

Clerk's Stamp:

COURT FILE NUMBER	2501-02606
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE OF	CALGARY
MATTER	IN THE MATTER OF THE <i>COMPANIES' CREDITORS ARRANGEMENT ACT</i> , R.S.C. 1985, c. C-36, as amended
	AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ROYAL HELIUM LTD., IMPERIAL HELIUM CORP., AND ROYAL HELIUM EXPLORATION LIMITED.
APPLICANTS:	ROYAL HELIUM LTD., IMPERIAL HELIUM CORP., AND ROYAL HELIUM EXPLORATION LIMITED.
DOCUMENT	<b><u>SISP APPROVAL ORDER</u></b>
CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	<b>Reconstruct LLP</b> 80 Richmond Street West Suite 1700 Toronto, ON, CA M5H 2A4 <b>Caitlin Fell / Sharon Kour</b> Tel: 416.613.8282 / 416.613.8283 Fax: 416.613.8290 Email: <a href="mailto:cfell@reconllp.com">cfell@reconllp.com</a> / <a href="mailto:skour@reconllp.com">skour@reconllp.com</a> File No: 00482
DATE ON WHICH ORDER WAS PRONOUNCED:	<b>February 19, 2025</b>
NAME OF JUDGE WHO MADE THIS ORDER:	<b>Justice D. R. Mah</b>
LOCATION OF HEARING:	<b>Edmonton, Alberta</b>

**UPON** the application of Royal Helium Ltd., Imperial Helium Corp. and Royal Helium Exploration Limited (collectively, the "**Applicants**") pursuant to section 11.6(a) of the *Companies' Creditors Arrangement Act* R.S.C., 1985, c. C-36 (the "**CCAA**"); **AND UPON** having read the Originating Application, the Affidavit of David Young sworn February 10, 2025 (the "**Young Affidavit**"); the Affidavit of David Young sworn February 14, 2025 (the "**Supplementary Young Affidavit**"); the Affidavit of Service of Alina Stoica sworn February 10, 2025; and the Affidavit of

Service of Alina Stoica sworn February 14, 2025; **AND UPON** reading the pre-filing report of Alvarez & Marsal Canada Inc. (the “**Monitor**”) dated February 18, 2025, filed; **AND UPON** hearing counsel for the Applicants, counsel for the Monitor, and counsel to all other parties present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

#### **SERVICE AND INTERPRETATION**

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

#### **APPROVAL OF SALE AND INVESTMENT SOLICITATION PROCESS**

2. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the sales and investment solicitation process (the “**SISP**”) attached hereto as **Schedule “A”**.
3. The SISP is approved in the form attached, which includes all or part of the Applicants’ Property and Business as defined in the SISP, without exception. Applicants, the Monitor and their advisors are empowered, authorized and directed to implement the SISP, perform their respective obligations under the SISP and to do all things reasonably necessary to perform their obligations under the SISP.
4. The steps taken by the Applicants or the Monitor in connection with the SISP prior to the date of this Order, as described in the Pre-Filing Report, are approved and ratified.
5. Each of the Applicants, the Monitor and their respective affiliates, partners, directors, employees, advisors (including but not limited to legal counsel), agents, shareholders and controlling persons shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the SISP or the conduct thereof, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP (as determined by this Court). Pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Applicants and the Monitor may disclose personal information of identifiable individuals to Potential Bidders and their advisors in connection with the

SISP, but only to the extent desirable or required to carry out the SISF. Each Potential Bidder (and their respective advisors) to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction in respect of the Applicants and the Property, and if it does not complete such a transaction, shall return all such information to the Monitor, or in the alternative destroy all such information. The Successful Bidder shall be entitled to continue to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Applicants and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed.

6. In overseeing and conducting the SISF, the Monitor shall have all of the benefits and protections granted to it under the CCAA and any Order of this Court in the within proceeding.
7. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
8. Notwithstanding Rule 6.11 of the Alberta Rules of Court, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
9. Service of this Order shall be deemed good and sufficient by serving the same by posting a copy of this Order on the Monitor's website at [www.alvarezandmarsal.com/royalhelium](http://www.alvarezandmarsal.com/royalhelium).

  
Justice of the Court of King's Bench of Alberta

## **Schedule “A”**

### **Sale and Investment Solicitation Process**

## Schedule “A”

### Bidding Procedures for the Sale Investment and Solicitation Process

#### Introduction

1. On January 17, 2025 (the “**Filing Date**”), Royal Helium Ltd., Royal Helium Exploration Limited, and Imperial Helium Corp. (together, the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, 1985, c. B-3 (the “**BIA**”, and the proceedings, the “**NOI Proceedings**”).
2. Grant Thornton Limited, a licensed insolvency trustee, was appointed as Proposal Trustee of the Company in the NOI Proceedings.
3. On January 29, 2025, the Company obtained an order (the “**Consolidation Order**”) from the Ontario Superior Court of Justice (Commercial List) which, among other things, consolidated the NOI Proceedings, approved a debtor in possession facility in the amount of \$1,500,000 (the “**DIP Facility**”), and ordered that the NOI Proceedings be transferred to the Alberta Court of King’s Bench.
4. On February 10, 2025, the Company filed an application with the Alberta Court of King’s Bench (Commercial List) (the “**Court**”) pursuant to section 11.6(a) of the *Companies’ Creditors Arrangement Act*, 1985, c C-36 (“**CCAA**”), to continue the NOI Proceedings thereunder. Canadian Western Bank and Business Development Bank of Canada (together, the “**Lenders**”) are currently the primary secured lenders of the Company and, in that capacity, the Lenders will have certain consultation rights as specifically provided for below.
5. On February 19, 2025, the Court granted an initial order (the “**Initial Order**”) pursuant to the CCAA, among other things, converting the NOI Proceedings to proceedings under the CCAA (the “**CCAA Proceedings**”): appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as the monitor (the “**Monitor**”) of the Company; taking up and continuing certain charges granted in the Consolidation Order, including a charge up to a maximum amount of \$1,500,000 in favour of Energy & Specialty Gases DIP, LLC (the “**DIP Lender**”) to secure the DIP Facility; and amending certain charges granted in the Consolidation Order, including the \$300,000 charge in favour of certain professional fees (the “**Administrative Charge**”).
6. On February 19, 2025, the Court granted an order authorizing the Monitor and the Company to undertake a sale and investment solicitation process (“**SISP**”) to solicit offers for the sale of the Company’s: (A) property, assets and undertaking (collectively, the “**Property**”), and/or (B) business operations (the “**Business**”), or for the restructuring, recapitalization or refinancing of the Business (the “**SISP Approval Order**”). The SISP will be conducted by the Monitor, working in conjunction with the Company, in the manner set forth herein and in accordance with the SISP Approval Order.
7. Among other things, the SISP Approval Order approved the procedures set out in this Schedule (the “**Bidding Procedures**”) for the solicitation of offers (each, a “**Bid**”) for the acquisition of the Property and/or the Business or some portion thereof or the restructuring, recapitalization or refinancing of the Business.

## Bidding Procedures

### *Opportunity*

8. The SISP is intended to solicit interest in and opportunities for a sale of all or part of the Company's Property and Business (the "**Opportunity**"). The Opportunity may include one or more of a sale of all, substantially all or one or more components of the Company's Property and Business as a going concern or otherwise and/or the restructuring, recapitalization or refinancing of the Business.
9. Any sale of any of the Property and/or the Business will be on an "*as is, where is*" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Company, the Lenders or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Company in and to the Property or the Business to be acquired will be sold free and clear of, *inter alia*, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders and definitive documents.
10. The Bidding Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning the Company, the Property and the Business, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of Bids received, the ultimate selection of a Successful Bidder (as defined below) and the requisite approvals to be sought from the Court in connection therewith.
11. The Monitor and the Company shall be entitled to consult with the Lenders in respect of any matter relating to these Bidding Procedures; and, (ii) the Monitor and the Company shall be entitled to disclose to the Lenders confidential information concerning the SISP, including any list of potential purchasers or investors, information regarding the identity and number of bidders or prospective bidders participating in the SISP from time to time, the number of bids received and the terms of any bids received, and any similar information in connection with the SISP, including, but not limited to, any such information as may be included in the VDR (as defined in paragraph 20).
12. The Monitor, in consultation with the Company and the Lenders, may at any time and from time to time, modify, amend, vary or supplement the Bidding Procedures, without the need for obtaining an order of the Court or providing notice to Qualified Bidders, Binding Offer Bidders or the Successful Bidder(s) (as each are defined below) provided that such modification, amendment, variation or supplement is expressly limited to changes that do not alter, amend or prejudice the rights of such bidders and are necessary or useful in order to give effect to the substance of the SISP, the Bidding Procedures or the SISP Approval Order. Notwithstanding the foregoing; (i) the dates or time limits indicated in the table contained below may be extended by the Monitor, in consultation with the Company and the Lenders, as the Monitor deems necessary or appropriate, or by order of the Court.
13. The Monitor will post on the Monitor's website and serve on the service list maintained in the CCAA Proceedings, as soon as practicable, any such modification, amendment, variation or supplement to these Bidding Procedures and inform the bidders impacted by such modifications.

14. The SISP will be conducted by the Monitor, in coordination with the Company, and in the manner set forth herein and in accordance with the SISP Approval Order. In the event of a dispute as to the interpretation or application of the SISP Approval Order or these Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute. For the avoidance of doubt, all bidders shall be deemed to have consented to the jurisdiction of the Court in connection with any disputes relating to the SISP, including the qualification of Bids, the enforcement of the SISP, and the closing of a Successful Bid, as applicable.
15. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, the Auction and any further negotiations or other actions whether or not they lead to the consummation of a transaction.
16. A summary of the key dates pursuant to the SISP is as follows:

<b>Milestone</b>	<b>Date</b>
Commence solicitation of interest from parties, including delivering NDA and Teaser Letter, and upon execution of NDA (each as defined below) and access to VDR	As soon as practical following the date of the SISP Approval Order.
Phase I Bid Deadline (non-binding letter of intent)	By no later than 5:00 p.m. (Mountain Time) on March 28, 2025,
Binding Offer Deadline (as defined below) – Phase II Bid Deadline	By not later than 5:00 p.m. (MT) on April 18, 2025
Auction, if needed	By no later than April 23, 2025.
Selection of Successful Bid	By no later than April 23, 2025.
Approval Motion (as defined below)	By no later than May 2, 2025, or the earliest date available thereafter.
Closing of Successful Bid	As soon as possible but no later than May 9, 2025.

### **Solicitation of Interest: Notice of the SISP**

17. As soon as reasonably practicable after the granting of the SISP Approval Order,
  - (a) the Monitor shall cause a notice of the SISP to be published in the Globe & Mail (National Edition) and any other relevant paper or online industry at the discretion of the Monitor;
  - (b) the Company and the Monitor will prepare a list of potential bidders, including: (i) parties that have approached the Company or the Monitor indicating an interest in the Opportunity prior to the date of the SISP Approval Order; and (ii) local, national, and international financial and strategic parties who the Company and the Monitor believe may have an interest in submitting a Bid for the Property and/or the Business, in each case whether or not such party has submitted a letter of intent or similar document (collectively, the **"Known Potential Bidders"**); and
  - (c) the Company, with the review and final approval of the Monitor, will prepare and finalize: (i) a process summary (the **"Teaser Letter"**) describing the Opportunity, outlining the contemplated process under the SISP and inviting recipients of the Teaser Letter to express their interest; and (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor and the Company and their respective counsel, which shall enure to the benefit of any purchaser of the Business or Property or any part thereof (an **"NDA"**).
18. As soon as reasonably practicable, but, in any event, by no later than five (5) business days after the granting of the SISP Approval Order, the Monitor, with the assistance of the Company will arrange to provide the Known Potential Bidders with a copy of the Bidding Procedures approved by the Court.
19. The Monitor will cause the Teaser Letter and NDA to be sent to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Company, the Monitor or the Lenders or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable. The Monitor will ensure the Company is informed of any or all Teaser Letter and NDAs that are sent to any parties hereto.



### ***Virtual Data Room***

20. A confidential virtual data room or rooms (collectively the “**VDR**”) in relation to the Opportunity will be made available by the Monitor to Potential Bidders (as defined below) that have executed the NDA. The VDR will be made available as soon as practicable. The Company, in consultation with the Monitor, may establish separate VDRs (including “**clean rooms**”), if the Company reasonably determines that doing so would prevent the distribution of commercially sensitive competitive information. The Monitor may also, in consultation with the Company, limit the access of any Potential Bidder to any confidential information in the VDR where the Monitor, in consultation with the Company, reasonably determines that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Business, the Property or their value. The Monitor will have access to the VDR and any clean rooms.

### ***Qualified Bidders***

21. Any party who wishes to participate in the SISP (a “**Potential Bidder**”) must provide to the Monitor and counsel to the Company, at the addresses specified in **Appendix “B”** hereto (including by email transmission), an NDA executed by it, acceptable to the Company and the Monitor, and written confirmation of the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.
22. A Potential Bidder (who has delivered the executed NDA and letter as set out above) will be deemed a “**Qualified Bidder**” if the Monitor, in its reasonable judgment, and in consultation with the Company and the Lenders, determines such person is likely, based on the availability of financing, experience and other considerations, to be able to consummate a sale or liquidation transaction pursuant to the SISP. All Qualified Bidders will be granted access to the VDR. For greater certainty, no Potential Bidder or other party shall be deemed to be a Qualified Bidder without the approval of the Monitor, in consultation with the Company and the Lenders.
23. The Lenders shall not participate as bidders in the SISP, other than in accordance with paragraph 40 herein.
24. The Company, the Monitor, the Lenders and their respective advisors make no representation or warranty as to the information contained in the VDR, Teaser Letter or otherwise made available pursuant to the SISP.
25. At any time during the SISP the Monitor may, in its reasonable judgment, and in consultation with the Company and the Lenders, eliminate a Qualified Bidder from the SISP, in which case such bidder will be eliminated from the SISP and will no longer be a “Qualified Bidder” for the purposes of the SISP.
26. Potential Bidders must rely solely on their own independent review, diligence, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with respect to the Property and Business or any portion thereof.

## Due Diligence

27. The Monitor and the Company, shall, subject to competitive and other business considerations, afford each Qualified Bidder such access to available due diligence materials and information relating to the Property and Business as the Monitor, in consultation with the Company, may deem appropriate. Due diligence access may include management presentations, access to the VDR, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Monitor, in its reasonable judgment, and in consultation with the Company, may agree. Any access or interactions with the Company's management and personnel shall be coordinated through, and involve a representative of, the Monitor.
28. The Monitor will designate one or more representatives of the Monitor to be solely responsible for coordinating and responding to all requests for information and due diligence access from Qualified Bidders and the manner in which such requests must be communicated. Neither the Monitor, nor the Company through the Monitor, will be obligated to furnish any information relating to the Property or Business to any person other than to Qualified Bidders. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Qualified Bidders if the Company, in consultation and agreement with the Monitor, determines such information to represent proprietary or sensitive competitive information.

## Non-Binding Offers

29. Any Qualified Bidder that wishes to make a formal offer to: (a) acquire all or substantially all of the Property or Business, whether through an asset purchase, a share purchase or a combination thereof (either one, a **"Sale Proposal"**); or (b) a portion of the Property or the Business (a **"Partial Sale Proposal"**); or (c) the restructuring, recapitalization or refinancing of the Business (a **"Investment Proposal"**) must submit a non-binding offer (a **"Non-Binding Offer"**) in the form of a Letter of Intent disclosing all material terms of the Non-Binding Offer, including, without limitation the source of financing or funding for the proposed transaction by no later than 5:00 p.m. (Mountain Time) on March 28, 2025 (the **"Phase I Bid Deadline"**). All Non-Binding Offers are to be submitted to the Monitor and copied to the Company.

## Formal Binding Offers

30. Any Qualified Bidder that wishes to make a formal binding offer for a Sale Proposal, Partial Sale Proposal or Investment Proposal must submit a binding offer (a **"Binding Offer"**):  
(i) in the case of a Sale Proposal or a Partial Sale Proposal, in the form of a purchase agreement, or (ii) in the case of a Financing Proposal, in the form of a financing agreement, both in form and substance satisfactory to the Monitor, in consultation with the Company and the Lenders, in each case, to the Monitor with copy to the Company, no later than 5:00 p.m. (Mountain Time) on April 18, 2025 (the **"Binding Offer Deadline"**).
31. A Binding Offer submitted by a Qualified Bidder (the **"Binding Offer Bidder"**) will be considered if it:
  - (a) is submitted on or before the Binding Offer Deadline by a Qualified Bidder;
  - (b) is made by way of binding, definitive transaction document(s) that is/are executed by the Binding Offer Bidder and contains reasonable particulars of the proposed transaction structure, including the form of Approval Order (which may, in appropriate circumstances, include a reverse vesting order);
  - (c) in the case of a Sale Proposal or Partial Sale Proposal, identifies any executory contracts and leases of the Company that the Binding Offer Bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and non-monetary defaults will be remedied, as applicable;
  - (d) is not subject to any financing condition, diligence condition or internal or board approval;
  - (e) is unconditional, other than upon the receipt of the Approval Order(s) (as defined below) and satisfaction of any other conditions expressly set forth in the Binding Offer;
  - (f) contains or identifies the key terms and provisions to be included in any Approval Order;
  - (g) in the case of a Sale Proposal or Partial Sale Proposal, contains the Binding Offer Bidder's proposed treatment of employees of the Company (for example, anticipated employment offers and treatment of post-employment benefits);
  - (h) includes acknowledgments and representations of the Binding Offer Bidder that it:
    - (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer;
    - (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property and/or the Business in making its Binding Offer;
    - (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer;
    - (iv) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable governmental authorities;

- (i) includes evidence satisfactory to the Monitor of funds available to pay the purchase price on closing;
- (j) provides for any anticipated corporate, licensing, securityholder, legal or other regulatory approvals required to close the transaction, and an estimate of the anticipated time frame and any anticipated impediments for obtaining such approvals (or, in the case of any such approvals which are already held by the Qualified Bidder, identifies such approvals);
- (k) does not provide for any break or termination fee, expense reimbursement or similar type of payment, it being understood and agreed that no bidder will be entitled to any bid protections;
- (l) in the case of a Sale Proposal or Partial Sale Proposal, includes:
  - (i) the specific purchase price in Canadian dollars and a description of any non-cash consideration;
  - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (iii) a specific indication of the sources of capital for the Binding Offer Bidder and the structure and financing of the transaction; and
  - (iv) a description of those liabilities and obligations (including operating liabilities) which the Binding Offer Bidder intends to assume and which such liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;
- (m) in the case of an Investment Proposal, includes the scope of the investment in the Business, which may include one or more of the following: a restructuring, recapitalization or other form of reorganization of the Business and affairs of the Company as a going concern, together with a plan of compromise or arrangement pursuant to the CCAA;
- (n) includes payment of a deposit in the amount of not less than 20% of the cash purchase price payable on closing (the “**Deposit**”) by wire transfer to the Monitor;
- (o) is accompanied by an acknowledgement that if the Binding Offer Bidder is selected as a Successful Bidder, that the Deposit will be non-refundable subject to approval of such Successful Bid by the Court and the terms described in paragraph 45 below;
- (p) contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on the date that is ten (10) days from the date of the issuance of the Approval Order approving such bid, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing and in any event no later than April 7, 2025 (the “**Outside Date**”);
- (q) provides sufficient consideration to repay or otherwise address the indebtedness owing to the Lenders (the “**Lender Secured Indebtedness**”) to the satisfaction of the Lenders in their sole discretion; and

- (r) includes such other information as reasonably requested or identified as being necessary or required by the Monitor, in consultation with the Company.
32. The DIP Lender, the Lenders (solely pursuant to and in accordance with paragraph 40 herein), and any other secured creditor of the Company shall have the right (subject to compliance with the terms of this SISP) to credit bid their secured debt against the assets secured thereby up to the full face value of such secured lender's claims, including principal, interest and any other obligations owing to such secured lender; provided that any such secured lender shall be required to: (a) pay in full in cash, or assume (with the consent of the holder of the priority claim), any obligations of the Company in priority to or *pari passu* with its secured debt; and (b) pay appropriate consideration for any assets of the Company which are contemplated to be acquired and that are not subject to such secured lender's security.
33. By submitting an offer for consideration as a Binding Offer, it is deemed that such Binding Offer: (i) may, if such Binding Offer is selected as the Successful Bid, be accepted by the Company by countersigning the Binding Offer, and (ii) is irrevocable and capable of acceptance until the earlier of (A) two (2) business days after the date of closing of the applicable Successful Bid; and (B) the Outside Date.
34. The Monitor, in its reasonable judgment, and in consultation with the Company and the Lenders may waive compliance with any one or more of the requirements specified above and consider such non-compliant Binding Offer. For the avoidance of doubt, the completion of any Binding Offer shall be subject to the approval of the Court.
35. The Monitor, in consultation with the Company, may aggregate separate bids from unaffiliated Binding Offers to create one or more Qualified Bid(s) (an "**Aggregated Bid**").

### **Evaluation of Competing Bids**

36. A Binding Offer will be evaluated based upon several factors, including, without limitation, items such as the purchase price and the net value and form of consideration to be paid pursuant to such bid (including the extent of value available to creditors of the Company), the identity, circumstances and ability of the Binding Offer Bidder to successfully complete such transactions, including any conditions attached to the bid and the expected feasibility of such conditions, the proposed transaction documents, factors affecting the speed, certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, compliance or eligibility with respect to regulatory requirements, the likelihood and timing of consummating such transactions, and the ability of the bidder to finance and ultimately consummate the proposed transaction within the timeline established by the Monitor, in consultation with the Company and Lenders.

### **Selection of Successful Bid**

37. The Monitor in consultation with the Company and the Lenders may, following the receipt of any Binding Offer, including one or more Binding Offers comprising an Aggregated Bid, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered.

38. The Monitor, in consultation with the Company, may negotiate with Binding Offer Bidders, including Binding Offers comprising an Aggregated Bid, in any manner it considers appropriate in its business judgment with a view to maximizing the value of the Property, including at the Auction (as defined below).
39. The Monitor and the Company will, in consultation with the Lenders: (i) review and evaluate each relevant Binding Offer; and (ii) subject to paragraph 41 (j) below: (A) identify the highest and otherwise best Binding Offer (the “**Successful Bid**”, and the Binding Offer Bidder making such Successful Bid, the “**Successful Bidder**”); and (B) the next highest and otherwise second best Binding Offer (the “**Back-Up Bid**”, and the Binding Offer Bidder making such Back-Up Bid, the “**Back-Up Bidder**”). The Monitor, in consultation with the Company and the Lenders, may consider any commercial factor in evaluating Binding Offers, including speed, certainty, value and preservation of employment.
40. From and after the Binding Offer Deadline, but prior to the commencement of any Auction if any, in the event that no offer is received (including an offer received by the DIP Lender) that provides sufficient consideration to repay or otherwise address the indebtedness owing to the Lenders to the satisfaction of the Lenders, the Lenders (or any one of them) shall be entitled to repay the DIP Facility in full and: (i) credit bid some or all of the amount of the DIP Facility and the Lender Secured Indebtedness, and such credit bid submitted by the Lenders (or any of them) shall be deemed to be the Successful Bid; or (ii) agree to fund an alternate process to realize on the Company’s assets.
41. If the Monitor, in consultation with the Company and the Lenders, determines that more than one Binding Offers should be considered, the Monitor may, in consultation with the Company and the Lenders, without being obligated to do so, conduct an auction (the “**Auction**”) to select the highest and/or best Binding Offer in accordance with the procedures set out below.
- (a) The Auction will commence at a time to be designated by the Monitor and may, in the discretion of the Monitor, be held virtually via videoconference, teleconference or such other reasonable means as the Monitor deems appropriate. The Monitor will consult with the parties permitted to attend the Auction to arrange for the Auction to be so held. Subject to the terms hereof, the Monitor, in consultation with the Company and Lenders, may postpone the Auction.
  - (b) Except as otherwise permitted in the Monitor’s discretion, only the Company, the Monitor, the Lenders and the Binding Offer Bidders, and, in each case, their respective professionals and representatives, will be permitted to attend the Auction. Only Binding Offer Bidders are eligible to participate in the Auction.
  - (c) Binding Offer Bidders will participate in the Auction through a duly authorized representative who has the authority to make binding offers on behalf of the Binding Offer Bidder at the Auction.
  - (d) Except as otherwise set forth herein, the Monitor may waive and/or employ and announce at the Auction additional rules, including rules to facilitate the participation of parties participating in an Aggregated Bid, that are reasonable under the circumstances for conducting the Auction, provided that such rules are:

- (i) Not materially inconsistent with the Initial Order, the SISP, the Bidding Procedures, the CCAA, or any order of the Court issued in connection with the CCAA Proceedings;
  - (ii) disclosed to each Binding Offer Bidder; and (iii) designed, by the Monitor, in its reasonable judgment, and in consultation with the Company, to result in the highest and otherwise best offer.
- (e) The Monitor may arrange for the actual bidding at the Auction to be transcribed or recorded. Each Binding Offer Bidder participating in the Auction will designate a single individual to be its spokesperson during the Auction.
- (f) Each Binding Offer Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with the Company or any other person, including any other Binding Offer Bidder, or any of the respective representatives of such persons, without the consent of the Monitor, regarding the SISP, that has not been disclosed to all other Binding Offer Bidders.
- (g) Prior to the Auction, the Monitor will identify the highest and best of the Binding Offers received and such Binding Offers will constitute the opening bid for the purposes of the Auction (the “**Opening Bid**”). Subsequent bidding will continue in minimum increments valued at not less than \$50,000.00 cash in excess of the Opening Bid (each and “**Overbid**”). Each Binding Offer Bidder will provide evidence of its financial wherewithal and ability to consummate the transaction at the increased purchase price. Further, in the event that an Aggregated Bid qualifies to participate in the Auction, modifications to the bidding requirements may be made by the Monitor, in consultation with the Company, to facilitate bidding by the participants in the Aggregated Bid.
- (h) All Binding Offer Bidders will have the right, at any time, to request that the Monitor announce, subject to any potential new Bids, the then-current highest and best Bid and, to the extent requested by any Binding Offer Bidder, use reasonable efforts to clarify any and all questions such Binding Offer Bidder may have regarding the Monitor’s announcement of the then-current highest and best bid.
- (i) Each participating Binding Offer Bidder will be given reasonable opportunity to submit an overbid at the Auction to any then-existing overbids. The Auction will continue until the bidding has concluded and there is one remaining Binding Offer Bidder. The Monitor and the Company, in consultation with the Lenders, shall determine which Binding Offer Bidders have submitted: (i) the highest and otherwise best Binding Offer of the Auction, which shall be a Successful Bid, and (ii) the next highest and otherwise second best Binding Offer of the Auction, which shall be a Back-Up Bid. At such time and upon the conclusion of the bidding, the Auction will be closed, and the Binding Offer Bidder with the highest and otherwise best Binding Offer of the Auction will be a Successful Bidder. The Binding Offer Bidder with the next highest and otherwise second best Binding Offer of the Auction will be a Back-Up Bidder.
- (j) Upon selection of a Successful Bidder(s) and the Back-Up Bidder, if any, the Successful Bidder(s) and the Back-Up Bidder, if any, shall deliver to the Monitor and the Company, an amended and executed transaction document that reflects

their final Bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the motion material for the hearing to consider the Approval Motion.

- (k) Any Bids submitted after the conclusion of the Auction will not be considered.
  - (l) The Monitor, in consultation with the Company, shall be at liberty to modify or to set additional procedural rules for the Auction as it sees fit, including to conduct the Auction by way of written submissions.
42. A Successful Bid and a Back-Up Bid, if any, will be selected by no later than 5:00 p.m. (Mountain Time) on April 23, 2025 (or such later date immediately thereafter if the Auction is conducted and not completed in one day). If a Back-Up Bid is identified in accordance with the SISP, then such Back-Up Bid shall remain open until the date (the “**Back-Up Bid Outside Date**”) on which the transaction contemplated by the applicable Successful Bid is consummated or such earlier date as the Monitor, in consultation with the Company, determines. If the transactions contemplated by the applicable Successful Bid have not closed by the Outside Date, as applicable, or the applicable Successful Bid is terminated for any reason prior to the Outside Date, as applicable, the Company and the Monitor may elect to, or by further order of the Court, seek to complete the transactions contemplated by the applicable Back-Up Bid, and will promptly seek to close the transaction contemplated by such Back-Up Bid, which will be deemed to be a Successful Bid. The Company will be deemed to have accepted such Back-Up Bid only when the Company and the Monitor have made such election.

#### ***Approval of Successful Bid***

43. The Company will apply to the Court (the “**Approval Motion**”) for one or more orders: (i) approving the Successful Bid(s) and authorizing the taking of such steps and actions and completing such transactions as are set out therein or required thereby (such order shall also approve the Back-Up Bid(s), if any, should the Successful Bid(s) not close for any reason); and (ii) granting a vesting order(s) to the extent that such relief is contemplated by the Successful Bid(s) so as to vest title to any purchased assets and/or shares in the name of the applicable Successful Bidder(s) (collectively, the “**Approval Order(s)**”). The Approval Motion will be held on a date to be scheduled by the Company, in consultation with the Monitor and the Lenders, and confirmed by the Court upon application by the Company. With the consent of the Monitor, the Approval Motion may be adjourned or rescheduled by the Company without further notice, by an announcement of the adjourned date at the Approval Motion or in a notice to the service list maintained in the CCAA Proceedings prior to the Approval Motion. The Company will consult with the Monitor, the Lenders and the applicable Successful Bidder regarding the motion material to be filed by the Company for the Approval Motion.
44. All Binding Offers (other than the Successful Bid(s) but including the applicable Back-Up Bid(s)) will be deemed rejected on and as of the date of the closing of the applicable Successful Bid(s), with no further or continuing obligation of the Company or the Monitor to any unsuccessful Binding Offer Bidders.

#### ***Deposits***

45. The Deposit(s):



- (a) will, upon receipt from the Binding Offer Bidder(s), be retained by the Monitor and deposited in a non-interest-bearing trust account;
- (b) received from the Successful Bidder(s) and the Back-Up Bidder will:
  - (i) be applied to the purchase price to be paid by the applicable Successful Bidder of the Back-Up Bidder whose Successful Bid or Back-Up Bid, as applicable, is the subject of the Approval Order(s), upon closing of the approved transaction; and
  - (ii) otherwise be held and refunded in accordance with the terms of the definitive documentation in respect of the applicable Successful Bid or Back-Up Bid, provided that (A) all such documentation will provide that the Deposit, will be fully refunded to the Back-Up Bidder on the Back-Up Bid Outside Date; and (B) all such documentation will provide that the Deposit will be retained by the Company and forfeited by the Successful Bidder, if its Successful Bid fails to close by the Outside Date and such failure is attributable to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of its Successful Bid; and
- (c) received from the Binding Offer Bidder(s) that are not a Successful Bidder or a Back-Up Bidder will be fully refunded to the Binding Offer Bidder(s) that paid the Deposit(s), as applicable, as soon as practical following the closing of the applicable Successful Bid.

***“As is, Where is”***

- 46. Any sale (or sales), including in the case of liquidation, of the Property or the Business or portions thereof will be on an **“as is, where is”** basis except for representations and warranties that are provided in writing in any definitive documents. Any such representations and warranties provided for in the definitive documents will not survive closing.

**Confidentiality**

- 47. Unless otherwise set out herein, other than as required in connection with any Auction or Approval Motion or as otherwise ordered by the Court, neither the Company nor the Monitor will disclose: (i) the identity of any Potential Bidder or Qualified Bidder; or (ii) the terms of any bid, Sale Proposal, Partial Sale Proposal, or Binding Offer, to any other bidder or any of its affiliates, except to the extent the Monitor, with the consent of such applicable parties is seeking to combine separate Bids into Aggregated Bids. Potential Bidders, Qualified Bidders, Known Potential Bidders, Binding Offer Bidders and each of their respective affiliates shall not communicate with, or contact, directly or indirectly, any other Potential Bidder, Qualified Bidder, Known Potential Bidder, Binding Offer Bidder, or their respective affiliates, without the express written consent of the Monitor, and such communications or discussions are to take place under the supervision of the Monitor. For greater certainty, nothing in this section shall limit the ability of the Monitor or the Company to disclose information in relation to the identity of any Potential Bidder or Qualified Bidder

or the terms of any bid, Sale Proposal, Partial Sale Proposal, or Binding Offer, to the Lenders.

### **Further Orders**

48. At any time during the SISP, the Company or the Monitor may apply to the Court for advice and directions with respect to any aspect of this SISP including, but not limited to, the continuation of or termination of the SISP or with respect to the discharge of its powers and duties hereunder.

### **Additional Terms**

49. In addition to any other requirement of the SISP, prior to seeking Court approval for any transaction or Bid contemplated by this SISP, the Monitor will provide a report to the Court on the SISP, parts of which may be filed under seal, including in respect of any and all Bids received.
50. Notwithstanding the terms of the SISP and these Bidding Procedures, the Company may, with the consent of the Monitor and the Lenders (other than any Lender that has indicated an intention to bid in the SISP), at any time bring an application to seek approval of a stalking horse bid in respect of some or all of the Property or the Business and related bid procedures, including to establish further or other bid procedures or the extension of any timeline set out herein.
51. The Monitor may, with the consent of the Company and the Lenders, terminate the SISP in relation to all or any part of the Business or Property, including if no acceptable bids are received by any deadline contemplated herein.
52. This SISP does not, and will not, be interpreted to create any contractual or legal relationship between the Company or the Monitor and any other party, other than as specifically set forth in the NDA or any other definitive agreement executed.
53. Notwithstanding anything to the contrary herein, the Monitor shall have no liability whatsoever to any person or entity, including without limitation any Potential Bidder, Qualified Bidder, Binding Offer Bidder, Known Potential Bidder, Successful Bidder, Back-Up Bidder, or any other creditor or stakeholder, or the Company, as a result of implementation or otherwise in connection with this SISP, except to the extent that any such liabilities result from the gross negligence or wilful misconduct of the Monitor, as determined by the Court, and all such persons or entities shall have no claim against the Monitor in respect of the SISP for any reason whatsoever.