**“SANDBAGGING”**

**A typical pro-sandbagging (Buyer-friendly) provision states:**

The rights of the Purchaser to indemnification or any other remedy under this Agreement shall not be impacted or limited by any knowledge that the Purchaser may have acquired, or could have acquired, whether before or after the closing date, nor by any investigation or diligence by the Purchaser. The Seller hereby acknowledges that, regardless of any investigation made (or not made) by or on behalf of the Purchaser, and regardless of the results of any such investigation, the Purchaser has entered into this transaction in express reliance upon the representations and warranties of the Seller made in this Agreement.

**A typical anti-sandbagging provision (Seller-friendly) may state:**

The Purchaser acknowledges that it has had the opportunity to conduct due diligence and investigation with respect to the Company, and in no event shall the Seller have any liability to the Purchaser with respect to a breach of representation, warranty or covenant under this Agreement to the extent that the Purchaser knew of such breach as of the Closing Date.

**“MATERIALITY SCRAPE”**

Notwithstanding anything in this Agreement to the contrary, for purposes of the Parties’ indemnification obligations under this Article 13 (but, for the avoidance of doubt, not for purposes of determining whether a Closing condition in Article 9 has been satisfied), all of the representations and warranties set forth in this Agreement or any certificate or schedule that are qualified as to “material,” “materiality,” “material respects,” “material adverse effect,” “Material Adverse Effect” or words of similar import or effect shall be deemed to have been made without any such qualification for purposes of determining (i) whether a breach of any such representation or warranty has occurred and (ii) the amount of Covered Liabilities resulting from arising out of or relating to any such breach of representation or warranty.