



Dated: 4/19/2017

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

IN RE: )  
)  
) Case No. 3:17-bk-01300  
DART MUSIC, INC., )  
) Chapter 11  
) Judge Randal S. Mashburn  
Debtor. )

**ORDER, PURSUANT TO 11 U.S.C. §§ 105, 363, 364, 365, 503 AND 507 AND FED. R.  
BANKR. P. 2002, 4001, 6004, 6006, 9008, AND 9014, APPROVING  
(A) BID PROCEDURES, (B) NOTICE OF SALE, AUCTION, AND SALE HEARING,  
AND (C) ASSUMPTION PROCEDURES AND RELATED NOTICES**

Upon the motion (the “*Motion*”)<sup>1</sup> of Dart Music, Inc. (the “*Debtor*”), as debtor-in-possession, pursuant to 11 U.S.C. §§ 105, 363, 364, 365, 503 and 507 and Fed. R. Bankr. P. 2002, 4001, 6004, 6006, 9008, and 9014, for entry of (I) an order approving (A) bid procedures in connection with the sale of substantially of all of the Debtor’s assets (the “*Assets*”), (B) the notice of sale, auction, and sale hearing (the “*Sale Notice*”) and (C) assumption procedures and related notices (as hereinafter defined); and (II) an order approving the sale of the Assets (the “*Sale Transaction*”); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and upon the Court's consideration of the Motion, and the Court having determined that there exists just cause for the relief granted herein and that such relief is in the best interests of the Debtor, its estate and creditors and all other parties in interest; it is **HEREBY ORDERED** that:

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

1. The Motion is **GRANTED** to the extent provided herein.

### **Bid Procedures**

2. The Bid Procedures, substantially in the form annexed hereto as Exhibit A and incorporated herein by reference, are hereby approved. The failure specifically to include or reference a particular provision of the Bid Procedures in this Order shall not diminish or impair the effectiveness of such provision.

### **Bid Deadline, Auction and Sale Hearing**

3. The deadline for a Potential Bidder to submit bids shall be **Monday, May 22, 2017 at 5:00 p.m.** (prevailing Central Time) (the “*Bid Deadline*”). The Auction shall be held on **Monday, May 29, 2017** at the offices of Nelson Mullins Riley & Scarborough, LLP, 150 Fourth Ave. North, Suite 1100, Nashville, Tennessee 37219 at 9:00 a.m. (prevailing Central Time).

4. The Court shall hold a hearing on **Tuesday, June 6, 2017 at 9:00 a.m.** (prevailing Central Time) (the “*Sale Hearing*”) in the United States Bankruptcy Court for the Middle District of Tennessee, Customs House, 701 Broadway, Nashville, Tennessee 37203, at which time the Court shall consider the approval of the Sale Transaction as set forth in the Motion, approve the Successful Bidder(s), and confirm the results of the Auction, if any. Objections to the Sale Transaction shall be in writing, filed and served so as to be actually received by the Bankruptcy Court, the Debtor, all parties receiving notice through the Bankruptcy Court’s CM/ECF system, and the United States Trustee (the “*Objection Recipients*”) on or before **Monday, June 5, 2017 at 5:00 p.m.** (prevailing Central Time) (the “*Objection Deadline*”):

5. The failure to file and serve an objection to the Sale Transaction by the Objection Deadline shall be a bar to the assertion thereof at the Sale Hearing or thereafter.

6. At least five days prior to the auction and following the submission of the Qualified Bids, the Debtor, with further approval by this Court, may enter into a Purchase Agreement (the “*Stalking Horse Agreement*”), subject to higher and better offers at the Auction, with any Qualified Bidder that submits a Qualified Bid (the “*Stalking Horse Bidder*”) to establish a minimum Qualified Bid (the “*Stalking Horse Bid*”) at the Auction. With Court approval, the Stalking Horse Agreement may contain certain customary terms and conditions, including expense reimbursement and a break-up fee in an amount to be determined by the Debtor (such break-up fee or expense reimbursement, the “*Break-Up Fee*” and “*Expense Reimbursement*,” respectively). At least five days prior to the Auction, the Debtor will distribute the Stalking Horse Agreement, if any, to the parties submitting the other Qualified Bids.

7. The Debtor’s obligation, if any, to pay a Break-Up Fee and Expense Reimbursement as provided herein shall survive termination of the Stalking Horse Bid.

8. The Sale Hearing may be adjourned from time to time without further notice to the Sale Notice Parties (as defined below), creditors or other parties in interest other than by announcement of the adjournment in open court or an entry of a notice of such adjournment on the Court's docket.

#### Authorization

9. The Debtor is authorized to take such actions as contemplated by the Motion prior to the Auction and the Sale Hearing, including, without limitation, actions to notify creditors, customers, regulators or other interested parties regarding the Sale Transaction and to obtain any necessary consents or approvals regarding the Sale Transaction or any other actions necessary to effectuate the Sale Transaction.

## Notice

10. Notice of (a) the Motion, (b) the Bid Procedures, (c) the Auction, (d) the Sale Hearing and (e) the proposed assumption and assignment of the Designated Contracts or other similarly designated contracts to the Successful Bidder shall be good and sufficient, and no other or further notice shall be required, if given as follows:

### Notice of Sale, Auction and Sale Hearing

11. Within five (5) business days after entry of this Order, the Debtor (or its agents) shall:

- a. Provide (i) notice of the Sale Transaction, the Auction, and the Sale Hearing, and (ii) this Order by email, mail, facsimile or overnight delivery service, upon: (a) the Office of the United States Trustee for the Middle District of Tennessee; (b) all known creditors and parties in interest of the Debtor; and (c) all known entities that have previously expressed, or who the Debtor believes may express, a bona fide interest in purchasing the Assets (collectively the "*Sale Notice Parties*");
- b. Publish the Sale Notice on one occasion each in *USA Today*,
- c. Cause the Sale Notice to be published on [www.dartdata.io](http://www.dartdata.io) (the "*Website*").

### Assumption, Assignment and Cure Notice

- a. No later than twenty-one (21) days before the Auction, the Debtor shall file with the Court and serve on each counterparty to an executory contract or unexpired lease a notice of assumption, assignment, and cure (the "*Cure Notice*"). The Cure Notice shall include the Debtor's calculation of the cure amount (the "*Cure Amount*") for each such executory contract or unexpired lease. A list of the Cure Amounts shall also be posted on the Website.
- b. Any counterparty to an unexpired lease or executory contract listed in the Cure Notice (the "*Designated Contracts*") shall file and serve any objections to (i) the proposed assumption and assignment set forth in the Cure Notice and (ii) if applicable, the proposed Cure Amount, no later than the Bid Deadline, five (5) days before the Auction. Notwithstanding this deadline, any counterparty to a Selected Contract, as defined below, shall have until the time of the Sale Hearing to object based solely on lack

of adequate assurances to any assumption, assignment, or rejection by the Successful Bidder.

- c. At the Sale Hearing, only those contracts (and the corresponding Cure Amounts) listed on the Cure Notice that have been selected to be assumed by the Successful Bidder at the Auction (the “*Selected Contracts*”) shall be subject to approval by the Bankruptcy Court, and the Debtor shall reserve its right for all other contracts. If no objection to the Cure Notice with respect to the Selected Contracts is timely received, (i) the counterparty to a Selected Contract shall be deemed to have consented to the assumption and assignment of the Selected Contract to the Successful Bidder and shall be forever barred from asserting any objection with regard to such assumption and assignment, and (ii) the Cure Amount set forth in the Cure Notice shall be controlling, notwithstanding anything to the contrary in any Selected Contract, or any other document, and the counterparty to a Selected Contract shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Selected Contract against the Debtor or the Successful Bidder, or the property of any of them.

13. Within five (5) hours of completion of the Auction, the Debtor shall file notice with the Bankruptcy Court of the identity of the Successful Bidder at the Auction. The Debtor shall also serve notice of the identity of the Successful Bidder by fax, email, or overnight delivery to all counterparties to any Selected Contracts.

14. This Court shall retain jurisdiction to hear and determine all matters arising from the interpretation, implementation and enforcement of this Order.

IT IS SO ORDERED.

APPROVED FOR ENTRY:

/s/ Shane G. Ramsey

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# **EXHIBIT A**

# DART MUSIC, INC.

## BID PROCEDURES

### Introduction

Dart Music, Inc. (the “**Debtor**”) is debtor-in-possession in a chapter 11 case (Case No. 3:17-bk-01300) pending in the United States Bankruptcy Court for the Middle District of Tennessee (the “**Bankruptcy Court**”).

On or before Thursday, April 20, 2017 the Bankruptcy Court entered its order (the “**Bid Procedures Order**”), (i) authorizing the Debtor, among other things, to market substantially all of the assets of the Debtor (the “**Assets**”) through the bid procedures described herein (the “**Bid Procedures**”), and (ii) scheduling a hearing (the “**Sale Hearing**”) to consider approval of the sale of substantially all of the assets of the Debtor to the Successful Bidder (as defined below), to be conducted on **Tuesday, June 6, 2017 at 9:00 A.M.**, Central time, in Courtroom 1, United States Bankruptcy Court for the Middle District of Tennessee, Customs House, 701 Broadway, Nashville, TN, 37203.

### Key Dates For Potential Bidders

These Bid Procedures provide interested parties with the opportunity to qualify and participate in the auction of the Assets (the “**Auction**”) and submit competing bids for the Assets. The Debtor shall assist Potential Bidders (as defined below) in conducting their respective due diligence investigations and shall accept bids (as defined below) until 5:00 p.m., Central time on **Monday, May 22, 2017**.

The key dates for the sale process are as follows:

Monday, May 22, 2017 at 5:00 P.M. CDT	Bid Deadline - Due Date for Bids and Deposits
Monday, May 29, 2017 at 9:00 A.M. CDT	Auction
Tuesday, June 6, 2017 at 9:00 A.M. CDT	Sale Hearing

### Bid Procedures

Set forth below are the Bid Procedures to be employed with respect to the proposed sale of the Assets (the “**Proposed Sale**”). The Bid Procedures Order authorizes and approves the Proposed Sale to such Qualified Bidder(s) (as defined below) as is determined to have made the highest or otherwise best offer for some or all of the Assets. Any person or entity who wishes to participate in the Bidding Process (as defined below) and the Proposed Sale must meet the participation requirements to become a Potential Bidder as specified below and must thereafter timely submit a Qualified Bid (as defined below) to become a Qualified Bidder.

Neither the Debtor nor its representatives shall be obligated to furnish information of any kind whatsoever to any person or entity that is not a Potential Bidder (or their legal counsel and financial advisors) and the Debtor and its representatives shall use good faith efforts to provide all Potential Bidders with substantially similar access and information.

The Debtor and its representatives shall (i) receive and evaluate all offers made hereunder, (ii) determine whether any person or entity has met the participation requirements to become a Potential Bidder and has timely submitted a Qualified Bid so as to become a Qualified Bidder, (iii) coordinate the efforts of Potential Bidders in conducting any required due diligence investigations and (iv) negotiate in good faith with respect to any Qualified Bids (collectively, the “**Bidding Process**”).

### **Participation Requirements**

Any person or entity that wishes to conduct due diligence with respect to the Assets must first deliver to the Debtor an executed confidentiality agreement (it being understood that any person or entity who previously signed a confidentiality agreement in a form satisfactory to the Debtor shall not be required to execute a new confidentiality agreement). The executed confidentiality agreement must be signed and transmitted by the person or entity wishing to become a Potential Bidder so as to be received by each of the following parties (the “**Notice Parties**”) prior to any dissemination of confidential information: Nelson Mullins Riley & Scarborough LLP, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 (Attn: Shane G. Ramsey, Esq.; shane.ramsey@nelsonmullins.com and Jason I. Epstein, Esq.; jason.epstein@nelsonmullins.com), counsel to the Debtor.

A “**Potential Bidder**” is a person or entity that has expressed an interest in submitting a *bona fide* offer and that has executed a confidentiality agreement.

### **Due Diligence**

The Debtor may afford each Potential Bidder the time and opportunity to conduct reasonable due diligence; provided, however, that neither the Debtor nor any of its representatives shall be obligated to furnish any due diligence information: (i) at any time to any person or entity other than a Potential Bidder; or (ii) after the Bid Deadline (as hereinafter defined) to any Potential Bidder. The Debtor may, in the exercise of its business judgment, extend a Qualified Bidder's time to conduct due diligence after the Bid Deadline until the Auction; *provided, however*, that the Successful Bidder and Back-Up Bidder shall be permitted to continue to conduct due diligence until closing of the sale (subject to the terms of the Purchase Agreement); *provided, further, however*, that a Qualified Bid shall not be subject to further due diligence after the Bid Deadline. To the extent the Debtor elects to withhold diligence information to any Potential Bidder, the Debtor will provide notice to the Bankruptcy Court and United States Trustee: (i) identifying such Potential Bidder and (ii) providing a general description of the due diligence information withheld.



### **Bid Deadline**

The deadline for a Potential Bidder to submit bids shall be **Monday, May 22, 2017 at 5:00 p.m. (prevailing Central Time)** (the “**Bid Deadline**”). Any Potential Bidder who fails to submit a bid so as to be received by the Notice Parties in advance of the Bid Deadline shall not be permitted to participate in the Bidding Process and will not be a Qualified Bidder.

Prior to the Bid Deadline, a Potential Bidder that desires to make a bid shall deliver written copies of its bid in writing and executed by an individual or individuals authorized to bind the Potential Bidder. Each bid shall be served by courier, facsimile, e-mail or as otherwise specified by the Debtor to each of the Notice Parties.

### **Bid Requirements**

To participate in the Auction, a bidder must be a Potential Bidder and must deliver a written offer, which includes, at a minimum, the following items (the “**Required Bid Materials**”) prior to the Bid Deadline:

- i. Documents by which the Potential Bidder offers to purchase the Assets that are the subject of the bid from the Debtor at the purchase price and upon the terms and conditions as the Potential Bidder sets forth therein.
- ii. A written acknowledgment that the bid is not subject to any due diligence or financing contingency, is not conditioned on the payment in any circumstances of a break-up fee, expense reimbursement or similar type of payment to the bidder, is irrevocable until entry by the Bankruptcy Court of the order approving the Proposed Sale (the “**Sale Order**”) (unless it is chosen as the Successful Bid or Back-Up Bid (each as defined below)) and is not subject to any approvals, consents or conditions except as specified therein.
- iii. A written acknowledgement by the bidder that it agrees to all of the terms for sale set forth in these Bid Procedures.
- iv. Specification of the proposed purchase price and of the Assets that are the subject of the bid.
- v. Delivery by certified check or wire transfer of a good faith deposit in immediately available funds equal to 5% of the proposed purchase price (the “**Deposit**”) for the Assets that are the subject of the bid. The Deposit shall be held in escrow and will be refunded on the terms set forth below.
- vi. Evidence or a statement indicating that the bidder has obtained authorization and approval from its Board of Directors (or comparable governing body) with respect to the submission and consummation of its bid and acceptance of the terms of sale in these Bid Procedures, or a representation that no such authorization or approval is required and that any and all initial consents required in connection

with the submission and consummation of the bid have been obtained and that no other initial consents are required.

- vii. Evidence of sufficient cash or other acceptable forms of currency on hand or written evidence of a commitment for financing or other evidence of the ability to consummate the sale satisfactory to the Debtor with appropriate contact (and any other necessary) information for such financing sources.
- viii. A list of the Debtor's executory contracts and unexpired leases with respect to which the bidder seeks assignment from the Debtor and a specification of what the bidder believes to be the appropriate cure amounts and which cure amounts will be the bidder's responsibility and which will be the Debtor's responsibility. For the avoidance of doubt, this information will be included on the notice sent to all assumed contract counterparties (without discussing the name of the bidder) prior to the Auction, as set forth in more detail herein.
- ix. A written disclosure of the identity of each person or entity that is bidding for the Assets or otherwise participating in connection with such bid.
- x. Such other information as may be reasonably requested in writing by the Debtor at least two calendar days prior to the Bid Deadline.

In order to be a Qualified Bid, a bid (including all Required Bid Materials) must:

- i. be received by the Bid Deadline;
- ii. not be subject to any due diligence or financing contingency; and
- iii. not request or entitle the bidder to any break-up fee, expense reimbursement or similar type of payment, provided, however, that the Debtor, in its discretion may decide to grant break-up fee and expense reimbursement protections to any bidder the Debtor denotes as a "Stalking Horse" bidder; if the Debtor determines in its reasonable business judgment to enter into a Stalking Horse Agreement containing customary terms and conditions, the Debtor will seek Bankruptcy Court approval of such an Agreement on an expedited basis prior to the Auction.

A bid received from a Potential Bidder that includes all of the Required Bid Materials and meets all of the above requirements is a "**Qualified Bid**" if the Debtor determines that such bid evidences a *bona fide* interest and ability to purchase the Assets or any material portion thereof. A Potential Bidder that submits a Qualified Bid (a "**Qualified Bidder**") shall be entitled to participate in the Auction. The Debtor reserves the right to contact bidders before or after the Bid Deadline to discuss or clarify the terms of their bid and to indicate any terms which may need to be modified in order to conform the bid to a Qualified Bid or otherwise evaluate the bid.

The Debtor may accept a single Qualified Bid or multiple bids for non-overlapping material portions of the Assets such that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid. The Debtor may also permit otherwise Qualified Bidders who submitted bids by the Bid Deadline for a material portion of the Assets but who were not identified as a component of a single Qualified Bid consisting of multiple bids, to participate in the Auction and to submit higher or otherwise better bids that in subsequent rounds of bidding may be considered, together with other bids for non-overlapping material portions of the Assets, as part of such a single Qualifying Bid.

The Qualified Bid selected by the Debtor as the highest or otherwise best bid following the Bid Deadline and prior to the start of the Auction shall be provided to all other Qualified Bidders at least 24 hours prior to the start of the Auction (the “**Opening Bid**”).

As set forth in the Bid Procedures Order, at any time at least five (5) days prior to the Auction, the Debtor may enter into a purchase agreement (the “**Stalking Horse Agreement**”), subject to higher and better offers at the Auction, with any bidder that submits a bid (the “**Stalking Horse Bidder**”) to establish a minimum Qualified Bid at the Auction. The Stalking Horse Agreement may contain certain customary terms and conditions, including expense reimbursement and a break-up fee in an amount to be determined by the Debtor. At least five (5) days prior to the Auction, the Debtor will distribute the Stalking Horse Agreement, if any, to the parties submitting other Qualified Bids. To the extent the Debtor enters into any such Stalking Horse Agreement, the agreement shall be placed on the Bankruptcy Court docket and notice thereof shall be given to all creditors and other parties in interest.

### **Conduct Of The Auction, If Any**

If but only if more than one Qualified Bid is received by the Debtor prior to the Bid Deadline, the Auction shall take place at the offices of Nelson Mullins Riley & Scarborough LLP, 150 Fourth Avenue North Suite 1100, Nashville, TN 37219 and shall commence on **Monday, May 29, 2017 at 9:00 a.m. (prevailing Central time)**; *provided, however*, that the Debtor shall have the discretion or the ability to adjourn or cancel the Auction at any time by delivering notice of such adjournment or cancellation to all Qualified Bidders; *provided, further*, that the Debtor shall have the right to conduct any number of Auctions on such date to accommodate Qualified Bids for certain, but less than all, of the Assets if the Debtor determines that such process would be in the best interest of the Debtor’s estate. The Debtor shall confirm to all Qualified Bidders the time and place of the Auction.

Only a Qualified Bidder who is designated as such by the Debtor is eligible to participate at the Auction. During the Auction, bidding shall begin initially with the Opening Bid, and subsequently continue with minimum increments of at least Ten Thousand and 0/100 (\$10,000.00) Dollars.

The Auction shall be governed by the following procedures, which procedures shall be subject to modification by the Debtor as the Debtor deems necessary to better promote the goals of the Auction and to comply with its fiduciary obligations:

- a) The Qualified Bidders shall appear in person at the Auction, or through a duly authorized representative.
- b) Only representatives of the Debtor, the Debtor's creditors, and persons or entities making Qualified Bids shall be permitted to be present at the Auction. For the avoidance of doubt, although these parties shall be permitted to be present at the Auction, only Qualified Bidders may bid at the Auction
- c) The terms of each Qualified Bid selected from time to time by the Debtor as being the highest or otherwise best offer at any such time (each such Qualified Bid selected at any time, the "**Leading Bid**" at such time) shall be fully disclosed to all other Qualified Bidders. For the avoidance of doubt, each Leading Bid and each bid identified as being the highest or otherwise best offer for any or all of the Assets at any time shall have no conditions other than those disclosed
- d) The Auction shall commence with the Debtor confirming the particulars of the Opening Bid and asking for higher and better offers. The Auction shall continue with subsequent rounds of bidding and, after each round, the Debtor shall announce the Leading Bid.
- e) The Debtor shall provide for a court reporter to be present at and prepare a transcript of the Auction. The Debtor may determine, in its discretion, to make all or any part of the transcript subject to confidentiality requirements and seal.
- f) Each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Proposed Sale.
- g) The Debtor, acting in good faith and in the exercise of its fiduciary duties to maximize value to the Debtor's estate, may accept Qualified Bids as Leading Bids or as the Successful Bid if such Qualified Bid(s), taken together, constitute a sale of all or substantially all of the Assets without overlap.
- h) Bidding shall commence at the amount of the Opening Bid. Qualified Bidders may then submit successive bids higher than the previous bid in increments of no less than Ten Thousand and 0/100 (\$10,000.00) Dollars. The Debtor reserves the right to announce reductions or increases in minimum incremental bids (or in valuing such bids) at any time during the Auction.
- i) All Qualified Bidders shall have the right to submit additional bids.
- j) The Auction may include individual negotiations with the Qualified Bidders and/or open bidding in the presence of all other Qualified Bidders.
- k) The Debtor reserves the right to (i) determine, in their reasonable discretion which bid is the highest or otherwise best, and (ii) reject at any time, without liability, any offer that the Debtor, in its reasonable discretion deem to be (1) inadequate or

insufficient, (2) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules or procedures set forth therein or in the Bid Procedures Order, or (3) contrary to the best interests of the Debtor and its estate.

- 1) The Auction shall continue until there is only one bid (or more than one bid for non-overlapping portions of the Assets that collectively constitute substantially all of the Assets) that the Debtor determines, and subject to Bankruptcy Court approval, is the highest or otherwise best offer or offers that together constitute the highest or otherwise best offer or offers for the Assets from among the Qualified Bidders submitted at the Auction (the “**Successful Bid**”). In determining the Successful Bid, the Debtor in the exercise of the Debtor’s business judgment, shall consider, without limitation, the amount of the purchase price, the form of consideration being offered (i.e. although the Debtor will consider all forms of consideration, the Debtor prefers cash to all other types of consideration), the Qualified Bidders' ability to complete the transaction constituting the Successful Bid (including without limitation, the ability to obtain any required regulatory approvals or consents or the lack thereof), the proposed timing thereof, the contracts being assumed by the bidder, the rights of such Qualified Bidder and the Debtor with respect to the termination thereof, the number, type and nature of any changes reflected in the purchase agreement requested by each Qualified Bidder, and the net benefit to the Debtor’s estate. The Qualified Bidder(s) submitting such Successful Bid(s) for the Assets shall become the “**Successful Bidder(s)**,” and shall have such rights and responsibilities of a purchaser, as set forth in the Purchase Agreement, or modified definitive purchase agreement, as applicable. The next highest or otherwise best bid will be the “**Back-Up Bid**” and the maker of the bid will be the “**Back-Up Bidder**.” Within one (1) business day after conclusion of the Auction, the Successful Bidder, the Back-Up Bidder and the Debtor shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid and the Back-Up Bid were made (subject, in the case of the Debtor, to the qualifications set forth in "Acceptance and Termination of Qualified Bids" below).

THE SUCCESSFUL BID(S) SUBMITTED AT THE AUCTION SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE SUCCESSFUL BIDDER. IF THE SUCCESSFUL BID AND BACK-UP BID ARE APPROVED PURSUANT TO THE SALE ORDER, THE SUCCESSFUL BID SHALL BE BINDING, AND THE BACK-UP BID SHALL BE BINDING UNTIL 20 DAYS AFTER ENTRY OF THE SALE ORDER. EACH QUALIFIED BID THAT IS NOT THE SUCCESSFUL BID OR THE BACK-UP BID AS APPROVED BY THE BANKRUPTCY COURT AT THE SALE HEARING SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

### **Assumption Procedures**

No later than **Monday, May 8, 2017**—twenty-one (21) days before the Auction—the Debtor shall file with the Court and serve on each counterparty to an executory contract or unexpired lease a notice of assumption, assignment, and cure (the “**Cure Notice**”). The Cure Notice shall include the Debtor’s calculation of the cure amount (the “**Cure Amount**”) for each such executory contract or unexpired lease. A list of the Cure Amounts shall also be posted on the Website.

Any counterparty to an unexpired lease or executory contract listed in the Cure Notice (the “**Designated Contracts**”) shall file and serve any objections to (i) the proposed assumption and assignment set forth in the Cure Notice and (ii) if applicable, the proposed Cure Amount, no later than the Bid Deadline: **Monday, May 22, 2017 at 5:00 p.m. (prevailing Central Time)**. Notwithstanding this deadline, any counterparty to a Selected Contract, as defined below, shall have until the time of the Sale Hearing to object based solely on lack of adequate assurances to any assumption, assignment, or rejection by the Successful Bidder.

Within five (5) hours of completion of the Auction, the Debtor shall serve notice of the identity of the Successful Bidder by fax, email, or overnight delivery to all counterparties to any Selected Contract, as defined below.

At the Sale Hearing, only those contracts (and the corresponding Cure Amounts) listed on the Cure Notice that have been selected to be assumed by the Successful Bidder at the Auction (the “**Selected Contracts**”) shall be subject to approval by the Bankruptcy Court, and the Debtor shall reserve its right for all other contracts. If no objection to the Cure Notice with respect to the Selected Contracts is timely received, (i) the counterparty to a Selected Contract shall be deemed to have consented to the assumption and assignment of the Selected Contract to the Successful Bidder and shall be forever barred from asserting any objection with regard to such assumption and assignment, and (ii) the Cure Amount set forth in the Cure Notice shall be controlling, notwithstanding anything to the contrary in any Selected Contract, or any other document, and the counterparty to a Selected Contract shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Selected Contract against the Debtor or the Successful Bidder, or the property of any of them.

### **Acceptance And Termination Of Qualified Bids**

The Debtor intends to sell the Assets to the Successful Bidder upon the approval of the Successful Bid and the Back-Up Bid(s) by the Bankruptcy Court after the Sale Hearing. The Debtor’s presentation of a particular Successful Bid and Back-Up Bid to the Bankruptcy Court for approval does not constitute the Debtor’s acceptance of the bid. The Debtor will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing.

### **Sale Hearing**

The Sale Hearing shall be conducted by the Bankruptcy Court on **Tuesday, June 6, 2017 at 9:00 a.m. (prevailing Central Time)** and may be adjourned or rescheduled without notice. At the Sale Hearing, the Debtor will seek Bankruptcy Court approval of the Successful Bid and the Back-Up Bid. Unless the Bankruptcy Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the Proposed Sale and there will be no further bidding at the Sale Hearing. In the event that the Successful Bidder cannot or refuses to consummate the sale because of the breach or failure on the part of the Successful Bidder, the Back-Up Bidder will be deemed the new Successful Bidder and the Debtor shall be authorized, but not required, to close with the Back-Up Bidder on the Back-Up Bid without further order of the Bankruptcy Court.

### **Terms Of Sale**

Except as and to the extent provided in the Purchase Agreement, and subject to Bankruptcy Court approval, the sale of the Assets shall be on an "AS IS, WHERE IS" basis and without representations or warranties of any kind, nature or description by the Debtor or its agents, and by submitting a bid, each bidder is deemed to acknowledge and agree to the foregoing. Subject to Bankruptcy Court approval and the terms of the Purchase Agreement, all of the Debtor's right, title and interest in and to the Assets shall be sold free and clear of all liens, claims, interests, encumbrances, rights, remedies, restrictions, liabilities and contractual commitments of any kind or nature whatsoever, whether arising before or after the Petition Date, whether at law or in equity (collectively "Interests"), to the fullest extent available under Bankruptcy Code section 363 with such Interests, if any, attaching to the net proceeds of the sale of the Assets in the same order, dignity and priority as existed at the commencement of the bankruptcy cases and subject to certain FCC and Industry Canada and other conditions set forth in the Purchase Agreement. Notwithstanding the foregoing, the Debtor reserves the right to contest the validity, nature, extent or priority of and/or seek to set aside or avoid any and all Interests under applicable law.

### **Return Of Deposits**

Each Deposit submitted pursuant to the Bid Procedures will be held in escrow by the Escrow Agent and will not become property of the Debtor's estate absent further order of the Bankruptcy Court. Within two Business Days following the approval by the Bankruptcy Court of the Successful Bidder and Back-Up Bidder, the Escrow Agent shall return the Deposits made by any other Qualified Bidders and the Escrow Agent shall return the Back-Up Bidder's Deposit within two business days after the Back-Up Bid is terminated in accordance with the provisions herein.

If the Successful Bidder or the Back-Up Bidder shall fail to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder (or Back-Up Bidder, as the case may be), the Debtor shall be entitled to retain such Successful Bidder's (or Back-Up Bidder's, as the case may be) Deposit, in addition to other additional remedies available to the Debtor under applicable law. The Debtor shall credit the Deposit of the Successful Bidder

or the Back-Up Bidder towards the purchase price at the time of funding pursuant to the terms of the Purchase Agreement.

### **Reservation Of Rights**

The Debtor reserves the right to modify the Bid Procedures at or prior to the Auction if such modification will better promote the goals of the Auction and the Debtor deems such modifications consistent with the performance of its fiduciary obligations, provided that such modification shall not be materially inconsistent with these Bidding Procedures, the Bidding Procedures Order, the Bankruptcy Code, any Court-approved Stalking Horse Agreement, or any prior order of the Bankruptcy Court.