

Court File No.: BK-24-03091796-32  
 Bankruptcy Estate File No. 32-3091796

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY & INSOLVENCY)**

THE HONOURABLE	)	TUESDAY, THE 2 <sup>ND</sup> DAY
	)	
JUSTICE VALENTE	)	OF JULY, 2024

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*  
*ACT*, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
 TO MAKE A PROPOSAL OF  
 PIONEER BALLOON CANADA LIMITED

**ORDER**

**(Stay Extension, Stalking Horse Sale Process Approval; Administration Charge)**

**THIS MOTION**, made by Pioneer Balloon Canada Limited pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the “**BIA**”), for an order (this “**Order**”), among other things:

- (a) if necessary, abridging the time for service and filing of the notice of motion and the motion record or, in the alternative, dispensing with the same;
- (b) extending the time for the Company to file a proposal under section 50.4(9) of the BIA by 35 days to and including August 16, 2024;
- (c) approving the stalking horse asset purchase agreement dated June 20, 2024 (the “**Stalking Horse Agreement**”), between the Company and 1488108 B.C. LTD. as purchaser (the “**Stalking Horse Bidder**”), as appended as Exhibit “H” to the affidavit of Marylynn Borondy sworn June 21 2004 (the “**Borondy Affidavit**”);

(d) approving the stalking horse sale process as described in the Borondy Affidavit and the First Report of the Proposal Trustee, to be filed with the Court (the “**First Report**”); and, as set out in the sale process and procedures appended as Appendix “A” hereto (the “**Sale Process**”); and

(e) granting a super-priority charge over the assets of the Company as security for the professional fees and disbursements of counsel to the Company, the Proposal Trustee and counsel to the Proposal Trustee (the “**Administration Charge**”),

was heard by this Honourable Court (the “**Court**”) on this day by way of judicial video conference in Hamilton, Ontario.

**ON READING** the Motion Record of the Company, including the Borondy Affidavit and the exhibits thereto, the First Report and the appendices thereto, and on hearing the submissions of counsel for the Company, counsel for the Proposal Trustee, counsel for the Royal Bank of Canada (“**RBC**”), and the other parties listed on the participant information form and no one else appearing although properly served as appears from the affidavit of Amanda Adamo, sworn June 21, 2024, filed:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

#### **EXTENSION OF TIME**

2. **THIS COURT ORDERS** that the time for the filing of a proposal by the Company is hereby extended in accordance with section 50.4(9) of the BIA up to and including August 16, 2024.

## **APPROVAL OF STALKING HORSE AGREEMENT & SALE PROCESS**

### ***Stalking Horse Agreement***

3. **THIS COURT ORDERS** that Stalking Horse Agreement hereby approved, and the Company and Proposal Trustee (as applicable) are hereby authorized to execute such documents and do such things as are necessary or advisable in connect with the Stalking Horse Agreement.

### ***Sale Process & Procedures***

4. **THIS COURT ORDERS** that the Sale Process is hereby approved.

5. **THIS COURT ORDERS** that the Company and the Proposal Trustee are authorized and directed to perform their obligations under, and take such steps as they consider necessary or desirable in carrying out, the Sale Process; and, that any step taken by the Company or the Proposal Trustee in connection with the Sale Process prior to the date of this Order is approved and ratified.

6. **THIS COURT ORDERS** that the Proposal Trustee shall have no personal or corporate liability in connection with the Sale Process, including, without limitation:

- (a) by advertising the Sale Process;
- (b) by exposing the assets, properties and undertakings of the Company to any and all parties, including, but not limited to, those parties who have made their interests known to the Proposal Trustee and/or the Company;
- (c) by responding to any and all requests or inquiries regarding due diligence conducted in respect of the Company and its assets, properties and undertakings;
- (d) through the disclosure of any and all information Company and its assets, properties and undertakings arising from, incidental to or in connection with the Sale Process;
- (e) pursuant to any and all offers received by the Proposal Trustee in accordance with the Sale Process; and

(f) pursuant to any agreements entered into by any of the Proposal Trustee acting for the Company in respect of the sale of any its assets, properties and undertakings.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Company and the Proposal Trustee are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers of the assets, properties and undertakings of the Company and their respective advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales (each, a “Sale”). Each prospective purchaser to whom such information is provided shall limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale or Investment, it shall return all such information to the Company or the Proposal Trustee, or in the alternative destroy all such information. The purchaser of any of the assets, properties and undertakings of the Company shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Company, and shall return all other personal information to the Company or the Proposal Trustee, or ensure that all other personal information is destroyed.

#### **ADMINISTRATIVE CHARGE**

8. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company shall be paid their reasonable fees and disbursements (the “**Professional Fees**”), in each case at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and counsel for the Company on a weekly basis and, in addition, the Company is authorized to pay to the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company, such retainers are agreed to among such parties to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

9. **THIS COURT ORDERS** that the Proposal Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose, the accounts of the Proposal Trustee and its legal counsel are referred to a judge of the Ontario Superior Court of Justice.



10. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and the Company's counsel shall be entitled to the benefit of and are granted a charge (the "**Administration Charge**") over and against the assets, undertakings and properties of the Company (collectively, the "**Property**"), which charge shall not exceed an aggregate amount of \$150,000, as security for, as applicable, the Professional Fees, both before and after the making of this Order in respect of these proceedings; and that the Administration Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

11. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

12. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable, and the rights and remedies of the chargees entitled to the benefit of the same (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by:

- (a) the pendency of these proposal proceedings and the declarations of insolvency made herein;
- (b) any application(s) for bankruptcy, interim receivership or receivership order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications;
- (c) the filing of any assignments or deemed assignments for the general benefit of creditors made pursuant to the BIA;
- (d) any application made pursuant to the *Companies Creditors' Arrangement Act* or any order made pursuant to such application;
- (e) the provisions of any federal or provincial statutes; or

- (f) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Company and notwithstanding any provision to the contrary in any Agreement.
13. Notwithstanding any provision to the contrary in any Agreement:
- (a) the creation of the Administration Charge shall create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge;
- (c) the payments made by the Company pursuant to this Order and the granting of the Administration Charge do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law, including but not limited to the BIA.
14. **THIS COURT ORDERS** that any Charge created by this Order over one or more leases of real property in Canada shall only be a Charge in the Company’s interest in such real property leases.

#### **SERVICE & NOTICE**

15. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 14 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website (defined in the Guide) shall be established in accordance with the Guide with the following URL: [kpmg.com/ca/pioneerballoon](http://kpmg.com/ca/pioneerballoon).

16. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Company and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by ordinary prepaid mail, courier, personal delivery or facsimile transmission to the Company's creditors or other interested parties at their respective addresses as last shown on the records of the Company and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

17. **THIS COURT ORDERS** that the Company, the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Company's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **GENERAL**

18. **THIS COURT ORDERS** that the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties under this Order.

19. **THIS COURT ORDERS** that nothing in this Order shall prevent the Proposal Trustee from subsequently expressly acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Company or the Property.

20. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Company, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Company and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order,

to grant representative status to the Proposal Trustee in any foreign proceeding or to assist the Company, the Proposal Trustee and their respective agents in carrying out the terms of this Order.

21. **THIS COURT ORDERS** that each of the Company and the Proposal Trustee is at liberty and is authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

22. **THIS COURT ORDERS** that any interested party (including the Company and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charge and priorities set forth in paragraph 11 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

23. **THIS COURT ORDERS** that any interested party (including the Company and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

24. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. from today's date and is enforceable without the need for entry and filing.



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SCHEDULE "A"

A handwritten signature in black ink, appearing to be 'WJ' or similar, written in a cursive style.

**BIDDING PROCEDURES & SALE PROCESS**

## Schedule A

Bidding Procedures for  
the Sale Process

## INTRODUCTION

1. On June 12, 2024 (the “**Filing Date**”), Pioneer Balloon Canada Limited (the “**Vendor**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”, and the proceedings, the “**NOI Proceedings**”).
2. KPMG Inc., a licensed insolvency trustee, was appointed as the Trustee acting *in re* the proposal of the Vendor (the “**Trustee**”) under the NOI Proceedings.
3. In connection with the NOI Proceedings, the Vendor will apply to the Ontario Superior Court of Justice, Commercial List (the “**Court**”), for an order (the “**Sale Process Order**”), among other things, authorizing the Trustee, with the assistance of the Vendor’s management team, to undertake a sale process (“**Sale Process**”) for the sale of the Vendor’s (A) property, assets and undertaking or shares in the capital of one or more of the Debtors (collectively, the “**Property**”), including liquidation offers for the Debtors’ inventory and equipment, and/or (B) business operations (the “**Business**”). The Sale Process will be conducted by the Trustee in the manner set forth herein and in accordance with the Sale Process Order.
4. Among other things, the Sale Process Order will also: (a) approve the procedures set out in this Schedule (the “**Bidding Procedures**”) for the solicitation of offers or liquidation proposals (each, a “**Bid**”) for the acquisition of the Property and the Business or some portion thereof; and (b) approve the form of stalking horse agreement (as same may be amended from time to time pursuant to its terms and the Sale Process Order, the “**Stalking Horse Agreement**”) to be entered into between Pioneer Balloon Canada Limited, as Vendor, and 1488108 B.C. Ltd. (the “**Stalking Horse Bidder**”), as purchaser, for the purposes of serving as the stalking horse bid in the Sale Process (the “**Stalking Horse Bid**”). For the avoidance of doubt, the implementation of the transactions contemplated by the Stalking Horse Agreement are conditional upon the Stalking Horse Bid being selected as a Successful Bid (as defined below) in accordance with the Bidding Procedures and Court approval of the Stalking Horse Agreement and the transactions contemplated therein on a subsequent motion to be brought by the Vendor following the completion of the Sale Process.

## Bidding Procedures

*Opportunity*

5. The Sale Process is intended to solicit interest in and opportunities for a sale of all or part of the Vendor’s Property and Business (the “**Opportunity**”). The Opportunity may include a sale of all, substantially all or one or more components of the Vendor’s Property and Business as a going concern or otherwise.
6. Any sale of any of the Property and the Business will be on an “*as is, where is*” basis and without surviving representations or warranties of any kind, nature, or description by the

Trustee, the Vendor or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Vendor in and to the Property to be acquired will be sold free and clear of, *inter alia*, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders and definitive documents.

7. The Stalking Horse Agreement constitutes a Binding Offer (as defined below) by the Stalking Horse Bidder (which constitutes a Binding Offer Bidder (as defined below)) for all purposes and at all times under this Sale Process and will serve as the Stalking Horse Bid for purposes of this Sale Process and the Bidding Procedures and have the right to participate in the Auction (as defined below), if any. A copy of the Stalking Horse Agreement will be made available to all Qualified Bidders (as defined below) and a form of such purchase agreement, to be uploaded to the VDR (as defined below), may be used as the basis for any Binding Offer made in the Sale Process.
8. The Bidding Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning the Vendor, the Property and the Business, the manner in which bidders may participate in the Sale Process, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder (as defined below) and the requisite approvals to be sought from the Court in connection therewith.
9. Subject to paragraph 27 below, the Trustee, in consultation with the Vendor, may at any time and from time to time, modify, amend, vary or supplement the Bidding Procedures, without the need for obtaining an order of the Court or providing notice to Qualified Bidders, Binding Offer Bidders or the Successful Bidder(s) (as each are defined below) provided that such modification, amendment, variation or supplement is expressly limited to changes that do not alter, amend or prejudice the rights of such bidders (including the rights of the Stalking Horse Bidder, except with the authorization of the Stalking Horse Bidder) and are necessary or useful in order to give effect to the substance of the Sale Process, the Bidding Procedures or the Sale Process Order. Notwithstanding the foregoing, the dates or time limits indicated in the table contained below may be extended by the Trustee, as the Trustee deems necessary or appropriate, or by order of the Court.
10. The Trustee will post on the Trustee's website and serve on the service list maintained in the NOI Proceedings, as soon as practicable, any such modification, amendment, variation or supplement to these Bidding Procedures and inform the bidders impacted by such modifications.
11. The Sale Process will be conducted by the Trustee in the manner set forth herein and in accordance with the Sale Process Order. In the event of a dispute as to the interpretation or application of the Sale Process Order or these Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute. For the avoidance of doubt, all bidders shall be deemed to have consented to the jurisdiction of the Court in connection with any disputes relating to the Sale Process, including the qualification of bids, the construction and enforcement of the Sale Process, and closing of a Successful Bid, as applicable.

12. Participants in the Sale Process are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, the Auction and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

13. A summary of the key dates pursuant to the Sale Process is as follows:

<b>Milestone</b>	<b>Date</b>
Commence solicitation of interest from parties, including delivering NDA and Teaser Letter, and upon execution of NDA (each as defined below) and access to VDR	By no later than June 13, 2024 <sup>1</sup>
Binding Offer Deadline (as defined below)	By no later than 5:00 p.m. (Eastern Time) on July 10, 2024
Auction, if needed	By no later July 12, 2024
Selection of Successful Bid	By no later than July 12, 2024
Approval Motion (as defined below)	By no later than July 26, 2024 or the earliest date available thereafter
Closing of Successful Bid	As soon as possible but no later than July 31, 2024

#### **Solicitation of Interest: Notice of the Sale Process**

14. As soon as reasonably practicable after the Filing Date,

- a. the Trustee, in consultation with the Vendor, will prepare a list of potential bidders, including (i) parties that have approached the Debtors or the Trustee indicating an interest in the Opportunity, (ii) strategic and financial parties who the Trustee, in consultation with the Vendor, believe may be interested in purchasing all or part of

<sup>1</sup> The Company and the Proposal Trustee commenced soliciting interest immediately following the filing of the NOI but advised all parties who expressed an interest that a subsequent motion for approval of the sale process and possible stalking horse bid was pending.



the Business or the Property, and (iii) parties that showed an interest in the Vendor and/or its Property prior to the date of the Sale Process Order including by way of the previous, out-of-court strategic review process, in each case whether or not such party has submitted a letter of intent or similar document (collectively, the “**Known Potential Bidders**”); and

- b. the Trustee, with the assistance of the Vendor, will prepare (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the contemplated process under the Sale Process and inviting recipients of the Teaser Letter to express their interest; and (ii) a non-disclosure agreement in form and substance satisfactory to the Trustee and Vendor and their respective counsel, which shall enure to the benefit of any purchaser of the Business or Property or any part thereof (an “**NDA**”).
15. As soon as reasonably practicable, but, in any event, by no later than five (5) business days after the granting of the Sale Process Order, the Trustee, with the assistance of the Vendor, will provide the Known Potential Bidders with a copy of the Bidding Procedures approved by the Court.
  16. The Trustee will cause the Teaser Letter and NDA to be sent to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Trustee as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

#### **Virtual Data Room**

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

#### **Qualified Bidders**

18. Any party who wishes to participate in the Sale Process (a “**Potential Bidder**”) must provide to the Trustee and counsel to the Vendor, at the addresses specified in **Appendix “B”** hereto (including by email transmission), an NDA executed by it, acceptable to the Trustee, in consultation with the Vendor, and written confirmation of the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.
19. A Potential Bidder (who has delivered the executed NDA and letter as set out above) will be deemed a “**Qualified Bidder**” if the Trustee, in its reasonable judgment, and in consultation

with the Vendor, determines such person is likely, based on the availability of financing, experience and other considerations, to be able to consummate a sale or liquidation transaction pursuant to the Sale Process. All Qualified Bidders will be granted access to the VDR. For the avoidance of doubt, the Stalking Horse Bidder is, and will be deemed to be, a Qualified Bidder. The Trustee will provide to each Qualified Bidder a copy of the Stalking Horse Agreement and any material amendment thereto.

20. The Vendor, the Trustee and their respective advisors make no representation or warranty as to the information contained in the VDR, Teaser Letter or otherwise made available pursuant to the Sale Process.
21. At any time during the Sale Process, the Trustee may, in its reasonable judgment, and in consultation with the Vendor, eliminate a Qualified Bidder from the Sale Process, in which case such bidder will be eliminated from the Sale Process and will no longer be a "Qualified Bidder" for the purposes of the Sale Process.
22. Potential Bidders must rely solely on their own independent review, diligence, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the Sale Process and any transaction they enter into with one or more of the entities comprising the Vendor.

#### **Due Diligence**

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

#### **Formal Binding Offers**

25. Any Qualified Bidder (other than the Stalking Horse Bidder) that wishes to make a formal offer to (A) acquire all or substantially all of the Property or Business, whether through an asset purchase, a share purchase or a combination thereof, must submit a binding offer (a "**Binding Offer**") as a marked version compared to the Stalking Horse Agreement, a copy of

which will be posted in the VDR (the “**Binding Offer Bidder**”), in each case, to the Trustee, no later 5 p.m. EST on July 10, 2024 (the “**Binding Offer Deadline**”).

26. A Binding Offer will be considered if it:

- (a) provides for net cash proceeds on closing no less than the aggregate of: (A) the amount of cash payable under the Stalking Horse Agreement, plus (B) the amount of cash payable to cover the Break Fee of \$75,000, as defined in the Stalking Horse Agreement, plus (C) the amount of legal costs of the Stalking Horse Bidder up to a maximum of \$25,000, plus (D) a minimum overbid amount of \$50,000 (the amounts set forth in this paragraph 26(a), the “**Minimum Purchase Price**”);
- (b) is submitted on or before the Binding Offer Deadline by a Qualified Bidder;
- (c) is made by way of binding, definitive transaction document(s) that is/are executed by the Binding Offer Bidder;
- (d) identifies any executory contracts and leases of the Vendor that the Binding Offer Bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and non-monetary defaults will be remedied, as applicable;
- (e) is not subject to any financing condition, diligence condition or internal or board approval;
- (f) is unconditional, other than upon the receipt of the Approval Order(s) (as defined below) and satisfaction of any other conditions expressly set forth in the Binding Offer;
- (g) contains or identifies the key terms and provisions to be included in any Approval Order;
- (h) contains the Binding Offer Bidder’s proposed treatment of employees of the applicable Vendor entities (for example, anticipated employment offers and treatment of post-employment benefits);
- (i) includes acknowledgments and representations of the Binding Offer Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property and/or the Business in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities;

- (j) includes evidence satisfactory to the Trustee of funds available to pay the Minimum Purchase Price on closing;
- (k) provides for any anticipated corporate, licensing, securityholder, legal or other regulatory approvals required to close the transaction, and an estimate of the anticipated time frame and any anticipated impediments for obtaining such approvals;
- (l) does not provide for any break or termination fee, expense reimbursement or similar type of payment, it being understood and agreed that no bidder will be entitled to any bid protections;
- (m) includes:
  - (i) the specific purchase price in Canadian dollars and a description of any non-cash consideration;
  - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (iii) a specific indication of the sources of capital for the Binding Offer Bidder and the structure and financing of the transaction; and
  - (iv) a description of those liabilities and obligations (including operating liabilities) which the Binding Offer Bidder intends to assume and which such liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;
- (n) includes payment of a deposit in the amount of not less than ten percent (10%) of the cash purchase price payable on closing (the “**Deposit**”) by wire transfer to the Proposal Trustee;
- (o) is accompanied by an acknowledgement that if the Binding Offer Bidder is selected as a Successful Bidder, that the Deposit will be non-refundable subject to approval of such Successful Bid by the Court and the terms described in paragraph 27 below;
- (p) contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on the date that is ten (10) days from the date of the issuance of the Approval Order approving such bid, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing and in any event no later than July 31, 2024 (the “**Outside Date**”); and
- (q) includes such other information as reasonably requested or identified as being necessary or required by the Trustee, in consultation with the Vendor.

27. By submitting an offer for consideration at a Binding Offer, it is deemed that such Binding Offer: (i) may be accepted by the Vendor by countersigning the Binding Offer, and (ii) is

irrevocable and capable of acceptance until the earlier of (A) two (2) business days after the date of closing of the applicable Successful Bid; and (B) the Outside Date (as defined below).

28. The Trustee, in its reasonable judgment, and in consultation with the Vendor, may waive compliance with any one or more of the requirements specified above and consider such non-compliant Binding Offer. For the avoidance of doubt, the completion of any Binding Offer shall be subject to the approval of the Court.
29. In the circumstance that a Binding Offer, does not provide for net cash proceeds on closing that are at least equal to the Minimum Purchase Price, the Trustee may elect that such Binding Offer nevertheless be considered as a potential Successful Bid and be entitled to participate in the Auction.

### **Selection of Successful Bid**

30. The Trustee, in consultation with the Vendor, may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered.
31. The Trustee and the Vendor, will (i) review and evaluate each relevant Binding Offer; and (ii) identify the highest and otherwise best Binding Offer (the “**Successful Bid**”, and the Binding Offer Bidder making such Successful Bid, the “**Successful Bidder**”). The Trustee, in consultation with the Vendor, may consider any commercial factor in evaluating Binding Offers, including speed, certainty, value and preservation of employment.
32. In the event that no Binding Offer is selected (other than the Stalking Horse Bid), the Vendor will promptly seek Court approval of the Stalking Horse Agreement and the transactions contemplated therein. In the event there is at least one Binding Offer in addition to the Stalking Horse Bid, a Successful Bid will be identified through an auction (“**Auction**”) in accordance with the procedure set out below.
33. The Trustee may negotiate with Binding Offer Bidders in any manner it considers appropriate in its business judgment with a view to maximizing the value of the Property, including at the Auction. In the event an Auction is required, the Auction will be conducted in accordance with the procedures set forth in this paragraph:
  - (a) The Auction will commence at a time to be designated by the Trustee and may, in the discretion of the Trustee, be held virtually via videoconference, teleconference or such other reasonable means as the Trustee deems appropriate. The Trustee will consult with the parties permitted to attend the Auction to arrange for the Auction to be so held. Subject to the terms hereof, the Trustee, in consultation with the Vendor, may postpone the Auction.
  - (b) The identity of each Binding Offer Bidder participating in the Auction will be disclosed, on a confidential basis, to other Binding Offer Bidders participating in the Auction.

- (c) Except as otherwise permitted in the Trustee's discretion, only the Vendor, the Trustee and the Binding Offer Bidders, and, in each case, their respective professionals and representatives, will be permitted to attend the Auction. Only Binding Offer Bidders (including, for greater certainty, the Stalking Horse Bidder) are eligible to participate in the Auction.
- (d) Binding Offer Bidders will participate in the Auction through a duly authorized representative.
- (e) Except as otherwise set forth herein, the Trustee may waive and/or employ and announce at the Auction additional rules, including rules to facilitate the participation of parties participating in an Aggregated Bid, that are reasonable under the circumstances for conducting the Auction, provided that such rules are:
  - (i) not inconsistent with the Initial Order, the Sale Process, the Bidding Procedures, the BIA, or any order of the Court issued in connection with the NOI Proceedings;
  - (ii) disclosed to each Binding Offer Bidder; and
  - (iii) designed, by the Trustee, in its reasonable judgment, and in consultation with the Vendor, to result in the highest and otherwise best offer.
- (f) The Trustee may arrange for the actual bidding at the Auction to be transcribed or recorded. Each Binding Offer Bidder participating in the Auction will designate a single individual to be its spokesperson during the Auction.
- (g) Each Binding Offer Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with the Vendor or any other person, without the consent of the Trustee, regarding the Sale Process, that has not been disclosed to all other Binding Offer Bidders. For greater certainty, communications between the Stalking Horse Bidder and either the Vendor or the Trustee with respect to and in preparation of the Stalking Horse Agreement, the Sale Process and the Bidding Procedures, prior to the issuance of the Sale Process Order and the commencement of the Sale Process will not represent collusion nor communications prohibited by this paragraph.
- (h) Prior to the Auction, the Trustee will identify the highest and best of the Binding Offers received and such Binding Offers will constitute the opening bid for the purposes of the Auction (the "**Opening Bid**"). Subsequent bidding will continue in minimum increments valued at not less than \$50,000.00 cash in excess of the Opening Bid. Each Binding Offer Bidder will provide evidence of its financial wherewithal and ability to consummate the transaction at the increased purchase price. Further, in the event that an Aggregated Bid qualifies to participate in the Auction, modifications to the bidding requirements may be made by the Trustee, in consultation with the Vendor, to facilitate bidding by the participants in the Aggregated Bid.
- (i) All Binding Offer Bidders will have the right, at any time, to request that the Trustee announce, subject to any potential new bids, the then-current highest and best bid



and, to the extent requested by any Binding Offer Bidder, use reasonable efforts to clarify any and all questions such Binding Offer Bidder may have regarding the Trustee's announcement of the then-current highest and best bid.

- (j) Each participating Binding Offer Bidder will be given reasonable opportunity to submit an overbid at the Auction to any then-existing overbids. The Auction will continue until the bidding has concluded and there is one remaining Binding Offer Bidder. The Trustee and the Vendor shall determine which Binding Offer Bidders have submitted the highest and otherwise best Binding Offer of the Auction, which shall be a Successful Bid. At such time and upon the conclusion of the bidding, the Auction will be closed, and the Binding Offer Bidder with the highest and otherwise best Binding Offer of the Auction will be a Successful Bidder.
  - (k) Upon selection of a Successful Bidder(s), if any, the Successful Bidder(s), if any, shall deliver to the Trustee and the Vendor, an amended and executed transaction document that reflects their final bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the motion material for the hearing to consider the Approval Motion.
  - (l) Any bids submitted after the conclusion of the Auction will not be considered.
  - (m) The Trustee, in consultation with the Vendor, shall be at liberty to modify or to set additional procedural rules for the Auction as it sees fit, including to conduct the Auction by way of written submissions.
34. A Successful Bid, if any, will be selected by no later than 5:00 p.m. (Eastern Time) on July 12, 2024 (or such later date immediately thereafter if the Auction is conducted and not completed in one day). If the applicable Successful Bid is terminated for any reason prior to the Outside Date, the Vendor and the Trustee may elect to, or by further order of the Court, seek to complete the transactions contemplated by the Stalking Horse Bid and will promptly seek to close the transaction contemplated by such Stalking Horse Bid, which will be deemed to be a Successful Bid. The Vendor will be deemed to have accepted such Stalking Horse Bid only when the Vendor and the Trustee have made such election.

#### *Approval of Successful Bid*

35. The Vendor will apply to the Court (the “**Approval Motion**”) for one or more orders: (i) approving the Successful Bid(s) and authorizing the taking of such steps and actions and completing such transactions as are set out therein or required thereby; and (ii) granting a vesting order(s) to the extent that such relief is contemplated by the Successful Bid(s) so as to vest title to any purchased assets and/or shares in the name of the applicable Successful Bidder(s) (collectively, the “**Approval Order(s)**”). The Approval Motion will be held on a date to be scheduled by the Vendor and confirmed by the Court upon application by the Vendor. With the consent of the Trustee, the Approval Motion may be adjourned or rescheduled by the Vendor without further notice, by an announcement of the adjourned date at the Approval Motion or in a notice to the service list maintained in the NOI Proceedings prior to the Approval Motion. The Vendor will consult with the Trustee and the applicable

Successful Bidder regarding the motion material to be filed by the Vendor for the Approval Motion.

36. All Binding Offers (other than the Successful Bid(s)) will be deemed rejected on and as of the date of the closing of the applicable Successful Bid(s)), with no further or continuing obligation of the Vendor or the Trustee to any unsuccessful Binding Offer Bidders, including the Stalking Horse Bidder.

### ***Deposits***

37. The Deposit(s):

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

### ***“As is, Where is”***

38. Any sale (or sales), including in the case of liquidation, of the Property or the Business or portions thereof will be on an “**as is, where is**” basis except for representations and warranties that are customarily provided in purchase agreements for a company subject to NOI proceedings. Any such representations and warranties provided for in the definitive documents will not survive closing.

### ***Confidentiality***

39. For greater certainty, other than as required in connection with any Auction or Approval Motion and subject to paragraph 27, neither the Vendor nor the Trustee will disclose: (i) the identity of any Potential Bidder or Qualified Bidder (other than the Stalking Horse Bidder); or (ii) the terms of any bid, or Binding Offer (other than the Stalking Horse Agreement), to any other bidder or any of its affiliates. Potential Bidders, Qualified Bidders (including the



Stalking Horse Bidder) and each of their respective affiliates shall not communicate with, or contact, directly or indirectly, any other Potential Bidder, Known Potential Bidder, Qualified Bidder or their respective affiliates, without the express written consent of the Trustee, and such communications or discussions are to take place under the supervision of the Trustee.

#### **Further Orders**

40. At any time during the Sale Process, the Vendor or the Trustee may apply to the Court for advice and directions with respect to any aspect of this Sale Process including, but not limited to, the continuation of or termination of the Sale Process or with respect to the discharge of its powers and duties hereunder.

#### **Additional Terms**

41. In addition to any other requirement of the Sale Process:
- (a) Any consent, approval or confirmation to be provided by the Stalking Horse Bidder, the Vendor and/or the Trustee is ineffective unless provided in writing and any approval required pursuant to the terms hereof is in addition to, and not in substitution for, any other approvals required by the BIA or as otherwise required at law in order to implement a Successful Bid. For the avoidance of doubt, a consent, approval or confirmation provided by email will be deemed to have been provided in writing for the purposes of this paragraph.
  - (b) Prior to seeking Court approval for any transaction or bid contemplated by this Sale Process, the Trustee will provide a report to the Court on the Sale Process, parts of which may be filed under seal, including in respect of any and all bids received.
42. This Sale Process does not, and will not be interpreted to, create any contractual or legal relationship between the Vendor and any other party, other than as specifically set forth in the NDA or any other definitive agreement executed.
43. Notwithstanding anything to the contrary herein, the Trustee shall have no liability whatsoever to any person or entity, including without limitation any Potential Bidder, Qualified Bidder, Binding Offer Bidder, Successful Bidder, or any other creditor or stakeholder, or any Applicant, as a result of implementation or otherwise in connection with this Sale Process, except to the extent that any such liabilities result from the gross negligence or wilful misconduct of the Trustee, as determined by the Court, and all such persons or entities shall have no claim against the Trustee in respect of the Sale Process for any reason whatsoever.

## APPENDIX "B"

PB

**The Trustee:****KPMG INC.**

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Attention: Pritesh Patel  
Email: [pritpatel@kpmg.ca](mailto:pritpatel@kpmg.ca)

with copies to counsel to the Trustee:

**Borden Ladner Gervais LLP**

Bay Adelaide Centre, East Tower  
22 Adelaide St. W  
Toronto, ON, Canada  
M5H 4E3

Attention: Alex MacFarlane  
Email: [AMacfarlane@blg.com](mailto:AMacfarlane@blg.com)

**The Debtors****Vendor****c/o Loopstra Nixon LLP**

130 Adelaide Street West – Suite 2800  
Toronto, ON M5H 3PG

Attention: Graham Phoenix  
Email: [gphoenix@LN.law](mailto:gphoenix@LN.law)

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985, C. B-3, AS AMENDED  
 AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PIONEER BALLOON CANADA  
 LIMITED

Court File No. BK-24-03091796-32  
 Bankruptcy Estate File No. 32-3091796

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY & INSOLVENCY)**

Proceedings commenced in Hamilton

**ORDER**

(Stay Extension, Stalking Horse Sale Process Approval)

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