

Summary Memorandum

Confidential



6 Week Sale Process

Bid Deadline: [October 17, 2022, 5:00pm ET](#)

Auction: [October 19, 2022, 10:00am ET](#)

Rock Creek Advisors (the “Sale Agent”) is contacting you regarding the sale of the assets of 8e14 Networks, Inc., d/b/a Ananda Networks (the “Company” or “Ananda”).

This offering and Summary Memorandum (the “Memorandum”) provides information regarding the Company and the sale process:

- Overview
- Problem
- Solution
- Sales Process and Timing
- Contacts

We are looking to identify and finalize a transaction quickly so please let us know your level of interest as soon as possible so we can include you in the process.

This will be a 6-week sale process.

Bid Deadline: October 17, 2022



Disclaimer

This Memorandum contains information regarding the Company’s business and operations, and the information contained herein has been prepared for the purpose of providing interested parties with general information to assist them in their evaluation of the Company’s business. Nothing contained in this Memorandum is, or shall be relied upon as, a promise or representation as to the past or future performance of the Company or its products.



Network security company founded in 2018 based in Los Altos, CA
Employees: 9
Ananda has built an AI-powered fabric that connects the distributed workforce with unparalleled speed, security, and simplicity.

Overview

TECHNOLOGY

Ananda Networks created a patent-pending private, high performance, low-latency network fabric that allows organizations to connect remote users, branches and devices anywhere.

Their key security and networking technology greatly simplifies deployment and makes hardware unnecessary, while providing a fully secure network that up to 10x faster than legacy VPN.

- Simplicity – can be set up in minutes
- Speed – offers up to 10x performance with superior link quality
- Security – creates a “dark” network, utilizing end-to-end encryption
- Cost Effective – cloud-managed, no hardware expense required

CUSTOMERS & RECOGNITION



PIPELINE

UNIQUE STRATEGIC OPPORTUNITY

COVID-19 has significantly impacted the number of employees working remotely and these employees are now permanently remote causing a shift to a highly distributed workforce.

Additionally, as enterprises become global they need to connect users and devices in multiple locations to applications running in their data centers or clouds, securely and efficiently.

As the workforce becomes more distributed, connecting them with high network performance and reliability is crucial for productivity.

Businesses are increasingly in need of connecting remote branches, remote, or edge devices, and this currently requires expensive hardware, and multiple networking and security tools. This has caused a need for a safe, secure, simple, and fast cloud-based network solution.

Problem

The network was never designed for our distributed enterprise needs.

- Complex – Multiple band-aids required, rigidly configured, resulting in brittle network
- Slow – Antiquated protocols, suboptimal routing, and backhaul of traffic through centralized choke points impact the network
- Unsecure – Traffic decrypted, entrusted to third parties
- Unreliable – Multiple points of failure, at the mercy of the Internet
- Expensive – Current solutions require expensive networking hardware solutions

VPN Solutions

- Complex deployment and management, often involves hardware
- Legacy enterprise VPN solutions slow down traffic and often backhaul all traffic through the data centers
- Access to resources such as cloud applications may force unnecessary degradation of performance and quality

SASE Solutions

- SASE Solutions backhaul all traffic through a finite network of data centers points of presence (PoPs)
- If the user is not near a PoP, traffic will be backhauled to the nearest PoP, which could be in another state or even another country.
- PoPs will also decrypt traffic

Solution

Ananda delivers strong zero-trust private networking functionality, avoiding legacy VPN and RDP vulnerabilities and risks, while also delivering a superior networking experience, including much higher speed, reliability, and reducing the complexity of deploying legacy solutions such as VPN's and first generation SASE products.

Simplicity – can be set up in minutes

- Cloud Managed
- Self-organizing
- “Slack”-like management

Speed – offers up to 10x performance with superior link quality

- Self-optimizing
- Distributed – no backhaul
- PoP-agnostic relay design

Security – creates a “dark” network, utilizing end-to-end encryption

- Dark network
- ZTNA; End-to-end encryption
- Micro-segmentation

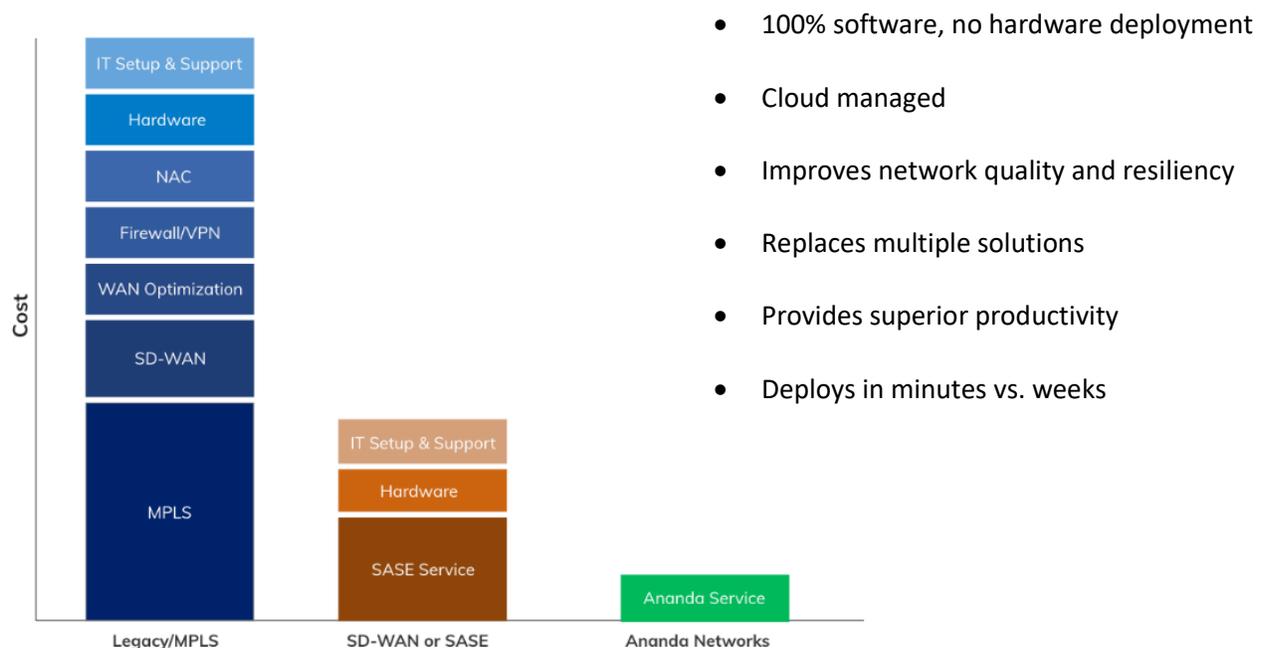
Re-imagining the Network

	VPN	Current “SASE”	Ananda Next-gen ML-powered Fabric
Topology	Centralized gateway	30-100 gateways (PoPs)	Decentralized – infinite ways to connect
Setup	Hard-coded network	Hard-coded network	Self-organizing, self-optimizing
Infrastructure	Hardware	Hardware, physical PoPs	Software, PoP-agnostic
Security	Allow full network access	ZTNA	ZTNA + micro-segmentation
Performance	Slows, degrades performance	Degrades some performance	Up to 10x faster
Simplicity	Setup takes months	Setup takes weeks	Setup in minutes

How Ananda Is Different

		Firewall/VPN (Palo Alto, Check Point)	SD-WAN (Cisco, VMware)	SASE (ZScaler, Cato)
Simplicity and cost Cloud-managed, 100%-software, no infrastructure	●	○	◐	◑
End-to-end security ZTNA, segmentation	●	◐	◐	◑
High-performance, low-latency networking	●	○	◐	◑
Unified networking fabric WAN traffic + lateral + cloud + on-prem	●	○	○	○

Ananda Is the Simplest, Most Cost Effective Solution



SALES PROCESS AND TIMING

Participation Requirements:

1. To receive due diligence information, including full access to the Debtor's electronic data room and additional non-public information regarding the Debtor, a party interested in consummating a Transaction (a "Potential Bidder") should deliver (or have delivered) to each of: (x) Rock Creek Advisors LLC, 1738 Belmar Blvd, Belmar, NJ 07719, Attn: Brian Ayers (BAyers@rockcreekfa.com); (y) proposed counsel to the Debtor, Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801, Attn: Matthew P. Ward (matthew.ward@wbd-us.com) and Morgan L. Patterson (morgan.patterson@wbd-us.com); and (z) proposed special counsel to the Debtor, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, New York 10019 Attn: Eric Daucher and 555 South Flower Street, 41st Floor, Los Angeles, California 90071 Attn: Rebecca J. Winthrop (collectively, the "Debtor's Advisors"), the following documents (collectively, the "Preliminary Bid Documents"):
 - a) an executed Confidentiality Agreement, to the extent not already executed; and
 - b) proof or other documentation acceptable to the Debtor of the Potential Bidder's financial capacity to close a proposed Transaction (or, if the Potential Bidder is an entity formed for the purpose of consummating the Transaction, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtor (with the assistance of their advisors).

Promptly after a Potential Bidder delivers Preliminary Bid Documents, the Debtor will determine and notify the Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents so that the Potential Bidder may proceed to conduct due diligence and ultimately submit a Bid (as defined below) and participate in the Auction, as applicable, and will provide copies of any such notices to the Notice Parties. Except as otherwise determined in the Debtor's business judgment, only those Potential Bidders that have submitted acceptable Preliminary Bid Documents (each, an "Acceptable Bidder") may submit Bids.

Rock Creek will provide access, in the electronic data room, to a form asset purchase agreement and the chapter 11 plan (once filed) (collectively, the "Form Documents").

2. For any Acceptable Bidder who is a competitor of the Debtor or is affiliated with any competitor of the Debtor, the Debtor reserves the right to withhold, or to delay providing, any diligence materials that the Debtor determines are business-sensitive or otherwise inappropriate for disclosure to such Acceptable Bidder at such time.
3. Each Acceptable Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtor or its advisors regarding such Acceptable Bidder and its contemplated transaction.

Bid Deadline:

An Acceptable Bidder that desires to make a proposal, solicitation, or offer (each, a "Bid") shall transmit such proposal, solicitation, or offer via email (in .pdf or similar format) so as to be actually received on or before **October 17, 2022, at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline") to:

1. Rock Creek Advisors LLC, 1738 Belmar Blvd, Belmar, NJ 07719, Attn: Brian Ayers (BAyers@rockcreekfa.com);
2. Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801, Attn: Matthew P. Ward (matthew.ward@wbd-us.com) and Morgan L. Patterson (morgan.patterson@wbd-us.com); and
3. Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, New York 10019 Attn: Eric Daucher (eric.daucher@nortonrosefulbright.com) and 555 South Flower Street, 41st Floor, Los Angeles, California 90071 Attn: Rebecca J. Winthrop (rebecca.winthrop@nortonrosefulbright.com).

Bid Requirements (Local Rule 6004-I(c)(i)):

Each Bid by an Acceptable Bidder must be submitted in writing and satisfy the following requirements (collectively, the "Bid Requirements"):

1. **Purpose:** Each Acceptable Bidder must state if the Bid is an offer by the Acceptable Bidder to purchase assets or equity, including the percentage of the new interests to be purchased, if any, and which executory contracts and unexpired leases the Acceptable Bidder seeks to have assumed and assigned as part of the Transaction. Each Acceptable Bidder must also state if it is willing to fund costs of confirming the Plan, including wind-down costs, and if so, the amount of funding to be provided.
2. **Purchase Price.** Each Bid must clearly set forth the terms of any proposed Transaction, including and identifying separately any cash and non-cash components of the proposed Transaction consideration, including, for example, certain liabilities to be assumed by the Acceptable Bidder (the "Purchase Price"); provided that any Bid for the Assets that constitute DIP Collateral (as defined in the DIP Orders) must (a) provide for the indefeasible payment in cash in full of the DIP Obligations (as defined in the DIP Orders) at closing of the applicable Transaction or (b) have the consent of the DIP Lender.
3. **Deposit.** Each Bid other than the Stalking Horse Bid must be accompanied by a cash deposit in the amount equal to 10% of the aggregate value of the cash and non-cash consideration of the Bid to be held in one or more escrow accounts on terms acceptable to the Debtor (the "Deposit").
4. **Marked Agreement.** Each Bid must include a marked version of the applicable Form Documents, in each case, together with the exhibits and schedules related thereto and any related Transaction documents or other material documents integral to such Bid, pursuant to which the Acceptable Bidder proposes to effectuate the Transaction (collectively, the "Transaction Documents"). Any modifications to the Transaction contemplated by the Form Documents must be in form and substance acceptable to the Debtor.
5. **Committed Financing.** To the extent that a Bid is not accompanied by evidence of the Acceptable Bidder's capacity to consummate the Transaction set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtor's satisfaction that demonstrates that the Acceptable Bidder has received sufficient debt and/or equity funding commitments to satisfy the Acceptable Bidder's Purchase Price and other obligations under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, or shall have covenants and conditions acceptable to the Debtor.
6. **Contingencies; No Financing or Diligence Outs.** A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence.
7. **No Bidding Protections.** Each Bid (other than the Stalking Horse Bid) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Purchaser) will be permitted to request, nor be granted by the Debtor, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. By submitting its Bid, each Bidder (other than the Stalking Horse Purchaser) is agreeing to

refrain from and waive any assertion or request for reimbursement on any basis, including pursuant to section 503(b) of the Bankruptcy Code.

8. Identity. Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Acceptable Bidder if such Acceptable Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Each Bid should also include contact information for the specific person(s) and counsel whom the Debtor's Advisors should contact regarding such Bid.

9. Authorization. Each Bid must contain evidence acceptable to the Debtor that the Acceptable Bidder has obtained authorization or approval from its board of directors (or a comparable governing body) with respect to the submission of its Bid and the consummation of the Transaction contemplated in such Bid.

10. As-Is, Where-Is. Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Transaction prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents in making its Bid; (iii) 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 Transaction or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidder's Transaction Documents; and (iv) the Acceptable Bidder did not engage in any collusive conduct and acted in good faith in submitting its Bid.

Stalking Horse Bid Protections:

The Debtor has selected VMware, Inc. as the stalking horse bidder (in such capacity, the "Stalking Horse Bidder") pursuant to the Asset Purchase Agreement by and among VMware, Inc. as Buyer and 8e14 Networks, Inc. as Seller, dated as of August 4, 2022 (the "Stalking Horse Agreement"). The Stalking Horse Agreement provides for consideration equal to \$12,500,000 less amounts outstanding under the DIP Facility, which amounts, for the avoidance of doubt shall be credit bid in accordance with Section 363(k) of the Bankruptcy Code. The Stalking Horse Agreement contains certain bidder protections and bidding procedures which have been approved by the Delaware Bankruptcy Court:

1. Termination Fee and Expense Reimbursement. The Stalking Horse Purchaser is entitled to bidding protections equal to 3% of the Purchase Price, plus the Buyer Expense Reimbursement (as defined in the Stalking Horse Agreement) (the "Bid Protections").

2. Bidding Increments. Each Bid or combination of Bids must be for all of the Assets and shall clearly show the amount of the purchase price. In addition, a Bid or combination of Bids must propose a purchase price greater than the sum of (i) the value of the Stalking Horse Agreement, as determined by the Debtor in consultation with the Subchapter V Trustee; (ii) the Bid Protections, and (iii) an initial overbid of not less than \$100,000 (the "Initial Overbid").

3. Unless otherwise determined by the Debtor in its business judgment after consultation with the Subchapter V Trustee, any subsequent overbid after the initial over bid shall be made in increments of at least \$100,000 in the aggregate (the "Minimum Overbid Increment").

Right to Credit Bid:

1. Any Qualified Bidder who has a valid and perfected lien on any assets of the Debtor's estate (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; provided that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured.

Designation of Qualified Bidders:

1. A Bid will be considered a "Qualified Bid," and each Acceptable Bidder that submits a Qualified Bid will be considered a "Qualified Bidder," if the Debtor, determines that such Bid:
2. Satisfies the Bid Requirements set forth above, including the Initial Overbid;
 - a) is reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Winning Bid (as defined below), within a time frame acceptable to the Debtor; and
 - b) when aggregated with other Bids (or portions thereof), provides for payment in full in cash of all allowed DIP Obligations outstanding on the date of closing of the applicable Transaction *plus* payment in full in cash of all administrative, priority, and secured claims (other than the DIP Claims) arising in the Debtor's chapter 11 case through the Effective Date (as defined in the Plan).
 - c) By October 5, 2022, the Debtor will notify each Qualified Bidder whether such party is a Qualified Bidder and shall provide the Notice Parties a copy of each Qualified Bid.
 - d) If any Bid is determined by the Debtor not to be a Qualified Bid, the Debtor will refund such Acceptable Bidder's Deposit on the date that is three business days after the Bid Deadline.
 - e) Between the date that the Debtor notifies an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtor may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtor, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their Purchase Price, or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided* that any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.
 - f) Notwithstanding anything herein to the contrary, the Debtor reserves the right to work with (1) Potential Bidders and Acceptable Bidders to aggregate two or more Bids into a single consolidated Bid prior to the Bid Deadline or (2) Qualified Bidders to aggregate two or more Qualified Bid into a single Qualified Bid prior to the conclusion of the Auction. The Debtor reserves the right to cooperate with any Acceptable Bidder to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtor may accept a single Qualified Bid or multiple Bids that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders shall be treated as a single Qualified Bidder for purposes of the Auction).
 - g) The Stalking Horse Bid is a Qualified Bid, and the Stalking Horse Bidder is an Acceptable Bidder and a Qualified Bidder.

The Auction:

1. If the Debtor receives two or more Qualified Bids (including the Stalking Horse Bid), the Debtor will conduct the Auction to determine the Winning Bidder with respect to the Transaction.
2. No later than **October 18, 2022**, the Debtor, will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, as determined in the Debtor's business judgment (the "Baseline Bid"), and provide copies of the documents supporting the Baseline Bid to all Qualified Bidders and the Notice Parties. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Winning Bid shall take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid to the Debtor's estate, including, among other things: (a) the number, type, and nature of any changes to the applicable Form Documents requested by the Qualified Bidder; (b) the amount and nature of the total consideration; (c) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtor's estate from the Transaction contemplated by the Baseline Bid; and (e) the tax consequences of such Qualified Bid (collectively, the "Bid Assessment Criteria").
3. Unless otherwise indicated as provided by the Bidding Procedures Order, the Auction shall take place at **10:00 a.m. (prevailing Eastern Time) on October 19, 2022**, either via videoconference or at the offices of Womble Bond Dickinson (US), LLP, 1313 N. Market Street, Suite 1200, Wilmington, DE 19801, or such later date and time or location as selected by the Debtor. The Auction shall be conducted in a timely fashion according to the following procedures:
 - a) 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. All incremental Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtor shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Winning Bid.
 - Only Qualified Bidders, the Debtor, the DIP Lender and the Subchapter V Trustee, and each of their respective legal and financial advisors, and any other parties specifically invited or permitted to attend by the Debtor, shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Except as otherwise permitted by the Debtor, only Qualified Bidders shall be entitled to bid at the Auction.
 - b) Terms of Overbids. "Overbid" means any Bid made at the Auction by a Qualified Bidder subsequent to the Debtor's announcement of the Baseline Bid. Each Overbid must comply with the following conditions:
 - Minimum Overbid Increment. Any Overbid following the Baseline Bid or following any subsequent Prevailing Highest Bid (as defined below) shall be in increments of value (including revised treatment under the Plan) equal to \$100,000, unless otherwise determined by the Debtor in an exercise of its business judgment after consultation with the Subchapter V Trustee.
 - Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtor may announce a deadline (as the Debtor may, in its business judgment, extend from time to time, the "Overbid Round Deadline") by which time any Overbids must be submitted to the Debtor.

- Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable in the aggregate to the Debtor's estate than any prior Qualified Bid or Overbid, as determined in the Debtor's business judgment, but shall otherwise comply with the terms of these Bidding Procedures.
 - Announcing Highest Bid. Subsequent to each Overbid Round Deadline, the Debtor, in consultation with the Subchapter V Trustee, shall announce whether the Debtor has identified an Overbid as being higher or otherwise better than the Baseline Bid, in the initial Overbid Round, or, in subsequent rounds, the Overbid previously designated by the Debtor as the prevailing highest or otherwise best Bid (the "Prevailing Highest Bid"). The Debtor shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtor as the Prevailing Highest Bid, as well as the value attributable by the Debtor to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.
- c) Consideration of Overbids. The Debtor reserves the right, in consultation with the Subchapter V Trustee, in its business judgment, to adjourn the Auction one or more times, to, among other things, (1) facilitate discussions between the Debtor and Potential Bidders, (2) allow Qualified Bidders to consider how they wish to proceed, and (3) provide Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its 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.
- d) Closing the Auction. The Auction shall continue until there is only one Qualified Bid that the Debtor determines, in consultation with the Subchapter V Trustee, in its business judgment, to be the highest or otherwise best Qualified Bid. Such Qualified Bid shall be declared the "Winning Bid" and such Qualified Bidder, the "Winning Bidder," at which point the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtor of the Winning Bid is conditioned upon approval by the Court of the Winning Bid. For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtor from exercising its fiduciary duties under applicable law. As soon as reasonably practicable after closing the Auction, the Debtor shall finalize definitive documentation to implement the terms of the Winning Bid, including, if applicable, the Plan, the Plan Supplement (as defined in the Plan), and the Confirmation Order (as defined in the Plan) and, as applicable, cause such definitive documentation to be filed with the Court.
- e) No Collusion; Good-Faith *Bona Fide* Offer. Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (1) it has not engaged in any collusion with respect to the bidding and (2) its Qualified Bid is a good-faith *bona fide* offer and it intends to consummate the proposed Transaction if selected as the Winning Bidder.

Backup Bidder (Local Rule 6004-1(c)(1)(E)):

1. Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the Auction, as determined by the Debtor in the exercise of its business judgment, shall be required to serve as a backup bidder (the “Backup Bidder”) until the earlier of (i) thirty (30) days after entry of the Sale Order and (ii) the date of closing of the applicable Transaction (the “Outside Date”), and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtor.
2. The identity of the Backup Bidder and the amount and material terms of the Qualified Bid of the Backup Bidder shall be announced by the Debtor, at the conclusion of the Auction at the same time the Debtor announces the identity of the Winning Bidder. The Backup Bidder shall be required to keep its Qualified Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the Outside Date. The Backup Bidder’s Deposit shall be held in escrow pending confirmation of the Plan.
3. If the Winning Bidder fails to consummate the approved Transaction contemplated by its Winning Bid prior to the Outside Date, the Debtor may select the Backup Bidder as the Winning Bidder, and such Backup Bidder shall be deemed a Winning Bidder for all purposes. The Debtor will be authorized, but not required, to consummate the Transaction contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. In such case, the defaulting Winning Bidder’s Deposit shall be forfeited to the Debtor’s estate, and the Debtor, on behalf of itself and its estate, specifically reserves the right to seek all available remedies against the defaulting Winning Bidder, including, but not limited to, specific performance.

Notice Parties:

1. Information that must be provided to the “Notice Parties” under these Bidding Procedures must be provided to the following parties: (a) Rock Creek Advisors LLC, 1738 Belmar Blvd, Belmar, NJ 07719, Attn: Brian Ayers (BAyers@rockcreekfa.com); (b) proposed counsel to the Debtor, Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801, Attn: Matthew P. Ward (matthew.ward@wbd-us.com) and Morgan L. Patterson (morgan.patterson@wbd-us.com); (c) proposed special counsel to the Debtor, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, New York 10019 Attn: Eric Daucher (eric.daucher@nortonrosefulbright.com) and 555 South Flower Street, 41st Floor, Los Angeles, California 90071 Attn: Rebecca J. Winthrop (rebecca.winthrop@nortonrosefulbright.com); (d) Office of the United States Trustee, 844 King Street, Suite 2207, LockBox 35, Wilmington, Delaware 19801, Attn: Joseph Cudia (Joseph.Cudia@usdoj.gov); and (e) the Subchapter V Trustee, Jami Nimeroff (jnimeroff@bmnlawyers.com).

“As Is, Where Is”:

1. Consummation of any Transaction will be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtor or its estate, except as specifically accepted or agreed to by the Debtor. Except as specifically accepted or agreed to by the Debtor, all of the Debtor’s right, title, and interest in and to the respective assets will be transferred to the Winning Bidder free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests in accordance with sections 363(f) and 1123(a)(5)(D) of the Bankruptcy Code, as applicable.
 - By submitting a Bid, except as specifically accepted or agreed to by the Debtor, each Acceptable Bidder will be deemed to acknowledge and represent that it (A) has had an opportunity to conduct adequate due

diligence regarding the Transaction prior to making its Bid, (B) has relied solely on its own independent review, investigation, and inspection of any document, including executory contracts and unexpired leases, in making its Bid, and (C) did not rely on or receive from any party any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, with respect to the Transaction or the completeness of any information provided in connection with the Transaction or the Auction.

Reservation of Rights (Local Rule 6004-1(c)):

1. The Debtor reserves its right to modify these Bidding Procedures in its business judgment, in consultation with the Subchapter V Trustee, in any manner that is not inconsistent with prior orders of the Court or applicable law and will best promote the goals of these Bidding Procedures, or impose, at or prior to the Auction, additional customary terms and conditions on a Transaction, including: (i) extending the deadlines set forth in these Bidding Procedures; (ii) adjourning the Auction at the Auction; (iii) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (iv) canceling the Auction; and (v) rejecting any or all Bids or Qualified Bids. Nothing in these Bidding Procedures shall abrogate the fiduciary duties of the Debtor.

Consent to Jurisdiction:

1. All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction, and enforcement of these Bidding Procedures.

Sale Hearing:

1. A hearing to consider approval of the Transaction and the sale to the Winning Bidder (the “Sale Hearing”) will be held on or about October 24, 2022, which Sale Hearing may be combined with a hearing to consider confirmation of a chapter 11 plan to implement Transaction if the Debtor and the Winning Bidder desire to consummate such Transaction through a chapter 11 plan, and otherwise in accordance with any scheduling order entered by the Court.

Any party wishing to object to approval of the Transaction and the sale (a “Sale Objection”) to the Stalking Horse Bidder shall, by no later than October 17, 2022 at 4:00 p.m. (prevailing Eastern Time), file with the Bankruptcy Court and serve its Sale Objection on the Notice Parties. Any party wishing to object to approval of the Transaction and the sale to a Winning Bidder or Backup Bidder other than the Stalking Horse Bidder or wishing to object to the conduct of the Auction (an “Auction Objection”) shall, by no later than October 19, 2022 at 4:00 p.m. (prevailing Eastern Time), file and serve its Sale Objection or Auction Objection, as applicable, on the Notice parties.

Any party failing to timely file a Sale Objection or an Auction Objection, as applicable, will be forever barred from objecting and will be deemed to have consented to the Sale, including the transfer of the Debtor’s right, title and interest in, to, and under the assets free and clear of any and all liens, claims, interests, and encumbrances in accordance with the definitive agreement for the Transaction.

Return of Deposit:

- 1.** The Deposit of the Winning Bidder shall be applied to the Purchase Price of such Transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more escrow accounts on terms acceptable to the Debtor and shall be returned (other than with respect to the Winning Bidder and the Backup Bidder) on the date that is three business days after the Auction.
- 2.** If a Winning Bidder fails to consummate a proposed Transaction because of a breach by such Winning Bidder, the Debtor will not have any obligation to return the Deposit deposited by such Winning Bidder, which may be retained by the Debtor as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtor and its estate, and the Debtor shall be free to consummate the proposed Transaction with the applicable Backup Bidder without the need for an additional hearing or order of the Court.

If the Debtor receives two or more Qualified Bids (including the Stalking Horse Bid), the Debtor will conduct the Auction to determine the Winning Bidder with respect to the Transaction.

Safe Harbor Statement

This Memorandum contains forward-looking statements. These statements are made under the "safe harbor" provisions of the U.S. Private Securities Litigation Reform Act of 1995. These forward-looking statements can be identified by words or phrases such as "will," "expects," "anticipates," "future," "intends," "plans," "believes," "estimates" and similar statements. Among other things, the business outlook and statements provided by management contain forward-looking statements. Statements that are not historical facts, including statements about the Company's beliefs and expectations, are forward-looking statements. Forward-looking statements involve inherent risks and uncertainties. A number of important factors could cause actual results to differ materially from those contained in any forward-looking statement. The Sale Agent or any of its affiliates do not undertake any obligation to update any forward-looking statement, except as required under applicable law.

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