

**RICHTER**

Court File No. CV-23-00699238-00CL

**FIRST REPORT OF RICHTER INC.,  
IN ITS CAPACITY AS RECEIVER OF  
DIGITAL ORTHODONTIC CARE INC.**

**AUGUST 11, 2023**

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

BETWEEN:

**ORTHO STUDIO EXPRESS, INC.**

Applicant

- and -

**DIGITAL ORTHODONTIC CARE INC.**

Respondent

**APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**FIRST REPORT OF RICHTER INC.,  
IN ITS CAPACITY AS RECEIVER OF  
DIGITAL ORTHODONTIC CARE INC.**

**AUGUST 11, 2023**

## I. INTRODUCTION

1. Pursuant to an application by Ortho Studio Express, Inc. (the “**Lender**”) under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, Richter Inc. (“**Richter**”) was appointed as receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of Digital Orthodontic Care Inc. (the “**Company**”) by way of an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), dated July 4, 2023 (the “**Date of Appointment**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The primary objective of the Company’s receivership proceedings is to create a stabilized environment to allow the Receiver to realize on the Property.
3. Marketing the Company’s business as a going concern was not viable given:
  - (i) the Company was and would continue to incur cash losses;
  - (ii) the Company was utilizing only a fraction of the business’s infrastructure capacity; and
  - (iii) the Lender was not prepared to finance the cash losses anticipated to support a going-concern sale process.
4. Pursuant to the Appointment Order, the Receiver is authorized to market any or all of the Property.
5. As set out below, the Receiver is seeking the Court’s authorization to engage Infinity Asset Solutions Inc. (the “**Agent**”) to conduct a liquidation process under a net minimum guarantee arrangement (the “**Liquidation Plan**”) to govern the sale of the Company’s tools, equipment, vehicle, and furniture (collectively, the “**Liquidation Property**”).
6. A sale solicitation process (the “**Sale Process**”) is proposed to be conducted by the Receiver for the balance of the Company’s assets not subject to the Liquidation Plan, including, *inter alia*: minority investments in other businesses, intellectual property and other credits, refunds and rebates (collectively, the “**Sale Process Property**”). The Sale Process is contemplated to include the approval of a “stalking horse bid”, as discussed below.
7. The Lender has prepared a proposed stalking horse agreement dated August 10, 2023 (the “**Stalking Horse Agreement**”) pursuant to which the Lender agreed to act as a stalking horse bidder in the Sale Process (in such capacity, the “**Stalking Horse Bidder**”), to govern the sale of the Sale Process Property. The closing of the

purchase transaction contemplated by the Stalking Horse Agreement is conditional on, among other things: (i) the Stalking Horse Bidder being declared the Successful Bidder (as defined in the Sale Process); and (ii) Court approval. The Stalking Horse Bid is intended to set the floor price for other bidders in the Sale Process.

8. This report is the Receiver's first report (the "**First Report**") filed with this Court in connection with these receivership proceedings.
9. The Receiver has established a website (the "**Receiver's Website**") at <https://www.richter.ca/insolvencycase/digital-orthodontic-care-inc/> where copies of materials filed in the Company's receivership proceedings have been made available in electronic format.
10. The Receiver has engaged Reconstruct LLP ("**Reconstruct**") as its legal counsel.

## **II. PURPOSE OF REPORT**

11. The purpose of this First Report is to:
  - (i) provide background information on the Company;
  - (ii) provide an overview of the activities of the Receiver since the Date of Appointment;
  - (iii) outline the key aspects of the Liquidation Plan;
  - (iv) outline the key aspects of the Receiver's proposed Sale Process, including an overview of the Stalking Horse Agreement; and

- (v) recommend the Court grant an Order:
  - (i) approving the Liquidation Plan, and authorizing the Receiver to take such steps necessary to implement same;
  - (ii) approving the Sale Process, and authorizing the Receiver to take such steps necessary to implement same;
  - (iii) approving the Stalking Horse Agreement;
  - (iv) in the event the Stalking Horse Agreement is selected as the Successful Bid (as defined below), approving a vesting order (the “**Vesting Order**”) in respect of same; and
  - (v) approving the activities of the Receiver as outlined in this First Report.

### III. TERMS OF REFERENCE

12. In preparing this First Report, Richter has relied upon financial information and documents prepared by the Company and its advisors, including unaudited, draft and/or internal financial information, the Company’s books and records, discussions with representatives of the Company, including former employees and information from third-party sources (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in the First Report, Richter has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Richter has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Canadian Auditing Standards (“**CAS**”) pursuant to the *Chartered Professional Accountant of Canada Handbook* and, as such, Richter expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.
13. The First Report should be read in conjunction with the motion materials filed in respect of the Lender’s receivership motion, including the affidavit of Mr. Mark Cassidy sworn May 8, 2023 (the “**Cassidy Affidavit**”). Parties using this First Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
14. Unless otherwise noted, all monetary amounts noted herein are expressed in Canadian dollars.

## IV. BACKGROUND

### Company Overview

15. The Company was established in 2017 and operated under the business name 'SureCure Orthodontic Aligners'. The Company is a privately owned corporation organized under the *Business Corporations Act*, RSO 1990 c B.16. The Company's shareholders include:
  - (i) Murrell Health Services Inc. ("**MHS**"), owned by Fred Murrell, the Company's former Vice President (61%);
  - (ii) Jeff Sheppard, the Company's former CEO and President (21.3%);
  - (iii) The Lender (10.1%);
  - (iv) Sachin Bhatia, the Company's former secretary (7.4%); and
  - (v) Asad Kaspar (0.2%).
16. The Company is a manufacturer of customized orthodontic supplies, primarily clear aligners used to straighten teeth and related accessories.
17. The Company operated from a leased premises located at 8400 Lawson Road, Units 2-4, in Milton, Ontario (the "**Premises**").
18. As at the Date of Appointment, the Company employed approximately forty-seven salaried and hourly employees (the "**Employees**"). Pursuant to the Appointment Order, all Employees have been terminated. There was no company sponsored pension plan for the Employees, nor were any of the Employees unionized. Two former Employees are engaged by the Receiver to assist on a term and task basis.

19. According to the Company's most recent internal, unaudited financial statements, as at April 30, 2023, the Property consisted of the following:

<b>ASSETS</b>	<b>(\$000's, CAD)</b>
Cash	138
Deposits	234
Investments	77
<b>Total current assets</b>	<b>449</b>
Fixed assets	6,625
<b>Total non-current assets</b>	<b>6,625</b>
<b>Total assets</b>	<b>7,074</b>

*Note: The above amounts represent book values of the Company's assets and do not represent the realizable value of the Property.*

20. Further background information about the Company, including the causes of its financial difficulties, is detailed in the Cassidy Affidavit, and are not repeated herein.

### **Secured Creditors**

#### Ortho Studio Express, Inc.

##### *Secured Promissory Note*

21. The Receiver understands that as at the Date of Appointment, the Company was indebted to the Lender in the principal amount of USD\$5 million, plus interest and fees under a Line of Credit Grid Promissory Note dated March 20, 2020 (the "**Secured Note**"). As security for the repayment of amounts owing under the Secured Note, the Company provided a general security agreement in favour of the Lender, including a security interest in all of the present and after acquired personal property of the Company.
22. The Receiver has received a written opinion from its independent counsel, Reconstruct, that subject to the customary assumptions and qualifications for opinions of this nature, the security interests in favour of the Lender are valid and enforceable in the Province of Ontario.

##### *Receivership Funding*

23. Pursuant to the Appointment Order, the Receiver is empowered to borrow from the Lender such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$400,000 (or such greater amount as this Court may by further Order authorize) for the purpose of funding

the exercise of the powers and duties conferred upon the Receiver by the Appointment Order, including interim expenditures. Borrowings by the Receiver are secured against the Property by way of a Receiver's Borrowing Charge (the "**Receiver's Borrowing Charge**") granted pursuant to the Appointment Order.

24. As at the date of the First Report, the Receiver has borrowed \$70,000 (the "**Receiver's Borrowings**") from the Lender. The Receiver issued a certificate to the Lender for the Receiver's Borrowings.
25. The Receiver's Borrowings have been used primarily to fund payroll amounts to the Company's former employees. The Receiver paid wages and vacation pay, including certain pre-filing amounts (approximately \$30,000 in aggregate), to the terminated employees. The pre-filing payments largely relate to priority claims under section 81.4(5) of the BIA. Aggregate claims in excess of the \$2,000 priority amount per employee are anticipated to be immaterial. The Lender is aware of the pre-filing payments and supports the payment of these amounts by the Receiver.

#### Murrell Health Services Inc.

26. The Receiver understands that the Company granted certain security to MHS, the Company's majority shareholder, in relation to promissory notes dated July 24, 2018, October 31, 2018, March 5, 2019, April 26, 2019, June 5, 2019, October 4, 2019, October 9, 2019, December 12, 2019, February 5, 2020, February 11, 2020, February 25, 2020, February 26, 2020 and March 10, 2020 (collectively, the "**MHS Loan Agreements**") in the total aggregate principal amount of \$5,767,756.53.
27. Pursuant to a subordination agreement dated March 20, 2020 between MHS and the Lender, all advances under the MHS Loan Agreements were subordinated to the Lender's line of credit facility up to USD\$5 million.
28. Until such time as it is known as to whether there will be proceeds sufficient to pay the Lender, the Receiver will hold off on the review as to the validity of any security granted in connection with the MHS Loan Agreements.

#### Marina Sheppard

29. The Receiver understands that the Company granted certain security to Marina Sheppard, the wife of the Company's President and minority shareholder, Jeff Sheppard, in relation to promissory notes dated December 7, 2018, February 12, 2019, February 5, 2020 and March 11, 2020 (collectively, the "**Sheppard Loan Agreements**") in the total aggregate principal amount of \$320,000.

30. Pursuant to a subordination agreement dated March 20, 2020 between Marina Sheppard and the Lender, all advances under the Sheppard Loan Agreements were subordinated to the Lender’s line of credit facility up to USD\$5 million.
31. Until such time as it is known as to whether there will be proceeds sufficient to pay the Lender, the Receiver will hold off on the review as to the validity of any security granted in connection with the Sheppard Loan Agreements.

### **Unsecured Creditors**

#### Canada Emergency Business Account (“CEBA”)

32. The Government of Canada’s CEBA program was launched in April, 2020 as a financial relief measure to support Canadian businesses adversely affected by COVID-19. The CEBA program offered interest-free loans of up to \$60,000 to small businesses and not-for-profits.
33. Royal Bank of Canada administers the Company’s CEBA loan. The Company’s current balance under their CEBA loan of \$60,000 is unsecured and non-interest bearing.

#### Due to Related Parties

34. A summary of the amounts due to related parties (the “**Related Parties**”) reported in the Company’s most recent internal unaudited accounting records, as at April 30, 2023 is presented in the following table.

<b>Related Parties</b>	<b>Amount (\$000's, CAD)</b>
MHS	2,800
Marina Sheppard	865
1358023 Ontario Ltd	200
Jeff Sheppard	130
Thomas F Seiler	6
Thomas Feeney	5
Other	2,699
<b>Total amount due to Related Parties</b>	<b>6,705</b>

35. The Company records the balances owing to multiple Related Parties under a single general ledger account. This account captures advances that are related to: (i) the MHS Loan Agreements; (ii) the Sheppard Loan Agreements; and (iii) other transactions.

36. Multiple transactions recorded in the Company's general ledger account did not identify the lending party. These transactions have been categorized under 'Other' in the summary above.
37. In the event that realizations from the Company's Property is sufficient to fully repay (i) amounts borrowed under Receiver's Borrowing Charge; (ii) the secured amount owed to the Lender; and (iii) any other priority payables, the Receiver will complete a detailed review of the advances and repayments recorded in the Related Parties general ledger account and the subordinated secured balances, if any, still held by the Related Parties.

#### The Canada Life Assurance Company

38. An account statement provided by agents representing The Canada Life Assurance Company, the landlord of the Premises (the "**Landlord**"), indicate that as at the Date of Appointment, the Company owed approximately \$460,000 in occupancy cost arrears.

#### Unsecured Trade Creditors

39. Based on the Company's books and records, the Company owed approximately \$622,000 to unsecured trade creditors.

### **V. ACTIVITIES OF THE RECEIVER SINCE THE DATE OF APPOINTMENT**

40. The Receiver's activities since the Date of Appointment have included, *inter alia*, the following:
  - (i) attending before the Court in respect of the Appointment Order;
  - (ii) taking possession and control of the Property;
  - (iii) opening new bank accounts under the Receiver's name;
  - (iv) arranging for the Company's existing bank accounts to be modified to deposit only;
  - (v) arranging for balances in the Company's bank accounts to be transferred to the Receiver's new account;
  - (vi) sending to all creditors on record the *Notice and Statement of Receiver* required under section 245(1) and 246(1) of the BIA;
  - (vii) terminating the Company's employees pursuant to the Appointment Order;
  - (viii) engaging two of the Company's former employees on a task and term basis;

- (ix) coordinating for the processing of records of employment for terminated employees;
- (x) compiling the payroll and personal employee details required to administer claims pursuant to the *Wage Earners Protection Plan Act* (“**WEPPA**”) in relation to employees that were terminated;
- (xi) corresponding with the Company’s former payroll administrator and the former head of human resources regarding WEPPA;
- (xii) corresponding with the Company’s subtenant, Borderworx Logistics (the “**Subtenant**”), regarding the receivership proceedings and regarding access to the Premises;
- (xiii) coordinating access to the Premises for:
  - (i) the Company’s former employees to retrieve personal belongings;
  - (ii) the Landlord’s fire safety equipment service providers;
  - (iii) liquidators reviewing assets in respect of the Liquidation process; and
  - (iv) the Company’s Subtenant.
- (xiv) responding to inquiries from stakeholders, including creditors, customers and former employees;
- (xv) engaging with counsel to the Landlord regarding a rent reduction in respect of a proposed short-term occupancy agreement;
- (xvi) reviewing the Company’s books and records, and specifically its accounting and financial records;
- (xvii) corresponding with the Company’s bookkeeping service provider regarding the Company’s financial records;
- (xviii) corresponding with the Company’s external accounting service provider, MNP LLP, regarding the status of the Company’s fiscal 2023 tax filings and year-end compilation engagement;
- (xix) corresponding with The Regional Insurance Services Inc., the Company’s insurance broker and arranging for the Receiver to be added to the policy as a named-insured;
- (xx) establishing and maintaining the Receiver’s Website, where all materials filed the Court in connection with The Company’s receivership proceedings are available in electronic format;

- (xxi) corresponding and communicating regularly with the Lender and their legal counsel, McMillan LLP (“**McMillan**”), regarding the receivership proceedings;
- (xxii) working with the Lender, McMillan and Reconstruct to develop the Sale Process;
- (xxiii) preparing this First Report;
- (xxiv) soliciting proposals from five liquidators, and developing the Liquidation Plan with the Agent; and
- (xxv) attending to other matters pertaining to the administration of the receivership proceedings.

## **VI. PROPOSED LIQUIDATION PLAN**

41. The Receiver solicited liquidation proposals from five liquidators in respect of the Liquidation Property. Four liquidators each submitted multiple offers including outright purchases, net minimum guarantee offers, and strictly commission-based arrangements. After review of the proposals and consultation with the Lender, the Receiver proposes to engage the Agent to conduct a liquidation process under a net minimum guarantee arrangement.
42. The Liquidation Plan to be entered into with the Agent, pending approval of this Court, includes the following key terms a copy of which is attached as **Appendix “B”**.
  - (i) **Guaranteed Amount:** The Agent will pay the Receiver a guaranteed minimum amount of \$515,000 (the “**NMG Amount**”) for the Liquidation Property.
  - (ii) **Deposit:** A deposit in the amount of \$100,000 upon signing of an auction service agreement (“**ASA**”) between the Receiver and the Agent;
  - (iii) **Agent’s Fees:** Following the first \$515,000 in auction proceeds, the Agent will retain the next \$60,000 to cover expenses, marketing, labour and set-up fees; and
  - (iv) **Profit Sharing:** Proceeds in excess of \$575,000 will be split 85/15 between the Receiver and the Agent, in the Receiver’s favour.

(v) Expenses:

- (i) The Receiver will be responsible for providing the Agent with rent-free access at the Premises;
- (ii) The Agent will be responsible for *inter alia*, the advertising, marketing, preparing of the Liquidation Property for sale, cleaning setup, cataloguing, preview, inspection arrangements, collection invoices, in supervision of the release period following the auction; and
- (iii) The Agent will not be responsible for any the removal of, or the disposition of, any and all environmentally hazardous chemicals, alcohol, isopropanol, waste or substances found in or on the Premises or contained in any of the Liquidation Property during our contract, without cost or obligation.

(vi) Timing: the Agent's access to the Premises will be terminated on September 30, 2023.

(vii) Court Approval: the Liquidation Plan is subject to court approval authorizing the Receiver to:

- (i) enter into the ASA and retain the Agent on terms set out in the Agent's NMG Amount proposal; and
- (ii) pay the Agent its compensation on the terms out in the Agent's NMG Amount proposal.

43. The terms of the Agent's NMG Amount proposal are consistent with standard insolvency transactions, to be completed on an "as-is, where is" basis, without any material representations or warranties. All sales of Liquidation Property are to be on the same terms.

## VII. PROPOSED SALE PROCESS

44. The purpose of the Sale Process is to solicit interest in substantially all of the Company's remaining Property not subject to the Liquidation Plan while providing the certainty of a transaction through the Stalking Horse Agreement. It is anticipated that the Stalking Horse Bid will add competitive tension, thereby increasing the maximization of value to be derived with respect to the Sale Process Property. A copy of the Stalking Horse Agreement is included in **Appendix "C"** of this First Report.

45. The closing of the purchase transaction contemplated by the Stalking Horse Agreement is conditional on, among other things: (i) the Stalking Horse Bidder being declared the Successful Bidder (as defined in the Sale Process); and (ii) Court approval of the Stalking Horse Bid, which the Receiver proposes to obtain as part of this motion in the event that the Receiver constitutes the Stalking Horse Bidder as the Successful Bidder.
46. The proposed Sale Process is to be administered by the Receiver.
47. A summary of the proposed Sale Process is as follows (capitalized terms not otherwise defined in this section have the meanings provided to them in the Sale Process, which are provided in Schedule “G” to the Stalking Horse Agreement):
- (i) Subject to Court approval, the following table sets out the Sale Process timeline:

Milestone	Key Dates
Commencement of Sale Process	Promptly following the granting of the Sales Procedure Order
Distribution of Teaser Letter & Data Room to be opened	As soon as practical following the granting of the Sales Procedure Order
Bid Deadline	September 29, 2023
Auction Date (if required)	October 6, 2023
Approval Hearing Date (if required)	October 13, 2023
Outside Date	October 27, 2023

- (ii) Key Dates can be extended by up to 7 days by the Receiver in its discretion, or for a longer period with the consent of the Stalking Horse Bidder or by Court order.
- (iii) The Sale Process is proposed to commence on the date the Court issues the Sale Procedure Order (the “**Commencement Date**”).
- (iv) As soon as practicable following the Commencement Date, the Receiver will distribute an initial offering summary (the “**Teaser Letter**”) detailing the opportunity to potential interested parties (the “**Prospective Bidders**”) identified by the Receiver. Attached to the Teaser Letter will be a form of confidentiality agreement

("Confidentiality Agreement"), which Prospective Bidders must execute in order to gain access to a data room containing further information about the Sale Process Property.

- (v) As soon as practicable after the Commencement Date, the Receiver will (a) have arranged for an advertisement of the acquisition opportunity in such newspaper(s) and/or journal(s) or other publications as the Receiver may deem appropriate or advisable, and (b) post the Teaser Letter and other relevant information concerning the acquisition opportunity on the Receiver's Website.
- (vi) Prospective Bidders who have executed a Confidentiality Agreement, will be provided with access to a virtual data room (the "Data Room") to be maintained by the Receiver. The Data Room will contain various financial and other information concerning the Company and the Sale Process Property for purposes of performing diligence on the acquisition opportunity.
- (vii) Prospective Bidders will be provided with a copy of the Stalking Horse Agreement and Prospective Bidders will be required to submit offers in a form similar to the Stalking Horse Agreement, with a blackline comparison illustrating any changes.
- (viii) Offers will be required to be submitted to the Receiver by no later than 5:00 pm (Toronto time) on September 29, 2023 (the "Bid Deadline"), being approximately 43 days from the return date of the motion for approval of the Sale Process.

#### **Qualified Bid**

48. To be a "Qualified Bid", an offer must be submitted by the Bid Deadline and must, at a minimum, include, *inter alia*, the following requirements, unless such requirement is waived by the Receiver:

- (i) a complete, executed Definitive Agreement and a blackline against the Stalking Horse Agreement;
- (ii) a cash purchase price equal to or greater than:
  - (a) the sum of \$3,000,000, being the consideration under the Stalking Horse Agreement; plus
  - (b) an amount equal to the Priority Amounts. Priority amounts consist of all amounts which by operation of law are in priority to the security interest of the Lender in respect of the Secured Indebtedness, including amounts that may be due and owing under the Receiver's Borrowing Charge; plus
  - (c) an amount equal to the Receiver's Borrowing Obligations attributable to Property being purchased;

(d) a minimum incremental amount of \$10,000 in excess of the aggregate purchase price contemplated by the Stalking Horse Agreement; plus

(e) \$85,000, representing the Break Fee.

(iii) it fully discloses the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the Bid and the complete terms of any such participation;

(iv) it does not include any request of the Potential Bidder for an entitlement to any break or termination fee, expense reimbursement or similar type of payment;

(v) it includes an acknowledgment that the offer is irrevocable until the earlier of (i) the approval of the Successful Bid by the Court (or, in the case of the Stalking Horse Bid, the delivery of the Receiver's Certificate to the Stalking Horse Bidder and the filing of the Receiver's Certificate in Court), and (ii) thirty (30) calendar days following the Bid Deadline, provided that if such Potential Bidder's Bid is selected as a Successful Bid, its bid shall remain irrevocable until the closing of the Transaction contemplated by the Successful Bid;

(vi) it must include written evidence, satisfactory to the Receiver, that the prospective purchaser has the financial means to complete the proposed acquisition;

(vii) it must not contain any condition or contingency relating to due diligence or financing conditions precedent to the offeror's obligation to complete the transaction (save and except for approval by the Court); and

(viii) a cash deposit in the form of cheque or bank draft of not less than 10% of offer purchase price;

(ix) it includes a commitment to close the Transaction contemplated by the Bid by no later than the Outside Date;

(x) it contains such other information as may reasonably be requested by the Receiver; and

(xi) it is received prior to the Bid Deadline.

49. Under the Sale Process, the Stalking Horse Bidder is deemed to be a Qualified Bid.

### **Auction**

50. The Receiver will review all Qualified Bids and identify the Successful Bidder pursuant to the Sale Process.

51. If no Qualified Bids are submitted by the Bid Deadline, the Stalking Horse Bid will be deemed to be the Successful Bid.

52. If more than one Qualified Bids are received by the Bid Deadline (including the Stalking Horse Bid) , the Receiver may proceed with an auction to select the Successful Bid (an “**Auction**”) on notice to the Stalking Horse Bidder and each bidder that is invited to attend the Auction by the Receiver having regard to the terms of its Qualified Bid (each, an “**Auction Bidder**”).
53. There shall be no more than five (5) Auction Bidders, including the Stalking Horse Bidder. The Stalking Horse Bidder shall constitute an Auction Bidder in all circumstances in which an Auction is conducted.
54. If an Auction is conducted, it shall be conducted in accordance with the following procedures:
  - (i) the Receiver will notify all Auction Bidders, that the Auction shall be held at a time to be designated by the Receiver at the offices of the Receiver or by teleconference, video conference or other form of electronic telecommunications, as the Receiver may deem fit;
  - (ii) The identity of each Auction Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Auction Bidder;
  - (iii) only the Receiver and the Auction Bidders, and in each case their respective professional advisors, shall be entitled to attend the Auction;
  - (iv) the Receiver may waive and/or employ and announce at the Auction additional procedures that the Receiver deems reasonable under the circumstances for conducting the Auction;
  - (v) the bidding will begin initially with the highest Qualified Bid and subsequently continue in minimum increment amounts to be determined by the Receiver prior to the Auction;
  - (vi) the Auction shall continue until the bidding has concluded and there is one remaining Auction Bidder that the Receiver has determined has submitted the highest or otherwise best bid of the Auction. At such time, the Auction shall be closed and the Auction Bidder that submitted the highest or otherwise best bid shall be designated as the Successful Bidder; and
  - (vii) upon selection of a Successful Bidder, the Successful Bidder shall, as soon as practicable, execute and deliver a Definitive Agreement that reflects the Successful Bidder’s bid and any modifications submitted and agreed to during the Auction.

## The Stalking Horse Agreement

55. In the days following the Date of Appointment, the Receiver engaged in discussions with the Lender and its counsel, whereby the Lender expressed an interest in acquiring the Sale Process Property.
56. These discussions culminated in the Stalking Horse Agreement between the Receiver and the Stalking Horse Bidder, pursuant to which, subject to Court approval, the terms of the Sale Process, and the terms and conditions of the Stalking Horse Agreement, the Stalking Horse Bidder agrees to purchase the Sale Process Property free and clear of all encumbrances, in exchange for the payment of the Purchase Price (as defined below).
57. The key terms and conditions of the Stalking Horse Agreement are provided below.
  - (i) **Stalking Horse Purchaser:** Ortho Studios Express, Inc.
  - (ii) **Purchase Price:** estimated to be \$3,000,000 million (the "**Purchase Price**") to be paid by way of a credit bid in the amount to \$3,000,000 of the Secured Indebtedness (the "**Credit Bid Amount**"), such that on Closing the Secured Indebtedness shall be partially repaid in the amount of the Credit Bid Amount.
  - (iii) **Purchased Assets:** intellectual property, legal actions where the Company is the moving party, tax refunds, credits, rebates, claims to insurance reimbursements, investment property and books and records related to the Purchased Assets.
  - (iv) **Excluded Assets:** shares and other interests or capital in the Company, tax records unrelated to the Purchased assets, insurance policies, books and records unrelated to the Purchased Assets and assets listed in schedule E to the Stalking Horse Agreement.
  - (v) **Assumption of Liabilities:** the Stalking Horse Bidder will assume only those liabilities in respect of the Purchased Assets. The Assumed Liabilities are the liabilities of the Company: (i) related to the transfer or maintenance of the Intellectual Property; (ii) related to the transfer or maintenance of the investment property (iii) the transfer of the Intangibles; and (iv) associated with the transfer of authorizations owned, held or used by the Company in connection with the Purchased Assets (each as defined in the Stalking Horse Bid).
  - (vi) **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an "as is, where is" basis, with limited representations and warranties.

(vii) **Closing Date:** the date that is five (5) Business Days following the later of (i) the selection of the Stalking Horse Agreement as the Successful Bid and (ii) the date of the Approval and Vesting, or such other date as may be agreed in writing between the parties hereto, but in any case, not later than the Outside Date.

(viii) **Material Conditions:**

For the Benefit of both Parties

- (a) the Court shall have issued and entered the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated;
- (b) no Applicable Law and no judgment, injunction, order or decree shall have been issued by a Governmental Authority or otherwise in effect that restrains or prohibits the completion of the Transaction; and
- (c) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.

For the Benefit of the Stalking Horse Purchaser

- (a) the representations and warranties of the Company set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;
- (b) the Company will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Company at or prior to the Time of Closing; and
- (c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the sale and purchase of the Purchased Assets.

For the Benefit of the Company

- (a) the representations and warranties of the Stalking Horse Bidder set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;

- (b) the Stalking Horse Bidder will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Stalking Horse Bidder at or prior to the Time of Closing; and
  - (c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the purchase and sale of the Purchased Assets.
- (ix) **Termination:** the Stalking Horse Agreement can be terminated:
- (a) by either party if the other party is in breach of the Stalking Horse Agreement;
  - (b) by either party if the agreement becomes impossible to satisfy prior to the Outside Date other than for failure of that party to comply with its obligations under the Stalking Horse Agreement;
  - (c) by written agreement of both parties, and on consent of the Receiver; or
  - (d) by either party if the completion of the sale of the Purchased Assets has not occurred by the Outside Date;

#### **Conditional Pre- Approval of the Stalking Horse Agreement**

58. As part of the relief sought, the Receiver is seeking conditional approval of the Stalking Horse Agreement in the event that the Stalking Horse Bid is declared by the Receiver to be the Successful Bid.
59. The proposed Sale Process provides that if no Qualified Bids are submitted by the Bid Deadline, the Stalking Horse Bidder will be deemed to have submitted the Successful Bid. Alternatively, the Stalking Horse Bidder may be declared by the Receiver to be the Successful Bid at the culmination of the Sale Process, including any Auction.
60. The Receiver is requesting that the Court conditionally pre-approve the Stalking Horse Bid and provisionally vest the Sale Process Property to the Stalking Horse Bidder in the event that the Stalking Horse Bid is determined by the Receiver to be the Successful Bid pursuant to and in accordance with the Sale Procedures. The Receiver proposes that the Stalking Horse Bid be pre-approved by this Court and that the vesting of the Sale Process Property to the Stalking Horse Purchaser occur upon the satisfaction of the following conditions:
- (i) the Receiver serving a report to the Court and on the service list designating the Stalking Horse Transaction as the Successful Bid; and

- (ii) the Receiver receiving no written objection from any person as to the selection by the Receiver of the Stalking Horse Transaction as the Successful Bid within 10 days of serving such report.

61. In the event that a Qualified Bidder other than the Stalking Horse Bidder is declared to be the Successful Bid, the Receiver intends to return to Court to seek Court approval of such Successful Bid.

### **Recommendation**

62. The Receiver has considered whether the Stalking Horse Bid warrants it being conditionally pre-approved by the Court at this time, as opposed to the Stalking Horse Bidder simply being invited to bid in the Sale Process. The Receiver is of the view that the Stalking Horse Bid should be pre-approved by the Court at this time as::

- (i) if the Stalking Horse Bid is declared to be Successful Bid, the purchase price being offered by the Stalking Horse Bidder will reflect the market value of the Sale Process Property.
- (ii) the requirement for an additional hearing and the associated inherent delays may adversely affect the value of the Company's assets and cause the Lender and the Receiver to incur additional costs to return to Court where the proposed Purchase Price is advanced as a credit bid;
- (iii) the Stalking Horse Agreement provides certainty that a transaction will be completed;
- (iv) the Stalking Horse Bidder is not being approved as making the Successful Bid at this time, but is subject to the outcome of the Sale Process;
- (v) upon serving a report declaring the Stalking Horse Bid as the Successful Bidder, any person shall have 10 business days to object to the selection of the Stalking Horse Bid (the "**Stalking Horse Approval Report**"). In the event that this occurs, the Receiver will bring a motion for formal approval by the Court of the Stalking Horse Bid;
- (vi) the requirement of the service and filing of the Stalking Horse Approval Report provides a mechanism under which the Sale Process will ensure that parties are treated fairly. The requested Order requires that, should a party have an objection to the selection of the Stalking Horse Bid as the Successful Bid, the Receiver will return to the Court for sale approval;
- (vii) the terms of the Sale Process treats all interested persons fairly and affords them substantially equal information and opportunity;
- (viii) the Receiver is of the view that the Stalking Horse Offer is not prejudicial to any creditor; and

- (ix) the Stalking Horse Agreement sets a minimum bid amount, which will avoid the Company's time and resources being spent on below market offers.

### **Sale Process Recommendation**

63. The Receiver recommends that this Court issue an order approving the Stalking Horse Agreement and the Sale Process for the following reasons:

- (i) the Sale Process provides for a wide marketing of the Company's business by the Receiver, which has extensive experience selling distressed assets and businesses;
- (ii) stalking horse sale processes are a recognized mechanism in restructuring processes to maximize recoveries, while creating stability for the business;
- (iii) the Sale Procedures allow for a fair, efficient and transparent market test for the benefit of all stakeholders, and provide an opportunity to complete a transaction with greater value than the Stalking Horse Agreement, should one materialize;
- (iv) it is in the best interests of the Company and its stakeholders that the Stalking Horse Agreement be preserved in order to have the opportunity to maximize value and to protect downside risk in the event that a superior offer is not submitted;
- (v) the proposed timelines of the Sale Process are sufficient to allow interested parties to perform diligence and submit offers;
- (vi) the terms of the Stalking Horse Agreement are commercially reasonable; and
- (vii) approving the form of Vesting Order in the event the Stalking Horse Bidder is the Successful Bidder minimizes professional fees.

64. The Receiver has also considered the reasonableness of the Break Fee. The Receiver has reviewed recent comparable stalking horse agreements wherein bid protections have been approved in transactions of this nature. Based on this comparison, the Receiver is of the view that, in the circumstances, the Break Fee is fair and reasonable to compensate the Stalking Horse Bidder for costs and expenses in relation to entering into the Stalking Horse Agreement and will not unduly "chill" bidding on the Company's assets and/or business as part of the Sale Process.

## VIII. RECEIVER'S RECOMMENDATION

65. Based on the foregoing, the Receiver respectfully recommends that this Court issue an Order granting the relief detailed in paragraph 11(v) of this First Report.

All of which is respectfully submitted, this 11<sup>th</sup> day of August, 2023.

**Richter Inc.**  
**in its capacity as Receiver of**  
**Digital Orthodontic Care Inc.**  
**and not in its personal or corporate capacity**

Per:



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Karen Kimel, MAcc, CPA, CA, CPA (IL), CIRP, LIT



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Jonathan Joffe, CA, CPA, CFA, CIRP, LIT

# Appendix “A”

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
 )  
JUSTICE OSBORNE )  
 ) TUESDAY, THE 4<sup>th</sup>  
 DAY OF JULY, 2023

B E T W E E N :

ORTHO STUDIO EXPRESS, INC.

Applicant

- and -

DIGITAL ORTHODONTIC CARE INC.

Respondent

**ORDER  
(APPOINTING RECEIVER)**

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O 1990 c. C.43, as amended (the “CJA”) appointing Richter Inc. as receiver (in such capacities, the “Receiver”) without security, of all of the assets, undertakings and properties of Digital Orthodontic Care (the “Debtor”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mark Cassidy sworn May 8, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, and on reading the consent of Richter Inc. to act as the Receiver,

AND UPON BEING ADVISED that the respondent does not oppose the relief sought in the Application,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Richter Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

**RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000.00 provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.00; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the *Ontario Personal Property Security Act* shall not be required, and in each case the *Ontario Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing,

the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which

may not be disclosed or provided to the Receiver due to the privilege attaching to lawyer-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver'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 Receiver'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 Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court

from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose

personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or 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 Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver 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 Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’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.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from Ortho Studio Express, Inc. or any of its affiliates, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$400,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## **POWER TO ASSIGN INTO BANKRUPTCY**

25. THIS COURT ORDERS that the Receiver is hereby authorized to assign the Debtor into bankruptcy if it reasonably determines that a sale of the Debtor's business is

not reasonably achievable and that a bankruptcy proceeding would provide a more efficient means of liquidating the Property for the benefit of its creditors.

### **SERVICE AND NOTICE**

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) 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, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<<https://www.richter.ca/insolvencycase/digital-orthodontic-care-inc/>>’.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor’s creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

### **GENERAL**

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Receiver 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 Receiver 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.

32. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. <number>

AMOUNT \$<amount>

1. THIS IS TO CERTIFY that Richter Inc., the receiver (the "Receiver") of the assets, undertakings and properties Digital Orthodontics Care Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 4<sup>th</sup> day of July, 2023 (the "Order") made in an action having Court file number CV-23-00699238-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$<amount>, being part of the total principal sum of \$<amount> which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the <day> day of each month after the date hereof at a notional rate per annum equal to the rate of <percentage> per cent above the prime commercial lending rate of Bank of Montreal from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

Dated the «day» of \_\_\_\_\_, 202\_\_\_\_

Richter Inc., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: \_\_\_\_\_  
Name: »  
Title: »

ORTHO STUDIO EXPRESS, INC.  
Applicant

and DIGITAL ORTHODONTIC CARE INC.  
Respondent

Court File No.: CV-23-00699238-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE -  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER  
(APPOINTING RECEIVER)**

McMillan LLP  
Brookfield Place  
181 Bay St, Suite 4400  
Toronto ON M5J 2T3

**Stephen Brown-Okruhlik** LSO# 66576P  
[stephen.brown-okruhlik@mcmillan.ca](mailto:stephen.brown-okruhlik@mcmillan.ca)  
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**Sarah White** LSO#: 82985M  
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Tel: 416.865.5533

Lawyers for the Applicant

Served on the Service List

# Appendix “B”

# **Liquidation Sale Strategy of:**



**SureCure Aligners**

**Assets Located at:**

8400 Lawson Road, Units 2-3, Milton, ON, L9T 0J8

**Presented to:**

Jonathan Joffe, CA, CPA, CIRP, LIT, Vice-President

# **RICHTER BUSINESS**

**Presented by:**



**Auctioneers Appraisers Liquidators Financiers**

Tel: 905-669-8893 • E-mail: [info@infinityassets.com](mailto:info@infinityassets.com) • [www.infinityassets.com](http://www.infinityassets.com)  
63 Maplecrete Road • Concord, Ontario • L4K 1A5 • Canada



August 2<sup>nd</sup>, 2023

Jonathan Joffe  
Richter  
Bay Wellington Tower  
181 Bay St. #3510  
Toronto, ON  
M5J 2T3

Dear Jonathan:

Further to your request for offers, **Infinity Asset Solutions** is pleased to submit the following Liquidation Proposals for your review and consideration of **SureCure Aligners**.

Our goal is to provide Richter with a liquidation solution that will meet your liquidation goals and expectations. We are pleased to submit in the following pages a comprehensive disposition strategy taking into consideration the current market conditions and selling trends of similar industry assets while meeting your timelines.

We understand the importance of this project. We also recognize there are many details to be managed. **Infinity** will act as Exclusive Agent/Auctioneer and will work closely with your staff ensuring all aspects of the liquidation to ensure a successful sale with maximum asset value return. Our industry experience, market knowledge and high-caliber professional staff along with our unique service and marketing capabilities establish our firm as a leader in our field. Our professional team has 80+ years of combined experience executing thousands of sale scenarios which enables us to handle this project in a professional and expeditious fashion.

**The Offer includes:**

- **All Machinery & Equipment as provided in the DOC Asset List and as per our site inspections.**

**Auctioneers Appraisers Liquidators Financiers**

Tel: 905-669-8893 • E-mail: [info@infinityassets.com](mailto:info@infinityassets.com) • [www.infinityassets.com](http://www.infinityassets.com)  
63 Maplecrete Road • Concord, Ontario • L4K 1A5 • Canada

**Section 1**  
**SALES METHODOLOGY**

Based on the information provided as well as our on-site inspections of the assets, we recommend that an Infinity managed a **Global Webcast Online Auction Sale** process be utilized along with a **Private Treaty** sale process on certain major machinery and inventory assets. Our experience, understanding of the industry, and knowledge of the equipment and marketplace will assist in achieving the maximum gross realization.

Infinity's unique opportunity to market your assets is a one-time opportunity to take full advantage of our proprietary database of global buyers in conjunction with the online bid platform BidSpotter's vast database. Collectively, our market exposure will achieve the best possible monetary realization on the liquidated assets.



Outlined below are the sales methodologies and tasks to be performed by Infinity based on the time frame allotted for the disposition of the assets.

***Global Webcast Online Auction***

- INVENTORYING, GATHERING DESCRIPTIONS, CREATING DATA-BASE FOR MARKETING
- PREPARATION FOR PUBLIC ONLINE AUCTION SALE EVENT
- CREATION OF A "SURECURE ALIGNERS" MICRO SALE WEBSITE
- CREATION AND DISSEMINATION OF MARKETING MATERIALS. INFINITY WILL PROVIDE GLOBAL EXPOSURE THROUGH THE WORLD WIDE WEB NETWORKS ALONG WITH NEWSPAPER, DIRECT MAIL BROCHURES
- CONDUCT OF AN ONLINE WEB-CAST AUCTION SALE
- INVOICING, COLLECTION OF FUNDS AND REMITTANCE OF SALES PROCEEDS
- ACCOUNTING AND REPORTING

Section 2  
**COMPENSATION STRUCTURE**

***Excluded Assets Include: Any Third-Party Storage Assets and the Toyota Electric Forklift***

**Anticipated Gross Recovery Value: \$550,000 - \$700,000**

Based on all the Machinery & Equipment included in the DOC Asset List and Inspected by Infinity.

**Option #1 – Cash Purchase (BUY)**

For all the Assets, Infinity is pleased to offer an outright Cash Purchase of **\$560,000**.

*A Deposit will be posted on file for the amount of **\$100,000** upon the signing of an acceptable **“Purchase Agreement”** with the final balance of the **“Purchase Price”** paid in full 10 days prior to the proposed Auction Sale or the removal of any sold assets.*

**Option #2 – Net Minimum Guarantee (NMG)**

For all the assets, Infinity is pleased to offer a Net Minimum Guarantee of **\$515,000**. Infinity shall retain the next **\$60,000** for expenses, marketing, labour, set-up, fees, etc. Proceeds in excess of **\$575,000** shall be shared on an **85/15%** basis in your favour.

*A Deposit will be posted on file for the amount of **\$100,000** upon the signing of an acceptable **“Auction Services Agreement”** with the final balance of the **“NMG”** paid in full 1 day prior to the proposed Auction Sale.*

**Option #3 – Agency - Commission**

Infinity is pleased to offer a commission sale of **15%**. Infinity shall retain **\$28,000 (capped and not to exceed)** for expenses and to be deducted from the proceeds of the sale.

### Section 3

#### *Marketing Strategy, Timeline, Terms and Conditions*

**The foregoing is subject to the detailed following commitments and conditions and the signing of an acceptable Auction Services Agreement:**

- 1) **Advertising:** The sales process shall be prominently and widely advertised well in advance through advertisements in the print media, pictorial brochure, including newspapers, web site promotion, e-mail and fax mail, etc.
- 2) **Premises:** The Agent shall be entitled to occupy the Premises for a period up until September 30<sup>th</sup> 2023, as an agent, free of any charge in respect of the occupancy or the normal consumption of utilities.
- 3) **Offer Excludes:** Third Party Assets and Toyota Forklift.
- 4) **Check-out, Removal and Cleanup:** The Agent will carefully supervise the checkout following the auction, ensuring damage free removal of the sold Assets and leaving the floor in a broom swept condition. Unsold/abandoned item removal costs & labour to be to the account of Richter along with any waste receptacles as required during the term of our contract.
- 5) **Use of Name:** The Agent shall be entitled to use the wording “**SureCure Aligners**” in all of our promotional media and online advertising.
- 6) **Environmental:** The Agent is not responsible for the removal of, or the disposition of, any and all environmentally hazardous chemicals, Alcohol, Isopropanol, waste or substances found in or on the Premises or contained in any of the Assets during our contract, without cost or obligation.
- 7) **Insurance:** The Agent shall take out and maintain during our occupancy of the Premises, public liability insurance with a minimum coverage amount of \$5,000,000. The Estate to be responsible for maintaining fire and other perils insurance on the Assets until sold.
- 8) **Settlement:** Full settlement will be made to you within Twenty (20) banking days of the final auction, along with a detailed disclosure of all transactions.

August 2<sup>nd</sup>, 2023

Page 6

- 9) **Collection of Taxes and Buyer's Premium:** The Agent shall be solely responsible for charging and collecting from the purchasers the purchase price, together with all applicable taxes in connection therewith, and remitting any and all taxes to the appropriate authorities, and accounting for all such applicable taxes. The Agent will be entitled to charge and retain our industry standard buyer's premium on all sales.
- 10) **Offer Deadline:** This offer is valid and open for acceptance in principle now with the final "Court Approval" to be issued after August 17<sup>th</sup> 2023. Time is of the essence.

We thank you for the opportunity to submit this proposal and look forward to further discussion leading to the acceptance of the foregoing Liquidation Proposal to provide you with a professional second-to-none service.

Yours truly,

**INFINITY ASSET SOLUTIONS**

*Via email*



Bruce Lyle  
President

**Auctioneers Appraisers Liquidators Financiers**

Tel: 905-669-8893 • E-mail: [info@infinityassets.com](mailto:info@infinityassets.com) • [www.infinityassets.com](http://www.infinityassets.com)  
63 Maplecrete Road • Concord, Ontario • L4K 1A5 • Canada

# Appendix “C”

# STALKING HORSE PURCHASE AGREEMENT

This Agreement is made as of August 10, 2023, between

**Richter Inc., in its capacity as court appointed receiver of Digital Orthodontic Care Inc. and not in its personal or corporate capacity**

(the “Vendor”)

and

**Ortho Studios Express, Inc.**

a corporation incorporated under the laws of the State of Wisconsin

(the “Purchaser”)

**WHEREAS** on July 4, 2023, Richter Inc. was appointed as receiver (in such capacity, the “Receiver”) of all of the assets, undertakings and properties of Digital Orthodontic Care Inc. (the “Company”) pursuant to an order (the “Appointment Order”) of the Ontario Superior Court of Justice (Commercial List) (the “Court”),

**AND WHEREAS** pursuant to the Appointment Order, the Receiver is authorized to market any or all of the property of the Company (the “Property”), including advertising or soliciting offers in respect of any and all the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver, in its discretion, may deem appropriate,

**AND WHEREAS** on August 17, 2023, the Court granted an order (the “Sale Procedures Order”) approving the procedures for soliciting and selecting bids for one or more sale transactions (each, a “Transaction”) in respect of certain of the property and assets of the Company and authorizing and directing the Receiver to carry out the Sale Procedures (as defined below),

**AND WHEREAS** in the event that this Agreement is selected as the Successful Bid (as defined below) in the Sale Procedures, the Vendor has agreed to sell and transfer to the Purchaser, and the Purchaser has agreed to purchase from the Vendor, all of the Vendor’s and Company’s right, title and interest in and to the Purchased Assets, subject to and in accordance with the terms and conditions set forth in this Agreement,

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the parties hereto (collectively, the “Parties”, and each, a “Party”) hereby acknowledge and agree as follows:

## ARTICLE 1 – INTERPRETATION

### 1.01 Definitions

(1) In this Agreement, unless something in the subject matter or context is inconsistent therewith:

“**Affiliates**” means, with respect to any Person, any other Person that controls or is controlled by or is under common control with the referent Person.

“**Agreement**” means this agreement, including its recitals and schedules, as amended from time to time.

“**Applicable Law**” means (i) any applicable domestic or foreign law including any statute, regulation, subordinate legislation or treaty, as well as the common law, and (ii) any applicable and enforceable rule, requirement, order, judgment, injunction, award or decree of a Governmental Authority.

“**Appointment Order**” has the meaning set out in the recitals hereto.

“**Approval and Vesting Order**” means an order of the Court substantially in a form to be agreed on by the Vendor and the Purchaser, each acting reasonably: (i) approving the sale of the Purchased Assets by the Vendor to the Purchaser pursuant to the terms of this Agreement, (ii) authorizing and directing the Vendor to complete the Transaction to convey to the Purchaser the Purchased Assets, and (iii) providing for the vesting of all the right, title, benefit and interest of the Company and the Vendor in and to the Purchased Assets in and to the Purchaser, free and clear of all Encumbrances, other than the Permitted Encumbrances.

“**Assumed Liabilities**” has the meaning set out in Section 2.07(1).

“**Bid Deadline**” has the meaning set out in Schedule F.

“**Books and Records**” means all personnel records, inspection records, financial records, and other records, books, documents and data bases recorded or stored by means of any device, including in electronic form, relating to the Business or the Purchased Assets as are in the possession or under the control of the Vendor.

“**Break Fee**” means the break fee in an amount equal to CAN\$85,000 contemplated by the Sale Procedures that will become immediately due and payable to the Purchaser (in its capacity as “Stalking Horse Bidder” under the Sale Procedures) if this Agreement is not designated by the Receiver as the Successful Bid pursuant to and in accordance with the Sale Procedures and Section 5.05(1)(b) hereof.

“**Business**” means the business conducted by Digital Orthodontic Care Inc. being a dental technology company engaged in the development, marketing and sale of orthodontic aligners.

“**Business Day**” means a day other than a Saturday, Sunday, statutory or civic holiday in Toronto, Ontario.

“**Claim**” means any actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, investigation or proceeding and any loss, claim or demand relating thereto or resulting therefrom, or any other claim or demand of whatever nature or kind.

“**Closing Date**” means five (5) Business Days following the later of (i) the selection of this Agreement as the Successful Bid and (ii) the date of the Approval and Vesting Order, or such other date as may be agreed in writing between the parties hereto, but in any case, not later than the Outside Date.

“**Company**” has the meaning set out in the recitals hereto.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Credit Bid Amount**” has the meaning set out in Section 2.03(b).

“**Encumbrances**” means any security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens (statutory or otherwise), pledges, executions, levies, charges, encumbrances, interests in property, or other financial or monetary Claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise.

“**ETA**” means the *Excise Tax Act*, R.S.C. 1985, c, E-15, as amended.

“**Excluded Assets**” has the meaning set out in Section 2.02.

“**Governmental Authority**” means any domestic or foreign legislative, executive, judicial or administrative body or Person having jurisdiction in the relevant circumstances.

“**HST**” means harmonized sales tax imposed under Part IX of the ETA.

“**Intangibles**” has the meaning set out in Section 2.01(1)(b).

“**Intellectual Property**” means intellectual property of any nature and kind including all domestic and foreign trade-marks, business names, trade names, domain names, trading styles, patents, trade secrets, confidential information, software, industrial designs and copyrights, whether registered or unregistered, and all applications for registration thereof, and inventions, formulae, recipes, product formulations and chemistries, processes and processing methods, technology and techniques and know-how, including without limitation the patents set out on **Schedule A** hereto.

“**Investment Property**” means all of the shares, units, debt instruments, notes or equity interests owned or held by the Company in the capital of, or issued by, the entities listed on **Schedule B** hereto (excluding any such shares, units, debt instruments, notes or equity interests identified as Excluded Assets on **Schedule D** hereto).

“**Liabilities**” means all costs, expenses, charges, debts, liabilities, commitments and obligations of any nature or kind, whether accrued or fixed, actual, absolute, contingent, latent or otherwise, matured or unmatured or determined or undeterminable, including those arising under any Applicable Law or Claim and those arising under any contract or undertaking or otherwise, including any tax liability or tort liability of the Company or the Vendor.

“**Liquidation Agreement**” means the agreement between the Receiver and Infinity Asset Solutions dated on or about the date hereof.

“**Outside Date**” means 11:59 pm (Toronto time) on October 27, 2023 or such later date and time as the Vendor and the Purchaser may agree in writing.

“**Permitted Encumbrances**” means only those Encumbrances and other registrations or encumbrances related to the Purchased Assets set forth on **Schedule C** hereto.

“**Person**” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or other entity.

“**Personal Information**” means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

“**Priority Payable Amount**” has the meaning set out in Section 2.03(a).

“**Priority Payables**” means all amounts which by operation of law are in priority to the security interest of the Purchaser in respect of the Secured Indebtedness, including amounts that may be due and owing under the Receiver’s Charge.

“**Purchase Price**” has the meaning set out in Section 2.03.

“**Purchased Assets**” has the meaning set out in Section 2.01.

“**Receiver**” has the meaning set out in the recitals hereto.

“**Receiver’s Certificate**” means a certificate signed by the Receiver substantially in the form attached as Schedule “A” to the Approval and Vesting Order.

“**Receiver’s Borrowings Charge**” has the meaning set out in the Appointment Order.

“**Receiver’s Charge**” has the meaning set out in the Appointment Order.

“**Sale Procedures**” means the sale procedures, substantially in the form set out in **Schedule F** hereto.

“**Sale Procedures Order**” has the meaning set out in the recitals hereto.

“**Secured Indebtedness**” means the indebtedness owing to the Purchaser by the Company including, without limitation, all principal, interest, fees, payments, costs, expenses and disbursements, pursuant to, or in connection with (i) the Line of Credit Grid Promissory Note dated March 20, 2020 in the principal amount of US\$5,000,000 issued by the Company to the Purchaser and secured by the General Security Agreement dated as of March 20, 2020 granted by the Company in favour of the Purchaser, in each case as amended, supplemented, amended and restated, replaced, or otherwise modified from time to time, and (ii) advances made by the Purchaser to the Receiver under the Receiver’s Borrowings Charge in the amount of CAN\$70,000.

“**Successful Bid**” has the meaning set out in Schedule F.

“**Tax Act**” means the *Income Tax Act* (Canada), as amended from time to time.

“**Time of Closing**” means 10:00 a.m. (Toronto Time) on the Closing Date.

“**Transfer Taxes**” has the meaning set out in Section 2.06(1).

“**Transaction**” means the transaction of the purchase and sale of the Purchased Assets as contemplated by this Agreement.

“**Vendor**” has the meaning set out in the recitals hereto.

## **1.02 Headings**

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles and Sections of and Schedules to this Agreement.

## **1.03 Extended Meanings**

In this Agreement words importing the singular number include the plural and vice versa, words importing any gender include all genders and words importing Persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities. The term “including” means “including without limiting the generality of the foregoing” and the term “third party” means any Person other than the Vendor and the Purchaser.

## **1.04 Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

## **1.05 Currency**

All references to currency herein are to lawful money of Canada.

## **1.06 Schedules**

The following are the Schedules to this Agreement:

Schedule A – Intellectual Property

Schedule B – Investment Property

**Schedule C** – Permitted Encumbrances

**Schedule D** – Other Excluded Assets

**Schedule E** – Allocation of Purchase Price

**Schedule F** – Sale Procedures

The Schedules hereto are for the sole benefit of the Purchaser. The parties hereto acknowledge and agree that the Purchaser, in its sole discretion, may revise the Schedules “A” through “E” up to and until the Time of Closing. For greater certainty, any revision of the Sale Procedures must comply with the terms therein.

**ARTICLE 2 - SALE AND PURCHASE**

**2.01 Assets to be Sold and Purchased**

(1) Upon and subject to the terms and conditions hereof, the Vendor will sell to the Purchaser and the Purchaser will purchase from the Vendor, as of and with effect from the Time of Closing, all of the right, title, benefit and interest of the Vendor in and to the following assets (collectively, the “**Purchased Assets**”);

- (a) all Intellectual Property owned by the Company relating to the Business or otherwise;
- (b) all choses in action where the Company is the plaintiff or moving party and any other intangibles owned by the Company that do not form part of the Intellectual Property (“**Intangibles**”);
- (c) all authorizations owned, held or used by the Company in connection with the Purchased Assets to the extent they are transferable;
- (d) all rights of the Vendor to tax refunds, credits, rebates or similar benefits for the period prior to the Closing Date;
- (e) any Claim of the Company to reimbursement under any insurance policy applicable to the Company;
- (f) all Investment Property; and
- (g) all Books and Records related to the Purchased Assets;

but excluding, for greater certainty, in each and every case the Excluded Assets (as hereinafter defined).

**2.02 Excluded Assets**

(1) Notwithstanding Section 2.01 or any other provision in this Agreement to the contrary, the Vendor and the Company will retain the right, title, benefit and interest in and to, and the Purchaser

will have no rights with respect to the right, title, benefit and interest of the Vendor in and to the following assets (collectively, the “**Excluded Assets**”):

- (a) shares and other interests or capital in the Company;
- (b) the tax records and insurance policies of the Vendor, save and except for those tax records that are required with respect to any Purchased Assets;
- (c) Books and Records not pertaining primarily to the Purchased Assets;
- (d) any other assets listed in **Schedule D**.

(2) The Purchaser and the Vendor agree that the Purchaser shall deliver to the Vendor, on or before the Bid Deadline, a completed form of **Schedule D**, which upon delivery shall form part of this Agreement.

### **2.03 Purchase Price**

The aggregate purchase price payable by the Purchaser to the Vendor for the Purchased Assets excluding all applicable Taxes (such amount being hereinafter referred to as the “**Purchase Price**”) shall be CAN\$3,000,000 (inclusive of any applicable Transfer Taxes), which shall comprise of the following:

- (a) the payment in cash of an amount equal to that portion of the Priority Payables not otherwise satisfied from the proceeds of sale of the Property sold pursuant to the Liquidation Agreement (the “**Priority Payable Amount**”); and
- (b) a credit bid of the Secured Indebtedness of the balance of the Purchase Price (the “**Credit Bid Amount**”), which shall upon Closing cause the partial repayment and release of that portion of the Secured Indebtedness.

### **2.04 Satisfaction of Purchase Price**

The Purchaser shall pay and satisfy the Purchase Price on the Closing Date as follows:

- (a) the assumption by the Purchaser of the Assumed Liabilities, if any;
- (b) the Purchaser shall pay in cash the Priority Payable Amount, if any; and
- (c) the repayment and release of the Credit Bid Amount, as described in Section 2.03(b).

### **2.05 Allocation of Purchase Price**

The Purchase Price will be allocated among the Purchased Assets as set out in **Schedule E**. The Vendor and Purchaser will make and file all tax returns and filings on a basis which is consistent with the amount and allocation of the Purchase Price. The Purchaser and the Vendor agree that the Purchaser shall deliver to the Vendor, on or before Closing, a completed form of **Schedule E**, which upon delivery shall form part of this Agreement.

## 2.06 Transfer Taxes

(1) The Purchaser shall be responsible for all federal and provincial sales taxes, transfer tax, goods and services, HST and other similar taxes and duties payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser (collectively, the “**Transfer Taxes**”). The Vendor will not collect HST if the Purchaser provides to the Vendor a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least five Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Vendor in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

(2) Subject to Section 2.06(1), any applicable Transfer Taxes shall be paid by the Purchaser to the Vendor in cash on Closing, which payment shall result in a reduction to the Credit Bid Amount in an amount equal to the amount of the Transfer Taxes.

## 2.07 Assumption of Liabilities

(1) Subject to this transaction Closing on the Closing Date, the Purchaser agrees to discharge, perform and fulfil the following obligations and liabilities of the Company:

- (a) All Liabilities in respect of the transfer or maintenance of the Intellectual Property;
- (b) All Liabilities in respect of the transfer of the Investment Property, including any costs associated with obtaining consent to such transfer;
- (c) All Liabilities in respect of the transfer of the Intangibles; and
- (d) Any Liabilities associated with the transfer of authorizations owned, held or used by the Company in connection with the Purchased Assets,

(collectively, the “**Assumed Liabilities**”).

(2) Other than the Assumed Liabilities, the Purchaser shall not assume and shall have no obligation to discharge, perform or fulfil any other Liabilities.

(3) For greater certainty, the Purchaser hereby releases the Vendor from any obligation to discharge, perform or fulfil any Liabilities in respect of the Purchased Assets.

## 2.08 Delivery of Purchased Assets

At the Time of Closing, the Purchaser will take possession of the Purchased Assets where situated. The Purchaser acknowledges that the Vendor has no obligation to deliver possession of the Purchased Assets to the Purchaser at any location other than where situated.

### ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

#### 3.01 Vendor's Representations and Warranties

(1) The Vendor represents and warrants to the Purchaser that, as at the date hereof and as of the Closing Date:

- (a) the Vendor has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement and completion of the transactions contemplated herein and the entering into of this Agreement in completion of the transactions contemplated herein;
- (b) subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, the Vendor has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;
- (c) subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, this Agreement constitutes a valid and legally binding obligation of the Vendor, enforceable against the Vendor in accordance with its terms;
- (d) the Vendor is or will be a registrant under Part IX of the *Excise Tax Act* (Canada) on the Closing Date; and
- (e) the Vendor is not a non-resident of Canada within the meaning of section 116 of the *Tax Act*.

#### 3.02 Purchaser's Representations and Warranties

(1) The Purchaser represents and warrants to the Vendor that:

- (a) the Purchaser is a corporation duly incorporated, organized and existing under the laws of the State of Wisconsin;
- (b) the Purchaser has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;
- (c) this Agreement constitutes a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms;
- (d) the Purchaser has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement and completion of the transactions contemplated herein and the entering into of this Agreement in completion of the transactions contemplated herein will not breach its constating documents, any agreement binding on the Purchaser, or Applicable Laws relating to the Purchaser;
- (e) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and

no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property;

- (f) there are no orders of or proceedings before or pending before any Governmental Authority, or threatened to be brought by or before any Governmental Authority by or against the Purchaser affecting the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby by the Purchaser;
- (g) no authorizations, consents or approvals of, or filing with or notice to, any Governmental Authority is required in connection with the execution, delivery or performance of this Agreement; and
- (h) except for the Approval and Vesting Order, no consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement.

### 3.03 “As Is, Where Is”

(1) The Purchaser acknowledges and agrees that it is purchasing the Purchased Assets and assuming the Assumed Liabilities on an “*as is, where is*” basis and on the basis that the Purchaser has conducted to its satisfaction an independent inspection, investigation and verification of the Purchased Assets (including a review of title) and all other relevant matters and has determined to proceed with the transaction contemplated herein and will accept the same at the Time of Closing in their then current state, condition, location, and amounts, subject to all Permitted Encumbrances.

(2) Except as otherwise expressly provided in Section 3.01, no representation, warranty or condition whether statutory (including under the *Sale of Goods Act* (Ontario), the *International Sale of Goods Contracts Convention Act* (Canada) and the *International Sale of Goods Act* (Ontario) or any international equivalent act which may be applicable to the subject matter pursuant to the provisions of this Agreement, including but not limited to the *United Nations Convention on Contracts for the International Sale of Goods*), or express or implied, oral or written, legal, equitable, conventional, collateral, arising by custom or usage of trade, or otherwise is or will be given including as to title, outstanding Encumbrances, description, fitness for purpose, merchantability, merchantable quality, quantity, condition (including physical environmental condition), suitability, durability, assignability, or marketability thereof or any other matter or thing whatsoever, and all of the same are expressly excluded and disclaimed and any rights pursuant to such statutes have been waived by the Purchaser. The Purchaser acknowledges and agrees that it has relied entirely and solely on its own investigations as to the matters set out above and in determining to purchase the Purchased Assets and assume the Assumed Liabilities pursuant to this Agreement.

(3) The description of the Purchased Assets contained herein is for the purpose of identification only and the inclusion of any item in such description does not confirm the existence of any such items or that any such item is owned by the Company. Except as otherwise explicitly set forth in Section 3.01, no representation, warranty or condition has been given by the Vendor concerning the completeness or accuracy of such descriptions and the Purchaser acknowledges and agrees that

any other representation, warranty, statements of any kind or nature, express or implied, (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Vendor or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Vendor.

(4) Any documents, materials and information provided by or on behalf of the Vendor or the Company to the Purchaser with respect to the Purchased Assets and the Assumed Liabilities (including any confidential information memorandums, management presentations, or material made available in the electronic data room) have been provided to the Purchaser solely to assist the Purchaser in undertaking its own due diligence, and the Vendor has not made and is not making any representations or warranties, implied or otherwise, to or for the benefit of the Purchaser as to the accuracy and completeness of any such documents, materials or information or the achievability of any valuations, estimates or projections. The Purchaser acknowledges that it has not and will not rely upon any such documents, materials or information in any manner, whether as a substitute for or supplementary to its own due diligence, searches, inspections and evaluations. The Vendor and its respective Affiliates, directors, officers, employees, agents and advisors shall not be liable for any inaccuracy, incompleteness or subsequent changes to any such documents, materials or information.

## **ARTICLE 4 – COVENANTS**

### **4.01 Covenants of the Vendor**

(1) As soon as practicable after the execution of this Agreement, the Vendor shall serve and file with the Court a motion for (i) the issuance of the Sale Procedures Order approving the Sale Procedures, and (ii) the issuance of the Approval and Vesting Order, among other things, approving this Agreement and, subject to this Agreement's selection as the Successful Bid, authorizing the Vendor to consummate the Transaction. The Vendor shall use its best efforts to seek the issuance and entry of the Approval and Vesting Order and the Purchaser shall cooperate with the Vendor in its efforts to obtain the issuance and entry of the Approval and Vesting Order.

(2) The Vendor will ensure that the representations and warranties of the Vendor set out in Section 3.01 are true and correct in all material respects at the Time of Closing and use reasonable commercial efforts to ensure that the conditions of closing for the benefit of the Purchaser set out in Section 5.02 over which it has reasonable control have been performed or complied with in all material respects by the Time of Closing.

### **4.02 Covenants of the Purchaser**

(1) The Purchaser will ensure that the representations and warranties of the Purchaser set out in Section 3.02 are true and correct in all material respects at the Time of Closing and use reasonable commercial efforts to ensure that the conditions of closing for the benefit of the Vendor set out in Section 5.03 over which it has reasonable control have been performed or complied with in all material respects by the Time of Closing.

(2) The Purchaser will provide the Vendor with all information within its possession or control that the Vendor may reasonably request to assist the Vendor in obtaining the Approval and Vesting Order.

(3) The Purchaser will comply with the *Personal Information Protection and Electronic Documents Act* (Canada) and other similar Applicable Laws relating to privacy and the protection of Personal Information in respect of the Books and Records and any other business and financial records related to the Purchased Assets.

## ARTICLE 5 - CONDITIONS AND TERMINATION

### 5.01 Mutual Conditions

(1) The obligation of the Parties to complete the Transaction is subject to the following joint conditions being satisfied, fulfilled or performed on or prior to the Closing Date:

- (a) the Court shall have issued and entered the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated;
- (b) the Transaction shall have been designated as the Successful Bid pursuant to the Sale Procedures;
- (c) no Applicable Law and no judgment, injunction, order or decree shall have been issued by a Governmental Authority or otherwise in effect that restrains or prohibits the completion of the Transaction; and
- (d) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.

(2) The foregoing conditions are for the mutual benefit of the Parties. If any condition set out in this Section 5.01 is not satisfied, performed or mutually waived on or prior to the Outside Date, any Party may elect on written notice to the other Party to terminate this Agreement.

### 5.02 Conditions for the Benefit of the Purchaser

(1) The sale by the Vendor and the purchase by the Purchaser of the Purchased Assets and the assumption of the Assumed Liabilities are subject to the following conditions, which are for the exclusive benefit of the Purchaser and which are to be performed or complied with at or prior to the Time of Closing:

- (a) the representations and warranties of the Vendor set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;
- (b) the Vendor will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Vendor at or prior to the Time of Closing; and
- (c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the sale and purchase of the Purchased Assets.

### **5.03 Conditions for the Benefit of the Vendor**

(1) The sale by the Vendor and the purchase by the Purchaser of the Purchased Assets and the assumption of the Assumed Liabilities are subject to the following conditions, which are for the exclusive benefit of the Vendor and which are to be performed or complied with at or prior to the Time of Closing:

- (a) the representations and warranties of the Purchaser set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;
- (b) the Purchaser will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Purchaser at or prior to the Time of Closing; and
- (c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities.

### **5.04 Waiver of Condition**

(1) The Purchaser, in the case of a condition set out in Section 5.02, and the Vendor, in the case of a condition set out in Section 5.03, will have the exclusive right to waive the performance or compliance of such condition in whole or in part and on such terms as may be agreed upon without prejudice to any of its rights in the event of non-performance of or non-compliance with any other condition in whole or in part. Any such waiver will not constitute a waiver of any other conditions in favour of the waiving party. Such waiving party will retain the right to complete the purchase and sale of the Purchased Assets herein contemplated.

### **5.05 Termination**

- (1) This Agreement may be terminated, by notice given prior to or on the Closing Date:
- (a) by the Vendor or the Purchaser if a material breach of any representation, warranty, covenant, obligation or other provision of this Agreement has been committed by the other party and such breach has not been waived or cured within five days following the date on which the non-breaching party notifies the other party of such breach;
  - (b) by the Vendor or the Purchaser, if a transaction other than the Transaction is designated by the Receiver as the Successful Bid at the Bid Deadline pursuant to the Sale Procedures and such transaction is consummated and closes, in which case, upon closing of the transaction that is the Successful Bid, the Break Fee will be forthwith payable by the Receiver to the Purchaser. The Break Fee shall be paid to the Purchaser only if the Purchaser is not in breach or default of any provision of this Agreement, which breach or default has not been waived in writing by the Vendor;

- (c) by the Purchaser if a condition in Section 5.01 or Section 5.02 becomes impossible to satisfy prior to the Outside Date (other than through the failure of the Purchaser to comply with its obligations under this Agreement) and the Purchaser has not waived such condition;
- (d) by the Vendor if a condition in Section 5.01 or Section 5.03 becomes impossible to satisfy prior to the Outside Date (other than through the failure of the Vendor to comply with its obligations under this Agreement) and the Vendor has not waived such condition;
- (e) by written agreement of the Purchaser and the Vendor;
- (f) by the Vendor or the Purchaser if the completion of the sale of Purchased Assets herein contemplated has not occurred (other than through the failure of the party seeking termination to comply with its obligations under this Agreement) on or before the Outside Date.

### **5.06 Effect of Termination**

Each party's right of termination under Section 5.05 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 5.05, all further obligations of the parties under this Agreement will terminate, except that the obligations in sections 6.04 and 8.03 will survive; provided, however, that if this Agreement is terminated by a party because of a material breach of a representation or warranty, covenant, obligation or other provision of this Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

## **ARTICLE 6 - CLOSING ARRANGEMENTS**

### **6.01 Closing**

The sale and purchase of the Purchased Assets will be completed at the Time of Closing at the offices of Reconstruct LLP, 200 Bay Street, Suite 2305, Toronto, Ontario.

### **6.02 Vendor's Closing Deliveries**

- (1) On or before the Time of Closing, the Vendor will deliver or cause to be delivered to the Purchaser the following:
  - (a) a certificate from the Vendor, dated as of the Closing Date, certifying:
    - (i) that, except as disclosed in the certificate, the Vendor has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction; and

- (ii) that all representations, warranties and covenants of the Vendor contained in this Agreement are true as of the Time of Closing, with the same effect as though made on and as of the Time of Closing;
- (b) an acknowledgement, dated as of the Closing Date, that each of the conditions in Sections 5.01 and 5.03 hereof have been fulfilled, performed or waived as of the Time of Closing;
- (c) a copy of the issued and entered Approval and Vesting Order;
- (d) a bill of sale, duly executed by the Vendor, if necessary;
- (e) the share certificate(s) or other documentation evidencing the Investment Property;
- (f) the executed Receiver's Certificate; and
- (g) such other documents or instruments as contemplated or required to be delivered pursuant to this Agreement, all of which shall be in form and substance satisfactory to the parties, acting reasonably.

### **6.03 Purchaser's Closing Deliveries**

- (1) On or before the Time of Closing, the Purchaser will deliver or cause to be delivered to the Vendor the following:
  - (a) a receipt and release with respect to the Credit Bid Amount;
  - (b) by the payment, in cash by wire transfer in immediately available funds, of the Priority Payable Amount and any applicable Transfer Taxes;
  - (c) a certificate executed by an officer of the Purchaser confirming that the representations and warranties of the Purchaser in this Agreement are true and correct in all material respects as of the Time of Closing and that the obligations of the Purchaser to be performed prior to the Time of Closing have been performed in all material respects;
  - (d) an acknowledgement, dated as of the Closing Date, that each of the conditions in Sections 5.01 and 5.02 hereof have been fulfilled, performed or waived as of the Time of Closing; and
  - (e) such other documents or instruments as contemplated or required to be delivered pursuant to this Agreement, all of which shall be in form and substance satisfactory to the parties, acting reasonably.

### **6.04 Confidentiality**

Subject to the terms of any non-disclosure agreement, both prior to the Closing Date and, if the sale and purchase of the Purchased Assets hereunder fails to occur for whatever reason thereafter, the Purchaser will not disclose to anyone or use for its own or for any purpose other than the purpose contemplated by this Agreement any confidential information concerning the Vendor or

the operations obtained by the Purchaser pursuant hereto, and will hold all such information in the strictest confidence and, if the sale and purchase of the Purchased Assets hereunder fails to occur for whatever reason, will return all documents, records and all other information or data relating to the Vendor or to the operations which the Purchaser obtained pursuant to this Agreement.

## **ARTICLE 7 – SURVIVAL**

### **7.01 Survival**

No covenants, representations and warranties of each party contained in this Agreement will survive the completion of the sale and purchase of the Purchased Assets hereunder, except for the covenants that by their terms are to be satisfied or survive after the Time of Closing, which covenants will continue in full force and effect in accordance with their terms.

## **ARTICLE 8 - GENERAL**

### **8.01 Further Assurances**

Each of the Vendor and the Purchaser will from time to time at the request and expense of the other execute and deliver all such further documents and instruments and do all acts and things as the other party may, either before or after the Closing Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

### **8.02 Time of the Essence**

Time is of the essence of this Agreement.

### **8.03 Fees, Commissions and other Costs and Expenses**

Each of the Vendor and the Purchaser will pay its respective legal and accounting costs and expenses and any other commissions incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred and will indemnify and save harmless the other from and against any Claim resulting from any broker's, finder's or placement fee or commission alleged to have been incurred as a result of any action by it in connection with the transactions under this Agreement.

### **8.04 Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties.

### **8.05 Entire Agreement**

This Agreement (including the agreements contemplated hereby) constitutes the entire agreement between the parties with respect to the subject matter hereof and such agreements cancel and supersede any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement (including the agreements contemplated hereby).

## **8.06 Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

## **8.07 Assignment**

This Agreement may not be assigned by the Vendor without the prior written consent of the Purchaser. This Agreement may not be assigned by the Purchaser without the prior written consent of the Vendor.

## **8.08 Notices**

(1) Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery or by electronic means of communication addressed to the recipient as follows:

to the Vendor:

Richter Inc.  
181 Bay St. #3510  
Bay Wellington Tower  
Toronto, ON M5J 2T3

Attention: Jonathan Joffe  
Email: JJoffe@Richter.ca

with a copy to:

Reconstruct LLP  
200 Bay Street, Suite 2305  
Toronto, ON M5J 2J3

Attention: Caitlin Fell  
Email: cfell@reconllp.com

to the Purchaser:

Ortho Studios Express, Inc.  
N2263 Foster Rd South  
Oostburg, Wisconsin  
53070-1643

Attention: Mark Cassidy  
Email: mcassidy@americanortho.com

With a copy to:

McMillan LLP  
Brookfield Place, Suite 4400  
181 Bay Street  
Toronto, Ontario  
M5J 2T3

Attention: Tushara Weerasooriya  
Email: tushara.weerasooriya@mcmillan.ca

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

#### **8.09 Remedies Cumulative**

The right and remedies of the parties under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

#### **8.10 Non-Assignable Rights**

Nothing in this Agreement will constitute an agreement to assign or an attempted assignment of any non-assignable rights or any contracts or permits for which any requisite consent or approval has not been obtained or which as a matter of Applicable Law or by its terms is not assignable.

#### **8.11 No Third Party Beneficiaries**

- (1) This Agreement is solely for the benefit of:
  - (a) the Vendor, and its successors and permitted assigns, with respect to the obligations of the Purchaser under this Agreement, and
  - (b) the Purchaser, and its successors and permitted assigns, with respect to the obligations of the Vendor under this Agreement, and this Agreement will not be deemed to confer upon or give to any other Person any Claim or other right or remedy.

#### **8.12 Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### **8.13 Attornment**

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Vendor and the Purchaser each attorns to the jurisdiction of the courts of the Province of Ontario.

### **8.14 Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect.

### **8.15 Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

### **8.16 Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

*[The balance of this page has been intentionally left blank]*

The parties have executed this Agreement.

**RICHTER INC., IN ITS CAPACITY AS  
RECEIVER OF DIGITAL ORTHODONTIC  
CARE INC., AND NOT IN ITS PERSONAL  
OR CORPORATE CAPACITY**

By:  \_\_\_\_\_

Name: Karen Kimel

Title: Senior Vice President

*I have authority to bind the Corporation*

**ORTHO STUDIOS EXPRESS, INC.**

By: \_\_\_\_\_

Name:

Title:

*I have authority to bind the Corporation*

The parties have executed this Agreement.

**RICHTER INC., IN ITS CAPACITY AS  
RECEIVER OF DIGITAL ORTHODONTIC  
CARE INC., AND NOT IN ITS PERSONAL  
CAPACITY**

By: \_\_\_\_\_

Name:

Title:

*I have authority to bind the Corporation*

**ORTHO STUDIOS EXPRESS, INC.**

By:  \_\_\_\_\_

Name: **MARK CASSIDY**

Title: **VP OPERATIONS**

*I have authority to bind the Corporation*

**Schedule A – [Intellectual Property]**

See attached.

**DIGITAL ORTHODONTIC CARE – PATENT PORTFOLIO**

<b>Our Ref.</b>	<b>Country</b>	<b>Application No.</b>	<b>Filing Date</b>	<b>Title</b>	<b>Patent No.</b>	<b>Issue Date</b>	<b>Status</b>
16165-9 (156587)	US	63/121173	12/03/2020	SYSTEMS AND METHODS FOR PRODUCING DENTAL ALIGNERS	N/A	N/A	Expired on 03 Dec 2021; PCT application filed 03 Dec 2021
16165-10 (161457)	WO	PCT/CA2021/051734	12/03/2021	APPARATUSES, SYSTEMS AND METHODS FOR PRODUCING DENTAL ALIGNERS	N/A	N/A	National phase entered in US, Canada and Europe
16165-13 (309076)	US	18/255707	06/02/2023	APPARATUSES, SYSTEMS AND METHODS FOR PRODUCING DENTAL ALIGNERS	N/A	N/A	Pending and in good standing Awaiting first Office Action
16165-14 (309053)	CA	3203596	12/03/2021	APPARATUSES, SYSTEMS AND METHODS FOR PRODUCING DENTAL ALIGNERS	N/A	N/A	Pending and in good standing 2 <sup>nd</sup> Annuity due 03 Dec 2023 Request for Examination due 03 Dec 2025
16165-15 (309077)	EP	21899392.1	12/03/2021	APPARATUSES, SYSTEMS AND METHODS FOR PRODUCING DENTAL ALIGNERS	N/A	N/A	Pending and in good standing Annuity due 03 Dec 2023 Response to Rule 161/162 due 11 Jan 2024

**Schedule B – [Investment Property]**

Shares, units, debt instruments, notes or equity interests owned or held by the Company (excluding any such shares, units, debt instruments, notes or equity interests identified as Excluded Assets on **Schedule D** hereto) in or issued by:

1. Candid Care Co.

**Schedule C – [Permitted Encumbrances]**

Nil.

**Schedule D – [Other Excluded Assets]**

To be delivered by the Purchaser on or before the Bid Deadline.

**Schedule E – [Allocation of Purchase Price]**

To be delivered by the Purchaser on or before Closing.

**Schedule F – [Sale Procedures]**

## SALE PROCEDURES

### FOR THE SALE OF PROPERTY OF DIGITAL ORTHODONTIC CARE INC.

1. On July 4, 2023, Richter Inc. was appointed as receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of Digital Orthodontic Care Inc. (the “**Company**”) pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).
2. On August 17, 2023, the Court granted an order (the “**Sale Procedures Order**”) approving the procedures set forth herein (the “**Sale Procedures**”) for soliciting and selecting bids for one or more sale transactions (each, a “**Transaction**”) in respect of certain of the property and assets of the Company (the “**Property**”) and authorizing and directing the Receiver to carry out these Sale Procedures.

#### **Defined Terms**

3. Capitalized terms used and not otherwise defined in the body of these Sale Procedures shall have the meanings given to them in **Appendix “A”**.

#### **Solicitation Process and Timeline**

4. The Company has received a Transaction bid from Ortho Studios Express, Inc. (the “**Stalking Horse Bidder**”) pursuant to an asset purchase agreement in substantially the form attached to the Report of the Receiver dated August 9, 2023 (the “**Stalking Horse Agreement**”) which constitutes a qualified bid for all purposes and at all times under these Sale Procedures (the “**Stalking Horse Bid**”). The Stalking Horse Bid shall serve as the “stalking horse” bid for the purposes of the sale process governed by these Sale Procedures (the “**Sale Process**”).
5. Notwithstanding the receipt of the Stalking Horse Bid, all interested parties are encouraged to submit bids for a Transaction pursuant to these Sale Procedures.
6. These Sale Procedures describe the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Company, its Property, and its businesses and operations, the manner in which a bid becomes a Qualified Bid, the receipt and review of bids received, the ultimate selection of a Successful Bid and the approval thereof by the Court.
7. In the event that there is disagreement as to the interpretation or application of these Sale Procedures, the Court will have jurisdiction to hear and resolve any such dispute.
8. The following table sets out the deadlines under the Sale Process, each of which can be extended by up to seven (7) days by the Receiver in its discretion, or for a longer period with the consent of the Stalking Horse Bidder or by Court order:

<b>Milestone</b>	<b>Deadline</b>
Commencement of Sale Process	Promptly following the granting of the Sale Procedures Order
Bid Deadline	September 29, 2023
Auction Date (if required)	October 6, 2023
Approval Hearing Date	October 13, 2023
Outside Date	October 27, 2023

### **Solicitation of Interest**

9. As soon as reasonably practicable following the granting of the Sales Procedure Order, the Receiver shall: (a) prepare a list of potential bidders (each, a “**Potential Bidder**”) who may be interested in pursuing a Transaction; (b) prepare an initial offering summary describing the Company, the Property and the opportunity to participate in the Sale Process (the “**Teaser Letter**”); and (c) establish a data room (the “**Data Room**”) of due diligence materials, including the Teaser Letter (the “**Diligence Materials**”) that the Receiver believes may be useful for Potential Bidders.

10. As soon as reasonably practicable following the granting of the Sale Procedure Order, the Receiver shall contact Potential Bidders to introduce the opportunity and shall provide the Teaser Letter to each Potential Bidder that executes a Confidentiality Agreement. The Receiver shall post a copy of the Sale Procedures on the website maintained by the Receiver and shall post a notice of the Sale Process, substantially in the form attached as **Appendix “B”** hereto, to be published in such newspaper(s) or journal(s) as the Receiver considers appropriate.

### **Participation Requirements**

11. Unless otherwise provided for herein, ordered by the Court or agreed by the Receiver, in order to participate in the Sale Process and be granted access to the Diligence Materials, a Potential Bidder must deliver to the Receiver, at the address specified in **Appendix “C”** hereto (including by email), (a) an executed confidentiality agreement in form and substance satisfactory to the Receiver (the “**Confidentiality Agreement**”), which shall inure to the benefit of any Successful Bidder that completes a Transaction contemplated by the Successful Bid, and (b) such other information as the Receiver may request to ascertain the identity of the Potential Bidder, including its direct and indirect owners.

12. Potential Bidders shall be provided with access to the Data Room. The Receiver makes no representations or warranties as to the accuracy or completeness of the information contained in the Data Room, the Diligence Materials or any other information provided by the Receiver or its agents in respect of the business or Property of the Company, except to the extent expressly

provided in any definitive sale agreement executed by the Potential Bidder (a “**Definitive Agreement**”) that is executed by the Receiver and returned to the Potential Bidder.

13. The Receiver reserves the right to withhold or delay the disclosure of any Diligence Materials that it determines are business sensitive or otherwise not appropriate for disclosure to a Potential Bidder who is a strategic buyer, competitor, supplier or other person with a business relationship with the Company until such time as the Receiver determines, in its discretion, that the disclosure of any Diligence Materials to such a Potential Bidder does not impair the efficacy of the Sales Procedure and that such Potential Bidder has (a) a *bona fide* intent to submit a Bid (as defined below), and (b) the financial capability to consummate a Transaction.

14. Potential Bidders shall direct information requests with respect to the Sale Process to the Receiver or such other individuals as the Receiver may authorize. Potential Bidders shall provide the Receiver with advance notice, and obtain the prior consent of the Receiver, before commencing or continuing any communications or discussions with any director, officer, agent, employee, former employee, supplier, customer, creditor or shareholder of the Company concerning the Company or its business, Property, financial condition, or prospects, and the Receiver shall have the option to oversee or participate in any such communications or discussions.

### **Bids**

15. A Potential Bidder, other than the Stalking Horse Bidder, that wishes to deliver a bid shall deliver a written binding offer for a Transaction (a “**Bid**”) to the Receiver at the addresses specified in **Appendix “C”** hereto (including by email) so as to be received by the Receiver no later than 5:00 p.m. (Eastern Time) on the Bid Deadline.

16. A Bid will be deemed to be a “**Qualified Bid**” only if the Bid complies with all of the following:

- (a) it includes an executed Definitive Agreement, including all exhibits and schedules contemplated thereby, together with a blackline against the Stalking Horse Agreement (which shall be posted by the Receiver in Word format in the Data Room), describing the terms and conditions of the proposed Transaction, including any liabilities proposed to be assumed, the purchase price (the “**Purchase Price**”), and the structure and financing of the proposed Transaction;
- (b) the Transaction shall, on closing, provide cash proceeds, in immediately available funds, sufficient to pay in full in cash: (i) the aggregate of the Priority Claims attributable to the Property being purchased, (ii) the portion of the Receiver’s Borrowing Obligations attributable to Property being purchased, and (iii) a break fee in the amount of \$85,000;
- (c) it fully discloses the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the Bid and the complete terms of any such participation;
- (d) it includes an acknowledgement and representation of the Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property

prior to making its Bid; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith;

- (e) it does not include any request of the Potential Bidder for an entitlement to any break or termination fee, expense reimbursement or similar type of payment;
- (f) it includes an acknowledgment that the offer is irrevocable until the earlier of (i) the approval of the Successful Bid by the Court (or, in the case of the Stalking Horse Bid, the delivery of the Receiver's Certificate to the Stalking Horse Bidder and the filing of the Receiver's Certificate in Court), and (ii) thirty (30) calendar days following the Bid Deadline (the "**Irrevocable Bid Date**"), provided that if such Potential Bidder's Bid is selected as a Successful Bid, its bid shall remain irrevocable until the closing of the Transaction contemplated by the Successful Bid;
- (g) it includes or is accompanied by evidence satisfactory to the Receiver of the financial ability of the Potential Bidder to consummate the Transaction contemplated by the Bid;
- (h) it is not conditioned on the outcome of unperformed due diligence or obtaining financing;
- (i) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer to a bank account specified by the Receiver, payable to the order of the Receiver, in trust, in an amount equal to 10% of the Purchase Price in the Bid, which Deposit is to be held by the Receiver and dealt with in accordance with these Sale Procedures;
- (j) it includes a commitment to close the Transaction contemplated by the Bid by no later than the Outside Date;
- (k) it contains such other information as may reasonably be requested by the Receiver; and
- (l) it is received prior to the Bid Deadline.

17. Notwithstanding the foregoing, a Qualified Bid may not be withdrawn, modified or amended without the written consent of the Receiver prior to the Successful Bid being determined. Any such withdrawal, modification or amendment made without the written consent of the Receiver prior to the Successful Bid being determined shall result in the forfeiture of such Qualified Bidder's Deposit as liquidated damages and not as a penalty.

### **Review of Bid(s)**

18. Following the Bid Deadline, the Receiver shall assess any Bids received and determine whether such bids constitute Qualified Bids. The Receiver may waive compliance with any one or more of the requirements specified herein and deem any non-compliant Bid to be a Qualified Bid.

19. Following the receipt of any Bid, the Receiver may seek clarification with respect to any of the terms or conditions of such Bid and/or request one or more amendments to such Bid prior to determining if such Bid should be considered a Qualified Bid. Each Qualified Bidder shall comply with all reasonable requests for additional information by the Receiver regarding the Qualified Bidder or the Qualified Bid. Failure of a Qualified Bidder to comply with such requests for additional information will be a basis for the Receiver to reject a Qualified Bid.

20. In the event that the Receiver determines that there are no Qualified Bids, the Receiver shall promptly proceed to declare the Stalking Horse Bid as the Successful Bid and proceed to complete the Transaction contemplated by the Stalking Horse Agreement, in accordance with Stalking Horse Sale Approval Order (as defined below).

### **Selection of Successful Bid**

21. The Stalking Horse Bid and each Qualified Bid will be considered and reviewed by the Receiver based upon several factors including, without limitation, items such as the Purchase Price and the net value provided by such bid, the claims likely to be created by such bid in relation to other bids, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed and certainty of the closing of the transaction, the value of the transaction, any related transaction costs, the likelihood and timing of consummating such transactions, and such other matters as the Receiver may determine.

22. The Receiver shall identify the highest or otherwise best Bid(s) (each, a “**Successful Bid**”, and the Stalking Horse Bidder or the Potential Bidder(s) making such Successful Bid(s), a “**Successful Bidder**”) pursuant to these Sale Procedures. Any Successful Bid shall be subject to approval by the Court.

23. If the Receiver receives one or more Qualified Bids which are superior to the Stalking Horse Bid, it may proceed with an auction to select the Successful Bid (an “**Auction**”) on notice to the Stalking Horse Bidder and each Potential Bidder that submitted a Qualified Bid with a higher Purchase Price or deemed by the Receiver to be superior to the Stalking Horse Bid who will be invited to attend the Auction by the Receiver having regard to the terms of its Qualified Bid (each, an “**Auction Bidder**”). There shall be no more than five (5) Auction Bidders, including the Stalking Horse Bidder. For greater certainty, the Stalking Horse Bidder shall constitute an Auction Bidder in all circumstances in which an Auction is conducted.

24. If an Auction is conducted, it shall be conducted in accordance with the following procedures:

- (a) The Auction shall be conducted at a time to be designated by the Receiver on the Auction Date at the Toronto offices of the Receiver or by electronic communication means (including videoconference, teleconference or such other reasonable means

as the Receiver deems appropriate) and shall continue thereafter until completed, subject to such adjournments as the Receiver may consider appropriate;

- (b) The identity of each Auction Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Auction Bidder;
- (c) Except as otherwise permitted in the Receiver's discretion, only the Receiver and the Auction Bidders, and in each case their respective professional advisors, shall be entitled to attend the Auction. Each Auction Bidder shall appear at the Auction through a duly authorized representative that shall be designated by the Auction Bidder as its spokesperson;
- (d) Except as otherwise set forth herein, the Receiver may waive and/or employ and announce at the Auction additional procedures that the Receiver deems reasonable under the circumstances for conducting the Auction, provided that such procedures are (i) not inconsistent with these Sale Procedures, the Stalking Horse Agreement or any order of the Court granted in the within proceedings, (ii) disclosed to each Auction Bidder, and (iii) designed, in the Receiver's judgement, to result in the solicitation of the highest and best offer;
- (e) Not less than two (2) Business Days prior to the Auction, the Receiver shall: (i) identify the highest or otherwise best Qualified Bid or Stalking Horse Bid received, which shall constitute the opening bid for purposes of the Auction (the "**Opening Bid**"), and (ii) provide the Definitive Agreement in respect of the Opening Bid to all Auction Bidders, on a confidential basis. Subsequent bidding at the Auction will continue in minimum increments in an amount to be determined by the Receiver prior to, and announced at, the Auction. Each Auction Bidder shall, if requested by the Receiver, provide evidence of its financial wherewithal and ability to consummate the Transaction at the increased consideration bid at the Auction;
- (f) All Auction Bidders shall have the right, at any time during the Auction, to request that the Receiver announce, subject to any potential new bids, the then-current highest or otherwise best bid and, to the extent requested by any Auction Bidder, use reasonable efforts to clarify any questions such Auction Bidder may have on the then-current highest or otherwise best bid;
- (g) Each Auction Bidder shall be given a reasonable opportunity to submit an overbid at the Auction to any then-existing overbids;
- (h) The Auction shall continue until the bidding has concluded and there is one remaining Auction Bidder that the Receiver has determined has submitted the highest or otherwise best bid of the Auction. At such time, the Auction shall be closed and the Auction Bidder that submitted the highest or otherwise best bid shall be designated as the Successful Bidder; and
- (i) Upon selection of a Successful Bidder, the Successful Bidder shall, as soon as practicable, execute and deliver a Definitive Agreement that reflects the Successful Bidder's bid and any modifications submitted and agreed to during the Auction.

25. For all purposes of the Sale Process, the Stalking Horse Bidder shall be entitled to credit bid all or any portion of the Senior Secured Obligations, at the face value of such obligations in the full principal amount of US\$5,070,000 (plus interest). In the event that the Receiver designates a Qualified Bid, the Stalking Horse Bidder shall have the right, as part of an Auction, to supplement its Stalking Horse Bid with additional cash or other consideration such that the revised Stalking Horse Bid includes aggregate consideration in excess of the amount of the Senior Secured Obligations and the Priority Claims.

### **Court Approval**

26. Contemporaneously with the granting of the Sale Procedure Order, the Receiver obtained an order of the Court approving the Stalking Horse Agreement and vesting in the Stalking Horse Bidder (or its authorized assignee) all right, title interest in and to the Property described in the Stalking Horse Bid, conditional on, among other things, the selection of the Stalking Horse Bid as the Successful Bid by the Receiver (the “**Stalking Horse Sale Approval Order**”). If the Stalking Horse Bid is selected by the Receiver as the Successful Bid, the Receiver shall proceed to complete the Transaction contemplated by the Stalking Horse Agreement, in accordance with Stalking Horse Sale Approval Order.

27. If a Qualifying Bid other than the Stalking Horse Bid is selected by the Receiver as a Successful Bid, the Receiver shall apply to the Court (the “**Approval Motion**”) for an order approving such Successful Bid, which Approval Motion, subject to Court availability, shall be held on or prior to the Approval Hearing Date.

28. In either case, the Receiver shall implement the Successful Bid by no later than the Outside Date.

### **Deposits**

29. All Deposits shall be retained by the Receiver and deposited in a trust account.

30. The Deposit paid by the Successful Bidder whose bid is approved at the Approval Motion shall be applied (without interest) to the Purchase Price to be paid by the Successful Bidder upon closing of the Transaction. After selection of the Bid as the Successful Bid, the Deposit will be non-refundable.

31. The Deposits of Qualified Bidders not selected as the Successful Bidder shall be returned, without interest, within two (2) Business Days of the Irrevocable Bid Date.

32. The Stalking Horse Bidder shall not be required to provide a Deposit.

### **Approvals**

33. For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required at law in order to implement or complete a Successful Bid.

### **No Amendment**

34. Except as expressly set forth herein, there shall be no amendments or modifications to these Sale Procedures without the consent of the Receiver and the Stalking Horse Bidder or further Order of the Court.

### **“As Is, Where Is”**

35. Any Transaction will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description except to the extent expressly provided under a Definitive Agreement with a Successful Bidder executed and delivered by the Receiver.

### **Further Orders**

36. At any time during the Sale Process, the Receiver may apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

### **Reservation of Rights**

37. These Sale Procedures do not, and shall not be interpreted to, create any contractual or other legal relationship between the Receiver and any other party, other than as specifically set forth in definitive agreements that may be executed.

38. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the Appointment Order or any other statute or as otherwise required at law in order to implement a Successful Bid.

## Appendix “A” Definitions

For purposes of the Sale Procedures, the following terms shall have the following meanings:

“**Business Day**” means a day, other than a Saturday, Sunday, or a day on which banks in Toronto, Ontario are authorized or obligated by applicable law to close or otherwise are generally closed.

“**Priority Claims**” mean all claims other than the Receiver’s Borrowings Obligations ranking in priority to the Promissory Note Obligations and includes, for greater certainty, the post-closing fees of the Receiver and its counsel;

“**Promissory Note Obligations**” means, collectively, all present and future obligations of any kind or nature owing by the Company to Ortho Studios Express, Inc. including, without limitation, all principal, interest, fees, payments, costs, expenses and disbursements, pursuant to, or in connection with the Line of Credit Grid Promissory Note dated March 20, 2020 in the principal amount of US\$5,000,000 issued by the Company to Ortho Studios Express, Inc. and secured by that certain General Security Agreement dated as of March 20, 2020 granted by the Company in favour of Ortho Studios Express, Inc., in each case as amended, supplemented, amended and restated, replaced, or otherwise modified from time to time.

“**Receiver’s Borrowings Obligations**” means all obligations of any kind or nature owing by the Receiver to Ortho Studios Express, Inc. that are secured by the Receiver’s Borrowings Charge (as defined in the Appointment Order), including all principal, interest, fees, payments, costs, expenses and disbursements.

“**Receiver’s Certificate**” means the Receiver’s Certificate, in the form appended to the Stalking Horse Approval Order, signed and delivered by the Receiver to the Stalking Horse Bidder.

“**Senior Secured Obligations**” means, collectively, the Receiver’s Borrowings Obligations and the Promissory Note Obligations.

**Appendix “B” Form of Notice  
Acquisition Opportunity**

**[To be completed by Richter]**

## Appendix “C” Receiver Address for Notices

If to the Receiver:

Richter Inc.  
181 Bay St. #3510  
Bay Wellington Tower  
Toronto, ON M5J 2T3

Attention: Jonathan Joffe  
Email: JJoffe@Richter.ca

With a copy to:

Reconstruct LLP  
200 Bay Street, Suite 2305  
Toronto, ON M5J 2J3

Attention: Caitlin Fell  
Email: cfell@reconllp.com  
Tel.: 416 613-8282