

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

In re: ) Chapter 11  
 )  
AQUION ENERGY, INC.,<sup>1</sup> ) Case No. 17-10500 (KJC)  
 )  
Debtor. )

**Deadline for Submitting Bids: June 16, 2017 at noon (Eastern time)  
Deadline for Objections to Sale: June 16, 2017 at 4:00 p.m. (Eastern time)  
Auction Date: June 20, 2017 at 10:00 a.m. (Eastern time)  
Sale Hearing Date: June 21, 2017 at 2:00 p.m. (Eastern time)**

**NOTICE OF SALE PROCEDURES, AUCTION DATE  
AND SALE HEARING FOR SUBSTANTIALLY ALL OF DEBTOR'S ASSETS**

**PLEASE TAKE NOTICE** that on May 24, 2017, the above-captioned debtor and debtor in possession (the “Debtor”) filed the *Motion for Entry of an Order (I)(A) Authorizing Entry into the Asset Purchase Agreement with Respect to the Sale of Substantially all of the Debtor’s Assets; (B) Approving Bid Procedures for the Sale of Substantially All of the Assets of Debtor; (C) Scheduling an Auction and Hearing to Consider the Sale and Approve the Form and Manner of Notice Related Thereto; (D) Establishing Procedures Relating to the Assumption and Assignment of Certain Contracts and Leases, Including Notice of Proposed Cure Amounts; (E) Approving Certain Breakup Fee Provisions; (II) Authorizing and Approving (A) the Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Interests and (B) the Assumption and Assignment of Certain Contracts and Leases; And (III) Granting Related Relief* (the “Motion”).<sup>2</sup> On June 6, 2017, the Court entered an order (the “Bid

<sup>1</sup> The Debtor in this chapter 11 case and the last four digits of the Debtor’s U.S. tax identification number is Aquion Energy, Inc. (1370). The Debtor’s headquarters is located at 32 39th Street, Pittsburgh, PA, 15201.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.



Procedures Order”) granting the Motion in part and approving the bid procedures annexed hereto (the “Bid Procedures”) to be used in connection with the auction (the “Auction”) of the Debtor’s assets (the “Assets”). The Assets are being sold free and clear of all liens, claims, encumbrances and interests, provided that section 363(f) of the Bankruptcy Code has been satisfied. The Debtor has identified Bluesky Energy US, Inc. as the “stalking horse” bidder for the Assets (the “Stalking Horse Purchaser”). The Motion and all attachments thereto (including the purchase agreement of the Stalking Horse Purchaser), may reviewed and downloaded at no charge from the Debtor’s claims agent’s website at <http://www.kccllc.net/aquion>.

#### **Bid Procedures and Auction**

**PLEASE TAKE FURTHER NOTICE** that the Bid Procedures approved by the Bid Procedures Order, a copy of which are attached hereto as **Exhibit 1**, describe, *inter alia*, the terms of the bidding process, the requirements and deadlines for participation therein, required terms of any bids, and the time, location and conduct of the Auction. In the event of any inconsistency or conflict between this Notice, the Bid Procedures and the Bid Procedures Order, the Bid Procedures Order shall control. All creditors may attend the Auction, which shall be officially transcribed. The Debtor will provide notification of the Baseline Bid at least twelve hours prior to the start of the Auction.

#### **The Sale Hearing**

**PLEASE TAKE FURTHER NOTICE** that the Bankruptcy Court has scheduled a hearing for **June 21, 2017 at 2:00 p.m. (Eastern Time)** (the “Sale Hearing”) to consider approval of the winning bid(s) and confirm the results at the Auction for the Assets, pursuant to

the Motion. The Sale Hearing may, however, be adjourned in open court from time to time, without further notice. The Sale Hearing will be held before the Honorable Kevin J. Carey, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom No. 5, Wilmington, Delaware 19801.

**PLEASE TAKE FURTHER NOTICE** that the Bid Procedures annexed hereto shall govern the bidding process and the Auction of the Assets. Any person that wishes to receive a copy of the Bid Procedures Order shall make such request in writing to Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Laura Davis Jones, [ljones@pszjlaw.com](mailto:ljones@pszjlaw.com).

#### **Objections**

**PLEASE TAKE FURTHER NOTICE** that any objection to any of the relief to be requested at the Sale Hearing must be in writing, state the basis of such objection with specificity, and shall be filed with the Court, with a courtesy copy to Chambers, and shall be served on: (i) counsel to the Debtor and Debtor-in-Possession, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Laura Davis Jones, Esq.; (ii) counsel to the Official Committee of Unsecured Creditors: (a) Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020, Attn: Jeffrey Cohen, Esq. and Barry Z. Bazian, Esq.; (b) Lowenstein Sandler LLP, 65 Livingston Avenue, Roseland, NJ 07068, Attn: Andrew David Behlmann, Esq.; (c) Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Richard M. Beck, Esq. and Sally E. Veghte, Esq.; (iii) the Office of the United

States Trustee, J. Caleb Boggs Federal Building, 844 N. King Street, Suite 2207, Lock Box 35, Wilmington, DE 19801, Attn: Hannah McCollum, Esq.; and (iv) counsel to the Stalking Horse Purchaser: Barnes & Thornburg LLP, One North Wacker Drive, Suite 4400, Chicago, IL 60606, Attn: Kevin C. Driscoll, Jr., Esq., so as to be received by **June 16, 2017, at 4:00 p.m. (Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that all requests for information concerning the Assets and all requests for information concerning the Bid Procedures, should be directed in writing to Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, Delaware 19801, Attn: Laura Davis Jones, [ljones@pszjlaw.com](mailto:ljones@pszjlaw.com).

Dated: June 7, 2017

PACHULSKI STANG ZIEHL & JONES LLP

*/s/ Laura Davis Jones*

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Laura Davis Jones (Bar No. 2436)  
David M. Bertenthal (CA Bar No. 167624)  
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Counsel for Debtor and Debtor in Possession

# Exhibit “1”

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

In re: ) Chapter 11  
 )  
AQUION ENERGY, INC.,<sup>3</sup> ) Case No. 17-10500 (KJC)  
 )  
Debtor. )

**BID PROCEDURES FOR SALE OF  
SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS**

The above-captioned debtor and debtor in possession (the “Debtor”) filed a motion dated May 24, 2017 (the “Motion”),<sup>4</sup> seeking, among other things, approval of the process and procedures set forth below (the “Bid Procedures”) through which it will determine the highest and best offer for the sale of substantially all of the business assets of the Debtor (the “Assets”). On June 6, 2017, the Bankruptcy Court entered its order (the “Bid Procedures Order”), which, among other things, approved the Bid Procedures. Pursuant to the Bid Procedures Order, Bluesky Energy US, Inc. (the “Stalking Horse Purchaser”) is the Stalking Horse Purchaser for the assets, subject to higher and better bids that may be submitted in accordance with these Bid Procedures.

On June 21, 2017, at 2:00 p.m. (Eastern time), as further described below and in the Bid Procedures Order, the Bankruptcy Court shall conduct the “Sale Hearing” at which the Debtor shall seek entry of the Sale Order authorizing and approving the sale of the Assets to the Stalking Horse Purchaser or to one or more other Qualified Bidders (defined below) that the Debtor, in its sole discretion (in consultation with the Committee), determine to have made the highest and best offer.

***Agreement***

Prospective bidders should submit a proposed asset purchase agreement (a “Competing Agreement”), similar in form and substance, as modified, to the asset purchase agreement attached to the Motion as **Exhibit C** (the “Purchase Agreement”). The Motion and all attachments thereto (including the Purchase Agreement) may be viewed and downloaded at no charge from the Debtor’s claims agent’s website at <http://www.kccllc.net/aquion>. Subject to the approval of the Court, the highest or best bidder at the auction will purchase the Assets, and assume certain executory contracts and unexpired leases, free and clear of any liens, claims or encumbrances. The transaction contemplated is subject to competitive bidding as set forth herein, and approval by the Bankruptcy Court pursuant to Bankruptcy Code §§ 363 and 365.

<sup>3</sup> The Debtor in this chapter 11 case and the last four digits of the Debtor’s U.S. tax identification number is Aquion Energy, Inc. (1370). The Debtor’s headquarters is located at 32 39<sup>th</sup> Street, Pittsburgh, PA, 15201.

<sup>4</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion or Purchase Agreement, as applicable.

### ***Assets for Sale***

The Debtor is offering for sale the Assets, which generally consist of the manufacturing operations, substantially all of the other business assets and property associated with its battery technology. Except as otherwise provided in the Purchase Agreement, all of the Debtor's right, title and interest in and to the Assets subject thereto shall be sold free and clear of any Liens, Claims, interests and encumbrances (other than Permitted Liens and/or except as otherwise provided in the Competing Agreement) (collectively, the "Liens, Claims and Encumbrances") to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Liens, Claims and Encumbrances to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Liens, Claims and Encumbrances applied against the Assets.

### ***Participation Requirements***

In order to participate in the bidding process and to or otherwise be considered for any purpose hereunder, a person interested in all or portions of the Assets (a "Potential Bidder") must first deliver (unless previously delivered) to the Debtor and its counsel, not later than five (5) business days before the Bid Deadline (defined below), unless otherwise waived by the Debtor in its sole discretion in consultation with the Official Committee of Unsecured Creditors (the "Committee"), the following:

- a) Confidentiality Agreement. An executed confidentiality agreement ("Confidentiality Agreement") in form and substance acceptable to the Debtor;
- b) Identification of Potential Bidder. Concurrently with its Bid, identification of the Potential Bidder, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- c) Corporate Authority. Concurrently with its Bid, written evidence satisfactory to Debtor of the Potential Bidder's chief executive officer or other appropriate senior executive's approval of the contemplated transaction;
- d) Disclosure. Written disclosure of any connections or agreements with the Debtor, the Stalking Horse Purchaser, any other known Potential Bidder or Qualified Bidder (as defined below), and/or any officer, director or direct or indirect equity security holder of the Debtor; and
- e) Proof of Financial Ability to Perform. Prior to or at the time of presentation of a Bid, written evidence that demonstrates the Potential Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance under all contracts to be assumed in such contemplated transaction. Such information should include, *inter alia*, the following:
  - (1) the Potential Bidder's current financial statements (audited if they exist);
  - (2) contact names and numbers for verification of financing sources;
  - (3) evidence of the Potential Bidder's internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and

- (4) any such other form of financial disclosure of credit-quality support information or enhancement acceptable to the Debtor demonstrating that such Potential Bidder has the ability to close the contemplated transaction.

### ***Designation as Qualified Bidder***

A “Qualified Bidder” is a Potential Bidder (or combination of Potential Bidders whose bids for the Assets of the Debtor do not overlap and who shall also be referred to herein as a single Qualified Bidder) that delivers the documents described above and otherwise satisfies the requirements of the Bid Procedures Order and the procedures set forth herein, and that the Debtor, in its discretion (in consultation with the Committee), determines is reasonably likely to submit a *bona fide* offer for the Assets and to be able to consummate a sale if selected as a Successful Bidder.

The Debtor, in its sole discretion and in consultation with the Committee, shall determine and notify the Potential Bidder with respect to whether such Potential Bidder is a Qualified Bidder.

The Stalking Horse Purchaser is a Qualified Bidder and is deemed to satisfy all Bid requirements as set forth below.

### ***Access to Due Diligence Materials***

Only Potential Bidders that execute and deliver a confidentiality agreement satisfactory to the Debtor, in its sole discretion, are eligible to receive due diligence access or additional non-public information. The Debtor shall not be required to provide confidential or proprietary information to a Potential Bidder if the Debtor believes that such disclosure would be detrimental to the interests of the Debtor. If the Debtor determines that a Potential Bidder that has satisfied the Participation Requirements does not constitute a Qualified Bidder, then such Potential Bidder’s right to receive due diligence access or additional non-public information shall terminate. The Debtor will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders. The Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline (as hereinafter defined). The Debtor is not responsible for, and will bear no liability with respect to, any information obtained by Qualified Bidders in connection with the sale of the Assets.

### ***Due Diligence From Bidders***

Each Potential Bidder and Qualified Bidder (each, a “Bidder”) (and, collectively, “Bidders”) shall comply with all requests for additional information and due diligence access by the Debtor or its advisors regarding such Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information and due diligence access will be a basis for the Debtor to determine that the Potential Bidder is not a Qualified Bidder. Failure by a Qualified Bidder to comply with such requests for additional information and due diligence access will be a basis for the Debtor to determine that a bid made by a Qualified Bidder is not a Qualified Bid.

### **Bidding Process**

The Debtor and its advisors, shall (in consultation with Committee): (i) determine whether a Potential Bidder is a Qualified Bidder; (ii) coordinate the efforts of Bidders in conducting their due diligence investigations, as permitted by the provisions hereof; (iii) receive



offers from Qualified Bidders; and (iv) negotiate any offers made to purchase the Assets. The Debtor (in consultation with the Committee) shall have the right to adopt such other rules for the bidding process that are not inconsistent with the Bid Procedures Order that will better promote the goals of such process.

### ***Bid Deadline***

On or before the Bid Deadline, a Qualified Bidder that desires to make an offer, solicitation or proposal (a “Bid”) shall deliver written and electronic copies of its Bid to the Debtor, Aquion Energy, Inc., 32 39th Street, Pittsburgh, PA, 15201, Attn: Suzanne B. Roski, and Suzanne.roski@aquion-energy.com, with a copy to counsel for the Debtor, Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, Delaware 19801, Attn: Laura Davis Jones, not later than noon prevailing Eastern Time (prevailing Eastern time) on June 16, 2017 (the “Bid Deadline”). The Debtor shall promptly provide copies of all Bids to counsel for the Committee.

A Bid received after the Bid Deadline shall not constitute a Qualified Bid, unless otherwise allowed by the Debtor in its sole discretion (in consultation with the Committee).

### ***Bid Requirements***

To be eligible to participate in the Auction, each Bid and each Qualified Bidder submitting such a Bid must be determined by the Debtor (in consultation with the Committee) to satisfy each of the following conditions unless waived or modified by the Debtor in its sole discretion (in consultation with the Committee):

1. Good Faith Deposit. Each Bid must be accompanied by a deposit (the “Good Faith Deposit”) in the form of either wire transfer, a certified check, or cash payable to the order of the Debtor in an amount and payment method to be determined by the Debtor, but in any event no less than 10% of the Bidder’s offer. The Debtor reserves the right to modify the amount of the Good Faith Deposit in its discretion (in consultation with the Committee).
2. Minimum Bid. The consideration proposed by the Bid may include only cash and/or other consideration acceptable to the Debtor (in consultation with the Committee) in an amount of (1) no less than \$3,026,000, which is the sum of: (a) the purchase price offered by the Stalking Horse Purchaser in the amount of \$2,800,000; (b) \$100,000 in cash as an initial overbid amount; and (c) \$126,000, which is the dollar value of the Breakup Fee (as defined below), if any, in cash; and (2) the assumption of either all Assumed Liabilities that would be assumed by the Stalking Horse Purchaser under the Purchase Agreement or additional cash or other consideration of an equivalent value as determined by the Debtor in its business judgment. The amounts in (1)-(2) of this paragraph is referred to as a “Minimum Bid”.
3. Irrevocable. The Bids of the Successful Bidder and the Back-up Bidder must be irrevocable until the earlier of (a) the closing of the transaction with the Successful Bidder, or (b) the date the Sale Order has become final and non-appealable (the earliest of the dates being the “Termination Date”).
4. Principal Terms. A Bid must include an executed agreement pursuant to which the Qualified Bidder proposes to effectuate the contemplated transaction (the “Contemplated Transaction Documents”) and a black-lined copy of the Competing Agreement marked to show all changes requested by the Qualified Bidder, including specification of the proposed purchase price and any changes to any exhibits or schedules to the Competing

Agreement. The terms and conditions of the Contemplated Transaction Documents must be, in the aggregate, not materially more burdensome to Debtor than the provisions contained in the Stalking Horse Purchaser's Purchase Agreement. 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 Contemplated Transaction Documents. The Contemplated Transaction Documents must include a commitment to close by no later than the closing date set forth in section 2 of the Purchase Agreement. A Bid should propose a contemplated transaction involving all or substantially all of the Assets, provided, however, that the Debtor in its sole discretion (in consultation with the Committee) may consider proposals for less than substantially all the Assets if such proposals or combination of proposals maximizes the value of the Debtor's estate.

5. Contingencies. A Bid may not be conditioned on obtaining financing or any internal approval or on the outcome or review of due diligence, but may be subject to the accuracy in all material respects at the closing of specified representations and warranties at or before closing or the satisfaction in all material respects at the closing of specified conditions. A Bid must disclose any governmental approvals identified by the Qualified Bidder other than as set forth in the Competing Agreement that may impact the evaluation of such Bid.
6. Authorization to Bid and Identity of Bidder. A Bid must include evidence of authorization and approval from such Qualified Bidder's board of directors (or comparable governing body, or a statement as to why such approval is unnecessary) with respect to the submission, execution, delivery and closing of the Contemplated Transaction Documents. A Bid must also fully disclose the identity of such entity that is submitting the Bid, including the identity of each equity holder or other financial backer of the bidder if such bidder is formed for the purpose of submitting the bid.
7. Financing Sources. A Bid must contain written evidence of a commitment for financing or other evidence of the ability to consummate the sale satisfactory to the Debtor (in consultation with the Committee) with appropriate contact information for such financing sources.
8. No Fees Payable to Qualified Bidder. A Bid may not request or entitle the Qualified Bidder to any breakup 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 a substantial contribution claim under Bankruptcy Code § 503 related in any way to the submission of its Bid or the Bid Procedures.
9. Immediate Payment of the Breakup Fee. A Bid must allow for the immediate payment of the Breakup Fee to the Stalking Horse Purchaser from the first proceeds of the cash portion of the purchase price of such Bid.
10. Non-Reliance. A Bid must include an acknowledgement and representation of the Qualified 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 and/or inspection of any documents and/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, except as expressly stated in the Contemplated Transaction Documents.

A Bid received from a Qualified Bidder before the Bid Deadline that meets the above requirements and that satisfies the Bid Deadline requirement above shall constitute a "Qualified Bid," if the Debtor believes, in its sole discretion (in consultation with the Committee), that such Bid would be consummated if selected as the Successful Bid. The Debtor shall have the right to reject any and all bids that they believe, in its sole discretion (in consultation with the Committee), do not comply with the Bid Procedures. In the event that any Potential Bidder is determined by the Debtor not to be a Qualified Bidder, the Potential Bidder shall be refunded its Good Faith Deposit.

### ***Breakup Fee***

Recognizing the Stalking Horse Purchaser's expenditure of time, energy and resources, and that the Stalking Horse Purchaser provides a floor bid with respect to the Assets that it offers to purchase, the Debtor is authorized (pursuant to the Bid Procedures Order) to provide the following bidding protections to the Stalking Horse Purchaser.

1. The Debtor has agreed to pay the Stalking Horse Purchaser, upon the terms set forth in the Purchase Agreement, (a) an amount equal to \$126,000 as a breakup fee (the "Breakup Fee") pursuant to an in accordance with terms of the Purchase Agreement and Bid Procedures Order.
2. Any Bid submitted on the Bid Deadline by a party or parties other than the Stalking Horse Purchaser must be in an amount that is sufficient to pay the Breakup Fee and result in additional consideration to the Debtor's estate in the amount of at least \$100,000 (as compared to the Purchase Price offered by such Stalking Horse Purchaser), after payment of the Breakup Fee.

### **Auction**

If the Debtor receives at least one (1) Qualified Bid from a Qualified Bidder other than the Stalking Horse Purchaser prior to the Bid Deadline (unless such deadline is extended, as provided below), then the Debtor shall notify the Stalking Horse Purchaser and each other Qualified Bidder that the Debtor intends to conduct an auction (the "Auction") to consider all Qualified Bids and to determine the highest or otherwise best bid with respect to the Assets. The Debtor shall provide the Stalking Horse Purchaser, all Qualified Bidders and the Committee with copies of all Qualified Bids in advance of the Auction, but may exclude any confidential financial information, as reasonably designated by the applicable Qualified Bidder. Unless otherwise designated by the Debtor, the Auction shall commence at **10:00 a.m. (Eastern time) on June 20, 2017**, at the offices of Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, DE 19899.

In advance of the Auction, the Debtor will notify all Qualified Bidders in writing of (i) the highest or otherwise best Qualified Bid, as determined by the Debtor in its discretion (the "Baseline Bid") and (ii) the time and place of the Auction. Notification of the Baseline Bid shall be provided at least twelve (12) hours prior to the start of the Auction.

If the Debtor does not receive at least one (1) Qualified Bid from a Qualified Bidder other than the Stalking Horse Purchaser, then no Auction shall be scheduled or conducted, and the Court at the Sale Hearing shall proceed to solely consider the approval of the proposed sale to the Stalking Horse Purchaser as set forth in the Purchase Agreement and shall not consider any competing or alternative offers or proposals to purchase the Assets.

If the Auction is necessary, such Auction shall be conducted according to the following procedures:

**1. Participation at the Auction**

Only the Stalking Horse Purchaser and Qualified Bidders that have submitted Qualified Bids are eligible to participate at the Auction. Only the authorized representatives and professional advisors of each of the Qualified Bidders, the Debtor, the Committee, and the U.S. Trustee shall be permitted to attend the Auction. All creditors are permitted to attend the Auction. The Auction shall be transcribed.

Except as otherwise set forth herein, the Debtor (in consultation with the Committee) may conduct the Auction in the manner it determines will result in the highest or best offer for the Assets.

In the Debtor's sole discretion, after the conclusion of the Auction, the Debtor may resume an auction for the sale of discrete assets and/or discrete groups of assets, if any, which are not included in the Successful Bid, on such bidding procedures as may be implemented by the Debtor in its discretion.

**2. The Debtor Shall Conduct the Auction**

The Debtor and its professionals shall direct and preside over the Auction. At the start of the Auction, the Debtor shall describe the terms of the Baseline Bid. The determination of which Qualified Bid constitutes the Baseline Bid shall be made by the Debtor in its discretion (in consultation with the Committee), and may take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid to the estate (the "Bid Assessment Criteria"). All 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 Bid shall be fully disclosed to all other Qualified Bidders. The Debtor reserves the right to conduct the Auction in the manner designed to maximize value based upon the nature and extent of the Qualified Bids received. The Debtor shall maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids and the Successful Bid. Pursuant to Local Rule 6004-1, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the Bid Procedures, the Auction or the proposed transaction.

**3. Terms of Overbids**

An "Overbid" is any bid made at the Auction subsequent to the Debtor's announcement of the Baseline Bid. To submit an Overbid for purposes of this Auction, a Qualified Bidder must comply with the following conditions:

**(a) Minimum Overbid Increment**

During the Auction, bidding shall begin initially with the Baseline Bid. Any Overbid after the Baseline Bid shall be made in initial increments of at least \$50,000 in cash or other consideration acceptable to the Debtor; *provided, however*, that any overbids by the Stalking Horse Purchaser thereafter shall only be required to be equal to the sum of (1) the then existing lead Bid plus (2) the \$50,000 Overbid less (3) \$126,000 (i.e. the amount of the Breakup Fee). The Debtors, in consultation with the Committee, may adjust the minimum Overbid amounts in subsequent bidding rounds at the Auction.

Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless the Debtor (in consultation with the Committee) accepts a higher Qualified Bid as an Overbid.

**(b) Consideration of Overbids**

The Debtor reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction to, among other things: facilitate discussions between the Debtor and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its reasonable business judgment, may require, that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. Notice of any adjournments of the date of the Auction shall be filed on the docket of the Debtor's case.

**4. Additional Procedures**

The Debtor may adopt rules for the Auction at or prior to the Auction that, in its reasonable discretion (in consultation with the Committee), will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order or the Bankruptcy Code. All such rules will provide that all Bids shall be made and received in one room, on an open basis, and all other Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each Qualified Bidder (*i.e.*, the principals submitting the Bid) shall be fully disclosed to all other Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other Qualified Bidders throughout the entire Auction.

The Debtor (in consultation with the Committee) may (a) determine which Qualified Bid, if any, is the highest and best offer and (b) reject at any time before entry of an order of the Bankruptcy Court approving the sale of the Assets pursuant to a Qualified Bid, any Bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code or these Bid Procedures; or (iii) contrary to the best interest of the Debtor, its estate and its creditors.

The Debtor may, in its sole discretion (in consultation with the Committee), extend the Bid Deadline or the Auction Date, as determined, beyond the dates provided herein. In the event of such an extension, the Debtor shall provide notice to the Notice Parties and any Qualified Bidders of such extension, any related time and location details with respect to same, and any consequent continuance of the Sale Hearing.

**5. Consent to Jurisdiction as Condition to Bidding**

All Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of each Qualified Bidder's Contemplated Transaction Documents, as applicable.

**6. Closing the Auction**

Upon conclusion of the bidding, the Auction shall be closed, and the Debtor (in consultation with the Committee) shall immediately identify the highest or best offer for the Assets (which may be an aggregate of bids for less than all of the Assets) (the "Successful Bid") and the entity submitting such Successful Bid (the "Successful Bidder"), which highest or best offer will provide the greatest amount of net value to the Debtor, and the next highest or best offers after the Successful Bid (the "Back-up Bid") and the entity or entities submitting the Back-up Bid (the "Back-up Bidder"), and advise the Qualified Bidders of such determination.

Upon three (3) days' prior notice by the Debtor, the Back-up Bidder selected by the Debtor must immediately proceed with the closing of the transaction contemplated under the Back-up Bid in the event that the transaction with the Successful Bidder is not consummated for any reason.

As stated above, The Bids of the Successful Bidder and the Back-up Bidder must be irrevocable until the Termination Date.

### **Acceptance of Successful Bid**

The Debtor shall sell the Assets to the Successful Bidder upon the approval of the Successful Bid by the Bankruptcy Court after the Sale Hearing. The Debtor's presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtor's acceptance of such Qualified Bid. The Debtor will be deemed to have accepted a Qualified Bid only when the Qualified Bid has been approved by the Bankruptcy Court at the Sale Hearing.

### **"As Is, Where Is"**

The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents or its estate except to the extent set forth in the Competing Agreement of the Successful Bidder. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or the Competing Agreement of the Successful Bidder.

### **Free of Any and All Interests**

Except as otherwise provided in the Successful Bidder's Competing Agreement and subject to the approval of the Bankruptcy Court, all of Debtor's right, title and interest in and to the Assets subject thereto shall be sold free and clear of any Liens, Claims, and Encumbrances to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Liens, Claims and Encumbrances to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Liens, Claims and Encumbrances applied against the Assets.

### **Sale Hearing**

The Sale Hearing shall be conducted by the Bankruptcy Court on June 21, 2017, at 2:00 p.m. (Eastern time), or on such other date as may be established by the Bankruptcy Court.

If the Successful Bidder fails to consummate an approved sale in accordance with the applicable asset purchase agreement or such agreement is terminated, the Debtor shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale Hearing, the Successful Bids, and the Debtor shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting the next highest such Bid without further order of the Bankruptcy Court.

### **Return of Good Faith Deposit**

The Good Faith Deposit of the Successful Bidder (or the Back-up Bidder that becomes a Successful Bidder) shall be applied to the purchase price of such transaction at Closing. The

Debtor will hold the Good Faith Deposits of the Successful Bidder and the next highest Qualified Bidder in a segregated account until the closing of the sale with the Successful Bidder; good Faith Deposits of all other Qualified Bidders shall be held in a segregated account, and thereafter returned to the respective bidders following the conclusion of the Auction. If a Successful Bidder (including any Back-up Bidder that has become the Successful Bidder) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor shall be entitled to retain the Successful Bidder's Good Faith Deposit as part of the Debtor's damages resulting from such Successful Bidder's breach or failure to perform.