

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

In re

BURGESS BIOPOWER, LLC, *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-10235 (LSS)

(Jointly Administered)

**Re. D.I.**

**ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) APPROVING THE SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE FIRST AMENDED JOINT PLAN OF REORGANIZATION OF BURGESS BIOPOWER, LLC AND BERLIN STATION, LLC; (C) APPROVING THE FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH; (D) SCHEDULING CERTAIN DATES WITH RESPECT THERETO; AND (E) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for entry of an order pursuant to sections 105, 1125, 1126, and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017, 3018, 3020, and Local Rules 2002-1, 3017-1, 3018-1, and 3020-1 (a) approving the Disclosure Statement, (b) approving the Solicitation and Notice Procedures with respect to confirmation of the Plan, (c) approving the forms of Ballots and Notices in connection therewith, (d) scheduling certain dates with respect thereto, and (e) granting related relief, all as more fully set forth in the Motion; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and this Court having found that

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Burgess BioPower, LLC (0971) and Berlin Station, LLC (1913). The Debtors' corporate headquarters are located at c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408.

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

this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that due and proper notice of the Motion and the hearing thereon was adequate and appropriate under the circumstances and no other or further notice need be provided; and this Court having reviewed the Motion; and upon the Motion and the record of any hearing on the Motion, as applicable; and this Court having determined that the legal and factual bases set forth in the Motion and at any applicable hearing establish just cause for the relief granted herein and that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.

**I. Approval of the Disclosure Statement**

2. The Disclosure Statement is hereby approved as providing holders of Claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan in accordance with section 1125(a)(1) of the Bankruptcy Code.

3. The Disclosure Statement (including all applicable exhibits thereto) provides holders of Claims, holders of Interests, and other parties in interest with sufficient notice of the injunction, exculpation, and release provisions contained in Article VIII of the Plan, in satisfaction of the requirements of Bankruptcy Rule 3016(c).

## II. Approval of the Solicitation and Voting Procedures

4. The Debtors are authorized to solicit, receive, and tabulate votes to accept the Plan in accordance with the Solicitation and Voting Procedures attached hereto as **Exhibit 1**, which are hereby approved in their entirety.

5. Any party wishing to file a motion under Bankruptcy Rule 3018(a) to temporarily allow a Claim or Interest for purposes of voting to accept or reject the Plan shall have until seven (7) days from the later of (a) the mailing of the Confirmation Hearing Notice and (b) the filing of a claim objection to file such a motion. The Debtors and other parties in interest shall have until the date that is seven (7) days prior to the Voting Deadline as the deadline by which the Debtors or other parties in interest must file objections to any motion filed pursuant to Bankruptcy Rule 3018(a). Any party wishing to object to claims for voting purposes shall have until **April 23, 2024**, the date that is twenty-one (21) days prior to the Voting Deadline, **provided** that such objection is consistent with the Final DIP Order [D.I. 263].

## III. Approval of the Materials and Timeline for Soliciting Votes

### A. Approval of Key Dates and Deadlines with Respect to the Plan and Disclosure Statement

6. The following dates are hereby established (subject to modification as necessary) with respect to the solicitation of votes to accept, and voting on, the Plan:

- a. **Voting Record Date. April 8, 2024;**
- b. **Solicitation Deadline.** the Debtors shall distribute Solicitation Packages to holders of Claims entitled to vote on the Plan by the date that is three (3) business days from the entry of this Order (the "Solicitation Deadline");
- c. **Publication Deadline.** The date that is five (5) business days from the entry of this Order as the last date by which the Debtors shall submit the Confirmation Hearing Notice for publication in a format modified for publication;

- d. **Voting Deadline. May 14, 2024 at 4:00 p.m.** prevailing Eastern Time as the deadline by which **all** Ballots must be properly executed, completed, and delivered so that they are **actually received** (the “Voting Deadline”) by Epiq Corporate Restructuring, LLC (the “Solicitation Agent”);
- e. **Deadline to File Voting Report. May 16, 2024 at 4:00 p.m.** prevailing Eastern Time as the date by which the report tabulating the voting on the Plan (the “Voting Report”) shall be filed with the Court.

**B. Approval of the Form of, and Distribution of, Solicitation Packages to Parties Entitled to Vote on the Plan**

7. In addition to the Disclosure Statement, and exhibits thereto, and the Plan, the Solicitation Packages to be transmitted on or before the Solicitation Deadline to those holders of Claims in the Voting Classes entitled to vote on the Plan as of the Voting Record Date, shall include the following, the form of each of which is hereby approved:

- a. an appropriate form of Ballot attached hereto as **Exhibits 2A** and **2B**, respectively;<sup>3</sup>and
- b. the Confirmation Hearing Notice attached hereto as **Exhibit 6**.

8. The Solicitation Packages provide the holders of Claims entitled to vote on the Plan with adequate information to make informed decisions with respect to voting on the Plan in accordance with the Bankruptcy Code, Bankruptcy Rules 2002(b) and 3017(d), and Local Rules 2002-1 and 3017-1.

9. The Debtors shall distribute Solicitation Packages to all holders of Claims entitled to vote on the Plan on or before the Solicitation Deadline. Such service shall satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

---

<sup>3</sup> The Debtors will use commercially reasonable efforts to ensure that any holder of a Claim who has filed duplicate Claims against the Debtors (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class, receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class.

10. The Debtors are authorized, but not directed or required, to distribute the Plan, the Disclosure Statement, and this Order to holders of Claims entitled to vote on the Plan in electronic format).

11. On or before the Solicitation Deadline, the Debtors (through their Solicitation Agent) shall provide complete Solicitation Packages (other than Ballots) to the Office of the United States Trustee for the District of Delaware and to all parties on the Rule 2002 List as of the Voting Record Date.

12. Any party that receives the materials in electronic format that would prefer to receive materials in paper format may contact the Solicitation Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

13. The Solicitation Agent is authorized to assist the Debtors in: (a) distributing the Solicitation Package; (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by holders of Claims against the Debtors; (c) responding to inquiries from holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan; and (d) soliciting votes on the Plan.

14. The Solicitation Agent is also authorized to accept Ballots and Opt-Out Forms via electronic online transmission solely through a customized online balloting portal on the Debtors' case website. The encrypted data and audit trail created by such electronic submission shall become part of the record of any Ballot or Opt-Out Form submitted in this manner and the creditor's electronic signature will be deemed to be immediately legally valid

and effective. Ballots or Opt-Out Forms submitted via the customized online balloting portal shall be deemed to contain an original signature.

15. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first-class U.S. mail, in the return envelope provided with each Ballot; (b) overnight delivery; or (c) personal delivery, such that the Ballots are **actually received** by the Solicitation Agent no later than the Voting Deadline at the return address set forth in the applicable Ballot. Alternatively, Ballots may be submitted electronically through the Solicitation Agent's online Ballot submission portal at <https://dm.epiq11.com/case/burgess> by no later than the Voting Deadline. The Debtors, in consultation and with the consent of the DIP Lenders and Senior Lenders, are authorized to extend the Voting Deadline without further order of the Court.

**C. Approval of the Confirmation Hearing Notice**

16. The Confirmation Hearing Notice, substantially in the form attached hereto as **Exhibit 6** is approved and shall be deemed good and sufficient notice of the Confirmation Hearing and no further notice need be given. The Debtors shall file and serve the Confirmation Hearing Notice upon parties in interest in these chapter 11 cases by no later than the date that is five (5) business days from the entry of this Order. The Debtors shall also cause the Confirmation Hearing Notice, as may be modified for purposes of publication, to be published one time on or before the date that is five (5) business days from the entry of this Order in: (a) the *New York Times*, (b) the *Boston Globe*, and (c) the *Berlin Sun*. Service of the Confirmation Hearing Notice, as well as the publication of such notice, as set forth herein constitutes adequate and sufficient notice of the hearings to consider approval of the Plan, the manner in which a copy of the Plan could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

**D. Plan Supplement**

17. The Plan Supplement (as may be amended) shall be filed at least seven (7) days prior to the Voting Deadline, and notice of such filing shall be served on the Office of the United States Trustee for the District of Delaware and to all parties on the Rule 2002 List.

**E. Approval of the Form of Notices to Non-Voting Classes**

18. Except to the extent that the Debtors determine otherwise, the Debtors are not required to provide Solicitation Packages to holders of Claims or Interests in Non-Voting Classes, as such holders are not entitled to vote on the Plan. Instead, on or before the Solicitation Deadline, the Solicitation Agent shall mail (first-class postage pre-paid) a Non-Voting Status Notice in lieu of Solicitation Packages, the form of each of which is hereby approved, to those parties outlined below that are not entitled to vote on the Plan:

- a. ***Unimpaired Claims—Conclusively Presumed to Accept.*** Holders of Claims in Classes 1A, 1B, 2A, 2B, 4B, 5B and 6B are not impaired under the Plan and, therefore, are conclusively presumed to have accepted the Plan. As such, holders of such Claims will receive a notice, substantially in the form attached hereto as **Exhibit 3**, in lieu of a Solicitation Package.
- b. ***Other Interests and Claims—Deemed to Reject.*** Holders of Claims and Interests in Classes 4A, 5A, 6A, 7A, 7B, and 8A are receiving no distribution under the Plan and, therefore, are deemed to reject the Plan and will receive a notice, substantially in the form attached hereto as **Exhibit 4**, in lieu of a Solicitation Package.
- c. ***Disputed Claims.*** Holders of Claims subject to a pending objection by the Debtors are not entitled to vote the disputed portion of their claim. As such, holders of such Claims will receive a notice, substantially in the form attached to this Order as **Exhibit 5**.

19. The Debtors are not required to mail Solicitation Packages or other solicitation materials to: (a) holders of Claims that have already been paid in full during these chapter 11 cases pursuant to an order previously entered by this Court; or (b) any party to whom notice of the Disclosure Statement Hearing was sent but subsequently returned as undeliverable. The Debtors

are likewise authorized to rely on the address information for the Voting and Non-Voting Classes as compiled and maintained by the Solicitation Agent as of the Voting Record Date, such that the Debtors and Solicitation Agent will not be required to conduct any additional research for updated addresses based on undeliverable Solicitation Packages or Notices of Non-Voting Status and will not be required to resend Solicitation Packages or other materials, including Notices of Non-Voting Status, that are returned as undeliverable.

**F. Approval of Notices to Contract and Lease Counterparties**

20. The Debtors were authorized to mail a notice of assumption (or assumption and assignment) or rejection of any Executory Contracts or Unexpired Leases (and any corresponding cure claims), in the form approved by this Court pursuant to the Order, dated March 25, 2024 [D.I. 288], to the applicable counterparties to Executory Contracts and Unexpired Leases that will be assumed (or assumed and assigned) in connection with the Plan, whether under a Sale Scenario and/or Stand-Alone Restructuring Scenario.

**IV. Approval of Procedures for Confirming the Plan**

**A. Approval of the Timeline for Filing Objections to the Plan and Confirming the Plan**

21. The following dates are hereby established (subject to modification as needed) with respect to filing objections to the Plan and confirming the Plan:

- a. **Plan Supplement Filing Date.** The date that is seven (7) days prior to the Voting Deadline as the deadline by which the Debtors must file the initial Plan Supplement;
- b. **Plan Objection Deadline: May 14, 2024, 2024, at 4:00 p.m.** prevailing Eastern Time shall be the date by which objections to the Plan must be filed with this Court and served on the appropriate notice parties (as identified below) (the “Plan Objection Deadline”);
- c. **Deadline to file Voting Report. May 16, 2024, at 4:00 p.m.** prevailing Eastern Time shall be the date by which the Voting Report must be filed with this Court;

- d. **Plan Objection Reply Deadline: May 17, 2024, at 4:00 p.m.** prevailing Eastern Time shall be the date by which replies to objections to the Plan must be filed with this Court and served by the appropriate notice parties (the “Plan Objection Reply Deadline”);
- e. **Deadline to File the Confirmation Brief: May 16, 2024, at 4:00 p.m.** prevailing Eastern Time shall be the date by which the Debtors shall file their brief in support of Confirmation; and
- f. **Confirmation Hearing Date:** this Court shall consider Confirmation of the Plan at the hearing to be held on **May 21, 2024, at 10:00 a.m.** prevailing Eastern Time (the “Confirmation Hearing Date”).

**B. Approval of the Procedures for Filing Objections to the Plan**

22. Objections to the Plan may not be considered by this Court unless such objections are timely filed and properly served in accordance with this Order. Specifically, all objections to confirmation of the Plan or requests for modifications to the Plan, if any, **must:** (a) be in writing; (b) conform to the Bankruptcy Rules and the Local Rules; (c) state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and (d) be filed with this Court (contemporaneously with a proof of service) and served upon the notice parties identified in the Confirmation Hearing Notice on or before **May 14, 2024, at 4:00 p.m.** prevailing Eastern Time.

**V. Miscellaneous**

23. The Debtors’ right to modify the Plan in accordance with Article X thereof, including the right to withdraw the Plan as to any or all Debtors at any time before the Confirmation Hearing Date, is hereby reserved.

24. Nothing in this Order shall be construed as a waiver of the right of the Debtors or any other party in interest, as applicable, to object to a proof of claim after the Voting Record Date.

25. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

26. This Court shall retain jurisdiction over all matters arising from or related to the interpretation, implementation, and enforcement of this Order.

**Exhibit 1**

**Solicitation and Voting Procedures**

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

In re

BURGESS BIOPOWER, LLC, *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-10235 (LSS)

(Jointly Administered)

**SOLICITATION AND VOTING PROCEDURES**

**PLEASE TAKE NOTICE THAT**, on April [•], 2024, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order (the “Disclosure Statement Order”), (a) authorizing Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”) and together with Burgess, the “Debtors”), to solicit acceptances for the *Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (as modified, amended, or supplemented from time to time, the “Plan”); (b) approving the *Disclosure Statement for the Joint Chapter 11 Plan of Burgess BioPower, LLC and Berlin Station, LLC* (as modified, amended, or supplemented from time to time, the “Disclosure Statement”)² as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

**A. The Voting Record Date for Class 3A (Berlin Senior Note Claims) and Class 3B (Burgess Senior Notes Claims)**

The record date to determine which Claims in Class 3A (Berlin Senior Note Claims) and Class 3B (Burgess Senior Notes Claims) are entitled to vote with respect to the Plan is April 8, 2024.

**B. The Voting Deadline**

The Court has approved **May 14, 2024, at 4:00 p.m. prevailing Eastern Time** as the voting deadline (the “Voting Deadline”) for the Plan. The Debtors, in consultation and with the consent of the DIP Lenders and Senior Lenders, are authorized to extend the Voting Deadline without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots sent to registered holders of Claims (each, a “Ballot”) must be properly executed, completed, and

---

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number are: Burgess BioPower, LLC (0971) and Berlin Station, LLC (1913). The Debtors’ corporate headquarters are located at c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408.

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

returned in the pre-paid, pre-addressed return envelope included in the Solicitation Package or delivered by: (i) first-class U.S. mail; (ii) overnight courier; (iii) personal delivery; or (iv) “E-Ballot”, so that they are **actually received**, in any case, no later than the Voting Deadline by Epiq Corporate Restructuring, LLC (the “Solicitation Agent”). All Ballots returned by first-class U.S. mail should be sent to: Burgess BioPower, LLC c/o Epiq Ballot Processing, LLC, P.O. Box 4422, Beaverton, OR 97076-4422. All Ballots returned by overnight courier or personal delivery should be sent or delivered, as applicable, to: Burgess BioPower, LLC c/o Epiq Ballot Processing, LLC, 10300 SW Allen Boulevard, Beaverton, OR 97005. Return of Ballots via “E-Ballot” submission must be made by visiting <https://dm.epiq11.com/case/burgess>. Delivery of a Ballot to the Solicitation Agent by facsimile or electronic mail shall not be valid and shall not be counted by the Solicitation Agent.

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

#### **1. The Solicitation Package**

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

- a. a copy of these Solicitation and Voting Procedures;
- b. the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed By the Debtors and Related Voting and Objection Deadlines*, in substantially the form annexed as Exhibit 6 to the Disclosure Statement Order (the “Confirmation Hearing Notice”);
- c. the applicable form of Ballot, in substantially the form of Ballots annexed as Exhibit 2A & B to the Disclosure Statement Order, including a pre-paid, pre-addressed return envelope;
- d. the approved Disclosure Statement (and exhibits thereto, including the Plan);
- e. the Disclosure Statement Order (without exhibits); and
- f. any additional documents that the Court has ordered to be made available.

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

The Solicitation Package shall provide (a) a copy of the Solicitation and Voting Procedures; (b) a Ballot, together with detailed voting instructions and a pre-addressed, postage pre-paid return envelope; (c) the Disclosure Statement (and exhibits thereto); (d) the Plan; (e) the Disclosure Statement Order (without exhibits, except the Solicitation and Voting Procedures); and (f) the Confirmation Hearing Notice. Except for the Confirmation Hearing Notice and the Ballots, which shall be provided in paper format, all other contents of the Solicitation Package may be provided in electronic format.

Any party that receives the materials in electronic format but would prefer paper format may contact the Solicitation Agent by: (a) calling the Debtors' restructuring hotline at (877) 556-2937 (Domestic, toll-free) or +1 (503) 843-8526 (International); (b) visiting the Debtors' restructuring website at: <https://dm.epiq11.com/case/burgess>; and/or (c) emailing [Burgess@epiqglobal.com](mailto:Burgess@epiqglobal.com) (with "Burgess BioPower Solicitation" in the subject line) and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

The Debtors shall serve, or cause to be served, all of the materials in the Solicitation Package (excluding the Ballots) on the United States Trustee and all parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 as of the Voting Record Date. In addition, the Debtors shall mail, or cause to be mailed, the Solicitation Package to all holders of Claims in the Voting Classes who are entitled to vote by the date that is no later than three (3) business days after the Court enters the Disclosure Statement Order, as described below in Section D.

To avoid duplication and reduce expenses, the Debtors will use commercially reasonable efforts to ensure that any holder of a Claim who has filed duplicative Claims against a Debtor (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class as against that Debtor.

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

- a. Absent a further order of the Court, the holder of a Claim in a Voting Class that is the subject of a pending objection filed with the Court by the Debtors on a "reduce and allow" basis shall be entitled to vote such Claim in the reduced amount contained in such objection.
- b. If a Claim in a Voting Class is subject to an objection other than a "reduce and allow" objection that is filed with the Court by the Debtors at least twenty-one (21) days prior to the Voting Deadline and in accordance with the Final Dip Order [D.I. 263]: (i) the Debtors shall cause the applicable holder to be served with a Disputed Claim Notice substantially in the form annexed as Exhibit 5 to the Disclosure Statement Order; and (ii) the applicable holder shall not be entitled to vote to accept or reject the Plan on account of such Claim unless a Resolution Event (as defined herein) occurs as provided herein.
- c. If a Claim in a Voting Class is subject to an objection other than a "reduce and allow" objection that is filed with the Court by the Debtors after the date that is twenty-one (21) days prior to the Voting Deadline, the applicable Claim shall be deemed temporarily allowed for voting purposes only, without further action by the holder of such Claim and without further order of the Court, unless the Court orders otherwise.

- d. A “Resolution Event” means the occurrence of one or more of the following events no later than three (3) business days prior to the Voting Deadline:
  - i. an order of the Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
  - ii. an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
  - iii. a stipulation or other agreement is executed between the holder of such Claim and the Debtors resolving the objection and allowing such Claim in an agreed-upon amount; or
  - iv. the pending objection is voluntarily withdrawn by the Debtors.
- e. No later than two (2) business days following the occurrence of a Resolution Event, the Debtors shall cause the Solicitation Agent to distribute via electronic mail, hand delivery, or overnight-courier service a Solicitation Package and a pre-addressed, postage pre-paid envelope to the relevant holder.

#### **4. Non-Voting Status Notices for Unimpaired Classes and Classes Deemed to Reject the Plan**

Certain Holders of Claims and Interests that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are Unimpaired or otherwise conclusively presumed to accept the Plan under section 1126(f) of the Bankruptcy Code will receive only the *Notice of Non-Voting Status to Holders of Unimpaired Claims Conclusively Presumed to Accept the Plan*, substantially in the form annexed as Exhibit 3 to the Disclosure Statement Order. Such notice will instruct these holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots). Certain holders of Claims and Interests who are not entitled to vote because they are deemed to reject the Plan under section 1126(g) of the Bankruptcy Code will receive the *Notice of Non-Voting Status to Holders of Impaired Interests Deemed to Reject the Plan*, substantially in the form annexed as Exhibit 4 to the Disclosure Statement Order. Such notice will instruct these holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots).

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

Counterparties to Executory Contracts and Unexpired Leases that receive a notice informing of the potential assumption or assumption and assignment of executory contracts and unexpired leases and any applicable cure amount in the form approved by this Court pursuant to the order dated March 25, 2024 [Docket No. 288] (as may be amended from time to time, the “Cure Notice”) may file an objection to the Debtors’ proposed assumption, assumption and assignment and/or cure amount, as applicable, as set forth in the Cure Notice.

**D. Voting and Tabulation Procedures**

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

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

- a. holders of Claims who, on or before the Voting Record Date, have timely filed a Proof of Claim (or an untimely Proof of Claim that has been Allowed as timely by the Court under applicable law on or before the Voting Record Date) that: (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date; and (ii) is not the subject of a pending objection filed with the Court by the Debtors at least twenty-one (21) days prior to the Voting Deadline, pending a Resolution Event as provided herein; *provided* that a holder of a Claim that is the subject of a pending objection on a “reduce and allow” basis shall receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection absent a further order of the Court;
- b. holders of Claims that are listed in the Schedules (as defined in the Plan) (to the extent a superseding Proof of Claim has not yet been timely filed as of the Voting Record Date); *provided* that if the applicable Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated shall be allowed to vote only in the amount of \$1.00;
- c. holders whose Claims arise: (i) pursuant to an agreement or settlement with the Debtors, as reflected in a document filed with the Court; (ii) in an order entered by the Court; or (iii) in a document executed by the Debtors pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed;
- d. holders of any Disputed Claim that has been temporarily allowed to vote on the Plan pursuant to Bankruptcy Rule 3018(a); and
- e. with respect to any entity described in subparagraphs (a) through (d) above, who, on or before the Voting Record Date, has transferred such entity’s Claim to another Entity, the assignee of such Claim; *provided* that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the Claims Register (as defined in the Plan) as of the Voting Record Date.

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

**Class 3A and 3B Claims.** Notwithstanding anything to the contrary set forth herein, the Claims amount of Senior Notes Claims, including Class 3A (Berlin Senior Notes Claims) and Class 3B (Burgess Senior Notes Claims), for voting purposes only will be established by reference

to the principal amount of such Claims as reflected in the signature pages of the Restructuring Support agreement for each holder of the Senior Notes Claims.

**File/Scheduled Claims.** To the extent applicable, the following applies for Filed and/or Scheduled Claims, whose holders are eligible to vote on the Plan. The Claim amount established herein shall control for voting purposes only and shall not constitute the Allowed (as defined in the Plan) amount of any Claim. Moreover, any amounts filled in on Ballots by the Debtors through the Solicitation Agent, as applicable, are not binding for purposes of allowance and distribution. In tabulating votes, the following hierarchy shall be used to determine the amount of the Claim associated with each claimant's vote:

- a. the Claim amount: (i) settled and/or agreed upon by the Debtors, as reflected in a document filed with the Court; (ii) set forth in an order of the Court; or (iii) set forth in a document executed by the Debtors pursuant to authority granted by the Court;
- b. the Claim amount Allowed (temporarily or otherwise) pursuant to a Resolution Event under the procedures set forth in the Solicitation and Voting Procedures;
- c. the Claim amount contained in a Proof of Claim that has been timely filed (or deemed timely filed by the Court under applicable law), except for any amounts asserted on account of any interest accrued after the Petition Date; *provided, however*, that Ballots cast by holders of Claims who timely file a Proof of Claim in respect of a contingent Claim or in a wholly-unliquidated or unknown amount that is not the subject of an objection will count for satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as Ballots for Claims in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, and, if a Proof of Claim is filed as partially liquidated and partially unliquidated, such Claim will be Allowed for voting purposes only in the liquidated amount; *provided, further*, that to the extent the Claim amount contained in the Proof of Claim is different from the Claim amount set forth in a document filed with the Court as referenced in subparagraph (a) above, the Claim amount in the document filed with the Court shall supersede the Claim amount set forth on the respective Proof of Claim;
- d. the Claim amount listed in the Schedules, *provided* that such Claim is not scheduled as contingent, disputed, or unliquidated (for the avoidance of doubt, to the extent a Claim is scheduled as contingent, disputed, or unliquidated and no Proof of Claim is timely filed, the holder of such Claim shall not be entitled to vote on the Plan), *provided further* that if the Bar Date applicable to governmental units has not expired prior to the Voting Record Date and no Proof of Claim has been filed prior to the Voting Record Date with respect to a Claim of a governmental unit that is listed in

the Schedules as contingent, disputed, or unliquidated, such Claim shall be allowed to vote only in the amount of \$1.00; and

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

### 3. Voting and Ballot Tabulation Procedures

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

- a. Except as otherwise provided in these Solicitation and Voting Procedures, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline (as the same may be extended by the Debtors, in consultation and with the consent of the DIP Lenders and Senior Lenders, or by order of the Court), the Debtors shall reject such Ballot as invalid and, therefore, shall not count it in connection with Confirmation of the Plan.
- b. The Solicitation Agent will date-stamp all Ballots when received. The Solicitation Agent shall retain the original Ballots and an electronic copy of the same for a period of one (1) year after the Effective Date of the Plan, unless otherwise ordered by the Court. The Solicitation Agent shall tabulate Ballots on a Debtor-by-Debtor basis.
- c. The Debtors will file with the Court, not later than **4:00 p.m. prevailing Eastern Time on May 16, 2024**, a certification of votes (the "Voting Report"). The Voting Report shall, among other things, certify to the Court in writing the amount and number of Allowed Claims of each Class accepting or rejecting the Plan, and delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or necessary information, received via facsimile, or damaged (all such Ballots, "Irregular Ballots"). The Voting Report shall indicate the Debtors' intentions with regard to each such Irregular Ballot.
- d. The method of delivery of Ballots to be sent to the Solicitation Agent is at the election and risk of each holder, and, except as otherwise provided, a Ballot will be deemed delivered only when the Solicitation Agent actually receives the executed Ballot.
- e. An executed Ballot is required to be submitted by the entity submitting such Ballot. Subject to the other procedures and requirements herein, completed, executed Ballots may be submitted to the Solicitation Agent via the Solicitation Agent's E-Ballot system at

<https://dm.epiq11.com/case/burgess>. However, Ballots submitted by electronic mail or facsimile will not be valid and will not be counted by the Solicitation Agent.

- f. No Ballot should be sent to the Debtors, the Debtors' agents (other than the Solicitation Agent), the Debtors' financial or legal advisors, and any Ballot so sent will not be counted.
- g. If multiple Ballots are received from the same holder with respect to the same Claim prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot.
- h. Holders must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims within the same Class, the Debtor may, in its discretion, aggregate the Claims of any particular holder within a Class for the purpose of counting votes.
- i. A person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a holder of Claims must indicate such capacity when signing.
- j. The Debtors, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report.
- k. Neither the Debtors, nor any other entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification.
- l. Unless waived or otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted.
- m. In the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected.
- n. If a Claim has been estimated or otherwise Allowed for voting purposes only by order of the Court, such Claim shall be temporarily Allowed in the

amount so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution.

- o. If an objection to a Claim is filed, such Claim shall be treated in accordance with the procedures set forth herein.
- p. The following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of such Claim; (ii) any Ballot cast by any entity that does not hold a Claim in a Voting Class; (iii) any Ballot cast for a Claim scheduled as unliquidated, contingent, or disputed for which no Proof of Claim was timely filed, *provided* that if the Bar Date applicable to governmental units has not expired prior to the Voting Record Date and no Proof of Claim has been filed prior to the Voting Record Date with respect to a Claim of a governmental unit that is listed in the Schedules as contingent, disputed, or unliquidated, such Claim shall be allowed to vote only in the amount of \$1.00; (iv) any unsigned Ballot or Ballot lacking an original signature (for the avoidance of doubt, a Ballot cast via the Debtors' online "E-Ballot" submission portal will be deemed to have an original signature); (v) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; (vi) any Ballot submitted by any electronic means other than via the Debtors' online "E-Ballot" submission portal; (vii) any Ballot submitted to the Debtors or any person, entity, or agent of the Debtors other than the Solicitation Agent; and (viii) any Ballot submitted by any entity not entitled to vote pursuant to the procedures described herein.
- q. Any claimant who had delivered a valid Ballot voting on the Plan may withdraw or change such vote solely in accordance with Bankruptcy Rule 3018(a).
- r. The Debtors are authorized to enter into stipulations with the holder of any Claim agreeing to the amount of a Claim for voting purposes.
- s. Where any portion of a single Claim has been transferred to a transferee, the holders of any portion of such single Claim will be: (i) treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code (and for the other voting and solicitation procedures set forth herein); and (ii) required to vote every portion of such Claim collectively to accept or reject the Plan. In the event that: (i) a Ballot; (ii) a group of Ballots within a Voting Class received from a single creditor; or (iii) a group of Ballots received from the various holders of multiple portions of a single Claim partially reject and partially accept the Plan, such Ballots shall not be counted.

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

The Debtors reserve the right to make non-substantive or immaterial changes to the Disclosure Statement, Plan, Confirmation Hearing Notice, Solicitation Packages, Non-Voting Status Notices, Ballots, Solicitation and Voting Procedures, and related documents without further order of the Court, including changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution, in each case, subject to the terms of the Plan and RSA.