

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:

VERTEX ENERGY, INC., *et al.*,<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)  
) Case No. 24-90507 (CML)  
)  
) (Jointly Administered)  
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**SOLICITATION AND VOTING PROCEDURES**

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**PLEASE TAKE NOTICE THAT** on November 18, 2024, the United States Bankruptcy Court for the Southern District of Texas (the “Court”) entered an order [Docket No. 431] (the “Disclosure Statement Order”): (a) authorizing the above captioned debtors and debtors in possession (collectively, the “Debtors”) to solicit votes on the *First Amended Joint Chapter 11 Plan of Vertex Energy, Inc. and its Debtor Affiliates* [Docket No. 425] (as modified, amended, or supplemented from time to time, the “Plan”);<sup>2</sup> (b) approving the *Disclosure Statement for the First Amended Joint Chapter 11 Plan of Vertex Energy, Inc. and its Debtor Affiliates* [Docket No. 426] (as modified, amended, or supplemented from time to time, the “Disclosure Statement”) as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages; and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

**A. The Voting Record Date.**

The Court has established **November 1, 2024**, as the record date for purposes of determining which Holders of Claims in Classes 3 (Term Loan Claims), 4 (General Unsecured Claims at Debtors other than Vertex), 5 (Other General Unsecured Claims at Vertex), 6 (2027 Convertible Notes Claims), and 7 (Term Loan Deficiency Claims) are entitled to vote on the Plan (the “Voting Record Date”).<sup>3</sup>

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<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan or the Disclosure Statement, as applicable.

<sup>3</sup> To accommodate the Debtors’ claims bar date of November 27, 2024 (the “General Claims Bar Date”), the Voting Record Date applicable to any creditor who holds a claim that is subject to the Debtors’ General Claims Bar Date and who files a Proof of Claim after the Voting Record Date (*i.e.*, November 1, 2024), but on or before the General Claims Bar Date, shall be the date that such Proof of Claim is filed (any such date, a “Supplemental Voting Record Date”). A creditor that files a Proof of Claim by a Supplemental Voting Record Date shall receive a Solicitation Package and/or a Non-Voting Status Notice, as applicable, as soon as reasonably practical thereafter and shall be entitled to vote to accept or reject the Plan (if such claimant is entitled to vote pursuant to the Plan and the

## B. The Voting Deadline.

The Court has established **December 18, 2024, at 4:00 p.m.**, prevailing Central Time, as the voting deadline (the “Voting Deadline”) for the Plan. The Debtors, in consultation with the Committee and the Required Consenting Term Loan Lenders, may extend the Voting Deadline, in their discretion, without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots (collectively, the “Ballots”) must be properly executed, completed, and delivered in accordance with the instructions set forth on the applicable Ballot so that the Ballot is **actually received** by Kurtzman Carson Consultants, LLC dba Verita Global LLC (“Verita” or the “Claims and Noticing Agent”) no later than the Voting Deadline.

To have their votes to accept or reject the Plan counted, Beneficial Holders must properly execute, complete, and deliver their Ballots to their appropriate broker, bank, or other nominee (a “Nominee”) according to their Nominee’s instructions (whether by Beneficial Holder Ballot or otherwise) in sufficient time so that such Nominee can verify, tabulate, and include such votes in a Master Ballot (as defined herein) and timely return such Master Ballot, so that it is ***actually received*** no later than the Voting Deadline by the Claims and Noticing Agent.<sup>4</sup>

## C. Form, Content, and Manner of Notices.

### 1. The Solicitation Package.

The following materials shall constitute the solicitation package (the “Solicitation Package”):

- a. The Disclosure Statement Order (excluding the schedules hereto, except as set forth below);
- b. the Disclosure Statement, and the exhibits attached thereto, including the Plan;
- c. these Solicitation and Voting Procedures;
- d. the *Notice of Hearing to Consider Confirmation of the First Amended Joint Chapter 11 Plan Filed by the Debtors*, in

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Solicitation and Voting Procedures); *provided, however*, that the Voting Deadline and other objection deadlines set forth in the Disclosure Statement Order will still apply to the relevant creditor. If the Claims and Noticing Agent previously provided such creditor with a Ballot on account of a scheduled claim or previous Proof of Claim filed in advance of any such Supplemental Voting Record Date, the Claims and Noticing Agent shall update the creditors’ voting amount, but shall not be obligated to send a new Ballot.

<sup>4</sup> For any Ballot cast via email, the format of the attachment must be found in the common workplace and industry standard format (*i.e.*, industry-standard PDF file) and the received date and time in the Claims and Noticing Agent’s inbox will be used as the timestamp for receipt. For the avoidance of doubt, the only acceptable method of electronic Ballot submission is through the Claims and Noticing Agent’s electronic online portal; *provided* that the Claims and Noticing Agent will only accept Ballots submitted by Nominees on behalf of their Beneficial Holder clients or pre-validated Beneficial Holder Ballots via email.

substantially the form annexed as Schedule 8 to the Disclosure Statement Order (the “Confirmation Hearing Notice”);

- e. the Cover Letter, which describes the contents of the Solicitation Package and urges the Holders of Claims in each of the Voting Classes to vote to accept the Plan;
- f. the applicable form of Ballot for each of the Voting Classes, together with detailed voting instructions and instructions on how to submit the Ballot;
- g. a pre-addressed, postage prepaid reply envelope,<sup>5</sup> if applicable; and
- h. any additional documents that the Court has ordered to be made available.

## **2. Distribution of the Solicitation Package.**

The Solicitation Package shall provide the Plan, the Disclosure Statement, and the Disclosure Statement Order (without exhibits except the Solicitation and Voting Procedures) in electronic format (*i.e.*, flash drive format). Only the Ballots, the Cover Letter, and the Confirmation Hearing Notice will be provided in paper format. Any party that receives the materials in electronic format but would prefer paper format may contact the Claims and Noticing Agent by: (a) writing to Vertex Energy Ballot Processing Center, c/o KCC dba Verita; (b) calling the Claims and Noticing Agent at (877) 709-4747 (domestic, toll free) or +1 (424) 236-7228 (international); or (c) emailing VertexEnergyInfo@veritaglobal.com.

The Debtors shall serve, or cause to be served, all of the materials in the Solicitation Package (excluding the Ballots) on the U.S. Trustee and all parties required to be notified under Bankruptcy Rule 2002 and Bankruptcy Local Rule 2002-1 (the “2002 List”) as of the Voting Record Date. In addition, the Debtors shall distribute, or cause to be distributed, the Solicitation Package to all Holders of Claims who are entitled to vote in the Voting Classes by November 20, 2024 (or as soon as practicable thereafter) (the “Solicitation Deadline”). The Debtors will not distribute the Solicitation Packages or other solicitation materials to: (i) Holders of Claims that have already been paid in full during the Debtors’ chapter 11 cases or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court; (ii) any party to whom the Disclosure Statement Hearing Notice was sent but was subsequently returned as undeliverable; or (iii) Holders of Class 8 Intercompany Claims and Class 9 Intercompany Interests.

For purposes of serving the Solicitation Packages, the Debtors may rely on the address information for the Voting Classes as compiled, updated, and maintained by the Claims and Noticing Agent as of the Voting Record Date. The Debtors and the Claims and Noticing Agent

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<sup>5</sup> Service of the Solicitation Packages to Beneficial Owners by the Nominees may also be performed electronically, or otherwise in their customary practice, including VIF, email, or any other reliable and customary method of collecting votes from a Beneficial Owner, in which case they may not contain pre-addressed, postage pre-paid return envelopes.

are not required to conduct any additional research for updated addresses based on undeliverable Solicitation Packages (including Ballots) or Non-Voting Status Notices.

To avoid duplication and reduce expenses, the Debtors will use commercially reasonable efforts to ensure that each Holder of a Claim entitled to vote on the Plan receives no more than one Solicitation Package (and, therefore, one Ballot) and is only entitled to submit one Ballot on account of such Holder's Claim.

With respect to Holders of Claims that are entitled to vote to accept or reject the Plan and that file Proofs of Claim or, in the absence of filed Proofs of Claim, as to which the Debtors file relevant schedules after the Voting Record Date but before the General Claims Bar Date, the Debtors and the Claims and Noticing Agent shall distribute Solicitation Packages as soon as reasonably practicable following receipt of such Proof of Claim or filing of such Schedules.

**3. Resolution of Disputed Claims for Voting Purposes; Resolution Event.**

- a. The Debtors may object to Proofs of Claims for purposes of voting on the Plan prior to the Voting Deadline. Any such objection that remains pending as of the Confirmation Hearing will be heard on an emergency basis at the Confirmation Hearing.
- b. Absent a further order of the Court, the Holder of a Claim in a Voting Class that is the subject of a pending objection on a "reduce and allow" basis shall be entitled to vote such Claim in the reduced amount contained in such objection.
- c. If a Claim in a Voting Class is subject to an objection other than a "reduce and allow" objection that is filed with the Court on or prior to seven (7) days before the Voting Deadline: (i) the Debtors shall cause the applicable Holder to be served with *Notice of Non-Voting Status and Opt-In of Releases with Respect to Disputed Claims and Interests* in the form annexed as Schedule 6 to the Disclosure Statement Order; and (ii) the applicable Holder shall not be entitled to vote to accept or reject the Plan on account of such Claim unless a Resolution Event (as defined herein) occurs as provided herein.
- d. If a Claim in a Voting Class is subject to an objection other than a "reduce and allow" objection that is filed with the Court less than seven (7) days prior to the Voting Deadline the applicable Claim shall be deemed temporarily allowed for voting purposes only, without further action by the Holder of such Claim and without further order of the Court, unless the Court orders otherwise.

- e. A “Resolution Event” means the occurrence of one or more of the following events no later than two business days prior to the Voting Deadline:
- an order of the Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
  - an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
  - a stipulation or other agreement is executed between the Holder and the Debtors resolving the objection and allowing such Claim in an agreed upon amount; or
  - the pending objection is voluntarily withdrawn by the objecting party.
- f. No later than two (2) business days following the occurrence of a Resolution Event, or as soon as reasonably practicable thereafter, the Debtors shall cause the Claims and Noticing Agent to distribute to the relevant Holders via email, hand delivery, or first-class mail service a Solicitation Package and a pre-addressed, postage pre-paid envelope, if applicable, to the relevant Holder to the extent such Holder has not already received a Solicitation Package.

**4. Non-Voting Status Notices for Unimpaired, Impaired, and Disputed Claims and Opt-In Forms.**

Certain (i) Holders of Claims that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code, or who are not entitled to vote because they are Unimpaired or otherwise presumed to accept the Plan under section 1126(f) of the Bankruptcy Code, (ii) Holders of Interests who are not entitled to vote because they are deemed to reject the Plan under section 1126(g) of the Bankruptcy Code, and (iii) Holders of Claims that are subject to a pending objection by the Debtors who are not entitled to vote the disputed portion of their claims unless a Resolution Event occurs will receive a Non-Voting Status Notice, substantially in the form attached to the Disclosure Statement Order as Schedules 4, 5A, 5B, and 6; and the opt-in form accompanying each Non-Voting Status Notice. Such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (*excluding* Ballots), as well as how they may opt-in to the Third-Party Release.

**5. Notices in Respect of Executory Contracts and Unexpired Leases.**

Counterparties to Executory Contracts or Unexpired Leases that receive an Assumption Notice or a Rejection Notice, substantially in the forms attached as Schedule 10 and Schedule 11 to the Disclosure Statement Order, respectively, may file an objection to the Debtors’ proposed assumption, rejection, and/or cure amount, as applicable. Such objections must be filed with the Court, served, and actually received by counsel to the Debtors no later than the date and time specified in the applicable notice (which shall not be less than fourteen (14) days after such notice is served).

**D. Voting and Tabulation Procedures.**

**1. Holders of Claims Entitled to Vote.**

Only the following Holders of Claims in the Voting Classes shall be entitled to vote with regard to such Claims:

- a. Unless otherwise provided, Holders of Claims who, on or before the Voting Record Date, have timely filed a Proof of Claim (or an untimely Proof of Claim that has been Allowed as timely by the Court under applicable law on or before the Voting Record Date) that (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date and/or (ii) is not the subject of a pending objection, other than a “reduce and allow” objection, filed with the Court at least seven (7) days prior to the Voting Deadline, pending a Resolution Event as provided herein; *provided* that a Holder of a Claim that is the subject of a pending objection on a “reduce and allow” basis shall receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection absent a further order of the Bankruptcy Court;
- b. Holders of Claims who have timely filed a Proof of Claim after the Voting Record Date but on or prior to a Supplemental Voting Record Date that (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Deadline, and (ii) is not the subject of a pending objection, other than a “reduce and allow” objection, filed with the Court prior to the Voting Deadline, pending a Resolution Event as provided herein; *provided* that a Holder of a Claim that is subject of a pending objection on a “reduce and allow” basis shall receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection;
- c. Holders of Claims that are listed in the Schedules; *provided* that Claims that are scheduled as contingent, unliquidated, or disputed (excluding such scheduled disputed, contingent, or unliquidated Claims that have been paid or superseded by a timely filed Proof of Claim) shall be disallowed for voting purposes (unless the applicable Claims Bar Date has not yet expired in which case such scheduled claims shall be allowed to vote in the amount of \$1.00);
- d. Holders of Claims that arise (i) pursuant to an agreement or settlement with the Debtors, as reflected in a document filed with the Court, (ii) in an order entered by the Court, or (iii) from a document executed by the Debtors pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed or the Claim was scheduled as contingent, unliquidated, or disputed;
- e. Holders of Disputed Claims that have been temporarily allowed to vote on the Plan pursuant to Bankruptcy Rule 3018; and

- f. the assignee of any Claim that was transferred on or before the Voting Record Date by any Entity described in subparagraphs (a) through (e) above; *provided* that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the Claims Register on the Voting Record Date.

**2. Establishing Claim Amounts for Voting Purposes.**

**Claims in Class 3.** For voting purposes, Claim amounts for Claims in Class 3 (Term Loan Claims) shall be entitled to vote the amount of its Claim established by reference to (a) the Debtors' books and records and (b) the list of record Holders maintained by the applicable Agent, dated as of the Voting Record Date, which shall reflect all outstanding amounts of the applicable positions held by such registered Holders as of the Voting Record Date, as evidenced by the applicable records provided by the applicable Agent to the Debtors or the Claims and Noticing Agent, which records shall be provided no later than one Business Day following the Voting Record Date.

**Claims in Class 4.** For voting purposes, each Holder of a Class 4 (General Unsecured Claims at Debtors other than Vertex) as of the Voting Record Date shall be entitled to vote the amount of its Claim established in accordance with the procedures set forth below for Filed and Scheduled Claims.

**Claims in Class 5.** For voting purposes, Claim amounts for Claims in Class 5 (Other General Unsecured Claims at Vertex) as of the Voting Record Date shall be entitled to vote the amount of its Claim established in accordance with the procedures set forth below for Filed and Scheduled Claims.

**Claims in Class 6.** For voting purposes, Claim amounts for Claims in Class 6 (2027 Convertible Notes Claims) shall be entitled to vote the amount of its Claim established by reference to the amount of the applicable positions such registered Holder held as of the Voting Record Date, as evidenced by the records of the applicable Nominee, applicable transfer agent, and the securities position report(s) from the Depository Trust Company or the amount of its Claim established in accordance with the procedures set forth below for Filed and Scheduled Claims.

**Claims in Class 7.** For voting purposes, Claim amounts for Claims in Class 7 (Term Loan Deficiency Claims) shall be entitled to vote the amount of its Claim established by reference to (a) the Debtors' books and records and (b) the list of record Holders maintained by the applicable Agent, dated as of the Voting Record Date, which shall reflect all outstanding amounts of the applicable positions held by such registered Holders as of the Voting Record Date, as evidenced by the applicable records provided by the applicable Agent to the Debtors or the Claims and Noticing Agent, which records shall be provided no later than one Business Day following the Voting Record Date.

**Filed and Scheduled Claims.** The Claim amount established herein shall control for voting purposes only and shall not constitute the Allowed amount of any Claim. Moreover, any amounts filled in on Ballots by the Debtors through the Claims and Noticing Agent, as applicable,

are not binding for purposes of allowance and distribution. In tabulating votes, the following hierarchy shall be used to determine the amount of the Claim associated with each claimant's vote:

- a. the Claim amount (i) settled and/or agreed upon by the Debtors, as reflected in a document filed with the Court, (ii) set forth in an order of the Court, or (iii) set forth in a document executed by the Debtors pursuant to authority granted by the Court;
- b. the Claim amount Allowed (temporarily or otherwise) pursuant to a Resolution Event under these Solicitation and Voting Procedures;
- c. the Claim amount contained in a Proof of Claim that has been timely filed by the applicable bar date (or deemed timely filed by the Court under applicable law), except for any amounts asserted on account of any interest accrued after the Petition Date; *provided*, that any Ballot cast by a Holder of a Claim who timely files a Proof of Claim in respect of (a) a contingent Claim or a Claim in a wholly unliquidated or unknown amount (based on a reasonable review by the Debtors and/or the Claims and Noticing Agent) that is not the subject of an objection will count toward satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as a Ballot for a Claim in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, or (b) a partially liquidated and partially unliquidated Claim, such Claim will be Allowed for voting purposes only in the liquidated amount; *provided further* that to the extent the Claim amount contained in the Proof of Claim is different from the Claim amount set forth in a document filed with the Court as referenced in subparagraph (a) above, the Claim amount in the document filed with the Court shall supersede the Claim amount set forth on the respective Proof of Claim for voting purposes;
- d. the Claim amount listed in the Schedules (to the extent such Claim is not superseded by a timely Filed Proof of Claim); *provided* that such Claim is not scheduled as contingent, disputed, or unliquidated and/or has not been paid; *provided further* that a Governmental Claim listed in the Schedules as contingent, disputed, or unliquidated shall be allowed to vote in the amount of \$1.00;
- e. Claims that have been paid, scheduled to be paid in the ordinary course, or otherwise satisfied are disallowed for voting purposes;
- f. claims filed in the amount of \$0.00 will be disallowed for voting purposes;
- g. notwithstanding anything to the contrary contained herein, any creditor who has filed or purchased duplicate Claims within the same Voting Class shall, to the extent possible, be provided with only one Solicitation Package and one Ballot for voting a single Claim in such Class regardless of whether the Debtors have objected to such duplicate Claims; and



- h. in the absence of any of the foregoing, such Claim shall be disallowed for voting purposes unless otherwise ordered by the Court.

If a Proof of Claim is amended, the last filed Claim shall be subject to these rules and will supersede the earlier filed Claim and any earlier filed Claim will be disallowed for voting purposes.

### **3. Voting and Ballot Tabulation Procedures.**

The following voting procedures and standard assumptions shall be used in tabulating Ballots, subject to the Debtors' right to waive any of the below specified requirements for completion and submission of Ballots so long as such requirement is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Bankruptcy Local Rules:

- a. except as otherwise provided in the Solicitation and Voting Procedures, unless the Ballot being furnished is timely submitted so that the Ballot is actually received by the Claims and Noticing Agent on or before the Voting Deadline (as the same may be extended by the Debtors), the Debtors, in their sole discretion, shall be entitled to reject such Ballot as invalid and, therefore, not count it in connection with Confirmation of the Plan;
- b. the Claims and Noticing Agent will date stamp all Ballots when received;
- c. the Debtors will file a voting report (the "Voting Report") with the Court by no later than one (1) business day before the Confirmation Hearing. The Voting Report shall, among other things, delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures, lacking necessary information, received via facsimile, or damaged (in each case, an "Irregular Ballot"). The Voting Report shall indicate the Debtors' intentions with regard to each Irregular Ballot. Neither the Debtors nor any other Entity will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report nor will any of them incur any liability for failure to provide such notification;
- d. the method of delivery of Ballots to be sent to the Claims and Noticing Agent is at the election and risk of each Holder. Except as otherwise provided, a Ballot will be deemed delivered only when the Claims and Noticing Agent actually receives the properly executed Ballot;
- e. an executed Ballot is required to be submitted by the Entity submitting such Ballot (except with respect to Master Ballots submitted by the Nominees). Delivery of a Ballot to the Claims and Noticing Agent by facsimile, email, or any electronic means other than expressly provided in the applicable Ballot will not be valid;

- f. no Ballot should be sent to the Debtors, the Debtors' agents (other than the Claims and Noticing Agent), or the Debtors' financial or legal advisors, and if so sent will not be counted;
- g. if multiple Ballots are received from the same Holder with respect to the same Claim prior to the Voting Deadline, the last properly submitted, valid Ballot timely received will be deemed to reflect that voter's intent and will supersede and revoke any prior received Ballot;
- h. Holders must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot (other than a Master Ballot) that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims within the same Class, the applicable Debtor may, in its discretion, aggregate the Claims of any particular Holder within a Class for the purpose of counting votes;
- i. Holders of Claims that may assert Claims against multiple Debtors must vote such Claims either to accept or reject the Plan at each such Debtor and may not vote any such Claim to accept at one Debtor and reject at another Debtor. Accordingly, a Ballot (other than a Master Ballot) that rejects the Plan for a Claim at one Debtor and accepts the Plan for the same Claim at another Debtor will not be counted;
- j. a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a Holder of Claims must indicate such capacity when signing;
- k. the Debtors, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report;
- l. neither the Debtors, nor any other Entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification;
- m. unless waived or as ordered by the Court, any defects or irregularities in connection with submissions of Ballots must be cured by the Holder of Claims or their Nominee prior to the Voting Deadline or such Ballots will not be counted; *provided* that a valid opt in election on an otherwise defective or irregular Ballot submitted prior to the Voting Deadline shall be honored as a valid opt in election;
- n. any Class that contains Claims entitled to vote but for which no votes are returned shall be deemed to have accepted the Plan;

- o. in the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected;
- p. subject to any order of the Court, the Debtors reserve the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the Debtors, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules; *provided* that any such rejections will be documented in the Voting Report;
- q. if a Claim has been estimated or a Claim has otherwise been Allowed only for voting purposes by order of the Court, such Claim shall be temporarily Allowed in the amount so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;
- r. if an objection to a Claim is filed, such Claim shall be treated in accordance with the procedures set forth herein;
- s. the following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the Holder of such Claim; (ii) any Ballot cast by any Entity that does not hold a Claim in a Voting Class; (iii) any Ballot cast for a Claim scheduled as unliquidated, contingent, or disputed for which no Proof of Claim was timely filed by the Voting Record Date (unless the applicable bar date has not yet passed, in which case such Claim shall be entitled to vote in the amount of \$1.00); (iv) any unsigned Ballot or Ballot lacking an original signature (for the avoidance of doubt, a Ballot cast via the online balloting portal or a Master Ballot received from a Nominee by email will be deemed to contain an original signature); (v) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (vi) any Ballot submitted by any Entity not entitled to vote pursuant to the procedures described herein;
- t. after the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the Debtors or approval from the Court or in accordance with Bankruptcy Rule 3018(a);
- u. the Debtors are authorized to enter into stipulations with the Holder of any Claim agreeing to the amount of a Claim for voting purposes;
- v. where any portion of a single Claim has been transferred to a transferee, all Holders of any portion of such single Claim will be (i) treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code (and for the other voting and solicitation procedures set forth herein), and (ii) required to vote every portion of such Claim collectively to accept or reject the Plan. In the event that (i) a Ballot, (ii) a group of Ballots within a Voting Class received from a single creditor, or

(iii) a group of Ballots received from the various Holders of multiple portions of a single Claim partially reject and partially accept the Plan, such Ballots shall not be counted; and

- w. for purposes of the numerosity requirement of section 1126(c) of the Bankruptcy Code, separate Claims held by a single creditor in a particular Class will be aggregated and treated as if such creditor held one Claim in such Class, and all votes related to such Claim will be treated as a single vote to accept or reject the Plan; *provided* that if separate affiliated entities hold Claims in a particular Class, these Claims will not be aggregated and will not be treated as if such creditor held one Claim in such Class, and the vote of each affiliated entity will be counted separately as a vote to accept or reject the Plan.

**4. Procedures for Beneficial Holders of Class 6 Claims Who Hold Their Positions through a Nominee.**

The following additional procedures shall apply to Claims of Beneficial Holders of Class 6 2027 Convertible Notes Claims who hold their positions through a Nominee:

- a. **November 1, 2024** is the record date for determining the identity of Beneficial Holders eligible to vote on the Plan;
- b. the Claims and Noticing Agent shall distribute or cause to be distributed the appropriate number of copies of Ballots to Nominees<sup>6</sup> identified by the Claims and Noticing Agent as Entities through which Beneficial Holders hold Class 6 2027 Convertible Notes Claims as of the Voting Record Date;
- c. any Nominee who is a Holder of record with respect to Class 6 2027 Convertible Notes Claims shall solicit votes from Beneficial Holders of such Class 6 2027 Convertible Notes Claims by: (i) immediately distributing the Solicitation Package, including Ballots, it receives from the Claims and Noticing Agent to all such Beneficial Holders;<sup>7</sup> (ii) providing such Beneficial Holders with a return address and envelope to send Ballots; (iii) promptly collecting Ballots from such Beneficial Holders that cast votes on the Plan; (iv) compiling and validating the votes and other relevant information of all such Beneficial Holders on the applicable Master Ballot;

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<sup>6</sup> A nominee ("Nominee") is the broker, dealer, commercial bank, trust company, savings and loan, financial institution, or other such party in whose name a Beneficial Holder's beneficial ownership in a Class 6 2027 Convertible Notes Claim is registered or held of record on the Beneficial Holder's behalf as of the Voting Record Date.

<sup>7</sup> Solicitation Packages may be sent in paper format or via electronic transmission in accordance with the customary requirements of each Nominee. Each Nominee will then distribute the Solicitation Packages, as appropriate, in accordance with their customary practices and obtain votes to accept or to reject the Plan also in accordance with their customary practices. If it is the Nominee's customary and accepted practice to submit a "voting instruction form" to the Beneficial Holders for the purpose of recording the Beneficial Holder's vote, the Nominee will be authorized to send the voting instruction form in lieu of, or in addition to, a Beneficial Holder Ballot.

and (v) transmitting the applicable Master Ballot to the Claims and Noticing Agent by the Voting Deadline;

- d. Alternatively, a Nominee may pre-validate<sup>8</sup> a Beneficial Holder Ballot (*i.e.*, execute the Beneficial Owner Ballot, forward the Solicitation Package and pre-validated Beneficial Holder Ballot to the Beneficial Holder as of the Voting Record Date and instruct the Beneficial Holder to indicate its vote to accept or reject the Plan and return the pre-validated Beneficial Holder Ballot directly to the Claims and Noticing Agent);
- e. any Beneficial Holder holding the Class 6 2027 Convertible Notes Claims as a record Holder in its own name shall vote on the Plan by completing and signing a Ballot and returning it directly to the Claims and Noticing Agent (including via the Claims and Noticing Agent’s online balloting portal) on or before the Voting Deadline;
- f. any Beneficial Holder holding Class 6 2027 Convertible Notes Claims in a “street name” through a Nominee must vote on the Plan through such Nominee by completing and signing the applicable Ballot and returning such Ballot to the appropriate Nominee as promptly as possible and in sufficient time to allow such Nominee to process the Ballot and return the applicable Master Ballot to the Claims and Noticing Agent so that it is actually received by the Claims and Noticing Agent prior to the Voting Deadline;
- g. any Ballot returned to a Nominee by a Beneficial Holder shall not be counted for purposes of accepting or rejecting the Plan until such Nominee properly completes and delivers to the Claims and Noticing Agent the applicable Master Ballot that reflects the vote of such Beneficial Holders so that such Master Ballot is actually received by the Claims and Noticing Agent by the Voting Deadline or otherwise validates the Ballot in a manner acceptable to the Claims and Noticing Agent. Nominees shall retain all Ballots returned by Beneficial Holders for a period of one year after the Effective Date of the Plan;
- h. if a Beneficial Holder holds Class 6 2027 Convertible Notes Claims through more than one Nominee or through multiple accounts, such Beneficial Holder may receive more than one Ballot, and each such Beneficial Holder should execute a separate Ballot for each block of Class 6 2027 Convertible Notes Claims that it holds through any Nominee and must return each such Ballot to the appropriate Nominee;
- i. if a Beneficial Holder holds a portion of its Class 6 2027 Convertible Notes Claims through a Nominee or Nominees and another portion in its own

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<sup>8</sup> A Nominee “pre-validates” a Beneficial Holder Ballot by (i) signing the Beneficial Holder Ballot and including its Depository Trust Company participant number and a medallion guarantee stamp validating the Beneficial Holder’s position as of the Record Date in respect of the Class 6 2027 Convertible Notes Claims, and (ii) indicating the account number of the Beneficial Holder and the principal amount of Class 6 2027 Convertible Notes Claims held by the Nominee for such Beneficial Holder as of the Voting Record Date.

name as the record Holder, such Beneficial Holder should follow the procedures described herein to vote the portion held in its own name and the procedures described in the rest of this section to vote the portion held by the Nominee(s);

- j. Beneficial Holders holding Class 6 2027 Convertible Notes Claims through a Nominee must return their paper Ballot to their Nominee, unless, at the option of the Nominee, the Nominee instructs their Beneficial Holders that they may relay votes or voting instructions electronically to the Nominee or the entity preparing the Master Ballot on such Nominee's behalf, and Nominees may use their customary procedures for obtaining such votes electronically; and
- k. Any Beneficial Holder that elects to opt in to the releases through a Nominee, consents and expressly authorizes such Nominee, and such Nominee is directed, to disclose their name and contact information to the Debtors and the Claims and Noticing Agent upon request.<sup>9</sup>

#### **5. Master Ballot Voting Procedures.**

These rules will apply with respect to the tabulation of master ballots cast by Nominees for Beneficial Holders of Class 6 2027 Convertible Notes Claims (each, a "Master Ballot"):

- a. votes cast by Beneficial Holders through Nominees will be applied to the applicable positions held by such Nominees in Class 6 as of the Voting Record Date, as evidenced by the applicable records. Votes submitted by a Nominee (or its agent) will not be counted in excess of the amount of such Claims held by such Nominee as of the Voting Record Date;
- b. if conflicting votes or "over-votes" are submitted by a Nominee, the Debtors and the Claims and Noticing Agent will use reasonable efforts to reconcile discrepancies with the Nominees;
- c. if over-votes on a Master Ballot are not reconciled prior to the preparation of the Voting Report, the Debtors shall apply the votes to accept and to reject the Plan in the same proportion as the votes to accept and to reject the Plan submitted on the Master Ballot that contained the over-vote, but only to the extent of the Nominee's position in Class 6, as evidenced by the Depository Trust Company's securities position report as of the Voting Record Date;

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<sup>9</sup> For the avoidance of doubt, the Debtors and the Claims and Noticing Agent will at all times comply with the Order (I) Authorizing the Debtors to (A) File a Consolidated Creditor Matrix and a Consolidated List of the 30 Largest Unsecured Creditors and (B) Redact Certain Personally Identifiable Information of Natural Persons, (II) Waiving the Requirement to File a List of Equity Security Holders, (III) Approving the Form and Manner of Notifying Creditors of the Commencement of the Chapter 11 Cases and Other Information, and (IV) Granting Related Relief [Docket No. 65].

- d. for purposes of tabulating votes, each Nominee or Beneficial Holder will be deemed to have voted the principal amount of its Class 6 2027 Convertible Notes Claims; although, any principal amounts of Class 6 2027 Convertible Notes Claims may be adjusted by the Claims and Noticing Agent to reflect the amount of the Claim actually voted;
- e. a single Nominee may complete and deliver to the Claims and Noticing Agent multiple Master Ballots. Votes reflected on multiple Master Ballots will be counted, except to the extent that they are duplicative of other Master Ballots. If two or more Master Ballots are inconsistent, the last-dated valid Master Ballot received prior to the Voting Deadline will, to the extent of such inconsistency, supersede and revoke any prior dated Master Ballot. Likewise, if a Beneficial Holder submits more than one Beneficial Holder Ballot to its Nominee, (i) the latest received Beneficial Holder Ballot received before the submission deadline imposed by the Nominee shall be deemed to supersede any prior Beneficial Holder Ballot submitted by the Beneficial Holder, and (ii) the Nominee shall complete the Master Ballot accordingly;
- f. the Debtors will, upon written request, reimburse Nominees for customary mailing and handling expenses incurred by them in forwarding the Beneficial Holder Ballot and other enclosed materials to the Beneficial Holders for which they are the Nominee. No fees or commissions or other remuneration will be payable to any broker, dealer, or other person for soliciting Beneficial Holder Ballot with respect to the Plan; and
- g. any Beneficial Holder that elects to opt in to the releases through a Nominee, consents and expressly authorizes such Nominee to disclose their name and contact information to the Debtors and the Claims and Noticing Agent upon request.

**E. Amendments to the Plan and Solicitation and Voting Procedures.**

The Debtors reserve the right to make changes to the Disclosure Statement, Plan (including, for the avoidance of doubt, the Plan Supplement), Confirmation Hearing Notice, Solicitation Package, Non-Voting Status Notices, Ballots, Publication Notice, Cover Letter, these Solicitation and Voting Procedures, Plan Supplement Notice, Assumption Notice, Rejection Notice, Voting and Tabulation Procedures and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors, if any, and to make conforming changes among the Disclosure Statement, the Plan, and any other materials in the Solicitation Package before their distribution; *provided* that all such modifications shall be made in accordance with the terms of the document being modified and the Plan; *provided further* that the Committee must consent to any proposed changes of the documents contemplated in this paragraph to the extent such changes would adversely impact the treatment or any other rights of Holders of General Unsecured Claims or Holders of 2027 Convertible Notes Claims.