

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF an application of  
Rambler Metals and Mining Canada  
Limited and 1948565 Ontario Inc.

AND IN THE MATTER OF the *Companies'*  
*Creditors Arrangement Act*, R.S.C. 1985,  
c. C-36, as amended ("**CCAA**")

**SALES AND INVESTMENT SOLICITATION PROCESS ORDER**

THE APPLICANTS Rambler Metals and Mining Canada Limited ("**Rambler Canada**") and 1948565 Ontario Inc. ("**1948**") (collectively, the "**Rambler Group**" or the "**Applicants**") have applied for an order approving a sales and investment solicitation process (the "**SISP**");

**ON READING** the materials filed by Rambler Group and the Monitor's Second Report, dated March 13, 2023;

**ON HEARING** the submissions of Joe Thorne, counsel for the Rambler Group, and such other counsel that were present, no one else appearing for any party although duly served as outlined in the affidavit of service dated March 13, 2023;

**DEFINITIONS**

1. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures (as defined below).

**SERVICE**

2. **THIS COURT ORDERS** that the time for service of the Notice of Application and the materials filed, as set out in the affidavit of service is hereby deemed adequate notice so that this application is properly returnable today and hereby dispenses with further service thereof.

**SISP**

3. **THIS COURT ORDERS** that the SISP set forth in the procedures attached as **Schedule A** to this Order (the "**Bidding Procedures**") is approved.

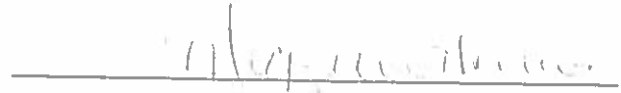
4. **THIS COURT ORDERS** that the Monitor, with the assistance of the Rambler Group, may implement the SISP and take such steps and execute such documentation as may be necessary or incidental to carry out the SISP, the whole in accordance with the Bidding Procedures.
5. **THIS COURT ORDERS** that Rambler Group and the Monitor, as well as their respective affiliates, partners, directors, employees, agents and controlling persons, shall have no liability with respect to any and all losses, claims, damages, or liability of any nature or kind to any person in connection with or as a result of performing their duties under the SISP, except to the extent of such losses, claims, damages, or liabilities result from gross negligence or willful misconduct of any such person or entity, as applicable, as determined by this Court.

#### **GENERAL**

6. **THIS COURT ORDERS** that the Monitor, with the assistance of the Rambler Group, are authorized and permitted under applicable law to disclose and transfer to Potential Bidders and to their advisors personal information in the custody or control of the Rambler Group relating to the operation of the business, including human resources and payroll information, records pertaining to the Rambler Group's past and current employees, and information about any consumer, website visitor or other individual (collectively, "**Personal Information**"), but only to the extent necessary to negotiate, determine whether to proceed with, and attempt to complete a transaction in accordance with the SISP (a "**Transaction**"). Each Potential Bidder to whom any Personal Information is disclosed shall maintain and protect the Personal Information with security safeguards appropriate to the sensitivity of the Personal Information and as may otherwise be required by applicable federal or provincial privacy legislation and limit the use of such information to its evaluation of a Transaction, and if it does not complete a Transaction with the Rambler Group, shall return all such information to the Rambler Group, or in the alternative permanently destroy all such information.
7. **THIS COURT ORDERS** that the Monitor and the Rambler Group may from time to time apply to this Court for advice and directions in the discharge of their respective powers and duties hereunder or under the SISP.
8. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States of America, in the

United Kingdom, or elsewhere to give effect to this Order and to assist the Monitor and the Rambler Group, as applicable, and their respective agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Newfoundland Standard/Daylight Time on the date of this Order.



**Assistant Deputy Registrar**



**SCHEDULE A**

*or*

## Procedures for the Sale and Investment Solicitation Process

On February 27, 2023, Rambler Metals and Mining Canada Limited (“**Rambler Canada**”) and 1948565 Ontario Inc. (“**1948**”) (collectively, the “**Rambler Group**”). Rambler Metals and Mining, plc, (“**Rambler UK**”), and Rambler Mines Limited (“**Rambler Mines**” and with Rambler UK and the Rambler Group, collectively the “**Companies**”), commenced proceedings pursuant to the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) before the Supreme Court of Newfoundland and Labrador (in Bankruptcy and Insolvency) in the City of St. John’s in the Province of Newfoundland and Labrador (the “**Court**”) pursuant to an order granted by the Court on February 27, 2023. Said order was amended and restated by the Court on March 6 and 7, 2023 (collectively, as further amended and restated from time to time, the “**Initial Order**”).

Pursuant to the Initial Order, Grant Thornton Limited was appointed as monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”).

On March 15, 2023, the Court granted an order (the “**Bidding Procedures Order**”), authorizing the Rambler Group to undertake a sale and investment solicitation process (“**SISP**”) for the sale of the Rambler Group’s business, property, assets and undertakings (collectively, the “**Business**”). The SISP shall be conducted by the Monitor in conjunction with an investment banker if deemed necessary, supported by the Rambler Group as required, in the manner set forth herein.

Among other things, the Bidding Procedures Order authorizes and directs the Monitor and the Rambler Group to conduct the SISP in accordance with the bidding procedures set out herein (the “**Bidding Procedures**”) governing the solicitation of offers or proposals (each a “**Bid**”) for the acquisition of the Business or some portion thereof.

### Defined Terms

1. Capitalized terms used in this SISP have the meanings given thereto in Appendix A.

### Bidding Procedures

#### *Opportunity*

2. The SISP is intended to solicit interest in, and opportunities for: (i) one or more sales or partial sales of all, substantially all, or certain portions of the Business; and/or (ii) for an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Rambler Group or its Business. Bids considered pursuant to the SISP may include one or more of an investment, restructuring, recapitalization, refinancing or other form of reorganization of the business and affairs of the Rambler Group as a going concern or a sale (or partial sales) of all, substantially all, or certain aspects of the Business, or a combination thereof (the “**Opportunity**”).
3. All interested parties are encouraged to submit bids based on any form of Opportunity that they may elect to advance pursuant to the SISP, including as a Sale Proposal or an Investment Proposal.
4. The Bidding Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning the Rambler Group and the Business, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder and the

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requisite approvals to be sought from the Court in connection therewith. The Monitor shall conduct the SISP in the manner set forth herein.


The Monitor, in consultation with the Rambler Group and the DIP Lenders, may at any time and from time to time, modify, amend, vary or supplement, whether material or immaterial the SISP or the Bidding Procedures, if necessary or useful in order to give effect to the substance of the SISP, the Bidding Procedures and the Bidding Procedures Order.

The Monitor shall post on the Monitor's website, as soon as practicable, any such modification, amendment, variation or supplement to the Bidding Procedures and inform the bidders impacted by such modifications.

In the event of a dispute as to the interpretation or application of the SISP or Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute.

5. No bidder may request or receive any form of bid protection as part of any bid made pursuant to the SISP.

As more particularly set out herein, a summary of the key dates pursuant to the SISP are as follows:<sup>1</sup>

Event	Date
<p><b><u>1. Due Diligence</u></b> Commence on-site and virtual due diligence, to prepare and assess best approach for the SISP.</p>	<p>By no later than April 14, 2023, at 5:00 p.m. (Newfoundland Standard Time).</p>
<p><b><u>2. Solicitation Letter</u></b> Distribute a solicitation letter to potential interested parties.</p>	<p>By no later than April 14, 2023, at 5:00 p.m. (Newfoundland Standard Time).</p>
<p><b><u>3. Confidential Information Memorandum and Virtual Data Room</u></b> Prepare and have available for parties having executed a non-disclosure agreement (Potential Bidders) the confidential information memorandum and access to the virtual data room.</p>	<p>By no later than April 14, 2023, at 5:00 p.m. (Newfoundland Standard Time) or such later time as agreed by the Monitor.</p>
<p><b><u>4. Phase 1 Qualified Bidders &amp; Bid Deadline</u></b> Phase 1 Bid Deadline of non-binding letters of intent by Phase 1 bidders.</p>	<p>By no later than May 19, 2023, at 5:00 p.m. (Newfoundland Standard Time).</p>
<p><b><u>5. Phase 1 Successful Bids</u></b> Notify each Phase 1 bidder in writing as to whether its bid constituted a Phase 1 successful bid.</p>	<p>By no later than May 26, 2023, at 5:00 p.m. (Newfoundland Standard Time).</p> 

<b>Event</b>	<b>Date</b>
<b><u>6. Phase 2 Bid Deadline &amp; Qualified Bidders</u></b> Phase 2 bid deadline of definitive offers.	By no later than July 21, 2023, at 5:00 p.m. (Newfoundland Standard Time).
<b><u>7. Auction</u></b> Auction Commencement Date (if needed)	By no later than July 28, 2023
<b><u>8. Selection of Successful Bidder</u></b> Deadline for selection of final successful bidder.	By no later than July 28, 2023, at 5:00 p.m. (Newfoundland Standard Time).
<b><u>9. Definitive Documentation</u></b> Deadline for completion of definitive documentation in respect of successful bidder.	By no later than August 4, 2023.
<b><u>10. Approval Motion – Successful Bid</u></b> Deadline for filing of Approval Motion in respect of successful bidder.	By no later than August 25, 2023.
<b><u>11. Closing – Successful Bid</u></b> Anticipated deadline for closing of Successful Bidder being the Target Closing Date.	August 31, 2023 or such earlier date as is achievable.

<sup>1</sup> All capitalized terms not already defined are defined further below. Titles in the chart are for presentation purposes only.

### ***Solicitation of Interest: Notice of the SISP***

6. As soon as reasonably practicable after the granting of the Bidding Procedures Order, the Monitor shall:
  - (a) publish a notice of the SISP and such other relevant information which the Rambler Group, in consultation with the Monitor and the DIP Lenders, considers appropriate shall be published in the *National Post*, the *Telegram (NL)* and *The Globe & Mail* and such other publications as may be considered appropriate;
  - (b) publish a press release setting out the notice and such other relevant information regarding the Opportunity as may be considered appropriate, shall be issued with *Canada Newswire* designating dissemination in Canada; and
  - (c) contact any parties that have already reached out to the Monitor expressing their interest.
7. The Monitor shall send a letter describing the Opportunity (a "**Solicitation Letter**"). outlining the SISP and inviting recipients of the Solicitation Letter to express their interest pursuant to the SISP, for distribution to potential bidders as soon as practical.

### ***Virtual Data Room***

8. A confidential virtual data room (the "**VDR**") in relation to the Opportunity will be made available by the Rambler Group or the Monitor to Potential Bidders that have executed the NDA (as defined below) in accordance with paragraph 9 herein. The VDR will be made available as soon as practicable. Following the completion of "**Phase 1**", but prior to the completion of "**Phase 2**", additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect of the Rambler Group and the Opportunity. The Monitor, in consultation with the Rambler Group and the DIP Lenders, may establish or cause the Rambler Group to establish separate VDRs (including "**clean rooms**"), if the Monitor reasonably determines that doing so would further the Rambler Group's and any Potential Bidders' compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information. The Monitor may also, in consultation with the Rambler Group and the DIP Lenders, limit the access of any Potential Bidder to any confidential information in the VDR where the Monitor reasonably determines that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Business or its value.

### **PHASE 1: NON-BINDING LOIS**

#### ***Phase 1 Qualified Bidders and Delivery of Confidential Information Memorandum***

9. In order to participate in the SISP, and prior to the distribution of any confidential information to an interested party (including access to the VDR), such interested party must deliver to the Monitor at the address specified in Appendix B hereto (including by email) a Non-Disclosure Agreement (an "**NDA**") which shall enure to the benefit of any Successful Bidder that closes a transaction contemplated by the Successful Bid. Pursuant to the terms of the NDA to be signed by a potential bidder (each potential bidder who has



executed an NDA with the Monitor, a "**Potential Bidder**"), each Potential Bidder will be prohibited from communicating with any other Potential Bidder regarding the Opportunity during the term of the SISP, without the consent of the Monitor. Prior to the Monitor executing an NDA with any potential bidder, any potential bidder may be required to provide evidence, reasonably satisfactory to the Monitor, in consultation with the Rambler Group, of its financial wherewithal to complete a transaction in respect of the Opportunity (either with existing capital or with capital reasonably anticipated to be raised prior to closing) and/or to disclose details of their ownership and/or investors. For the avoidance of doubt, a party who has executed an NDA or a joinder with a Potential Bidder for the purpose of providing financing to a Potential Bidder in connection with the Opportunity (such party a "**Financing Party**") shall not be deemed a Potential Bidder for purposes of the SISP, provided that such Financing Party undertakes to inform the Monitor in the event that it elects to act as a Potential Bidder.

10. A Potential Bidder that has executed an NDA and provided any additional information required pursuant to paragraph 9, will be deemed a "**Phase 1 Qualified Bidder**" and will be promptly notified of such classification by the Monitor.
11. The Monitor with the assistance of the Rambler Group and the DIP Lenders, as required, will prepare and send to each Phase 1 Qualified Bidder a confidential information memorandum providing additional information considered relevant to the Opportunity (a "**CIM**") as soon as practicable. The Monitor, the Rambler Group, the DIP Lenders and their respective advisors make no representation or warranty as to the information contained in the CIM or otherwise made available pursuant to the SISP.
12. The Monitor shall provide any person deemed to be a Phase 1 Qualified Bidder with access to the VDR. The Monitor, the Rambler Group, the DIP Lenders and their respective advisors make no representation or warranty as to the information contained in the VDR. The VDR shall contain a template letter of intent (the "**Template LOI**") and a template purchase and sale agreement ("**Template PSA**").
13. If a Phase 1 Qualified Bidder wishes to submit a bid, it must deliver a non-binding letter of intent (an "**LOI**") (each such LOI, provided in accordance with paragraph 14 below, a "**Phase 1 Qualified Bid**"), to the Monitor at the address specified in Appendix B hereto (including by email) so as to be received by the Monitor not later than 5:00 p.m. (Newfoundland Standard Time) on May 19, 2023, or such other date or time as may be agreed by the Monitor in consultation with the Rambler Group and the DIP Lenders (the "**Phase 1 Bid Deadline**"). To the extent possible, the Phase 1 Qualified Bid should follow the format as set out in the Template LOI.
14. An LOI submitted by a Phase 1 Qualified Bidder will only be considered a "**Phase 1 Qualified Bid**" if the LOI complies at a minimum with the following:
  - (a) it has been duly executed by all required parties;
  - (b) it is received by the Phase 1 Bid Deadline;
  - (c) it provides written evidence, satisfactory to the Monitor, in consultation with the Rambler Group and the DIP Lenders, of the ability to consummate the transaction within

the timeframe contemplated by the SISP and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital;

- (d) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such approvals;
- (e) it: (i) identifies the Qualified Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Qualified Phase 1 Bidder for all purposes regarding the contemplated transaction; and (ii) fully discloses the identity of each entity or person that will be sponsoring, participating in or benefiting from the transaction contemplated by the LOI;
- (f) an outline of any additional due diligence required to be conducted in order to submit a binding offer;
- (g) it clearly indicates:
  - (i) that the Phase 1 Qualified Bidder is seeking to acquire all or substantially all of the Business whether through an asset purchase, a share purchase or a combination thereof (either one being, a "**Sale Proposal**") or some other portion of the Business (a "**Partial Sale Proposal**"); and/or
  - (ii) whether the Phase 1 Qualified Bidder is offering to make an investment in, restructure, recapitalize, reorganize or refinance the Rambler Group or their business (an "**Investment Proposal**");
- (h) it contains such other information as may be reasonably requested by the Monitor, in consultation with the Rambler Group and the DIP Lenders;
- (i) it does not provide for any break fee or expense reimbursement;
- (j) in the case of a Sale Proposal, it identifies or contains the following:
  - (i) the purchase price or price range and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;
  - (ii) any contemplated purchase price adjustment;
  - (iii) a description of the specific assets that are expected to be subject to the transaction and any assets or obligations expected to be excluded;
  - (iv) a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the

Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;

- (v) information sufficient for the Monitor, in consultation with the Rambler Group and the DIP Lenders, to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above; and
  - (vi) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction; and
- (k) in the case of an Investment Proposal, it identifies the following:
- (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;
  - (ii) the aggregate amount of the equity and/or debt investment to be made in the Rambler Group or their business;
  - (iii) the underlying assumptions regarding the *pro forma* capital structure;
  - (iv) a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
  - (v) information sufficient for the Monitor, in consultation with the Rambler Group, to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above; and
  - (vi) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction.
15. Notwithstanding the foregoing, the Monitor in consultation with the Rambler Group and the DIP Lenders may waive compliance with any one or more of the requirements in paragraph 14 and deem any such non-compliant LOI to be a Phase 1 Qualified Bid, provided that doing so shall not constitute a waiver by the Monitor of the requirements of paragraph 14 or an obligation on the part of the Monitor to designate any other LOI as a Phase 1 Qualified Bid. The Monitor will be under no obligation to negotiate identical terms with, or extend identical terms to, each Phase 1 Qualified Bidder;

#### *Assessment of Phase 1 Qualified Bids and Subsequent Process*

16. The Monitor, in consultation with the Rambler Group and the DIP Lenders, may, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to



determining if the LOI should be considered a Phase 1 Qualified Bid or a Phase 1 Successful Bid (as defined below).

17. Following the Phase 1 Bid Deadline, the Monitor shall determine, in accordance with the requirements of paragraph 14 and in consultation with the Rambler Group, the LOI(s) that are selected as the most favourable Phase 1 Qualified Bid(s), which Phase 1 Qualified Bid(s) shall be deemed a “**Phase 1 Successful Bid(s)**” and which Phase 1 Qualified Bidder(s) accordingly shall be deemed a “**Phase 2 Qualified Bidder(s)**”. For greater certainty, there can be more than one Phase 1 Qualified Bid that may be determined as being a Phase 1 Successful Bid, and more than one Phase 1 Qualified Bidder that may be determined as being a Phase 2 Qualified Bidder.
18. Only Phase 2 Qualified Bidders – being those that have submitted a Phase 1 Successful Bid – shall be permitted to proceed to Phase 2 of the SISP.
19. The Monitor shall notify each Phase 1 Qualified Bidder in writing as to whether its Phase 1 Qualified Bid constituted a Phase 1 Successful Bid – such that it is a Phase 2 Qualified Bidder – within five (5) Business Days of the Phase 1 Bid Deadline, or at such later time as the Monitor deems appropriate, in consultation with the Rambler Group.
20. Without limiting the provisions governing amendment of the SISP set out in paragraph 32 below, and notwithstanding the process and timeline for Phase 1, the process to identify and designate Phase 2 Qualified Bidders and the terms upon which Phase 2 may be continued as described below, the Monitor may at any time before or after the Phase 1 Bid Deadline, determine that Phase 2 is not required and may proceed to execute a definitive agreement (which shall be subject to Court approval) with respect to a transaction contemplated in a Phase 1 Qualified Bid submitted at any time on or before the Phase 1 Bid Deadline.

## **PHASE 2: FORMAL OFFERS AND REMOVAL OF CONDITIONS**

### *Formal Binding Offers*

21. Any Phase 2 Qualified Bidder that wishes to make a formal offer with respect to his/her/its Sale Proposal or Investment Proposal shall submit a binding offer (a “**Binding Offer**”): (a) in the case of a Sale Proposal, in the form of the Template PSA provided in the VDR, along with a marked version showing edits to the original form of Template PSA provided in the VDR; or (b) in the case of an Investment Proposal, a plan or restructuring support agreement in form and substance satisfactory to the Monitor, in consultation with the Rambler Group and the DIP Lenders (each, such Binding Offer submitted in accordance with paragraph 22 below, a “**Phase 2 Qualified Bid**”) in each case to the Monitor, at the address specified in Appendix B hereto (including by email) so as to be received by the Monitor not later than 5:00 p.m. (Newfoundland Standard Time) on July 21, 2023, or such other date or time as may be agreed by the Monitor in consultation with the Rambler Group and the DIP Lenders (as may be extended, the “**Phase 2 Bid Deadline**”).




22. A Binding Offer will only be considered as a Phase 2 Qualified Bid if the Binding Offer:
- (a) has been received by the Phase 2 Bid Deadline;
  - (b) is a Binding Offer: (i) to purchase all, substantially all, or a portion of the Business; and/or (ii) to make an investment in, restructure, recapitalize, reorganize or refinance the Rambler Group or their business, on terms and conditions reasonably acceptable to the Rambler Group and the DIP Lenders;
  - (c) identifies all executory contracts of the Rambler Group that the Phase 2 Qualified 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;
  - (d) is not subject to any financing conditionality;
  - (e) 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;
  - (f) includes acknowledgments and representations of the Phase 2 Qualified 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 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;
  - (g) the Binding Offer must be accompanied by a letter that confirms that the Binding Offer: (i) may be accepted by the Monitor by countersigning the Binding Offer, and (ii) is irrevocable and capable of acceptance until the earlier of (A) two business days after the date of closing of the Successful Bid; and (B) the Outside Date;
  - (h) does not provide for any break fee or expense reimbursement;
  - (i) is accompanied by a deposit in the amount of not less than 10% of the cash purchase price payable on closing or total new investment contemplated, as the case may be (the "Deposit"), along with acknowledgement that if the Phase 2 Qualified Bidder is selected as the Successful Bidder (as defined below), that the Deposit will be non-refundable subject to approval of the Successful Bid (as defined below) by the Court and the terms described in paragraph 30 below;



- (j) contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on or before August 31, 2023, 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 (the “**Target Closing Date**”); and
- (k) contains an agreement that the Phase 2 Qualified Bidder submitting such bid, if not chosen as the Successful Bidder, shall serve, without modification to such bid, as a Backup Bidder (as defined below), in the event the Successful Bidder fails to close.

23. The Monitor shall not purport to waive strict compliance with any one or more of the requirements specified above (for greater certainty, other than paragraph 21(c) above and paragraph 32 below and deem any such non-compliant Binding Offer to be a Phase 2 Qualified Bid.

### *Selection of Successful Bid*

24. The Monitor, in consultation with the Rambler Group and the DIP Lenders, 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 a Phase 2 Qualified Bid.
25. The Monitor, in consultation with the Rambler Group and the DIP Lenders, will: (a) review and evaluate each Phase 2 Qualified Bid; and (b) identify the highest or otherwise best bid (the “**Successful Bid**”, and the Phase 2 Qualified Bidder making such Successful Bid, the “**Successful Bidder**”) pursuant to the paragraphs below. Any Successful Bid shall be subject to approval by the Court.
26. In the event there is at least two Phase 2 Qualified Bids that the Monitor, after consultation with the DIP Lenders, determines are materially the same, the Successful Bid shall be identified through an Auction.
27. Auction: In the event that an auction (the “**Auction**”) is required in accordance with the terms of this SISF, it shall be conducted in accordance with the procedures set forth in this paragraph:
- (a) The Auction shall commence at a time to be designated by the Monitor, no later than July 28, 2023, and may, in the discretion of the Monitor, be held virtually via videoconference, teleconference or such other reasonable means as the Monitor deems appropriate. The Monitor and the Rambler Group shall work in good faith with the parties entitled to attend the Auction to arrange for the Auction to be so held. The Monitor reserves the right to cancel or postpone the Auction in the consultation with the DIP Lenders.
  - (b) The identity of each Phase 2 Qualified Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Phase 2 Qualified Bidder participating in the Auction.
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- (c) Except as otherwise permitted in the Monitor's discretion, only the Rambler Group, the DIP Lenders, the Monitor and the Phase 2 Qualified Bidders, and, in each case, their respective professionals shall be entitled to attend the Auction. Only a Phase 2 Qualified Bidder is eligible to participate in the Auction.
- (d) Phase 2 Qualified Bidders shall appear at the Auction, or through a duly authorized representative.
- (e) Except as otherwise set forth herein, the Monitor, in consultation with the Rambler Group and the DIP Lenders, 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 SISP, the Bidding Procedures, the DIP, the CCAA, or any order of the Court entered in connection with the CCAA Proceedings; (ii) disclosed to each Phase 2 Qualified Bidder; and (iii) designed, in the Monitor's business judgment, to result in the highest and otherwise best offer.
- (f) The Monitor will arrange for the actual bidding at the Auction to be transcribed or recorded. Each Phase 2 Qualified Bidder participating in the Auction shall designate a single individual to be its spokesperson during the Auction.
- (g) Each Phase 2 Qualified 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 Rambler Group or any other person regarding the SISP that has not been disclosed to all other Phase 2 Qualified Bidders.
- (h) Prior to the Auction, the Monitor shall identify, in consultation with the Rambler Group and the DIP Lenders, the highest and best of the Phase 2 Qualified Bids received and such Phase 2 Qualified Bid shall 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 \$[250,000] cash in excess of the Opening Bid. For the purposes of facilitating bidding, the Monitor may ascribe a monetary value to non-cash considerations, including by way of example, to different levels of conditionality to closing. Each Phase 2 Qualified Bidder shall provide evidence of its financial wherewithal and ability to consummate the transaction at the increased purchase price, if so requested by the Monitor. Further, in the event that an Aggregated Bid qualifies to participate in the Auction, modifications to the bidding requirements may be made by the Monitor to facilitate bidding by the participants in the Aggregated Bid.
- (i) All Phase 2 Qualified Bidders shall have the right to, at any time, request that the Monitor announce, subject to any potential new bids, the then-current highest and best bid and, to the extent requested by any Phase 2 Qualified Bidder, use reasonable efforts to clarify any and all questions such Phase 2 Qualified Bidder



may have regarding the Monitor's announcement of the then-current highest and best bid.

- (j) Each participating Phase 2 Qualified Bidder shall be given reasonable opportunity to submit an overbid at the Auction to any then-existing overbids. The Auction shall continue until the bidding has concluded and there is one remaining Phase 2 Qualified Bidder that the Monitor, in consultation with the Rambler Group and the DIP Lenders, determine has submitted the highest and otherwise best Phase 2 Qualified Bid of the Auction. At such time and upon the conclusion of the bidding, the Auction shall be closed and the final remaining Phase 2 Qualified Bidder shall be the Successful Bidder.
  - (k) Upon selection of a Successful Bidder, the Monitor shall require the Successful Bidder to deliver as soon as practicable an amended and executed transaction document that reflects its final bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the application material for the hearing to consider the Approval Motion (as defined below).
  - (l) The Monitor shall not consider any bids submitted after the conclusion of the Auction.
28. The final Successful Bid and the Backup Bid (as defined below) shall be selected by no later than July 28, 2023 and the definitive documentation in respect of the Successful Bid must be finalized and executed no later than August 4, 2023, which definitive documentation shall be conditional only upon the receipt of the Approval Order(s) and the express conditions set out therein and shall provide that the Successful Bidder shall use all reasonable efforts to close the proposed transaction by no later than the Target Closing Date, or such longer period as shall be agreed to by the Monitor in consultation with the Rambler Group, the DIP Lenders and the Successful Bidder. In any event, the Successful Bid must be closed by no later than the Outside Date, unless with the authorization of the DIP Lenders, acting reasonably.
29. Notwithstanding anything in the SISF to the contrary, if an Auction is conducted, the Phase 2 Qualified Bidder with the next highest or otherwise best Phase 2 Qualified Bid at the Auction, as determined by the Monitor will be designated as the backup bidder (the "**Backup Bidder**"). The Backup Bidder shall be required to keep its initial Phase 2 Qualified Bid (or if the Backup Bidder submitted one or more overbids at the Auction, the Backup Bidder's final overbid) (the "**Backup Bid**") open until the earlier of: (A) two business days after the date of closing of the Successful Bid; and (B) the Outside Date.

#### *Approval of Successful Bid*

30. The Monitor shall apply to the Court (the "**Approval Motion**") for one or more orders: (i) approving the Successful Bid and the Backup Bid (as applicable) 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 and/or reverse vesting order to the extent that such relief is contemplated by the Successful Bid or the Backup Bid, as applicable, so





as to vest title to any purchased assets in the name of the Successful Bidder or the Backup Bidder (as applicable) and/or vesting unwanted liabilities out of one or more of the Rambler Group (collectively, the "Approval Order(s)"). The Approval Motion will be held on a date to be scheduled by the Monitor and confirmed by the Court upon application by the Monitor, who shall use their best efforts to schedule the Approval Motion on or before August 25, 2023, subject to Court availability. The Approval Motion may be adjourned or rescheduled by the Monitor without further notice, by an announcement of the adjourned date at the Approval Motion or in a notice to the service list of the CCAA Proceedings prior to the Approval Motion.

31. All Phase 2 Qualified Bids (other than the Successful Bid) shall be deemed rejected on and as of the date of the closing of the Successful Bid, with no further or continuing obligation of the Monitor to any unsuccessful Phase 2 Qualified Bidders.

*Deposits*

32. The Deposit(s):
- (a) shall, upon receipt from the Phase 2 Qualified Bidder(s), be retained by the Monitor and deposited in a non-interest-bearing trust account.
  - (b) received from the Successful Bidder, shall:
    - (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) shall otherwise be held and refundable in accordance with the terms of the definitive documentation in respect of any Successful Bid, provided that all such documentation shall provide that the Deposit shall be retained by the Monitor and forfeited by the Successful Bidder if the Successful Bid fails to close by the Outside Date, and such failure is attributable directly to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of the Successful Bid;
  - (c) received from the Backup Bidder, unless it is subsequently selected as the Successful Bidder, shall be fully refunded, to the Backup Bidder on or before the earlier of: (i) two (2) Business Days after the date of the closing to the Successful Bid; or (ii) September 5, 2023; and
  - (d) received from the Phase 2 Qualified Bidder(s) that are not the Successful Bidder or the Backup Bidder shall be fully refunded, to the Phase 2 Qualified Bidder(s) that paid the Deposit(s) as soon as practical following the selection of the Successful Bidder and in any event no later than July 31, 2023.



## **Amendment**

33. The Monitor shall have the right at any time, in consultation with the Rambler Group and the DIP Lenders, to: (i) make material amendments to the SISP (including by extending the Phase 1 Bid Deadline or the Phase 2 Bid Deadline); and (ii) make non-material amendments to the SISP, in each case if, in the Monitor's reasonable judgment in consultation with the Rambler Group and/or the DIP Lenders, such material or non-material amendment will enhance the procedure for conducting the SISP or maximize the value of a transaction pursuant to the SISP. The Monitor shall advise the Service List in the CCAA Proceedings of any material amendment to the SISP. Without limiting the foregoing and notwithstanding the process and timeline for Phase 1 and the continuation of the SISP into Phase 2, the Monitor may at any time during Phase 1 or Phase 2: (i) retain an investment bank to assist or conduct the SISP (ii) subject to Court approval, enter into a stalking horse agreement involving a transaction with respect to some or all of the Business with a party identified through the SISP or otherwise; or (iii) subject to Court approval, enter into a definitive agreement with respect to a transaction involving some or all of the Business with a party identified through the SISP or otherwise and suspend or terminate the SISP.

## **"As is, Where is"**

34. Any sale (or sales) of the Business will be on an "as is, where is" basis except for representations and warranties that are customarily provided in purchase agreements for a Rambler Group subject to CCAA proceedings and any such representations and warranties provided for in the definitive documents shall not survive closing.

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

35. In the event of a sale, to the extent permitted by law, all of the rights, title and interests of the Rambler Group in and to the Business to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "Claims and Interests") pursuant to section 36(6) of the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such Business (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant transaction documents with a Successful Bidder.

## **Credit Bidding**

36. Any party or parties holding a valid, enforceable, and properly perfected security interest in the Business may, subject in all respects to such party's compliance with the Bidding Procedures, credit bid the amount of debt secured by such lien as part of any transaction contemplated by the Bidding Procedures; provided, however, that such transaction shall also provide for the indefeasible and irrevocable repayment in full in cash on the date of closing of any such transaction of any and all obligations: (i) owing to the DIP Lenders; (ii) owing pursuant to any charges granted by the Court in the CCAA Proceedings; and (iii) secured by a security interest in the Business that is to be acquired under such transaction that is senior to the security interest held in such Business by the party



submitting such credit bid unless the holder or indenture trustee or agent of any such senior security interest otherwise agrees.

37. Nothing contained in the SISP or any order approving the SISP is intended to, or shall, alter or amend the rights, terms or obligations under any intercreditor agreement or other form of agreement in respect of existing indebtedness of the Rambler Group.

#### **Insider Credit Bid / Existing Secured Creditor Bid**

38. Any party or parties holding a valid, enforceable, and properly perfected security interest in the Business may, subject in all respects to such party's compliance with the Bidding Procedures, credit bid the amount of debt secured by such lien as part of any transaction contemplated by the Bidding Procedures; provided however that any such credit bid must be communicated to the Monitor in writing by no later than April 14, 2023 at 5:00 p.m. (Newfoundland Time).


#### **Confidentiality**

39. For greater certainty other than as shall be required in connection with any Auction or Approval Motion, neither the Rambler Group nor the Monitor will share: (i) the identity of any Potential Bidder, or Phase 1 Qualified Bidder; or (ii) the terms of any bid, LOI, Phase 1 Qualified Bid, Sale Proposal, Investment Proposal or Phase 2 Qualified Bid, with any other bidder without the consent of such party (including by way of email).

#### **Further Orders**

40. At any time during the SISP, the Monitor may apply to the Court for advice and directions with respect to any aspect of this SISP and the Bidding Procedures including, but not limited to, the continuation of the SISP or with respect to the discharge of its powers and duties hereunder.

#### **Additional Terms**

41. In addition to any other requirement of these Bidding Procedures:
- (a) The Monitor, as applicable, shall at all times prior to the selection of a Successful Bid use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without limitation, by actively soliciting participation by all persons who would be customarily identified as high potential bidders in a process of this kind or who may be reasonably proposed by any of the Monitor, the DIP Lenders or the Rambler Group's stakeholders as a high potential bidder.
  - (b) Any consent, approval or confirmation to be provided by the Rambler Group and/or the Monitor 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 CCAA 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 shall be deemed to have been provided in writing for the purposes of this paragraph.
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- (c) All Phase 1 Qualified Bidders and Phase 2 Qualified Bidders shall at all times be granted information, access and facilitation that is no less complete and timely than is granted by the Monitor, or their representatives, to other Phase 1 Qualified Bidders and Phase 2 Qualified Bidders pursuant to the SISP. This shall include, without limitation, reasonable access to the Rambler Group's books, records, financial information, management, advisors and business partners. The Monitor shall review all information and materials provided by the Rambler Group or its representatives to the DIP Lenders or their representatives pursuant to the DIP and, to the extent that the Monitor, in consultation with the Rambler Group, is of the view that any such information or materials are materially relevant to a Potential Bidder or Phase 1 Qualified Bidder or Phase 2 Qualified Bidder, then such information or materials shall be promptly posted to the VDR or otherwise made available to all Potential Bidders, Phase 1 Qualified Bidders and Phase 2 Qualified Bidders. Nothing in this paragraph creates binding obligations of third parties.
- (d) Nothing in this SISP shall require that a Successful Bid, Backup Bid or any other bid must be approved by the Court. The Court at all times retains the discretion to direct the clarification, termination, extension or modification of the SISP and Bidding Procedures on application of any interested party.
- (e) Prior to the seeking of Court approval for any transaction or bid contemplated by this SISP, the Monitor will provide a report to the Court on the SISP process, parts of which may be filed under seal, including in respect of any and all bids received.

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**APPENDIX A  
DEFINED TERMS**

- “**Applicant(s)**” shall have the meaning set forth in the preamble.
- “**Approval Motion**” shall have the meaning set forth in paragraph 29.
- “**Approval Order(s)**” shall have the meaning set forth in paragraph 29.
- “**Auction**” shall have the meaning set forth in paragraph 26.
- “**Backup Bid**” shall have the meaning set forth in paragraph 28.
- “**Backup Bidder**” shall have the meaning set forth in paragraph 28.
- “**Bid**” shall have the meaning set forth in the preamble.
- “**Bidding Procedures**” shall have the meaning set forth in the preamble.
- “**Bidding Procedures Order**” shall have the meaning set forth in the preamble.
- “**Binding Offer**” shall have the meaning set forth in paragraph 20.
- “**Business**” shall have the meaning set forth in the preamble.
- “**Business Day**” means a day on which banks are open for business in St. John’s, Newfoundland and Labrador but does not include a Saturday, Sunday or statutory holiday in the Province of Newfoundland and Labrador.
- “**CCAA**” shall have the meaning set forth in the preamble.
- “**CCAA Proceedings**” shall have the meaning set forth in the preamble.
- “**CIM**” shall have the meaning set forth in paragraph 11.
- “**Claims and Interests**” shall have the meaning set forth in paragraph 33.
- “**Court**” shall have the meaning set forth in the preamble.
- “**Deposit**” shall have the meaning set forth in paragraph 21(i).
- “**DIP**” means the DIP Financing Agreement dated February 23, 2023 among the Rambler Group and the lenders party thereto from time to time providing for DIP financing.
- “**DIP Lenders**” means, RMM Debt Limited Partnership, by its General Partner, RMM General Partner Inc. .

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“**Financing Party**” shall have the meaning set forth in paragraph 9.

“**Initial Order**” shall have the meaning set forth in the preamble.

“**Investment Proposal**” shall have the meaning set forth in paragraph 14(g)(ii).

“**LOI**” shall have the meaning set forth in paragraph 13.

“**Monitor**” shall have the meaning set forth in the preamble.

“**NDA**” shall have the meaning set forth in paragraph 9.

“**Opening Bid**” shall have the meaning set forth in paragraph 26(h)26(h).

“**Opportunity**” shall have the meaning set forth in paragraph 2.

“**Outside Date**” shall have the meaning set forth in paragraph 21(j).

“**Partial Sale Proposal**” shall have the meaning set forth in paragraph 14(g)(i).

“**Phase 1**” shall have the meaning set forth in paragraph 8.

“**Phase 1 Bid Deadline**” shall have the meaning set forth in paragraph 13.

“**Phase 1 Qualified Bid**” shall have the meaning set forth in paragraph 13.

“**Phase 1 Qualified Bidder**” shall have the meaning set forth in paragraph 10.

“**Phase 1 Successful Bid**” shall have the meaning set forth in paragraph 17.

“**Phase 2**” shall have the meaning set forth in paragraph 8.

“**Phase 2 Bid Deadline**” shall have the meaning set forth in paragraph 20.

“**Phase 2 Qualified Bid**” shall have the meaning set forth in paragraph 20.

“**Phase 2 Qualified Bidder**” shall have the meaning set forth in paragraph 17.

“**Potential Bidder**” shall have the meaning set forth in paragraph 9.

“**Sale Proposal**” shall have the meaning set forth in paragraph 14(g)(i).

“**SISP**” shall have the meaning set forth in the preamble.

“**Successful Bid**” shall have the meaning set forth in paragraph 24.

“**Successful Bidder**” shall have the meaning set forth in paragraph 24.

“**Target Closing Date**” shall have the meaning set forth in paragraph 21(j).

**“Solicitation Letter”** shall have the meaning set forth in paragraph 7.

**“Template LOI”** shall have the meaning set forth in paragraph 12.

**“Template PSA”** shall have the meaning set forth in paragraph 12.

**“VDR”** shall have the meaning set forth in paragraph 8.

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