



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

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

THE HONOURABLE	)	THURSDAY, THE 17 <sup>TH</sup>
	)	
JUSTICE CONWAY	)	DAY OF AUGUST, 2023
	)	

**B E T W E E N:**

**ORTHO STUDIO EXPRESS, INC.**

**Applicant**

**-and-**

**DIGITAL ORTHODONTIC CARE INC.**

**Respondent**

**ORDER**

**THIS MOTION**, made by Richter Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Digital Orthodontic Care Inc. (the “**Debtor**”) for an order, among other things,

- (i) approving a Liquidation Agreement (as defined herein),
- (ii) approving sale procedures for the sale of the assets and property of the Debtor, which are not otherwise disposed of pursuant to the Liquidation Agreement,
- (iii) approving a stalking horse purchase agreement (the “**Stalking Horse Agreement**”) between the Receiver and Ortho Studio Express, Inc. (the “**Stalking Horse Bidder**”) dated August 9, 2023, and

- (iv) conditionally vesting in favour of the Stalking Horse Bidder the Debtor's right, title and interest in and to the assets described in the Stalking Horse Agreement (the "**Purchased Assets**") in the event that the Stalking Horse Agreement is the sole bid in accordance with the sales procedures,

was heard this day by judicial videoconference via Zoom at Toronto, Ontario.

**ON READING** the Motion Record of the Receiver dated August 9, 2023, including the First Report of the Receiver dated August 10, 2023 (the "**First Report**"), and on hearing the submissions of counsel for the Receiver and for the Applicant, and no one appearing for any other parties, although duly served as appears from the affidavit of Shaun Parsons dated August 11, 2023,

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

#### **LIQUIDATION AGREEMENT**

2. **THIS COURT ORDERS** that the Liquidation Agreement between the Receiver and Infinity Asset Solutions (the "**Liquidator**") attached as Appendix B to the First Report (the "**Liquidation Agreement**") is hereby approved.

3. **THIS COURT ORDERS** that the Receiver and the Liquidator are hereby authorized and directed to perform their obligations under the Liquidation Agreement and to take any and all steps that are reasonably necessary or desirable to carry out the Liquidation Agreement.

## **SALE PROCEDURES**

4. **THIS COURT ORDERS** that the Sale Procedures attached as Schedule “A” to this Order (the “**Sale Procedures**”) are hereby approved.

5. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to carry out the Sale Procedures and to take any and all steps that are reasonably necessary or desirable to carry out the Sale Procedures.

## **STALKING HORSE AGREEMENT**

6. **THIS COURT ORDERS** that the execution by the Receiver of the Stalking Horse Agreement attached as Appendix C to the First Report is hereby authorized, *nunc pro tunc*.

7. **THIS COURT ORDERS** that, if required, the obligation to pay the Break Fee (as defined in the Stalking Horse Agreement) in the amount of \$85,000 pursuant to Section 5.05 of the Stalking Horse Agreement is hereby approved.

## **STALKING HORSE VESTING ORDER IF NO OTHER BIDS**

8. **THIS COURT ORDERS** that in accordance with the Sale Procedures, where no bids (other than the Stalking Horse Agreement) are received by the Receiver (as defined in the Sale Procedures), the Receiver shall serve upon the Service List and file a Report with the Court (the “**Stalking Horse Approval Report**”) advising of its intention to proceed with the sale transaction contemplated by the Stalking Horse Agreement (the “**Stalking Horse Transaction**”).

9. **THIS COURT ORDERS** that upon (i) serving the Stalking Horse Approval Report on the Service List; and (ii) provided that, within 10 days of serving the Stalking Horse Approval Report,

the Receiver receives no written objection from any person in respect to the Stalking Horse Transaction being designated as the Successful Bid (paragraph 9(i) and 9(ii) herein together, the “**Approval Conditions**”), then the Stalking Horse Transaction shall be deemed to be hereby approved and the Receiver shall be authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Stalking Horse Transaction and for the conveyance to the Stalking Horse Bidder of the Purchased Assets.

10. **THIS COURT ORDERS AND DECLARES** that upon satisfaction of the Approval Conditions as well as the delivery of a Receiver’s certificate to the Stalking Horse Bidder substantially in the form attached as Schedule “B” hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title, benefit, and interest in and to the Purchased Assets as described in the Stalking Horse Agreement shall vest absolutely in the Stalking Horse Bidder, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Osborne dated July 4, 2023; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system all of which are collectively referred to as the “**Encumbrances**” and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

11. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Stalking Horse Bidder pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof in connection with the Stalking Horse Transaction.

13. **THIS COURT ORDERS** that the Receiver and the Liquidator shall incur no liability or obligation as a result of carrying out of the Sale Procedures, the Liquidation Agreement, or the provisions of this Order, save and except for any gross negligence or wilful misconduct on their respective parts.

14. **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 or under the Sale Procedures.

#### **APPROVAL OF RECEIVER'S FIRST REPORT**

15. The First Report and the activities of the Receiver described therein are hereby approved provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

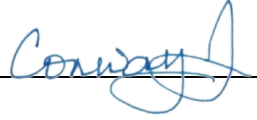
#### **REPUDIATION OF LEASE**

16. **THIS COURT ORDERS** that the Receiver shall be permitted to repudiate a lease by providing to the landlord not less than seven (7) days' prior notice in writing of its intention to do so, which notice shall set out the effective date of the repudiation and which may be sent by electronic transmission to the email address of the landlord and/or to the email address of their counsel.

17. **THIS COURT ORDERS** that the Receiver shall 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.

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any other Canadian and foreign court, tribunal, regulatory or administrative body ("**Judicial Body**") to give effect to this Order and to assist the Receiver and its respective agents in carrying out the terms of this Order. All Judicial 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, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its respective agents in carrying out the terms of this Order.



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**Schedule A – Sale Procedures  
For The Sale Of Property Of Digital Orthodontic Care Inc.**



## 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, (iii) a minimum incremental amount of \$10,000 in excess of the aggregate purchase price contemplated by the Stalking Horse Agreement; and (iv) 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 the sole 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**

**[Attached]**

**CERTAIN ASSETS OF DIGITAL ORTHODONTIC  
CARE INC. / INVESTORS SOUGHT**

Richter Inc. (“**Richter**”), in its capacity as receiver (the “**Receiver**”) of the assets, undertakings, and properties of Digital Orthodontic Care Inc. (the “**Company**”) and pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated August 17, 2023, which, *inter alia*, authorized the Receiver to undertake a sale solicitation process (the “**Sale Process**”) for the sale of certain of the Company’s business and/or assets, including, (i) intellectual property (ii) other intangible assets, (iii) rights to tax refunds, credits, rebates or similar benefits, (iv) reimbursement claims and (v) the books and records related to the purchased assets (collectively, the “**Assets**”).

The Company operated under the business name SureCure Orthodontic Aligners and manufactured orthodontic aligners for straightening teeth. Its business premises is located in Milton, Ontario. In order to obtain detailed information on the Company’s Assets, interested parties will be required to sign a non-disclosure agreement.

For further information regarding the Sale Process, please refer to the Receiver’s website at:  
<https://www.richter.ca/insolvencycase/digital-orthodontic-care-inc/>

For additional information regarding Digital Orthodontic Care Inc. and the Sale Process, please contact Shane Connolly (647-921-3902 or [SConnolly@richter.ca](mailto:SConnolly@richter.ca)) of the Receiver’s office. The deadline for submission of a qualifying offer is 5:00 p.m. (Toronto time) on September 29, 2023, and the outside closing date of the Sale Process is contemplated to be October 27, 2023.

## **RICHTER**

Richter Inc.

Receiver of Digital Orthodontics Care Inc.  
181 Bay Street, Suite 3510  
Bay Wellington Tower  
Toronto, Ontario M5J 2T3  
Telephone: 461-488-2345  
Fax: 514-934-8603

### 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

**Schedule B – Form of Receiver’s Certificate**

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

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

**B E T W E E N:**

**ORTHO STUDIO EXPRESS, INC.**

**Applicant**

**-and-**

**DIGITAL ORTHODONTIC CARE INC.**

**Respondent**

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (the “**Court**”) dated July 4, 2023, Richter Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of Digital Orthodontic Care Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Honourable Justice Conway dated August 17, 2023, the Court approved certain sale procedures in respect of certain of the Debtor’s assets (the “**Sale Procedures**”).

C. Pursuant to an Order of the Honourable Justice Conway dated August 17, 2023, the Court approved the Agreement of Purchase and Sale made as of August 9, 2023 (the “**Stalking Horse Agreement**”) between the Receiver and Ortho Studio Express, Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the Receiver has selected or declared the Purchaser’s Stalking Horse Bid as the Successful Bid (ii) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (iii) that the conditions to Closing as set out in Article 5 of the Stalking Horse Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iv) the Transaction has been completed to the satisfaction of the Receiver.

D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Stalking Horse Agreement.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser's Stalking Horse Bid is the Successful Bid pursuant to the Sale Procedures;
2. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Stalking Horse Agreement;
3. The conditions to Closing as set out in Article 5 of the Stalking Horse Agreement have been satisfied or waived by the Receiver and the Purchaser; and
4. The Transaction has been completed to the satisfaction of the Receiver.
5. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**Richter Inc. in its capacity as Receiver of the undertaking, property and assets of Digital Orthodontic Care Inc., and not in its personal capacity**

Per: \_\_\_\_\_

Name:

Title:

**ORTHO STUDIO EXPRESS, INC.**

**and**

**DIGITAL ORTHODONTIC CARE INC.**

Applicant

Respondent

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

Proceedings commenced at Toronto

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**ORDER**

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**RECONSTRUCT LLP**  
Royal Bank Plaza, South Tower  
200 Bay Street  
Suite 2305, P.O. Box 120  
Toronto, ON M5J 2J3

**Caitlin Fell** LSO No. 60091H  
cfell@reconllp.com  
Tel: 416.613.8282

Fax: 416.613.8290

**Lawyers for the Receiver**