee (the “Breakup Fee”), and/or (ii) agree to reimburse reasonable and documented out-of-pocket fees and expenses (the “Expense Reimbursement,” and together with the Breakup Fee, the “Bid Protections”).

D. Bid Requirements.

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

- (i) **Purpose.** Each Acceptable Bidder must (a) state that the Bid includes an offer by the Acceptable Bidder to acquire the Debtors’ equity and/or some or all of the Assets, ~~and identify the Assets and identify such Assets with reasonable specificity~~ and / or (b) ~~propose an revised version of the Plan (“Revised Plan”) that treats the Debtors’ Assets and liabilities and that explains such treatment~~ with reasonable specificity.
- (ii) **Transaction Structure and Purchase Price.** Each Bid ~~that includes an offer by the Acceptable Bidder to acquire the Debtors’ equity and/or some or all of the Assets~~ must: (a) clearly set forth the purchase price to be paid for the Assets (the “Purchase Price”) and must indicate the source of consideration, including funding commitments, and confirm that such consideration is not subject to any contingencies. ~~The Bid should~~ and (b) include a detailed sources and uses schedule. Each Bid shall also provide for appropriate treatment for the Account Holder Claims as provided in the Plan, ~~and any Revised Plan shall provide reasonably detail on the expected the economic treatment of each class of creditors.~~
- (iii) **Bid Deposit.** Each Bid ~~contemplating an acquisition of Assets, or Revised Plan that contemplates additional capital,~~ must be accompanied by a cash deposit equal

to ten percent of the net asset Purchase Price of the Bid or the additional capital contemplated (the “Good Faith Deposit”), which will be held in an escrow account to be identified and established pursuant to the authority granted by the order authorizing the Debtors to maintain and operate their bank accounts, by wire transfer or certified or cashier’s check.

- (iv) **Committed Financing**. To the extent that a Bid is not accompanied by evidence of the Acceptable Bidder’s capacity to consummate the Sale or Revised Plan transaction(s) set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtors’ satisfaction that demonstrates that the Acceptable Bidder has received sufficient debt and/or equity funding commitments to satisfy the Acceptable Bidder’s Purchase Price and / or other obligations under its Bid. 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 their sole discretion.
- (v) **Good Faith Offer**. Each Bid must constitute a good faith, bona fide offer to purchase or, in the case of a Revised Plan, treat and restructure, all or substantially all the Debtors’ equity or Assets. Bids may also be submitted for less than substantially all assets, but the Debtors may not consider partial bids in their business judgment (including unless multiple bids taken together would result in a sale of substantially all the Debtors assets).
- (vi) **Marked Agreement**. Each Bid must be accompanied by clean and duly executed transaction documents including, at a minimum, a chapter 11 plan or a draft asset purchase agreement, the form of which will be provided to any Acceptable Bidder prior to the Bid Deadline (as defined herein), including the exhibits and schedules related thereto and any related material documents integral to such Bid pursuant to which the Acceptable Bidder proposes to effectuate the Sale, along with copies that are marked to reflect any amendments and modifications from the form chapter 11 plan or asset purchase agreement provided, which amendments and modifications may not be materially more burdensome or otherwise inconsistent with these Bidding Procedures. The Debtors, in their reasonable business judgment, will determine whether any such amendments and modifications are materially more burdensome.
- (vii) **No Contingencies**. A Bid must not be conditioned on any contingency, including, among others, on obtaining any of the following (a) financing, (b) shareholder, board of directors, or other approval, and/or (c) the outcome or completion of a due diligence review by the Acceptable Bidder.
- (viii) **Binding and Irrevocable**. An Acceptable Bidder’s Bid must be irrevocable unless and until the Debtors accept a higher Bid and such Acceptable Bidder is not selected as the Back-Up Bidder (as defined herein).

- (ix) **Joint Bids.** The Debtors will be authorized to approve joint Bids in their reasonable discretion on a case-by-case basis.
- (x) **Adequate Assurance Information.** Each Bid must be accompanied by sufficient and adequate financial and other information (the “Adequate Assurance Information”) to demonstrate, to the reasonable satisfaction of the Debtors, that such Acceptable Bidder (a) has the financial wherewithal and ability to consummate the acquisition of the Assets and / or other transactions contemplated by the Bid (the “Closing”), and (b) can provide adequate assurance of future performance in connection with the proposed transaction. The Bid must also identify a contact person that parties may contact to obtain additional Adequate Assurance Information.
- (xi) **Identity & Corporate Authority.** Each Bid must fully disclose the identity of each entity that will be participating in connection with such Bid (including any equity owners or sponsors, if the purchaser is an entity formed for the purpose of consummating the acquisition of the Assets), and the complete terms of any such participation, along with sufficient evidence that the Acceptable Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties. A Bid must also fully disclose any connections or agreements with the Debtors, any known, potential, prospective bidder or Qualified Bidder (as defined herein), or any officer, director, or equity security holder of the Debtors.
- (xii) **Authorization.** Each Bid must contain evidence that the Acceptable Bidder has obtained authorization or approval from its board of directors (or a comparable governing body reasonably acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- (xiii) **No Fees.** Each Acceptable Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction, 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 Debtors are authorized in their discretion to provide the Bid Protections to one or more Stalking Horse Bidders in accordance with these Bidding Procedures.
- (xiv) **Adherence to Bidding Procedures.** By submitting its Bid, each Acceptable 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.
- (xv) **Regulatory Approvals and Covenants.** A Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the applicable Sale, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (and in the case that

receipt of any such regulatory or third-party approval is expected to take more than thirty days following execution and delivery of the Plan and/or asset purchase agreement, those actions the Acceptable Bidder will take to ensure receipt of such approvals as promptly as possible).

- (xvi) **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder (a) has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Acceptable Bidder's proposed purchase and sale agreement for the Assets.
- (xvii) **Time Frame for Closing.** A Bid by an Acceptable Bidder must be reasonably likely (based on 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.
- (xviii) **Consent to Jurisdiction.** The Acceptable Bidder must submit to the jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bidding Procedures, the Plan, the Sale documents, and the Closing, as applicable.

Bids fulfilling all of the preceding requirements, as determined by the Debtors and their advisors will be deemed to be "Qualified Bids," and those parties submitting Qualified Bids will be deemed to be "Qualified Bidders." The Debtors reserve the right to work with any Acceptable Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids for non-overlapping material portions of the Debtors' Assets such that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders will be treated as a single Qualified Bidder for purposes of the Auction; *provided* that the Debtors also reserve the right to conduct more than one Auction with respect to non-overlapping material portions of the Debtors' Assets).

Within two business days after the Bid Deadline (as defined herein), the Debtors and their advisors will determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute, alone or together with other Bids, Qualified Bids so as to enable such Qualified Bidders to bid at the Auction. Any Bid that is not deemed a Qualified Bid will not be considered by the Debtors. For the avoidance of doubt, any Acceptable Bidders designated as Stalking Horse Bidders by the Debtors and in accordance with these Bidding Procedures will be deemed to be Qualified Bidders, and any stalking horse plan and/or asset purchase agreement submitted by such Stalking Horse Bidders will be deemed Qualified Bids, which qualify such Stalking Horse Bidders to participate in the Auction as Qualified Bidders.

Bids must be sent to the Notice Parties so as to be actually received no later than August 26, 2022, at 12:00 p.m., prevailing Eastern Time (the “Bid Deadline”).

E. Evaluation of Qualified Bids.

Prior to the Auction, the Debtors and their advisors will evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors’ reasonable business judgment, the highest or otherwise best Bid (the “Initial Minimum Overbid”). For the avoidance of doubt, the Debtors may select more than one Qualified Bid to collectively serve as the Initial Minimum Overbid if each such Qualified Bid contemplates the purchase of different Assets. In making such determination, the Debtors will take into account, among other things, (i) the amount of the Qualified Bid, (ii) the impact on customers, vendors, and employees, (iii) the certainty of a Qualified Bid leading to a confirmed plan, and (iv) the execution risk attendant to any submitted Bids. Within 24 hours of such determination, but in no event later than the start of the Auction, the Debtors will distribute copies of the Initial Minimum Overbid to each Qualified Bidder who has submitted a Qualified Bid.

If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund such Acceptable Bidder’s Good Faith Deposit and all accumulated interest thereon on or within five business days after the Bid Deadline.

F. No Qualified Bids.

If no Qualified Bids are received by the Bid Deadline, then the Auction will not occur.

G. Auction.

If one or more Qualified Bids is received by the Bid Deadline, the Debtors will conduct the Auction with respect to the Debtors’ Assets. For the avoidance of doubt, the Debtors may also conduct more than one Auction with respect to non-overlapping material portions of the Debtors’ Assets. The Auction will commence on August 29, 2022, at 10:00 a.m., prevailing Eastern Time, at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, or such later time or other place as the Debtors will timely notify any Stalking Horse Bidders and all other Qualified Bidders.

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

- (i) the Auction will be conducted openly;
- (ii) only the Qualified Bidders, including any Stalking Horse Bidders, that have submitted a Good Faith Deposit in an amount exceeding the Initial Minimum Overbid, will be entitled to bid at the Auction;
- (iii) the Qualified Bidders, including any Stalking Horse Bidders, must appear in person or through duly-authorized representatives at the Auction;

- (iv) only such authorized representatives of each of the Qualified Bidders (including any Stalking Horse Bidders), the Debtors, and their respective advisors will be permitted to attend the Auction;
- (v) bidding at the Auction will begin at the Initial Minimum Overbid;
- (vi) subsequent Bids at the Auction, including any Bids by any Stalking Horse Bidder, must be made in minimum increments in an amount that the Debtors determine, after payment of the Bid Protections to any Stalking Horse Bidders, if applicable, and the Debtors will estimate the value of non-cash consideration offered, if applicable, in their reasonable business judgment;
- (vii) each Qualified Bidder will be informed of the terms of the previous Bids;
- (viii) the bidding will be transcribed to ensure an accurate recording of the bidding at the Auction;
- (ix) each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale;
- (x) the Auction will not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an overbid at the Auction to the then prevailing highest Bid, subject to the Debtors' right to require last and final Bids to be submitted on a "blind" basis;
- (xi) the Debtors reserve the right, in their reasonable business judgment, to adjourn the Auction one or more times to, among other things, (a) facilitate discussions between the Debtors and Qualified Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing amount; and
- (xii) the Auction will be governed by such other Auction Procedures as may be announced by the Debtors and their advisors from time to time on the record at the Auction; *provided* that such other Auction Procedures are (a) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, or any other order of the Bankruptcy Court, (b) disclosed orally or in writing to all Qualified Bidders, and (c) determined by the Debtors, in good faith, to further the goal of attaining the highest or otherwise best offer.

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

H. Acceptance of the Successful Bid or Successful Bids.

Upon the conclusion of the Auction (if such Auction is conducted), the Debtors, in the exercise of their reasonable, good-faith business judgment, will identify the highest or otherwise best Qualified Bid or Qualified Bids (each, a “Successful Bid”), which will be determined by considering, among other things, (a) the type and amount of Assets sought to be purchased in the Bid or Bids, (b) the total expected consideration to be received by the Debtors, (c) the likelihood of the Qualified Bidder or Qualified Bidders’ ability to close a transaction and the timing thereof (including any anticipated delays to Closing and the cost to the Debtors of such delays), (d) the expected net benefit to the estates, (e) the impact on vendors, customers, and employees (f) the certainty of the Debtors being able to confirm a plan, and (g) any other criteria as may be considered by the Debtors in their reasonable, good-faith business judgment. For the avoidance of doubt, the Debtors may select more than one Qualified Bid to collectively serve as a Successful Bid if each such Qualified Bid contemplates the purchase of different Assets. The Qualified Bidder or Qualified Bidders having submitted the Successful Bid or Successful Bids will be deemed the “Winning Bidder” or “Winning Bidders,” as applicable. The Winning Bidder or Winning Bidders and the Debtors must, as soon as commercially reasonably practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which such Successful Bid or Successful Bids were made.

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

If an Auction is held, the Debtors will be deemed to have accepted a Qualified Bid only when (a) such Qualified Bid is declared a Successful Bid at the Auction, and (b) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Bankruptcy Court of the Successful Bid or Successful Bids and entry of an order approving such Successful Bid or Successful Bids (in the case of a sale under section 363 of the Bankruptcy Code, the “Sale Order” or in the case of a sale under a chapter 11 plan, the “Confirmation Order”).

I. Sale Hearing.

In the event a transaction is consummated pursuant to section 363 of the Bankruptcy Code, a hearing before the Bankruptcy Court to consider approval of the Successful Bid or Successful Bids (the “Sale Hearing”), pursuant to which the Debtors and the Winning Bidder or Winning Bidders will consummate the Sale, will be held on September 7, 2022, at [●]:00 a.m., prevailing Eastern Time, before the Honorable Michael E. Wiles, United States Bankruptcy Judge for the Bankruptcy Court for the Southern District of New York at One Bowling Green, New York, New York 10004.

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

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

J. Confirmation Hearing.

In the event a transaction is consummated through a Plan or Revised Plan, a hearing before the Bankruptcy Court to consider confirmation of the Plan (the “Confirmation Hearing”) will be held on [November 23], 2022, at [●]:00 [a/p].m., prevailing Eastern Time, before the Honorable Michael E. Wiles, United States Bankruptcy Judge for the Bankruptcy Court for the Southern District of New York at One Bowling Green, New York, New York 10004, and otherwise in accordance with any scheduling orders entered by the Bankruptcy Court relating to confirmation of the Plan or approval of any disclosure statement related thereto.

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

At the Confirmation Hearing, the Debtors will present the Plan or Revised Plan, which will incorporate the terms of the Successful Bid or Successful Bids, to the Bankruptcy Court for confirmation.

K. Designation of Back-Up Bidder or Back-Up Bidders.

If for any reason the Winning Bidder or Winning Bidders fail to consummate the Qualified Bid or Qualified Bids within the time permitted after the entry of the Sale Order approving the Sale to the Winning Bidder or Winning Bidders, then the Qualified Bidder or Qualified Bidders with the next-highest or otherwise second-best Bid or Bids (each, a “Back-Up Bidder”), as determined by the Debtors after consultation with their advisors, at the conclusion of the Auction and announced at that time to all the Qualified Bidders participating therein, will automatically be deemed to have submitted the highest or otherwise best Bid or Bids (each, a “Back-Up Bid”), and the Debtors will be authorized, but not required, to consummate the transaction pursuant to the Back-Up Bid or Back-Up Bids as soon as is commercially reasonable without further order of the Bankruptcy Court upon at least 24 hours advance notice, which notice will be filed with the Bankruptcy Court. Upon designation of the Back-Up Bidder or Back-Up Bidders at the Auction, the Back-Up Bid or Back-Up Bids must remain open until the Closing of the Successful Bid or Successful Bids, as applicable, notwithstanding any outside date set forth in such Back-Up Bidder or Back-Up Bidders’ proposed purchase agreement or chapter 11 plan.

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

The Good Faith Deposit of the Winning Bidder or Winning Bidders will, upon consummation of the Successful Bid or Successful Bids, become property of the Debtors’ estates and be credited to the portion of the Purchase Price. If the Winning Bidder or Winning Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) fails to consummate the Successful Bid or

Successful Bids (or Back-Up Bid or Back-Up Bids, if applicable), then the Good Faith Deposit of such Winning Bidder or Winning Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) will be irrevocably forfeited to the Debtors and may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors.

The Good Faith Deposit of any unsuccessful Qualified Bidders (except for the Back-Up Bidder or Back-Up Bidders and any Stalking Horse Bidders) will be returned within five business days after consummation of the Sale or upon the permanent withdrawal of the proposed Sale. The Good Faith Deposit of the Back-Up Bidder or Back-Up Bidders, if any, will be returned to such Back-Up Bidder or Back-Up Bidders no later than five business days after the Closing with the Winning Bidder or Winning Bidders. The return of any Good Faith Deposit of any Stalking Horse Bidders will be subject to the terms of such Stalking Horse Bidders' chapter 11 plan or asset purchase agreement, as applicable.

All deposits shall be held in escrow and at no time shall be deemed property of the Debtors' estates absent further order of the Bankruptcy Court.

M. Reservation of Rights.

The Debtors reserve their rights to modify these Bidding Procedures in good faith, to further the goal of attaining the highest or otherwise best offer, or impose, at or prior to the Auction, additional terms and conditions on the Sale. The Debtors shall provide notice of any such modification to any Qualified Bidder, including any Stalking Horse Bidders. Notwithstanding anything to the contrary herein, the Debtors may elect to consummate the Sale under section 363(f) of the Bankruptcy Code as opposed to pursuant to the Plan with the Winning Bidder or Winning Bidders, but, for the avoidance of doubt, the Debtors prefer that the Sale be accomplished through the Plan.

N. Debtors' Discretion

In many areas, the Debtors have discretion under these Bidding Procedures. If an Acceptable Bidder believes that the Debtors have exercised that discretion improperly, the Acceptable Bidder may file an emergency motion with the Bankruptcy Court seeking review by the Bankruptcy Court.

N.O. Consent to Jurisdiction.

All Qualified Bidders at the Auction will be deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Sale, the Auction, the construction and enforcement of these Bidding Procedures, the Bid Requirements, and/or the Bid Documents, as applicable.

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

O.P. Fiduciary Out.

Nothing in these Bidding Procedures will require the board of directors, board of managers, or such similar governing body of a Debtor or non-debtor affiliate 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 reasonably determines in good faith, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law.

P.Q. Sale Is As Is/Where Is.

The Assets sold pursuant to these Bidding Procedures will be conveyed at the Closing in their then-present condition, **“as is, with all faults, and without any warranty whatsoever, express or implied.”**

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