

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Dynamic Aerostructures LLC, *et al.*,
Debtors.¹

Chapter 11

Case No. 25-10292 (LSS)

(Jointly Administered)

Related Docket No. 16 & 169

BIDDING PROCEDURES

On February 26, 2025 (the “Petition Date”), the above captioned debtors and debtors in possession (collectively, the “Debtors”) commenced their chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtors are maintaining their business and managing their property as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

On February 26, 2025, the Debtors filed the *Debtors’ Motion for Entry of an Order (A)(I) Approving Bidding Procedures for the Sale of the Debtors’ Assets, (II) Scheduling Hearings and Objection Deadlines with Respect to the Sale, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of the Notice Thereof, (V) Approving Assumption and Assignment Procedures for Executory Contracts and Unexpired Leases, (VI) Authorizing and Approving the Debtors’ Entry Into the Stalking Horse APA, (VII) Authorizing and Approving Bid Protections, and (VII) Granting Related Relief and (B)(I) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (II) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [Docket No. 16] (the “Combined Sale/Bidding Procedures Motion”)² seeking approval of, among other things, the procedures to be employed by the Debtors in connection with the proposed sale of all or substantially all of the Debtors’ assets (collectively, the “Assets”) through a section 363 sale process (any such purchase, a “Transaction”).

On March 25, 2025, the Court entered an order [Docket No. 169] (the “Bidding Procedures Order”), among other things, granting certain relief requested in the Combined Sale/Bidding Procedures Motion, including authorizing the Debtors to solicit bids and approving the procedures

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Dynamic Aerostructures LLC (3076); Dynamic Aerostructures Intermediate LLC (9800); and Forrest Machining LLC (3421). The Debtors’ service address is 27756 Avenue Mentry, Valencia, California 91355.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Combined Sale/Bidding Procedures Motion or the Stalking Horse APA (as defined herein) as applicable).



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contemplated herein (the “Bidding Procedures”). The Bidding Procedures set forth the process by which the Debtors are authorized to solicit bids and conduct an auction (the “Auction”) to determine the Successful Bidder (as defined below) for the Assets (the “Sale”).

FMI Holdco LLC (the “Stalking Horse Purchaser”) and the Debtors have executed that certain *Asset Purchase Agreement*, dated as of February 25, 2025 (as amended, supplemented or otherwise modified by the parties thereto from time to time, and including the disclosure schedules and exhibits attached thereto, the “Stalking Horse APA”), pursuant to which the Stalking Horse Purchaser has agreed to purchase the Assets set forth in the Stalking Horse APA, free and clear of all Liens, Claims (each as defined in the Stalking Horse APA), and interests pursuant to section 363(f) of the Bankruptcy Code other than the Assumed Liabilities (as defined in the Stalking Horse APA), and subject to the terms and conditions set forth therein. The Debtors are conducting an ongoing marketing process intended to obtain the highest or otherwise best bid for the Assets. The bid contained in the Stalking Horse APA is subject to higher and better offers submitted in accordance with the terms of the Bidding Procedures and, as such, the Stalking Horse APA has been approved by the Court as the “stalking-horse” bid for the Assets set forth therein (the “Stalking Horse Bid”).

Any party interested in bidding on the assets should contact:

- (a) Configure Partners, LLC, 3344 Peachtree Rd. NE, Suite 1500, Atlanta, GA 30326 (Attn: Rory Keenan and Matt Guill; email: rkeenan@configurepartners.com and mguill@configurepartners.com), investment banker for the Debtors; and
- (b) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036 (Attn: Gregg M. Galardi, email: gregg.galardi@ropesgray.com), Chipman Brown Cicero & Cole LLP, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801 (Attn: Mark L. Desgrosseilliers and Robert A. Weber; email: desgross@chipmanbrown.com and weber@chipmanbrown.com), and Chipman Brown Cicero & Cole LLP, 501 5th Ave, 15th Floor, New York, NY 10017 (Attn: Daniel G. Egan; email: egan@chipmanbrown.com), co-counsel for the Debtors.

Summary of Key Dates Established by Bidding Procedures

<u>Event</u>	<u>Due Date</u>
Deadline for Acceptable Bidders to Submit Bids	April 2, 2025 at 4:00 p.m. (ET)
Deadline to object to approval of Sale to Stalking Horse Purchaser	April 3, 2025 at 4:00 p.m. (ET)
Auction (if necessary)	April 4, 2025 at 10:00 a.m. (ET)
Deadline to object to approval of Sale to Successful Bidder other than the Stalking Horse Purchaser	April 7, 2025 at 2:00 p.m. (ET)
Hearing to Consider the Sale	April 7, 2025 at 2:00 p.m. (ET)

Marketing Process

I. Contact Parties

As part of the marketing process, the Debtors have and continue to assemble materials in order to streamline potential purchasers' diligence requests, and develop a list of parties who may be interested in, and who the Debtors reasonably believe have the financial resources to consummate, a Transaction (each, a "Contact Party" and, collectively, the "Contact Parties"). Parties interested in becoming Contact Parties should contact: investment banker to the Debtors, Configure Partners, Attn: Rory Keenan (rkeenan@configurepartners.com) and Matt Guill (mguill@configurepartners.com).

The Debtors may distribute (to the extent not already distributed) to each Contact Party and any other interested party or potential bidder materials consisting of: (a) a copy of the Bidding Procedures, the Bidding Procedures Order, and the Combined Sale/Bidding Procedures Motion; (b) a form confidentiality agreement (a "Confidentiality Agreement"); and (c) such other materials as appropriate under the circumstances.

II. Participation Requirements

To receive due diligence information and to receive additional non-public information regarding the Debtors, a potential bidder must deliver to each of: (i) (a) co-counsel to the Debtors, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036 (Attn: Gregg M. Galardi; email: gregg.galardi@ropesgray.com) and (b) co-counsel to the Debtors, Chipman Brown Cicero & Cole LLP, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801 (Attn: Mark L. Desgrosseilliers and Robert A. Weber; email: desgross@chipmanbrown.com and weber@chipmanbrown.com), and Chipman Brown Cicero & Cole LLP, 501 5th Ave, 15th Floor, New York, NY 10017 (Attn: Daniel G. Egan; email: egan@chipmanbrown.com) and (ii) investment banker to the Debtors, Configure Partners, LLC, 3344 Peachtree Rd. NE, Suite 1500, Atlanta, GA 30326 (Attn: Rory Keenan and Matt Guill; email: rkeenan@configurepartners.com and mguill@configurepartners.com) (collectively, the "Debtors' Advisors"), the following documents (collectively, the "Preliminary Bid Documents") unless otherwise waived by the Debtors in their discretion:

- a. documentation identifying the interested party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- b. an executed Confidentiality Agreement on terms acceptable to the Debtors, to the extent not already executed, which Confidentiality Agreement shall, among other terms, contain customary provisions regarding: (i) the nondisclosure of confidential information, (ii) prohibitions on contacting third parties in connection with a Transaction, (iii) covenant to not solicit employees of the Debtors, and (iv) the survival of certain provisions of the Confidentiality Agreement;
- c. evidence by the potential bidder of its sufficient financial capacity to close a proposed transaction, which may include financial statements of, or verified

financial commitments obtained by, the potential bidder (or, if the potential bidder is an entity formed for the purpose of acquiring the Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors, with the assistance of the Debtors' Advisors;

- d. a statement and other factual support that the potential bidder has a *bona fide* interest in consummating a sale transaction, to the reasonable satisfaction of the Debtors after consultation with the Consultation Parties (as defined below);
- e. written disclosure of any connections or agreements with the Debtors, the Stalking Horse Purchaser, any other known potential bidder, or Qualified Bidder (as defined below), "insiders" of the Debtors (as that term is contemplated by section 101(31) of the Bankruptcy Code), or any manager or direct or indirect equity security holder of the Debtors; and
- f. documentation identifying the potential bidder, its principals, and the representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated transaction.

Only those potential bidders that have submitted acceptable Preliminary Bid Documents, as determined by the Debtors (each, an "Acceptable Bidder") may submit Bids. For the avoidance of doubt, and notwithstanding the foregoing, the Stalking Horse Purchaser is an Acceptable Bidder.

Beginning on or as soon as is reasonably practicable after the Debtors determine that a potential bidder is an Acceptable Bidder, the Debtors will provide such Acceptable Bidder with reasonable access to due diligence information, to the extent reasonably requested by such Acceptable Bidder. All due diligence requests must be directed to: the investment banker to the Debtors, Configure Partners, Rory Keenan (rkeenan@configurepartners.com) and Matt Guill (mguill@configurepartners.com).

To the extent reasonably practicable, the Debtors will also facilitate meetings between any interested Acceptable Bidder and the Debtors' management team, which meetings will proceed in a manner determined by the Debtors, in their discretion. The due diligence period will end on the Bid Deadline (as defined below) and, subsequent to the Bid Deadline, the Debtors will have no obligation to furnish any due diligence information.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever related to the Assets (i) to any person or entity who (a) is not an Acceptable Bidder; (b) does not comply with the participation requirements set forth above; or (c) in the case of competitively sensitive information, is a competitor of the Debtors (except pursuant to information sharing procedures reasonably satisfactory to the Debtors in the Debtors' discretion) and (ii) to the extent not permitted by law.

The Debtors and the Debtors' Advisors will coordinate all reasonable requests from Acceptable Bidders for additional information and due diligence access; *provided* that the Debtors may decline to provide such information to Acceptable Bidders who, at such time and in the

Debtors' business judgment, have not established, or who have raised doubt, that such Acceptable Bidder intends in good faith to, or has the capacity to, consummate a Transaction. No potential bidder, Acceptable Bidder, or Qualified Bidder (as defined below) shall communicate with any of the Debtors' employees, landlords, vendors, lenders, or other potential bidder, Acceptable Bidder, or Qualified Bidder with respect to any bid or potential Transaction absent the prior written consent of the Debtors; *provided* that, if such consent is given, a representative of the Debtors shall be present for or party to any such communications (unless otherwise agreed by the Debtors in their sole discretion).

For any Acceptable Bidder who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right to withhold, redact, code, or delay providing any diligence materials that the Debtors determine are business-sensitive or otherwise inappropriate for disclosure to such Bidder at such time.

Each Acceptable Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or the Debtors' Advisors regarding such Acceptable Bidder and its contemplated Transaction.

Stalking Horse Purchase Price/Breakup Fee and Expense Reimbursement

On February 25, 2025, the Debtors entered into the Stalking Horse APA with the Stalking Horse Purchaser. As set forth more fully in the Stalking Horse APA, the Purchase Price to be paid by the Stalking Horse Purchaser is (i) cash in the amount of \$16,000,000 (less any Cure Cost Deduction and subject to a working capital adjustment), and (ii) the assumption by Purchaser of the Assumed Liabilities (including payment of the Cure Costs) (collectively, the "Purchase Price"). The Stalking Horse APA also includes various customary representations, warranties, and covenants by and from the Debtors and the Stalking Horse Purchaser, and certain conditions to closing and rights of termination related to the Sale and the Chapter 11 Cases generally.

To provide the Stalking Horse Purchaser with an incentive to participate in a competitive process and to compensate the Stalking Horse Purchaser for (i) performing substantial due diligence and incurring the expenses related thereto and (ii) entering into the Stalking Horse APA with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Debtors have agreed, and the Court (subject to the terms of the Bidding Procedures Order) has approved, that the Stalking Horse Purchaser is entitled from the proceeds of a transaction consummated pursuant to a Successful Bid (as defined below) with the Successful Bidder subject to the terms of the Stalking Horse APA and pursuant to the terms thereof, to the Breakup Fee and Expense Reimbursement (each as defined in the Stalking Horse APA). As set forth below, payment of the Breakup Fee and Expense Reimbursement (to the extent payable under the Stalking Horse APA and Bidding Procedures Order) shall be a component of any Qualified Bid submitted by a Qualified Bidder (other than the Stalking Horse Purchaser). The Breakup Fee and Expense Reimbursement shall be payable as provided for pursuant to the terms of the Bidding Procedures Order, the Sale Order (as defined in the Bidding Procedures Order), and the Stalking Horse APA.

Auction Process

I. Bid Deadline

An Acceptable Bidder, other than the Stalking Horse Purchaser, that desires to make a proposal, solicitation, or offer (each, a “Bid”) shall transmit such proposal, solicitation, or offer via email (in pdf or similar format) so as to be **actually received** on or before **April 2, 2025 at 4:00 p.m. (ET)** (the “Bid Deadline”) by:

- a. co-counsel to the Debtors, Ropes & Gray, 1211 Avenue of the Americas, New York, NY 10036 (Attn: Gregg M. Galardi (gregg.galardi@ropesgray.com));
- b. co-counsel to the Debtors, Chipman Brown Cicero & Cole LLP, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801 (Attn: Mark L. Desgrosseilliers and Robert A. Weber; email: desgross@chipmanbrown.com and weber@chipmanbrown.com), and Chipman Brown Cicero & Cole LLP, 501 5th Ave, 15th Floor, New York, NY 10017 (Attn: Daniel G. Egan; email: egan@chipmanbrown.com); and
- c. investment banker to the Debtors, Configure Partners, LLC, 3344 Peachtree Rd. NE, Suite 1500, Atlanta, GA 30326 (Attn: Rory Keenan and Matt Guill; email: rkeenan@configurepartners.com and mguill@configurepartners.com).

A Bid must be received no later than the Bid Deadline, unless otherwise extended by the Debtors in their sole discretion. To the extent that the Bid Deadline is extended for all parties, the Debtors shall file a notice on the docket of the Chapter 11 Cases indicating the same. Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.

II. Bid Requirements

Each Bid submitted by an Acceptable Bidder must be submitted in writing and satisfy the following requirements (collectively, the “Bid Requirements”) unless otherwise modified by the Debtors, in their discretion:

- a. **Marked Agreement.** A Bid must be in writing and include an executed asset purchase agreement (a “Competing APA”), together with all exhibits and schedules (the “Transaction Documents”), pursuant to which the Acceptable Bidder proposes to effectuate the contemplated transaction, which Competing APA must be similar in form and substance to the Stalking Horse APA and be marked to reflect the differences between the Stalking Horse APA and the Acceptable Bidder’s Competing APA, including, without limitation, specification of the proposed purchase price, any assumed liabilities, and any changes to any exhibits or schedules to the Competing APA. A Bid must identify with particularity each and every condition to closing and all executory contracts and unexpired leases to be assumed and assigned pursuant to the Transaction Documents. The Transaction Documents must include a commitment to close the Transaction by no later than the Closing

Date provided in the Stalking Horse APA. A Bid may propose a contemplated transaction involving all or substantially all of the Assets or any subset of Assets. The Debtors will evaluate all Bids, in their sole discretion, subject to prior consultation with the Consultation Parties, to determine whether such Bid or combination of Bids maximizes the value of the Debtors' estates as a whole in light of any factors regarding such bid which the Debtors, in their discretion, determine are appropriate to be considered in evaluating Bids.

- b. Purpose. Each Acceptable Bidder must state that the Bid includes an offer by the Acceptable Bidder to purchase some or all of the Assets and state which Assets with reasonable specificity. Each Bid must clearly identify the following: (i) contracts to be assumed, including cure costs to be paid, if any, and parties responsible for payment thereof; (ii) the liabilities, if any, to be assumed; (iii) leases to be assumed, including cure costs to be paid, if any, and parties responsible for payment thereof; and (iv) which employees or groups thereof will be offered employment.
- c. Purchase Price. The consideration proposed by a Bid may include cash or other consideration acceptable to the Debtors in an amount of no less than the sum of (i) the Purchase Price plus (ii) the Breakup Fee and Expense Reimbursement plus (iii) \$250,000; *provided that* the Bid must include sufficient cash to pay all DIP Obligations in full, in addition to the Breakup Fee and Expense Reimbursement.
- d. Forms of Consideration. Each Bid must (a) indicate (x) whether it is an all-cash offer (including confirmation that the cash component of the Bid is based in U.S. Dollars) or consists of certain non-cash components, such as a credit bid or the assumption of liabilities; and (y) the liabilities to be assumed, if applicable; and (b) provide sufficient cash consideration for payment of the amounts set forth in Section II(c) above. The Debtors may request that any Bid include the allocation of the Purchase Price among the Assets to be acquired. In addition, any Bid shall identify separately any cash and non-cash components, which non-cash components shall be limited only to credit-bids in accordance with section 363(k) of the Bankruptcy Code and assumed liabilities.
- e. Deposit. Each Bid must be accompanied by a cash deposit in the amount equal to 10% of the aggregate value of the cash and non-cash consideration (with the deposit amount for the non-cash consideration determined by the Debtors in their discretion) of the Bid to be held in an escrow account to be identified and established by the Debtors (the "Deposit"); *provided that* that the Debtors reserve the right to increase the amount of the Deposit in their discretion, including, without limitation, the right to request an additional Deposit in the event an Acceptable Bidder increases the amount of its Bid.
- f. Irrevocable. All Bids must be irrevocable until the Debtors' selection of the Successful Bid and Backup Bid (each as defined below); *provided, however*, that the Successful Bid shall be irrevocable until the closing of the Approved

Transaction (as defined below) and the Backup Bid must be irrevocable in accordance with Section VI below, as applicable.

- g. Committed Financing. To the extent that a Bid is not accompanied by evidence of the Acceptable Bidder's capacity to consummate the Transaction set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtors' satisfaction that demonstrates that the Acceptable Bidder has received sufficient debt or equity funding commitments to satisfy the Acceptable Bidder's purchase price and other obligations under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors.
- h. Unconditional Offer / Contingencies. A statement that the Bid is formal, binding, and unconditional and is not subject to any further due diligence or contingencies related to financing, internal approval, due diligence, or otherwise, and is irrevocable until the Debtors notify the Acceptable Bidder that such Bid is not a Successful Bid or a Backup Bid.
- i. Non-Reliance. A Bid must include a written acknowledgement and representation of the Acceptable Bidder that it has had an opportunity to conduct any and all due diligence regarding the Assets and assumed liabilities prior to making its Bid, that it has relied solely upon its own independent review, investigation or inspection of any documents or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guaranties, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or the physical condition of the Assets, the assumed liabilities, or the completeness of any information provided in connection therewith or the Auction.
- j. Identity. Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder, sponsor, parent company or other financial backer of the Acceptable Bidder, including if such Acceptable Bidder is an entity formed for the purpose of consummating the proposed Transaction contemplated by such Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s), counsel and other advisors whom the Debtors' Advisors should contact regarding such Bid. Nothing herein shall preclude multiple Acceptable Bidders from submitting a joint Bid, subject to the Debtors' prior written consent to such submission and the disclosure requirements set forth herein.
- k. Adequate Assurance. Each Bid must contain evidence acceptable to the Debtors in their discretion that the Acceptable Bidder has the ability to perform thereunder and otherwise complies with the requirements of adequate assurance of future performance under sections 365(b)(1) and 365(b)(3) of the Bankruptcy Code. Such evidence may include audited and unaudited financial statements, tax returns, bank

account statements, a description of the proposed business to be conducted at the premises or any other documentation that the Debtors further request.

- l. Authorization. Each Bid must contain evidence that the Acceptable Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) with respect to the submission of its Bid and the closing of the Transaction contemplated in such Bid (including the submission, execution, and delivery of the Competing APA).
- m. No Fees Payable to Bidder. Except with respect to the Breakup Fee and Expense Reimbursement payable to the Stalking Horse Purchaser in accordance with the Stalking Horse APA and Bidding Procedures Order, a Bid may not request or entitle the Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment. Moreover, by submitting a Bid, a Bidder shall be deemed to waive the right to pursue any break-up fee, termination fee, expense reimbursement or similar type of payment, or substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its Bid or the Bidding Procedures.

By submitting its Bid, each Acceptable Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from submitting a Bid or seeking to reopen any round of bidding or the Auction after conclusion of any round of bidding or the Auction. **The submission of a Bid shall constitute a binding and irrevocable offer to acquire the Assets as reflected in such Bid.**

Notwithstanding anything herein to the contrary and for the avoidance of doubt, for all purposes under the Bidding Procedures, the Stalking Horse APA submitted by the Stalking Horse Purchaser is a Qualified Bid without regard to any of the requirements or conditions set forth therein and without any other or further action by the Stalking Horse Purchaser.

III. Designation of Qualified Bidders

A Bid will be considered a “Qualified Bid,” and each Acceptable Bidder that submits a Qualified Bid will be considered a “Qualified Bidder,” if the Debtors determine, in their discretion, subject to prior consultation with the Consultation Parties, that such Bid:

- a. satisfies the Bid Requirements set forth above; and
- b. is reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtors.

The Debtors will notify each Qualified Bidder whether such party is a Qualified Bidder and shall provide the Notice Parties (as defined below) with a copy of each Bid that has been submitted to the Debtors (whether or not such bid has been determined by the Debtors to be a Qualified Bid).

If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund

such Acceptable Bidder's Deposit on the date that is the later of (i) three (3) Business Days after the Bid Deadline and (ii) the date on which the Debtors make a final determination that such Bid is not a Qualified Bid or, in each case, as soon as is reasonably practicable thereafter. The Debtors reserve the right to work with any Acceptable Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid and to determine at any time prior to the start of the Auction that such Bid, as modified, is a Qualified Bid.

Between the date that the Debtors notify an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Acceptable Bidder's purchase price, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided* that any Qualified Bid may be improved at the Auction as set forth herein; *provided, further*, that the Stalking Horse Bid may be modified or amended pursuant to its terms. Any improved Qualified Bid must continue to comply in all respects with the requirements for Qualified Bids set forth in these Bidding Procedures.

Notwithstanding anything herein to the contrary, the Debtors reserve the right, (a) to work with potential bidders and Acceptable Bidders to aggregate two or more Bids into a single consolidated Bid prior to the Bid Deadline or (b) to work with Qualified Bidders to aggregate two or more Qualified Bids into a single Qualified Bid prior to the conclusion of the Auction. No bidders, Acceptable Bidders or Qualified Bidders may aggregate any Bids without the Debtors' prior consent, subject to prior consultation with the Consultation Parties.

Notwithstanding anything herein to the contrary and for the avoidance of doubt, for all purposes under the Bidding Procedures, the Stalking Horse Purchaser is a Qualified Bidder without regard to any of the requirements or conditions set forth therein and without any other or further action by the Stalking Horse Purchaser.

IV. Right to Credit Bid

Unless otherwise ordered by the Court and subject to the terms of the Bidding Procedures Order, any Qualified Bidder who has a valid and perfected lien on any assets of the Debtors' estates (a "Secured Creditor") and the right, power, and authorization to credit bid claims secured by such liens, shall have the right to credit bid all or a portion of such Secured Creditor's secured claims within the meaning of, and subject to, section 363(k) of the Bankruptcy Code; provided that a Secured Creditor shall have the right to credit bid its secured claim only with respect to the collateral by which such Secured Creditor is secured.

V. Auction

If no Qualified Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, the Stalking Horse Purchaser shall be deemed the Successful Bidder without the need or requirement to hold or open the Auction.

If the Debtors receive more than one Qualified Bid for the Assets (other than the Stalking Horse Bid), the Debtors will conduct the Auction to determine both the Successful Bidder and the Backup Bidder with respect to such Assets. The Auction shall take place on **April 4, 2025 at 10:00 a.m. (ET)**, at the offices of Chipman Brown Cicero & Cole LLP, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801, or such later date and time as selected by the Debtors (following consultation with the Consultation Parties).

Prior to the start of the Auction, the Debtors will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, or, if multiple bids are received in respect of non-overlapping Assets, the highest or best Qualified Bid(s) received in relation to each group of Assets, in each case as determined in the Debtors' business judgment (each such bid, a "Baseline Bid"), and provide copies of the documents supporting the Baseline Bid(s) to all Qualified Bidders and the Consultation Parties. The determination of which Qualified Bid(s) constitutes the Baseline Bid(s) and which Qualified Bid(s) constitutes the Successful Bid(s) shall take into account any factors the Debtors, in consultation of the Consultation Parties, reasonably deem relevant to the value of the Qualified Bid(s) to the Debtors' estates, which may include, among other things: (a) the type and amount of Assets sought to be purchased in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Bid; (e) the tax consequences of such Bid; (f) the assumption of obligations, including contracts and leases; (g) the cure costs to be paid; and (h) the impact on employees, including the number of employees proposed to be transferred and employee-related obligations to be assumed (collectively, the "Bid Assessment Criteria").

The Auction shall be conducted pursuant to the following procedures:

a. The Debtors Shall Conduct the Auction

The Debtors and the Debtors' Advisors shall direct and preside over the Auction.

The Auction shall be conducted in an open cry format (and not by way of sealed bids). At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid(s). All incremental Bids made thereafter shall be Overbids (as defined below) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders and the Consultation Parties. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid(s), all Overbids, the Successful Bid(s), and any Backup Bid(s).

Qualified Bidders (including, for the avoidance of doubt, the Stalking Horse Purchaser) and the Consultation Parties, and each of their respective legal and financial advisors, shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction in person (live or on videoconference) and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders (including, for the avoidance of doubt, the Stalking Horse Purchaser) shall be entitled to make any subsequent bids at the Auction; *provided, however*, that any creditor who wishes to physically attend the Auction (other than (i) the parties set forth in the Bidding Procedures (including the Qualified Bidders), and (ii) such other parties the Debtors deem appropriate), shall provide at least two (2) days' notice of such attendance prior to the Auction by

sending an email to counsel to the Debtors.

b. Terms of Overbids

“Overbid” means any bid made at the Auction by a Qualified Bidder subsequent to the Debtors’ announcement of the Baseline Bid. Each Overbid must comply with the following conditions:

- (i) Minimum Overbid Increment. Any Overbid to the initial Baseline Bid at the start of the Auction shall be in increments of no less than a value equal to \$250,000 unless otherwise determined by the Debtors in an exercise of their business judgment; *provided, however*, that to the extent that the Baseline Bid constitutes the Stalking Horse Bid, the bidding for such Assets at the first round of bidding will start at an amount equal to the sum of: (i) the value of the Baseline Bid, (ii) the amount of the Breakup Fee and Expense Reimbursement, and (iii) \$250,000.
- (ii) Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
- (iii) Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtors’ estates than any prior Qualified Bid or Overbid, as determined in the Debtors’ business judgment, but shall otherwise comply with the terms of these Bidding Procedures.
- (iv) No Round-Skipping. Round-skipping, as described herein, is explicitly prohibited. To remain eligible to participate in the Auction, in each round of bidding, (i) each Qualified Bidder must submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding and (ii) to the extent a Qualified Bidder fails to bid in such round of bidding or to submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding, as determined by the Debtors in their reasonable business judgment, such Qualified Bidder shall be disqualified from continuing to participate in the Auction for the Assets including, without limitation, submitting further Bids.
- (v) Announcing Highest Bid. With respect to the Auction, the Debtors shall, subsequent to each Overbid Round Deadline, announce whether the Debtors in consultation with the Consultation Parties have identified (a) in the initial Overbid round, an Overbid as being higher or otherwise better than the Baseline Bid in respect of the Assets that are the subject of the Auction or (b) in subsequent rounds, an Overbid as being higher or otherwise better

than the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid as well as the value attributable by the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

c. Consideration of Overbids

For the purpose of evaluating the value of the consideration provided by any Bid subsequent to the Baseline Bid, the Debtors will, at each round of bidding, give effect to the Breakup Fee and Expense Reimbursement to the extent payable to the Stalking Horse Purchaser under the Stalking Horse APA and Bidding Procedures Order.

The Debtors reserve the right, in their business judgment, to adjourn the Auction one or more times, to, among other things, (i) facilitate discussions between the Debtors and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their business judgment, may require that the Qualified Bidder has sufficient internal approvals and resources or has received sufficient non-contingent debt or equity funding commitments to consummate the proposed Transaction at the prevailing Overbid amount.

d. Closing the Auction

The Auction shall continue until there is only one Qualified Bid that the Debtors determine, in their discretion following consultation with the Consultation Parties, to be the highest or otherwise best Qualified Bid for the Assets. Such Qualified Bid shall be declared the “Successful Bid,” and such Qualified Bidder, the “Successful Bidder,” at which point the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of such Successful Bid is conditioned upon approval by the Court of such Successful Bid. As soon as reasonably practicable after closing the Auction, the Debtors shall finalize definitive documentation to implement the terms of the Successful Bid, and, as applicable, cause such definitive documentation to be filed with the Court.

e. No Collusion; Good Faith *Bona Fide* Offer

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (i) it has not engaged in any collusion, within the meaning of section 363(n) of the Bankruptcy Code with respect to any bids submitted or not submitted in connection with the Sale, and (ii) its Qualified Bid is a good faith *bona fide* offer and it intends to consummate the proposed Transaction if selected as the Successful Bidder.

VI. Backup Bidder

- a. Notwithstanding anything in these Bidding Procedures to the contrary, if the Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best

Qualified Bid at the conclusion of the Auction for the Assets or any sub-group thereof, as determined by the Debtors in the exercise of their business judgment, shall be required to serve as a backup bidder (the “Backup Bidder”) in accordance with the terms and conditions set forth herein. Each Qualified Bidder shall agree and be deemed to agree to be a Backup Bidder if so designated by the Debtors, subject to the terms of such Backup Bidder’s Competing APA.

- b. The identity of a Backup Bidder and the amount and material terms of the Qualified Bid of such Backup Bidder shall be announced by the Debtors, at the conclusion of the Auction at the same time the Debtors announce the identity of the Successful Bidder related thereto. Such Backup Bidder shall be required to keep its Qualified Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the earlier of (i) the closing of the Approved Transaction and (ii) 60 days from entry of the Sale Order. Each Backup Bidder’s Deposit shall be held in escrow until the earlier of (i) three (3) Business Days after the closing of the Approved Transaction and (ii) 60 days from entry of the Sale Order, subject to the terms of such Backup Bidder’s Competing APA.
- c. If a Successful Bidder fails to consummate the Approved Transaction contemplated by its Successful Bid, the Debtors may select the Backup Bidder (which may be the Stalking Horse Purchaser) with respect to the Assets or sub-group of the Debtors’ Assets or business as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party.
- d. Notwithstanding any of the foregoing, in the event that the Successful Bidder (other than the Stalking Horse Purchaser) fails to consummate the Transaction on or before the date that is sixty (60) days after entry of the Sale Order (or such date as may be extended by the Debtors in consultation with the Consultation Parties), the Backup Bid will be deemed to be the Successful Bid, the Backup Bidder will be deemed to be the Successful Bidder, and the Debtors shall be authorized to consummate the Transaction with the Backup Bidder subject to the terms of the Backup Bid without the need for further order of the Court and without the need for further notice to any interested parties.

VII. Notice and Consultation Parties

Information that is provided to the “Notice Parties” under these Bidding Procedures must be provided to the following parties: (a) co-counsel to the Debtors, (i) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036, Attn: Gregg M. Galardi (gregg.galardi@ropesgray.com) and (ii) Chipman Brown Cicero & Cole LLP, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801 (Attn: Mark L. Desgrosseilliers and Robert A. Weber; email: desgross@chipmanbrown.com and weber@chipmanbrown.com), and Chipman Brown Cicero & Cole LLP, 501 5th Ave, 15th Floor, New York, NY 10017 (Attn: Daniel G. Egan; email: egan@chipmanbrown.com); (b) counsel to the Stalking Horse Purchaser, Troutman Pepper Locke LLP, 300 S. Grand Ave., 26th Floor, Los Angeles, CA 90071 (Attn: David Kupetz; email:

david.kupetz@troutman.com); (c) counsel to the DIP Lender, King & Spalding LLP, 1100 Louisiana St., Suite 4100, Houston, TX 77002 (Attn: Michael Fishel; email: mfishel@kslaw.com) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Kenneth J. Enos; email: kenos@ycst.com); and (d) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lock Box 35, Wilmington, Delaware 19801 (Attn: Rosa Sierra-Fox; email: Rosa.Sierra-Fox@usdoj.gov).

The term “Consultation Parties” as used in these Bidding Procedures shall mean (a) any official committee of unsecured creditors appointed in the Chapter 11 Cases (the “Creditors’ Committee”) and (b) the DIP Lender. In the event that a Consultation Party submits a Bid in connection with an Auction, such party shall no longer be a Consultation Party with respect to the bidding and any Auction until such time as such party withdraws such Bid. In addition, in the event (i) the Stalking Horse APA terminates or (ii) a subscription agreement in form and substance satisfactory to the DIP Lender does not close on or prior to 30 days after the Petition Date (the “Subscription Agreement”) in each case, as may be extended or waived by the DIP Lender in its sole discretion), the DIP Lender shall be deemed a Qualified Bidder and, at such time, shall no longer be a Consultation Party with respect to the bidding and any Auction.

VIII. Consent to Jurisdiction

Any Acceptable Bidders and Qualified Bidders shall: (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any disputes relating to, actions or proceedings arising from or relating to the Bidding Procedures, the Sale, the Auction and the construction and enforcement of the contemplated transaction documents; (ii) bring any such action or proceeding in the Court; and (ii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

IX. Sale Hearing

A hearing to consider approval of the sale (the “Sale Hearing”), pursuant to which the Debtors and the Successful Bidder will consummate the Transaction (the “Approved Transaction”), will be held on April 7, 2025 at 2:00 p.m. (ET).

The Sale Hearing may be continued to a later date by the Debtors by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.

X. Objection Deadlines

Any objections to the Sale (a “Sale Objection”) must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”); (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **April 7, 2025 at the time of the Sale Hearing**

(the “Sale Transaction Objection Deadline”), with proof of service of such Sale Objection upon the Notice Parties being filed with the Court as and when required by the Local Rules; and (e) be served upon the Notice Parties. The objection deadlines with respect to the proposed assumption and assignment of contracts and leases shall be as set forth in the Bidding Procedures Order.

XI. Return of Deposits

The Deposit of the Successful Bidder shall be applied to the purchase price of the Approved Transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more escrow accounts on terms acceptable to the Debtors in their sole discretion and shall be returned (other than with respect to each Successful Bidder and each Backup Bidder) on the date that is three (3) business days after the Auction, or as soon as is reasonably practicable thereafter. Upon the return of the Deposits, the applicable Qualified Bidders shall receive any and all interest that will have accrued thereon.

If the Successful Bidder (or, if the Sale is to be closed with the Backup Bidder, then the Backup Bidder) other than the Stalking Horse Purchaser fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Competing APA, the Debtors and their estates shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Backup Bidder, then the Backup Bidder).

To the extent the Debtors do not consummate the proposed transaction with the Backup Bidder due to the closing of the transaction with the Successful Bidder, the Backup Bidder’s deposit shall be refunded within three (3) business days of the closing of the Approved Transaction.

XII. Sale Is As Is/Where is

Except as may be set forth in the Stalking Horse APA or Competing APA, the Assets sold pursuant to the Bidding Procedures shall be conveyed at the closing of such sale in their then-present condition, **“AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.”**

XIII. Reservation of Rights

The Debtors reserve their rights, subject to prior consultation with the Consultation Parties, to modify these Bidding Procedures in their business judgment in any manner that will best promote the goals of these Bidding Procedures or impose at or prior to the Auction, additional customary terms and conditions on a Transaction, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids (other than the Stalking Horse Bid).

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