

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BRIDGING FINANCE INC., AS AGENT**

Applicant

**AUDIBLE CAPITAL CORP., AVENIR TRADING CORP., 1892244  
ALBERTA LTD., AVENIR SPORTS ENTERTAINMENT LTD., AVENIR  
SPORTS ENTERTAINMENT CORP. and PORTLAND WINTERHAWKS,  
INC.**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. 1985, c.B 3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE  
ACT, R.S.O. 1990, c.C.43, AS AMENDED

**MOTION RECORD**

December 22, 2020

**BENNETT JONES LLP**  
One First Canadian Place  
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Lawyers for KSV Restructuring Inc., solely  
in its capacity as Court-appointed Receiver  
and not in its personal capacity

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1	Notice of Motion
2	The Fourth Report of the Receiver dated December 22, 2020
3	Draft Bidding Procedures and Stalking Horse APA Approval Order

# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

**BRIDGING FINANCE INC., AS AGENT**

Applicant

**AUDIBLE CAPITAL CORP., AVENIR TRADING CORP.,  
1892244 ALBERTA LTD., AVENIR SPORTS  
ENTERTAINMENT LTD., AVENIR SPORTS  
ENTERTAINMENT CORP. and PORTLAND WINTER  
HAWKS, INC.**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c.B 3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, AS AMENDED

**NOTICE OF MOTION  
(Returnable January 6, 2021)**

KSV Restructuring Inc.<sup>1</sup> ("**KSV**" or the "**Receiver**"), in its capacity as Court-appointed receiver over the property, assets and undertakings of Audible Capital Corp. ("**Audible**"), Avenir Trading Corp., 1892244 Alberta Ltd., Avenir Sports Entertainment Ltd., Avenir Sports Entertainment Corp. and Portland Winter Hawks, Inc. (collectively, the "**Companies**"), will make a motion before the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on January 6, 2021, at 10:30 a.m. or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard by videoconference as a result of the COVID-19 pandemic, the details of which can be found at Schedule "A" hereto.

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<sup>1</sup> Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

**THE MOTION IS FOR:**

1. An order (the "**Bidding Procedures and Stalking Horse APA Approval Order**") substantially in the form of the draft order attached at Tab "3" of this motion record, among other things:
  - (a) abridging the time for service of this notice of motion and the motion record and dispensing with service on any person other than those served;
  - (b) approving the sale process (the "**Sale Process**") and the bidding procedures related thereto (the "**Bidding Procedures**");
  - (c) approving the Asset Purchase Agreement dated as of December 15, 2020, among the Receiver, as vendor, and Avina Acquisition Corp. ("**Avina**"), as purchaser (the "**Stalking Horse APA**"), for the purposes of acting as the stalking horse bid only;
  - (d) approving the Break Fee (as defined below) provided in the Stalking Horse APA; and
  - (e) requiring each of the entities that comprise the Purchased Assets (as defined below) to forthwith provide to the Receiver the Requested Information (as defined below);
2. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

***Background***

3. On May 7, 2020, the Court granted an order (the "**Receivership Order**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Ontario Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended (the "**CJA**"), appointing KSV as Receiver, without security, of all of the assets, undertakings and properties of the Companies. The primary asset of the Companies was the Portland Winterhawks franchise (the "**Winterhawks**"), a junior hockey team based in Portland, Oregon that plays in the Western Hockey League (the "**WHL**");
4. In addition to appointing KSV as Receiver, the Receivership Order, *inter alia*:

- (a) authorized and empowered the Receiver to act as a foreign representative of the Companies (the "**Foreign Representative**") for the purpose of having these receivership proceedings (the "**Receivership Proceedings**") recognized in a jurisdiction outside of Canada; and
- (b) authorized the Receiver, as Foreign Representative, to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*;

5. As Foreign Representative, the Receiver commenced proceedings in the US Bankruptcy Court of the District of Oregon (the "**US Court**") seeking recognition of the Receivership Proceedings and the enforcement of the Receivership Order pursuant to Chapter 15 of the *United States Bankruptcy Code*. On May 7, 2020, the US Court issued an order granting certain provisional relief, and on June 9, 2020, the US Court granted an order recognizing the Receivership Proceedings;

6. On June 2, 2020, the Court issued an order which, *inter alia*, approved a Court-supervised sale process (the "**PWH Sale Process**") in respect of the Winterhawks;

7. On December 16, 2020, as a result of the PWH Sale Process and certain additional efforts of the Receiver, the Court granted an order which, *inter alia*, approved the transaction (the "**PWH Transaction**") contemplated by the Asset Purchase Agreement dated October 23, 2020, as amended, between Winterhawks Sports Group LLC, as purchaser, and the Receiver, Avenue Ice Sports LLC and Winterhawks Junior Hockey LLC, as vendors. The PWH Transaction is scheduled to close on December 31, 2020;

### ***The Stalking Horse APA, Sale Process and Bidding Procedures***<sup>2</sup>

8. Audible holds several investments in start-up or growth stage companies (collectively, the "**Investments**"). On October 23, 2020, the Receiver was presented with an unsolicited asset purchase agreement from Avina to purchase Audible's interest in the Investments, other than Audible's interest in Orla Mining Ltd. (collectively, the "**Purchased Assets**");

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<sup>2</sup> All terms in this section not otherwise defined herein have the meanings ascribed to them in the Stalking Horse APA or the Bidding Procedures, as applicable.

9. Since the commencement of these proceedings, the Receiver has been monitoring the Purchased Assets and regularly speaking with the principals of the companies;

10. To maximize value for creditors by ensuring the highest and best value is obtained for the Purchased Assets, while minimizing the risk of losing the offer, the Receiver is seeking the Court's approval of the Sale Process and the Stalking Horse APA;

11. Pursuant to the Stalking Horse APA, Avina has agreed to act as the stalking horse bidder in the proposed Sale Process (in such capacity, the "**Stalking Horse Bidder**"). Among other things, the Stalking Horse APA provides for the payment of a break fee in the aggregate total amount of \$186,000 (the "**Break Fee**") in the event that the Stalking Horse Bidder is not the Successful Bidder;

12. The key terms and conditions of the Stalking Horse APA include, *inter alia*:

- (a) Purchaser: Avina;
- (b) Purchased Assets: the Receiver's and Audible's right, title and interest to the Purchased Assets;
- (c) Purchase Price: \$4,650,000
- (d) Deposit: \$232,500, being approximately 5% of the purchase price;
- (e) Closing: within three (3) Business Days after receipt of the Approval and Vesting Order; and
- (f) Outside Date: March 26, 2021;

13. Under the proposed Sale Process, the Receiver is offering for sale all of the Purchased Assets and the Receiver will consider (i) a bid for all of the Receiver's right, title and interest in and to the Purchased Assets or (ii) separate bids to acquire some but not all of the Purchased Assets (each a "**Piecemeal Bid**"). The Receiver will only consider Piecemeal Bids if a combination of one or more Piecemeal Bids in the aggregate meet the requirements to be a Qualified Bid (as defined in the Bidding Procedures);

14. The Receiver is also seeking approval of the Bidding Procedures that will govern the solicitation of higher and better offers for the Purchased Assets. The Bidding Procedures were

developed with the assistance of the Stalking Horse Bidder and provide the process by which the Receiver is to conduct the Sale Process for the sale of the Purchased Assets;

15. A summary of the key dates in proposed Sale Process is as follows:

Key Date	Milestone
January 7, 2021 at 5:00 p.m. (prevailing Eastern Time)	Delivery of Teasers and Sales Packages
January 7, 2021 at 5:00 p.m. (prevailing Eastern Time)	Confidential Data-Site to be established
February 4, 2021 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline - Due Date for Bids and Deposits
February 11, 2021 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any)
February 23, 2021 (prevailing Eastern Time) (no Auction required)	Approval and Sale Order hearing
March 2, 2021 (prevailing Eastern Time) (Auction required)	Approval and Sale Order hearing

16. The Sale Process and the Bidding Procedures are commercially reasonable and will result in a fair and equitable process that will canvass the market in order to maximize value for the Companies' stakeholders;

### ***Requested Information***

17. After the Receiver was contacted by Avina, it sent a letter to the principal of each of the entities in which the Purchased Assets are held (the "**Investment Entities**"). The letters, among other things, requested copies of each of the Investment Entities' financial statements, articles and by-laws, unanimous shareholder agreements, shareholder meeting minutes and resolutions, director related notices and securities registers (the "**Requested Information**"). The Requested Information is all information that the Receiver is statutorily entitled to under the relevant corporate statutes;



18. The Receiver has received the Requested Information from some but not all of the Investment Entities. The Receiver has advised all such Investment Entities that, should they not provide the Requested Information in advance of the within motion, that: (i) the Receiver would be seeking relief to compel them to provide same, and (ii) the Receiver intends to seek costs against those parties.

**OTHER GROUNDS:**

19. The provisions of the BIA and the inherent and equitable jurisdiction of the Court;

20. Rules 1.04, 1.05, 2.03, 3.02, 14.05(2), 16, 37 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 101 of the CJA; and

21. Such further and other grounds as counsel may advise and the Court may permit.

**DOCUMENTARY EVIDENCE:**

22. The following documentary evidence will be used at the hearing of the motion:

- (a) the Fourth Report of the Receiver dated December 22, 2020;
- (b) the Factum of the Receiver, to be filed; and
- (c) such further and other evidence as counsel may advise and the Court may permit.

December 22, 2020

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its capacity as Court-appointed Receiver and  
not in its personal capacity

## **Schedule "A"**

Join Zoom Meeting

<https://us02web.zoom.us/j/84423095082>

Meeting ID: 844 2309 5082

One tap mobile

+12532158782,,84423095082# US (Tacoma)

+13017158592,,84423095082# US (Washington D.C)

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington D.C)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

Meeting ID: 844 2309 5082

Find your local number: <https://us02web.zoom.us/j/84423095082>

**BRIDGING FINANCE INC., AS AGENT**

-and-

**AUDIBLE CAPITAL CORP. *et al***

Applicant

Respondents

Court File No.: CV-20-00640212-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceedings commenced in Toronto

**NOTICE OF MOTION**

**BENNETT JONES LLP**

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capacity as Court-appointed Receiver and not in its  
personal capacity

# TAB 2



**Fourth Report of  
KSV Restructuring Inc. as  
Receiver of Audible Capital Corp.,  
Avenir Trading Corp.,  
1892244 Alberta Ltd.,  
Avenir Sports Entertainment Ltd.,  
Avenir Sports Entertainment Corp. and  
Portland Winter Hawks, Inc.**

December 22, 2020

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COURT FILE NO.:CV-20-00640212-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**BETWEEN:****BRIDGING FINANCE INC. AS AGENT****APPLICANT****- AND -**

**AUDIBLE CAPITAL CORP.,  
AVENIR TRADING CORP., 1892244 ALBERTA LTD.,  
AVENIR SPORTS ENTERTAINMENT LTD.,  
AVENIR SPORTS ENTERTAINMENT CORP., AND  
PORTLAND WINTER HAWKS, INC.**

**RESPONDENTS**

**FOURTH REPORT OF KSV RESTRUCTURING INC.  
DECEMBER 22, 2020**

## **1.0 Introduction**

1. This report ("Report") is filed by KSV Restructuring Inc.<sup>1</sup> ("KSV") in its capacity as receiver (the "Receiver") of Audible Capital Corp. ("Audible"), Avenir Trading Corp. ("Avenir Trading"), 1892244 Alberta Ltd. ("189"), Avenir Sports Entertainment Ltd. ("ASE Canada"), Avenir Sports Entertainment Corp. ("ASE US") and Portland Winter Hawks, Inc. ("PWH") (collectively, the "Companies").
2. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on May 7, 2020 (the "Receivership Order"), KSV was appointed Receiver of the Companies.
3. On May 7, 2020, the Receiver, as foreign representative of the Companies, commenced proceedings in the US Bankruptcy Court for the District of Oregon (the "US Court") seeking recognition of the Canadian receivership proceedings and the enforcement of the Receivership Order in the US under Chapter 15 of the US Bankruptcy Code. On the same date, the US Court entered an order granting provisional relief, subject to the US Court's recognition of the Canadian receivership proceedings (the "US Provisional Order"). On June 9, 2020, the US Court extended the relief granted by the US Provisional Order by entering an order that, among other things, recognized the Canadian proceedings as foreign main proceedings.

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<sup>1</sup> Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

4. The Companies' principal asset was PWH's hockey franchise which operates in the Western Hockey League. A transaction for that business and assets was approved by the Court and the US Court on December 16, 2020 and December 18, 2020, respectively, and is scheduled to close on December 31, 2020.
5. Audible holds several investments in start-up or growth stage companies (collectively, the "Investments").
6. In October 2020, the Receiver was presented with an unsolicited asset purchase agreement from Avina Acquisition Corp. ("Avina") to purchase the Companies' interest in the Investments, other than Audible's interests in Orla Mining Ltd. ("Orla") (collectively, the "Purchased Assets").
7. To maximize value for creditors by ensuring the highest and best value is obtained while minimizing the risk of losing the offer, the Receiver proposed that Avina allow the offer to act as a "stalking horse" in a Court supervised sale process (the "Sale Process"). Avina agreed to participate as the stalking horse bidder in such a process and the Receiver and Avina negotiated and entered into an asset purchase agreement dated December 15, 2020 (the "Stalking Horse Agreement"), which is subject to Court approval (the "Stalking Horse Bid"). Subject to approval of the Court and identifying a superior offer in the Sale Process, Avina is to acquire the Purchased Assets in accordance with the Stalking Horse Agreement.

## **1.1 Purposes of this Report**

1. The purposes of this Report are to:
  - a) provide background information regarding the Purchased Assets;
  - b) summarize the terms of the Stalking Horse Agreement;
  - c) summarize the terms of the proposed Sale Process;
  - d) recommend that the Court issue an order (the "Order"), among other things:
    - approving the Stalking Horse Agreement solely for purposes of acting as the Stalking Horse Bid, including the break fee (the "Break Fee") contemplated therein;
    - approving the Sale Process; and
    - requiring each of the entities that comprise the Investments to forthwith provide to the Receiver the financial and other information the Receiver is entitled to and requires to populate a data room and effectively carry out the Sale Process.

## **1.2 Restrictions**

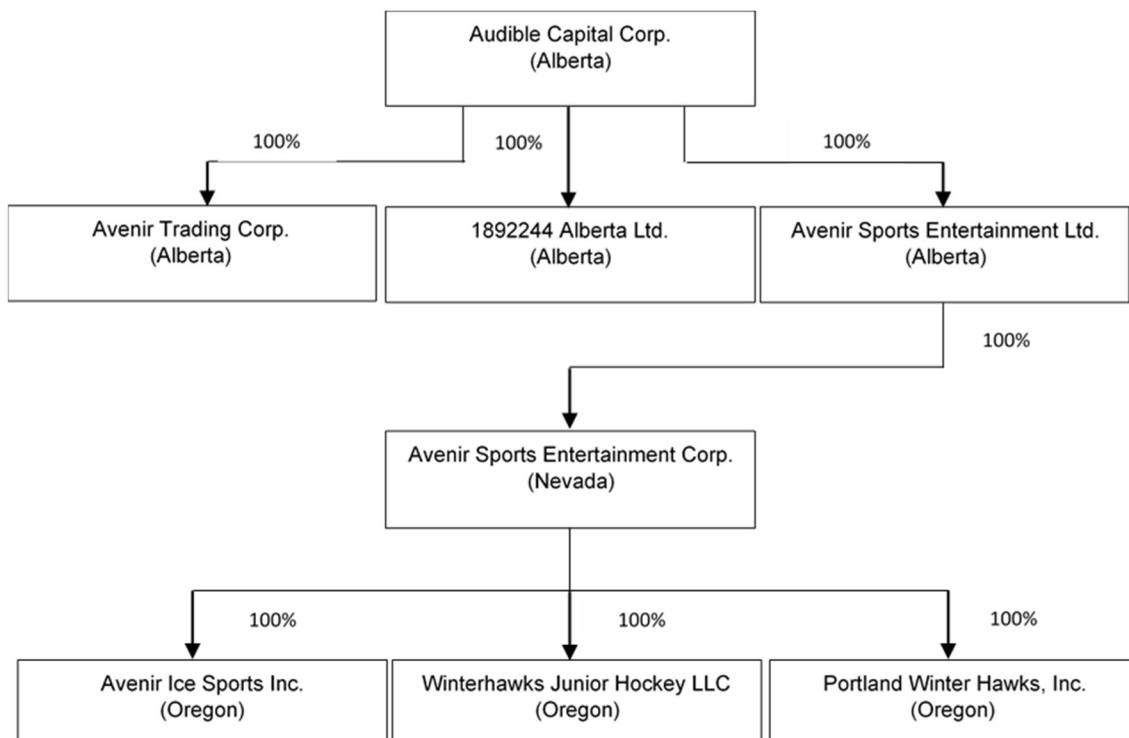
1. In preparing this Report, the Receiver has relied upon the Companies' unaudited financial statements, their books and records and discussions with representatives of the Agent and the Companies.



2. The Receiver has not audited, or otherwise attempted to verify, the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
3. All dollar amounts specified herein are in Canadian dollars unless otherwise indicated.

## 2.0 Background

1. Audible is a holding company which is wholly owned by William Gallacher.
2. The corporate chart for the group is provided below. Audible’s interest in each of the Investments is not depicted in the corporate chart below – they are discussed in Section 3 of this Report.



3. The Companies’ senior secured creditor is Bridging Finance Inc. (the “Agent”) which is currently owed approximately \$22 million.
4. Additional information about the Companies and these receivership proceedings is provided in the Affidavit of Lekan Temidire, a representative of the Agent, sworn April 28, 2020 (the “Temidire Affidavit”). Copies of all Court materials filed in these proceedings, including the Temidire Affidavit, are available on the Receiver’s website: <https://www.ksvadvisory.com/insolvency-cases/case/audible-capital-corp>.

### 3.0 Purchased Assets

1. The Purchased Assets consist of the following securities

	<b>Asset</b>	<b>Cost Base (\$)</b>
1	Archeoptix Biomedical Inc.	608,000
2	BioSteel Sports Nutrition Inc. ("BioSteel")	N/A <sup>2</sup>
3	Conavi Medical Inc.	149,997
4	Edgehill Partners	unknown
5	Hammerhead Resources Inc. (formerly Canadian International Oil Corp.)	24,603
6	Mobility View Inc.	468,589
7	Orthogonal, Inc.	994,779
8	Panaxium SAS	4,859,136
9	Performance Phenomics Inc.	500,000
10	Phononic Inc.	323,259
11	Sage Senses Inc. (o/a Motion Gestures)	98,478
12	Synaptive Medical Inc. ("Synaptive")	20,899,432

2. Since the commencement of these receivership proceedings, the Receiver has been monitoring the Purchased Assets and regularly speaking with the principals of the companies. The Purchased Assets are in private companies which are illiquid. To the Receiver's knowledge, none of the Purchased Assets appear close to a "liquidity event", such as a transaction which contemplates an acquisition or an initial public offering, and, accordingly, there appears to be no near-term prospect of monetizing the Purchased Assets outside of a sale process. Some or all of the Purchased Assets contain restrictions on the transfer of the securities (the "Transfer Restrictions"). The Receiver intends to transfer the Purchased Assets to the Successful Bidder (as that term is defined in the Bidding Procedures) notwithstanding the Transfer Restrictions, however, those Transfer Restrictions will survive any such transfer and those Transfer Restrictions will continue to bind the Successful Bidder. In any event, no relief related to the Transfer Restrictions is being sought at this time.

### 3.1 Synaptive

1. Pursuant to an agreement with Synaptive, the Receiver has agreed until the earlier of: (i) March 31, 2021 and (ii) the completion of a capital raise being completed by Synaptive, to refrain from contacting, *inter alia*, any of the existing securityholders of Synaptive (collectively, the "Restricted Securityholders"). The Receiver understands that Synaptive has not yet completed its capital raise. The Receiver was previously provided a list of the shareholders of Synaptive. The Receiver will obtain a full list of all the Restricted Securityholders prior to the launch of the Sale Process and in accordance with the agreement, the Receiver will not solicit or contact any of the Restricted Securityholders during the Sale Process.

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<sup>2</sup> All of the shares of BioSteel, including Audible's, were sold to Canopy Growth Corporation prior to the commencement of these receivership proceedings. However, the Receiver understands that in April 2021, Audible is entitled to a holdback of approximately \$704,000 from the sale of its shares of BioSteel, provided that no claims are made against the holdback prior to such time.

## 4.0 Stalking Horse Agreement<sup>3</sup>

1. A copy of the Stalking Horse Agreement is attached as Appendix “A”.
2. The key terms and conditions of the Stalking Horse Agreement are provided below.
  - **Purchaser:** Avina
  - **Purchased Assets:** the Receiver’s and the Companies' right, title and interest in the Purchased Assets.
  - **Purchase Price:** \$4,650,000
  - **Deposit:** \$232,500, being approximately 5% of the purchase price.
  - **Representation and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an “as is, where is” basis, with limited representations and warranties.
  - **Closing:** within three (3) business days after receipt of the Approval and Vesting Order.
  - **Outside Date:** March 26, 2021
  - **Material Conditions:**
    - a) the Court shall have issued the Stalking Horse and Sale Procedure Order and it shall not have been stayed, varied, superseded or under appeal at the time of Closing;
    - b) the Receiver shall have determined that the Stalking Horse Agreement is the Successful Bid in accordance with the Sale Process; and
    - c) the Approval and Vesting Order shall have been issued by the Court, shall not be stayed, varied superseded or under appeal, and the applicable time for appealing the Approval and Vesting Order shall have expired if the hearing for the Approval and Vesting Order is contested.
  - **Termination:**
    - (i) The Stalking Horse Agreement can be terminated:
      - if any of the conditions in favour of Avina or the Receiver are not performed or satisfied prior to the Outside Date; or
      - upon the mutual written agreement of Avina and the Receiver.
    - (ii) The Stalking Horse Agreement will be terminated in the event it is not the Successful Bid or Back-Up Bid.

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<sup>3</sup> Capitalized terms in this section have the meaning provided to them in the Stalking Horse Agreement unless otherwise defined herein.

## 4.1 Bid Protections

1. The Stalking Horse Agreement provides for a Break Fee in the amount of \$186,000 (equal to 4% of the Purchase Price) in the event a superior transaction is completed with another party.
2. The Break Fee is only payable to Avina on closing of a superior transaction with another party.
3. The Receiver is of the view that the Break Fee is reasonable as break fees in restructuring and insolvency transactions commonly range from 2.5% and 5%. Appendix "B" provides a summary of break fees in other Canadian restructuring proceedings.
4. The Receiver is of the view that the Break Fee should not discourage other interested parties from submitting offers for the Purchased Assets.
5. The Receiver was also advised by Avina that absent the Break Fee, Avina would not act as the Stalking Horse Bid in these receivership proceedings.

## 5.0 Sale Process and Bidding Procedures

### 5.1 Sale Process

1. After the Receiver was contacted by Avina, it sent a letter to the principal of each of the entities comprising the Investments (other than Orla) (collectively, the "Investment Companies") requesting copies of, among other things, their financial statements, articles and by-laws, unanimous shareholder agreements, shareholder meeting minutes and resolutions, director related notices and securities registers (the "Requested Information"). The Requested Information is all information that the Receiver is statutorily entitled to under the relevant corporate statutes.
2. The Receiver has received the Requested Information from some, but not all, of the Investment Companies. If the Requested Information is not provided by the Investment Companies to the Receiver in advance of the January 6<sup>th</sup> motion, the Receiver intends to seek relief compelling them to provide same. If that is necessary, the Receiver intends to seek costs against those parties.
3. The Receiver intends to upload this information into a virtual data room ("VDR") to be used in the Sale Process.
4. A summary of the proposed Sale Process is as follows:
  - a) on January 7, 2021, the Receiver will distribute an interest solicitation letter detailing this opportunity to prospective purchasers identified by the Receiver. The Receiver intends to contact shareholders of the Purchased Assets, other than those of Synaptive, as well as all other parties recommended by the principals of the companies comprising the Purchased Assets, and such other parties as the Receiver may deem appropriate.

- b) attached to the interest solicitation letter will be a form of confidentiality agreement ("CA");
- c) upon execution of a CA, prospective bidders will be provided with the opportunity to commence due diligence, including reviewing information in the VDR.
- d) on or prior to January 14, 2021, the Receiver will advertise the acquisition opportunity in The Globe and Mail (National Edition);
- e) prospective purchasers will only be granted access to the VDR if they are determined by the Receiver to be qualified;
- f) the Receiver will facilitate due diligence efforts by, *inter alia*, attempting to arrange for prospective bidders to speak with the principals of the companies comprising the Purchased Assets and attempting to obtain any information reasonably requested by the interested parties;
- g) prospective purchasers will be provided with a copy of the Stalking Horse Agreement. Prospective purchasers will be required to submit offers in the form of the Stalking Horse Agreement;
- h) offers will be required to be submitted to the Receiver by 5:00 pm (Eastern time) on February 4, 2021, being four (4) weeks from the commencement of the Sale Process.
- i) the Receiver will have the right to extend or amend the Sale Process as it considers appropriate, subject to the terms of the Stalking Horse Agreement; however, the Receiver would need the consent of the Agent and Avina, or the Court's approval, to materially amend the Sale Process; and
- j) A summary of the proposed Sale Process is as follows:

Milestone	Key Dates
Delivery of Teasers	January 7, 2021
Confidential Virtual Data Room to be opened	January 7, 2021
Bid Deadline	February 4, 2021
Auction (if any)	February 11, 2021
Approval and Sale Order hearing (no auction required)	February 23, 2021
Approval and Sale Order hearing (auction required)	March 2, 2021

## 5.2 Bidding Procedures<sup>4</sup>

1. The bidding procedures are attached as Schedule "A" to the Stalking Horse Agreement and the Order (the "Bidding Procedures"). The Bidding Procedures are summarized below.

<sup>4</sup> Capitalized terms in this section have the meaning provided to them in the Bidding Procedures unless otherwise defined herein.

### **5.2.1 Assets to be sold en Bloc or Piecemeal**

1. The Receiver is offering for sale all of the Purchased Assets and the Receiver will consider (i) a bid for all of the Receiver's and the Companies' right, title and interest in and to the Purchased Assets; or (ii) separate bids to acquire some but not all of the Purchased Assets (a "Piecemeal Bid"), provided that the Receiver will only consider Piecemeal Bids if a combination of one or more Piecemeal Bids in the aggregate meet the requirements to be a Qualified Bid (as defined below).

### **5.2.2 Qualified Bids**

1. All bids, unless such requirement is waived by the Receiver after consultation with the Agent, must meet the following requirements:
  - a) a cash purchase price equal to or greater than \$4,936,000, being the value of the Stalking Horse Bid (\$4.65 million) plus the Break Fee (\$186,000), and an initial bid increment of \$100,000 ("Base Purchase Price");
  - b) a provision stating that the bidder's offer is irrevocably open for acceptance until the earlier of (i) the date that the Purchased Assets have been sold pursuant to the closing of the sale approved by the Court; and (ii) the Outside Date;
  - c) an executed copy of a proposed purchase agreement and a redline of the bidder's proposed purchase agreement reflecting variations from the Stalking Horse Agreement;
  - d) a cash deposit of not less than five percent (5%) of the Base Purchase Price; and
2. Avina, as the stalking horse, is a Qualified Bidder.

### **5.3 Auction Procedures**

1. If no Qualified Bids are submitted by the Bid Deadline, Avina will be the Successful Bidder.
2. If one or more Qualified Bids are received by the Bid Deadline, the Receiver will conduct an Auction. A summary of the Auction Procedures, which are further detailed in the Bidding Procedures, is as follows:
  - a) the Receiver will advise all Qualified Bidders of the Lead Bid and invite all Qualified Bidders (including Avina) to attend the Auction;
  - b) the Auction will be conducted in rounds with the Lead Bid being the Opening Bid;
  - c) in each round, Qualified Bidders may each submit one Overbid with a minimum Cash Purchase Price increment of \$100,000 above the Lead Bid and such Overbid must comply with the Bid Requirements;

- d) the Receiver may request that Qualified Bidders re-submit Overbids in as many rounds as the Receiver considers appropriate to maximize value. In each round of bidding, the Receiver will advise the Qualified Bidders of the material terms of the then best bid;
  - e) if at the end of any round of bidding, a Qualified Bidder has elected not to submit an Overbid, then such Qualified Bidder shall not be entitled to participate in the subsequent rounds of bidding;
  - f) if only one Qualified Bid is submitted after a round of offers, then that Qualified Bidder shall be the Successful Bidder;
  - g) the Receiver, in consultation with the Agent, will consider and determine the highest and/or best Overbid based on the financial and contractual terms and other relevant factors, including those with respect to the speed and certainty of consummating the proposed sale, such bid being the Successful Bid; and
  - h) the next best Overbid, as determined by the Receiver, in consultation with the Agent, shall be required to keep its offer open and available for acceptance until the closing of the sale to the Successful Bidder and such bidder will be designated as the "Back-up Bidder". If the transaction with the Successful Bidder does not close, the Receiver will work to close the transaction with the Back-up Bidder.
3. If Avina is not the Successful Bidder, it will be paid the Break Fee from the proceeds of sale generated from the transaction with the Successful Bidder forthwith after closing of that transaction.

#### **5.4 Sale Process Recommendation**

1. The Receiver recommends that this Court issue the Order which, among other things, approves the Stalking Horse Agreement and the Bidding Procedures, for the following reasons:
- a) the Bidding Procedures and Sale Process are commercially reasonable;
  - b) the Bidding Procedures allow a market test to be conducted following the holiday season for the benefit of all stakeholders and provide an opportunity to complete a transaction with greater value than the Stalking Horse Agreement;
  - c) it is in the best interest of these proceedings that the Stalking Horse Agreement be preserved in order to maximize value and to protect downside risk in the event that a superior offer is not submitted;
  - d) the duration of the Sale Process is sufficient to allow interested parties to perform diligence and submit offers;

- e) the Break Fee is reasonable in the circumstances and is consistent with such fees in other Canadian restructuring proceedings – the Receiver does not believe that the Break Fee will discourage potential purchasers from participating in the Sale Process; and
- f) the Agent, the principal economic stakeholder in these proceedings, has consented to relief sought in the Order. It is uncertain at this time whether the proceeds of realization will be sufficient to repay in full the Companies' obligations to the Agent.

## 6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(d) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
SOLELY IN ITS CAPACITY AS  
RECEIVER OF THE COMPANIES  
AND NOT IN ITS PERSONAL CAPACITY**



## **Appendix “A”**

## ASSET PURCHASE AGREEMENT

This Agreement made this 15th day of December, 2020.

**BETWEEN:**

**KSV RESTRUCTURING INC., in its capacity as Court-appointed Receiver of Audible Capital Corp. et al, and not in its personal or corporate capacity**

**(the "Receiver")**

**- and -**

**AVINA ACQUISITION CORP., duly incorporated under the laws of the Province of Ontario**

**(the "Purchaser")**

**WHEREAS** pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated May 7, 2020 (the "**Receivership Order**"), the Receiver was appointed as receiver of all of the assets, undertakings and properties (the "**Property**") of Audible Capital Corp., Avenir Trading Corp., 1892244 Alberta Ltd., Avenir Sports Entertainment Corp. and Portland Winter Hawks, Inc. (collectively, the "**Debtors**");

**AND WHEREAS**, pursuant to the Receivership Order, the Receiver is authorized to market and sell any or all of the Property of the Debtors and negotiate such terms and conditions of sale as the Receiver may deem appropriate;

**AND WHEREAS** the Purchaser has agreed to act as a "stalking horse bidder" in connection with the sale by the Receiver of the Debtors' right, title and interest, if any, in and to the Purchased Assets (as defined below), meaning that, in the absence of the Vendors' acceptance of one or more bids for the Purchased Assets made in accordance with the Sale Procedure (as defined below) which is superior to this Agreement (as determined by the Receiver, in accordance with the Sale Procedure), the Purchaser has agreed to purchase the Purchased Assets on the terms and subject to the conditions set forth in this Agreement, in accordance with the Sale Procedure and subject to obtaining the Approval and Vesting Order (as defined below);

**AND WHEREAS** the Receiver will seek to obtain the Stalking Horse and Sale Procedure Order (as defined below) authorizing the Receiver to enter into this Agreement and authorizing the sale process with respect to the Purchased Assets pursuant to the Sale Procedure;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties) the parties hereto agree as follows:

## **ARTICLE 1** **INTERPRETATION**

### **1.1 Definitions**

In this Agreement, the following terms shall have the meanings set out below, unless the context requires otherwise:

**"Agreement"** means this asset purchase agreement, including all written amendments and written restatements thereto from time to time;

**"Applicable Law"** means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

**"Approval and Vesting Order"** means an order of the Court approving this Agreement and the transactions contemplated hereby and vesting, upon the delivery of the Receiver's Certificate to the Purchaser, all right, title and interest of the Debtors and the Receiver, if any, to the Purchased Assets in the Purchaser, free and clear of all Claims and Encumbrances pursuant to the terms and conditions of this Agreement, substantially in the form of the model order approved by the "Ontario Commercial List Users Committee", and otherwise in form and substance acceptable to the Purchaser and the Receiver;

**"Article"** or **"Section"** means the specified Article, or Section to this Agreement and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

**"Back-Up Bid"** has the meaning ascribed to it in the Sale Procedure;

**"Break Fee"** has the meaning ascribed thereto in Section 3.4 hereof;

**"Business Day"** means a day on which banks are open for business in the City of Toronto, but does not include a Saturday, Sunday or statutory holiday recognized in the Province of Ontario;

**"Claims"** means any and all claims, demands, complaints, actions, applications, suits, causes of action, orders, or other similar processes, and **"Claim"** means any one of them;

**"Closing"** means the completion of the purchase and sale of the Purchased Assets, in accordance with the provisions of this Agreement;

**"Closing Date"** has the meaning ascribed thereto in Section 4.1 hereof;

**"Closing Time"** has the meaning ascribed thereto in Section 4.1 4.1 hereof;

**"Court"** has the meaning ascribed thereto in the recitals hereof;

**"Debtors"** has the meaning ascribed thereto in the recitals hereof;

**“Deposit”** has the meaning ascribed thereto in Section 2.3 hereof.

**"Encumbrances"** means any and all security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, leases, title retention agreements, reservations of ownership, demands, executions, levies, charges, options or other rights to acquire any interest in any assets, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, and all contracts to create any of the foregoing, or encumbrances of any kind or character whatsoever;

**"Governmental Authorities"** means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **"Governmental Authority"** means any one of them;

**"HST"** means all of the harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada);

**“Outside Date”** means March 26, 2021;

**"Parties"** means the Receiver and the Purchaser collectively, and **"Party"** means any one of them;

**"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

**"Purchase Price"** has the meaning ascribed thereto in Section 2.2 hereof;

**"Purchased Assets"** has the meaning ascribed thereto in Section 2.1 hereof, as such defined term may be amended by the giving of notice by the Purchaser pursuant to Section 4.7 hereof;

**“Purchased Shares”** has the meaning ascribed thereto in Section 2.1 hereof;

**“Qualified Bid”** has the meaning ascribed to it in the Sale Procedure;

**“Receiver’s Certificate”** means a certificate from the Receiver confirming the Closing of the transactions contemplated hereby, substantially in the form attached to the Approval and Vesting Order;

**“Sale Procedure”** means the sale and solicitation process approved by the Stalking Horse and Sale Procedure Order, substantially in the form of **Schedule “A”** hereof;

**“Stalking Horse and Sale Procedure Order”** means an order of the Court approving the execution of this Agreement as a “stalking horse” asset purchase agreement, the transactions contemplated herein, and the Sale Procedure, in form and content acceptable to the Purchaser and the Receiver;

**“Successful Bid”** has the meaning ascribed to it in the Sale Procedure;

**"Taxes"** means all taxes, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax, including, Canada Pension Plan and provincial pension plan contributions (or equivalent in the jurisdiction where the Purchased Assets may be located), employment insurance payments and workers compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not that arise in respect of the Purchased Assets in the jurisdiction in which they are located.

## **1.2 Section References**

Unless the context requires otherwise, references in this Agreement to Sections are to Sections of this Agreement.

# **ARTICLE 2** **PURCHASE AND SALE**

## **2.1 Purchase and Sale of Purchased Assets**

At the Closing Time, subject to the terms and conditions of this Agreement and the Approval and Vesting Order, the Receiver shall sell, and the Purchaser shall purchase, all of the Receiver and the Debtors' right, title and interest to the assets set out in **Schedule “B”** hereto, as such Schedule “B” may be amended pursuant to Section 4.7 hereof (collectively the **“Purchased Assets”**), which includes the shares (the **“Purchased Shares”**) of the companies listed in Schedule A (collectively, the **“Companies”**).

## **2.2 Purchase Price**

Pursuant to the terms and subject to the conditions set forth in this Agreement, in consideration of the sale of the Purchased Assets pursuant to the terms hereof, the Purchaser shall pay to the Receiver in cash the amount of \$4,650,000 (the **“Purchase Price”**), inclusive of applicable Taxes.

## 2.3 Deposit

- (a) Within 24 hours of the execution and delivery of this Agreement by both Parties, the Purchaser shall pay a refundable deposit to the Receiver, in trust, by way of electronic funds transfer in the amount of \$232,500 (the “**Deposit**”).
- (b) The Deposit shall be held, pending Closing, by the Receiver in an interest-bearing account with a third-party financial institution.
- (c) If the Closing does not occur due to:
  - (1) a material uncured breach of this Agreement by Purchaser, or
  - (2) the Purchaser’s failure to close the transaction set forth in this Agreement on or before the Outside Date, except where the failure to close is due to:
    - (A) a termination pursuant to Section 7.1(a);
    - (B) a mutual termination of this Agreement pursuant to Section 7.1(b); or
    - (C) the Purchaser terminating pursuant to Section 7.1(c) because a condition precedent set forth in Section 5.1 is not satisfied prior to the Outside Date

the full amount of the Deposit (plus accrued interest), less any applicable withholding Tax, shall become the property of the Receiver and be forfeited, and released to the Receiver as liquidated damages and not as a penalty.

- (d) If the Closing does not occur for any reason other than that expressed in Section 2.3(c) above (including, without limitation where the failure to close is due to (i) a termination due to Section 7.1(a), or (ii) a mutual termination of this Agreement pursuant to Section 7.1(b), or (iii) the Purchaser terminating pursuant to Section 7.1(c) because a condition precedent set forth in Section 5.1 is not satisfied prior to the Outside Date), the full amount of the Deposit (plus accrued interest), less any applicable withholding Tax, shall be returned by the Receiver to the Purchaser. The return of the Deposit pursuant to this Section 2.3(d) and the payment of the Break Fee pursuant to Section 3.4 shall be the sole and exclusive remedy as liquidated damages of the Purchaser, whether at law or in equity, for any breach by the Receiver of the terms and conditions of this Agreement.

## 2.4 Satisfaction of Purchase Price

The Purchaser shall satisfy the Purchase Price on Closing by payment to the Receiver by wire transfer of the Purchase Price, less the amount of the Deposit, to an account specified in writing by the Receiver.

## **2.5 HST and Receivables Elections**

If applicable, at the Closing, the Receiver and the Purchaser shall jointly execute an election under Section 167 of the *Excise Tax Act* (Canada) to seek to cause the sale of the Purchased Assets to take place on an HST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser shall file such election with its HST return for the applicable reporting period in which the sale of the Purchased Assets takes place.

## **ARTICLE 3** **PROCEDURES**

### **3.1 Motion for Stalking Horse and Sale Procedure Order**

The Receiver shall file with the Court, as soon as practicable following the execution and delivery of this Agreement, a motion seeking the Court's issuance of the Stalking Horse and Sale Procedure Order. The Purchaser shall cooperate with the Receiver in its efforts to obtain the issuance and entry of the Stalking Horse and Sale Procedure Order. The Purchaser, at its own expense, will promptly provide to the Receiver all such information within its possession or under its control as the Receiver may reasonably request to obtain the Stalking Horse and Sale Procedure Order. The Receiver shall serve its motion seeking the Stalking Horse and Sale Procedure Order on not less than seven Business Days notice, and shall serve any party or parties as the Purchaser may reasonably request.

### **3.2 Motion for Approval and Vesting Order**

If this Agreement is determined to be the Successful Bid in accordance with the Sale Procedure, the Receiver shall file with the Court, as soon as reasonably practicable thereafter, a motion seeking the Court's issuance of the Approval and Vesting Order. The Purchaser shall cooperate with the Receiver in its efforts to obtain the issuance and entry of the Approval and Vesting Order. The Purchaser, at its own expense, will promptly provide to the Receiver with all such information within its possession or under its control as the Receiver may reasonably request to obtain the Approval and Vesting Order. The Receiver shall serve its motion seeking the Approval and Vesting Order on not less than seven Business Days notice, and shall serve any party or parties as the Purchaser may reasonably request.

### **3.3 One or More Qualified Bids**

If one or more Qualified Bids (other than this Agreement) are received pursuant to the Sale Procedure, the Receiver shall pursue such bid(s) in accordance with the Sale Procedure.

### **3.4 Break Fee**

If this Agreement is terminated pursuant to Section 7.1(a) herein and the Purchased Assets are sold pursuant to either the Successful Bid or the Back-Up Bid, the Purchaser shall be entitled to a break-fee in the aggregate total amount of \$186,000, from the proceeds of such sale (the "**Break Fee**"). The Break Fee, if payable, will, in addition to the return of the Deposit pursuant to Section 2.3(d), be the sole and exclusive remedy as liquidated damages of the Purchaser, whether

at Law or in equity, for any breach by the Receiver of the terms and conditions of this Agreement. For greater certainty, the Receiver's obligation to pay the Break Fee pursuant to this Section 3.4 is expressly subject to Court approval and the granting of the of the Stalking Horse and Sale Procedure Order.

## **ARTICLE 4**

### **CLOSING ARRANGEMENTS**

#### **4.1 Closing**

Closing shall take place at 3:00 p.m. (the "**Closing Time**") on a Business Day (the "**Closing Date**") to be designated by the Purchaser and reasonably acceptable to the Receiver not later than 3 Business Days after the satisfaction or waiver of the conditions set out in Article 5. The Closing shall take place by electronic transmission of documents, or at such other time and location, and in such other manner, as the Parties may agree upon in writing.

#### **4.2 Tender**

Except as otherwise set out herein, any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel and money may be tendered by official bank draft drawn upon a Canadian chartered bank, by negotiable cheque payable in Canadian funds and certified by a Canadian chartered bank or trust company, or by wire transfer of immediately available funds to the account specified by that Party.

#### **4.3 Receiver's Closing Deliveries**

At the Closing, the Receiver shall deliver to the Purchaser the following, each in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) a copy of the Approval and Vesting Order, issued by the Court;
- (b) the Purchased Assets, in accordance with the Purchaser's instructions;
- (c) evidence that the Companies have entered the Purchaser or its nominees upon the books of the Companies as the holder of the Purchased Shares, but only to the extent the Receiver has obtained such evidence in accordance with Section 4.5; and
- (d) the Receiver's Certificate, executed by the Receiver.

#### **4.4 Purchaser's Closing Deliveries**

At the Closing, the Purchaser shall deliver to the Receiver the following, each in form and substance satisfactory to the Receiver, acting reasonably:

- (a) the Purchase Price (less the Deposit);
- (b) a completed and signed Accredited Investor form.



#### **4.5 Companies Share Registries**

The Receiver shall take all reasonable steps necessary to cause the Companies to enter the Purchaser or its nominees upon the books of the Companies as the holder of the Purchased Shares on Closing, provided that the Purchaser shall provide the Receiver with any information or reasonable assistance as may be requested by the Receiver in connection with obtaining such entries.

#### **4.6 Delivery of the Receiver's Certificate**

When the conditions set out in Article 5 below have been satisfied or waived, the Receiver will deliver an executed copy of the Receiver's Certificate to the Purchaser. Upon such delivery, the Closing will be deemed to have occurred. The Receiver will thereafter promptly file a copy of the Receiver's Certificate with the Court.

#### **4.7 Removal of Purchased Assets**

At any time prior to Closing, the Purchaser may remove any asset or assets from Schedule "B" by giving the Receiver written notification that such asset shall not be purchased, and upon receipt of such notice by the Receiver the specified asset or assets shall not constitute a "Purchased Asset". The Purchase Price shall not be reduced or amended in the event that any assets are removed from Schedule "B" pursuant to this Section 4.7.

### **ARTICLE 5** **CONDITIONS PRECEDENT**

#### **5.1 Conditions Precedent of the Purchaser**

The Purchaser shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing, by the Purchaser at any time; and the Receiver agrees with the Purchaser to take all such commercially reasonable actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Execution of this Agreement.* The Receiver shall delivery a fully executed copy of this Agreement to the Purchaser on or before 5 p.m. (Toronto time) on Wednesday, December 16, 2020.
- (b) *Representations and Warranties.* The representations and warranties of the Receiver in Section 6.1 shall be true and correct at the Closing Time;
- (c) *Stalking Horse and Sale Procedure Order.* The Stalking Horse and Sale Procedure Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Stalking Horse and Sale Procedure Order shall have expired;

- (d) *Successful Bid.* The Receiver shall have determined in accordance with the Sale Procedure that this Agreement is a Successful Bid.
- (e) *Approval and Vesting Order Final:* The Approval and Vesting Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Approval and Vesting Order shall have expired if the hearing for the Approval and Vesting Order is contested; and
- (f) *Receiver's Compliance.* The Receiver shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before the Closing Time and shall have executed and delivered to the Purchaser at the Closing Time all the deliveries contemplated in Section 4.3.

## **5.2 Conditions Precedent of the Receiver**

The Receiver shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Receiver, and may be waived, in whole or in part, in writing by the Receiver at any time; and the Purchaser agrees with the Receiver to take all such commercially reasonable actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Purchaser's Compliance.* The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed by or complied with at or before the Closing Time and shall have executed and delivered to the Receiver at the Closing Time all the deliveries contemplated in Section 4.4 in this Agreement.
- (b) *Stalking Horse and Sale Procedure Order.* The Stalking Horse and Sale Procedure Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Stalking Horse and Sale Procedure Order shall have expired;
- (c) *Approval and Vesting Order Final:* The Approval and Vesting Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Approval and Vesting Order shall have expired if the hearing for the Approval and Vesting Order was contested; and
- (d) *Representations and Warranties.* The representations and warranties of the Purchaser in Section 6.2 shall be true and correct at the Closing Time.

## **5.3 Non-Satisfaction of Conditions**

If any condition precedent set out in Section 5.1 or 5.2 is not satisfied or performed prior to the Outside Date, the Party for whose benefit the condition precedent is inserted may:

- (a) waive compliance with the condition, in whole or in part, in its sole discretion by written notice to the other Party (but may not claim for any matter waived) and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or
- (b) elect on written notice to the other Party to terminate this Agreement, in which event each Party shall be released from all obligations under this Agreement, provided that the Deposit shall be dealt with in accordance with the terms of Section 2.3 hereof.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES**

#### **6.1 Representations and Warranties of the Receiver**

As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Receiver set out in this Section 6.1, the Receiver hereby represents and warrants to the Purchaser as follows:

- (a) *Due Authorization.* Subject to the granting of the Approval and Vesting Order, the Receiver has all necessary authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments;
- (b) *Enforceability of Obligations.* Subject to the granting of the Approval and Vesting Order, if applicable, this Agreement constitutes a valid and binding obligation of the Receiver, enforceable against the Receiver, in accordance with its terms.

#### **6.2 Representations and Warranties of the Purchaser**

As a material inducement to the Receiver entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Receiver is entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 5.2, the Purchaser hereby represents and warrants to the Receiver as follows:

- (a) *Financial Wherewithal.* The Purchaser has the financial wherewithal to satisfy the Purchase Price on the Closing Date and has the amount of the Purchase Price currently available to it;
- (b) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser, enforceable against the Purchaser, in accordance with its terms;
- (c) *Securities Laws.* The Purchaser is purchasing the Purchased Shares as principal or is deemed to be purchasing as principal in accordance with applicable Canadian

securities laws and satisfies the definition of “accredited investor” as such term is defined under National Instrument 45-106 *Prospectus and Registration Exemptions*; and

- (d) *Acknowledgement of Risks and Restrictions.* The Purchaser is aware of the risks and other characteristics of the Purchased Shares and of the fact that the Purchaser may not be able to resell the Purchased Shares except in accordance with the applicable securities legislation and regulatory policies.

### **6.3 Acquisition of Purchased Assets on "As Is, Where Is" Basis**

The Purchaser acknowledges and agrees that (a) the Receiver is selling the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date, subject to the terms of the Approval and Vesting Order, and (b) it has conducted or will conduct its own searches and investigations relating to the Purchased Assets.

Without limiting the generality of the foregoing, any and all conditions, warranties or representations, expressed or implied, pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser.

## **ARTICLE 7** **TERMINATION**

### **7.1 Termination by the Parties**

This Agreement may be terminated:

- (a) automatically and without any action or notice by either the Receiver to the Purchaser or the Purchaser to the Receiver, immediately (i) upon the selection by the Receiver of a Successful Bid, if this Agreement is neither the Successful Bid nor the Back-Up Bid selected at such time, or (ii) upon the Closing of the Successful Bid(s) if this Agreement is the Back-Up Bid;
- (b) upon the mutual written agreement of the Receiver and the Purchaser; or
- (c) pursuant to Section 5.3(b) by either Party, unless such Party is in material breach of its obligations under this Agreement.

## **ARTICLE 8** **GENERAL CONTRACT PROVISIONS**

### **8.1 Headings and Sections**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **8.2 Number and Gender**

Unless the context requires otherwise, words importing the singular include the plural and vice versa, and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

## **8.3 Currency**

Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.

## **8.4 No Strict Construction**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party, including, without limitation, the doctrine of *contra proferentum*.

## **8.5 Entire Agreement**

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and sets out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement.

## **8.6 Expenses**

Each Party shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

## **8.7 Notices**

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by email as follows:

- (a) in the case of notice to the Receiver at

**KSV Restructuring Inc.**  
150 King Street West, Suite 2308  
Toronto, Ontario, M5H 1J9

Attention: Noah Goldstein  
Email: [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com)

With a copy to:

**Bennett Jones LLP**  
First Canadian Place  
100 King Street West, Suite 3400  
Toronto, Ontario, M5X 1A4

Attention: Sean Zweig  
Email: [ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)

(b) in the case of a notice to the Purchaser at:

**Avina Acquisition Corp.**  
2 Bloor Street East, Suite 810  
Toronto, Ontario, M4W 1A8

Attention: Armand Reale  
Email: [areale@junipercptl.com](mailto:areale@junipercptl.com)

With a copy to:

**Blake, Cassels & Graydon LLP**  
Commerce Court West  
199 Bay Street, Suite 4000  
Toronto, Ontario, M5L 1A9

Attention: Chris Burr  
Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.

## **8.8 Successors and Assigns**

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns including a trustee in bankruptcy of the Debtors. Neither Party may assign or transfer,

whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Party.

### **8.9 Third Party Beneficiaries**

Unless where provided to the contrary by the specific terms hereof, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

### **8.10 Time of the Essence**

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

### **8.11 Amendment**

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

### **8.12 Further Assurances**

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing Date, provided that the reasonable costs and expenses of any actions taken after the Closing Date at the request of a Party shall be the responsibility of the requesting Party.

### **8.13 Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

### **8.14 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the Courts of the Province of Ontario. The Parties consent to the jurisdiction and venue of the Court for the resolution of any disputes under this Agreement.

### **8.15 Non-Merger**

Subject to Section 6.3, the representations, warranties and covenants of each Party contained in this Agreement will not merge on and will survive the closing of the Transaction and will continue in full force and effect, notwithstanding the closing of the Transaction or any investigation or knowledge acquired by or on behalf of the other Party.

### **8.16 Independent Legal Advice**

The Purchaser warrants that it has received independent legal advice in connection with this Agreement.

### **8.17 Execution and Delivery**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original or faxed form or by electronic delivery in portable document format (PDF) and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties.

### **8.18 Damages**

Under no circumstance shall any of the Parties or their representatives be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

### **8.19 No Brokers**

It is understood and agreed that the Purchaser shall not be liable for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Receiver. It is further understood and agreed that the Receiver shall not be liable for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Purchaser.

### **8.20 Receiver's Capacity**

The Purchaser acknowledges and agrees that KSV Restructuring Inc., acting in its capacity as receiver of the Debtors, will have no liability, in its personal capacity, in connection with this Agreement whatsoever.

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IN WITNESS OF WHICH the Parties have executed this Agreement.

**KSV RESTRUCTURING INC., in its capacity as Court-appointed Receiver of Audible Capital Corp. et al. and not in its personal or corporate capacity**

Per: 

Name: Noah Goldstein

Title: Managing Director

I have the authority to bind the Receiver

**AVINA ACQUISITION CORP.**

Per: 

Name: Armand Reale

Title: Director

I have the authority to bind the Corporation

**SCHEDULE “A”**  
**Form of Sale Procedure**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**BRIDGING FINANCE INC. AS AGENT**

Applicant

- and -

**AUDIBLE CAPITAL CORP.,  
AVENIR TRADING CORP., 1892244 ALBERTA LTD.,  
AVENIR SPORTS ENTERTAINMENT LTD.,  
AVENIR SPORTS ENTERTAINMENT CORP. and  
PORTLAND WINTER HAWKS, INC.**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

**Bidding Procedures**

Set forth below are the bidding procedures (the “**Bidding Procedures**”) to be employed with respect to the sale (the “**Sale**”) of certain of Audible Capital Corp.'s (“**Audible**”) assets set out in Schedule "A" hereto (the “**Investment Assets**”) pursuant to a court approved solicitation process in the receivership proceedings bearing Court File No. CV-20-00640212-00CL.

On January 6, 2021, the Court issued an order (the “**Sale Process Order**”) approving and accepting for the purpose of conducting a “stalking horse” solicitation process (the “**Stalking Horse Process**”) in accordance with these Bidding Procedures that certain asset purchase agreement dated December 15, 2020 (the “**Stalking Horse Bid**”) between KSV Restructuring Inc., in its capacity as Court-appointed Receiver of Audible et al, and not in its personal capacity (the “**Receiver**”), and Avina Acquisition Corp. (the “**Stalking Horse Bidder**”), including, without limitation, the payment of a break fee (the “**Break Fee**”) by the Receiver to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid, and approving these Bidding Procedures.

Subject to Court availability and the terms hereof, the Receiver shall bring a motion (the “**Approval and Vesting Order Motion**”) on or before March 2, 2021 (or, if there is no Auction, on or before February 23, 2021) seeking the granting of an order by the Court authorizing the Receiver to proceed with the Sale of the Investment Assets to the Qualified Bidder(s) making the Successful Bid (each as defined below) (the “**Successful Bidder**”) (such order, as approved, the “**Approval and Vesting Order**”).

#### **Key Dates**

On or before January 7, 2021 at 5:00 p.m. (prevailing Eastern Time)	Delivery of Teasers and Sales Packages
On or before January 7, 2021 at 5:00 p.m. (prevailing Eastern Time)	Confidential Data-Site to be established
February 4, 2021 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline - Due Date for Bids and Deposits
February 8, 2021 at 5:00 p.m. (prevailing Eastern Time)	Receiver to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth either or both: (i) the highest or otherwise best fully binding offer for all of the Investment Assets; and (ii) the highest or otherwise best fully binding offer(s) for all or any combination of the Investment Assets
February 11, 2021 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any)

February 23, 2021 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if the Auction is not required	Approval and Sale Order hearing
March 2, 2021 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if the Auction is required	Approval and Sale Order hearing

### **Assets to Be Sold En Bloc or Piecemeal**

The Receiver is offering for sale all of the Investment Assets and the Receiver will consider (i) a bid for all of the Receiver's right, title and interest in and to the Investment Assets (an “**En Bloc Bid**”); or (ii) separate bids to acquire some but not all of the Investment Assets (a “**Piecemeal Bid**”), provided that the Receiver will only consider Piecemeal Bids if a combination of one or more Piecemeal Bids in the aggregate meet the requirements to be a Qualified Bid (as defined below). The Receiver will be responsible for conducting the solicitation process and an auction (the “**Auction**”) (if any). The Auction, if any, will be conducted by the Receiver.

### **The Bidding Process**

The Receiver shall be responsible for the marketing and sale of the Investment Assets pursuant to the process described by the Receiver's Report to Court dated December ●, 2020 (the “**Bidding Process**”), which is set out below. The Receiver shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Process, *provided, however*, that the adoption of any rule that materially deviates from these Bidding Procedures shall require the prior written consent of the Stalking Horse Bidder and Bridging Finance Inc., as agent (“**Bridging**”) or a further Order of the Court.

### **Participation Requirements**

“**Qualified Bidder**” is a bidder who submits a bid in substantially the same form as the Stalking Horse Bid, for a cash purchase price of at least CAD\$4,936,000 million and includes the Required Bid Terms and Materials (as defined below).

### **Bid Deadline**

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Terms and Materials to the Receiver no later than 5:00 p.m. (prevailing Eastern time) on February 4, 2021 (the “**Bid Deadline**”). Bridging has confirmed to the Receiver that it will not participate in the process as a bidder, and accordingly, the Receiver shall forthwith provide copies of any bids received to Bridging.

### **Bid Requirements**

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Receiver after consultation with Bridging, the following (collectively, the “**Required Bid Terms and Materials**”):

- (i) A base cash purchase price equal to or greater than CAD\$4,936,000, being the amount payable under the Stalking Horse Bid plus the Break Fee (CAD\$186,000) and CAD\$100,000 bid increment (collectively, the “**Base Purchase Price**”);
- (ii) A provision stating that the bidder’s offer is irrevocably open for acceptance until the earlier of (i) the date that the Investment Assets have been sold pursuant to the closing of the sale approved by the Court; and (ii) the Outside Date;
- (iii) An executed copy of a proposed purchase agreement and a redline of the bidder’s proposed purchase agreement reflecting variations from the Stalking Horse Bid (the “**Marked Agreement**”);
- (iv) A cash deposit in the amount of not less than five *per cent* (5%) of the amount of the Base Purchase Price, in the form of a wire transfer, certified cheque or such other form acceptable to the Receiver (the “**Bid Deposit**”), which shall be held in the trust account of the Receiver’s solicitors (the “**Escrow Account**”). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest on Closing to the purchase price payable by it under its bid on the closing thereof; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer (which in the case of the Back-Up Bidder shall be following closing of the sale to the Successful Bidder).

A bid received from a Qualified Bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a “**Qualified Bid**”. The Receiver, in consultation Bridging, reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the best offer (the “**Lead Bid**”). For greater certainty, the Lead Bid can be two or more Piecemeal Bids. Details of the Lead Bid will be provided by the Receiver to all Qualified Bidders after the Bid Deadline and no later than 5:00p.m. (Eastern Time) two (2) Days before the date scheduled for the Auction.

Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

### **“As Is, Where Is, With All Faults”**

The Sale of the Investment Assets shall be on an “as is, where is” and “with all faults” basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Receiver or its agents, representatives, partners or employees, or any of the other parties participating in the sales process pursuant to these Bid Procedures, except as may otherwise be provided in a definitive purchase agreement with the Receiver. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Investment Assets prior to making its bid, that it has relied solely upon its own

independent review, investigation and/or inspection of any documents and/or the Investment Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Investment Assets, the financial performance of the Investment Assets or the location of the Investment Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Receiver.

### **Free of Any and All Liens**

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder's purchase agreement, and subject to any permitted encumbrances therein, all of the Receiver's and Audible's right, title and interest in and to the Investment Assets shall be sold free and clear of all liens and encumbrances pursuant to the Approval and Vesting Order.

### **The Sale and Auction Process**

If one or more Qualified Bids (other than that submitted by the Stalking Horse Bidder) have been received by the Receiver on or before the Bid Deadline, the Receiver shall advise all Qualified Bidders of the Lead Bid and invite all Qualified Bidders (including the Stalking Horse Bidder) to attend the Auction to be conducted by the Receiver in accordance with the Auction Procedures attached hereto as Appendix 1. The Auction shall be conducted by video conference. The Qualified Bid that is selected by the Receiver as the successful bid in accordance with the Auction Procedures shall be the "**Successful Bid**".

If no Qualified Bid (other than the Stalking Horse Bid) is submitted by the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, the Stalking Horse Bidder shall be the Successful Bidder and the Auction shall be cancelled.

**The Receiver to Determine Highest and/or Best Bid:** The Receiver shall determine after each round of offers in the Auction, in its reasonable business judgment, the best bid and this bid shall be the Lead Bid. In making such determination, the Receiver may consider, without limitation: (i) the amount and nature of the consideration; (ii) the ability of the Qualified Bidder in question to close the proposed transaction; (iii) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (iv) any purchase price adjustment; (v) the net economic effect of any changes made to the Stalking Horse Bid; and (vi) such other considerations as the Receiver deems relevant in its reasonable business judgment. At the end of each round of offers, the Receiver shall advise the Qualified Bidders of the material terms of the then highest and/or best bid, and the basis for calculating the total consideration offered in such offer. If at the end of any round of bidding a Qualified Bidder has elected not to submit a further bid meeting the criteria set out herein (including the Minimum Bid Increment), then such Qualified Bidder shall not be entitled to continue to participate in the next round of offers or in any subsequent round.

If only one Qualified Bid is submitted after a round of offers then that Qualified Bid shall be the Successful Bid. The next highest offer, as determined by the Receiver (the "**Back-up Bid**"), shall be required to keep its offer open and available for acceptance until the closing of the Court Approved Sale of the Investment Assets to the Successful Bidder.

### **Highest versus Best Offer**

In determining the Lead Bid, the highest and/or best sale offer or offers during each round of offers, and the Successful Bid, the Receiver, in consultation with Bridging, is not required to select the offer with the highest purchase price and may, exercising its reasonable business judgment, select another offer or offers on the basis that it or they are the best offer even though not the highest purchase price, individually or in the aggregate. Without limiting the foregoing, the Receiver, in consultation with Bridging, may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgment, is appropriate and reasonable, including those considerations described above under “The Receiver to Determine Highest and/or Best Bid”.

### **Break Fee**

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Receiver has agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, a Break Fee of \$186,000 inclusive of HST (if any), in the event that the Stalking Horse Bidder is not the Successful Bidder.

The Break Fee is a material inducement for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Bid. The Break Fee, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Sale Process Order.

### **Acceptance of Qualified Bids**

The sale of the Investment Assets to any Successful Bidder by the Receiver is expressly conditional upon the approval of the Successful Bid by the Court at the hearing of the Approval and Vesting Order Motion. The presentation of the Successful Bid to the Court for approval does not obligate the Receiver to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. The Receiver will be deemed to have accepted a bid only when the bid has been approved by the Court at the hearing on the Approval and Vesting Order Motion.

### **Approval and Vesting Order Motion Hearing**

The Approval and Vesting Order Motion shall, subject to court availability, be made returnable on or before March 2, 2021 (or, if there is no Auction, as soon as practicable). The Receiver, in consultation with Bridging, reserves its right to the extent consistent with the Stalking Horse Bid to change the date of the hearing of Approval and Vesting Order Motion in order to achieve the maximum value for the Investment Assets.

### **Miscellaneous**

The solicitation process and these Bidding Procedures are solely for the benefit of the Receiver and nothing contained in the Sale Process Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Sale



Process Order. The bid protections incorporated in these Bidding Procedures are solely for the benefit of the Stalking Horse Bidder.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order, the Stalking Horse Process and the Bidding Procedure.

## APPENDIX I

### Auction Procedures

#### Auction

1. If the Receiver, in consultation with Bridging, determines to conduct an Auction pursuant to the Bidding Procedures, the Receiver will notify the Qualified Bidders who made a Qualified Bid that an Auction will be conducted. The Auction will be convened by the Receiver and conducted by video conference at 10:00 a.m. (Eastern Time) on February 11, 2021, or such other place and time as the Receiver may advise. Capitalized terms used but not defined have the meaning given to them in the Bidding Procedures. The Auction shall be conducted in accordance with the following procedures:
  - a) Participation at The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Receiver shall provide all Qualified Bidders with the amount of the Leading Bid by 5:00pm (Eastern Time) two (2) Days before the date scheduled for the Auction. Each Qualified Bidder must inform the Receiver whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, Bridging, the Receiver and their respective counsel and other advisors shall be permitted to attend the Auction.
  - b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the “Opening Bid” for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the “Opening Bid” for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
  - c) Receiver Shall Conduct the Auction. The Receiver and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Receiver shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take

into account any factors that the Receiver reasonably deems relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the Receiver's assessment of the certainty of the Qualified Bidder to close the proposed transaction on or before the Outside Date; (iii) the likelihood, extent and impact of any potential delays in closing; (iv) the net economic effect of any changes from the Opening Bid of the previous round, and (v) such other considerations as the Receiver deems relevant in its reasonable business judgment (collectively, the “**Bid Assessment Criteria**”). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Receiver shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.

- d) Terms of Overbids. An “**Overbid**” is any Bid made at the Auction subsequent to the Receiver's announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in minimum Cash Purchase Price increments of CAD\$100,000 above the Opening Bid, or such increments as the Receiver, in consultation with Bridging, may determine in order to facilitate the Auction (the “**Minimum Overbid Increment**”). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.
  - (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply. Any Overbid made by a Qualified Bidder must provide that it remains irrevocable and binding on the Qualified Bidder and open for acceptance as a Back-Up Bid until the closing of the Successful Bid.
  - (iii) *Announcing Overbids:* At the end of each round of bidding, the Receiver shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid, including the assets proposed to be acquired and the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
  - (iv) *Consideration of Overbids:* The Receiver, in consultation with Bridging, reserves the right to make one or more adjournments in the Auction in durations set by the Receiver to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and, (C) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Receiver may have clarifying discussions with a Qualified Bidder, and the Receiver may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such

discussions. BIDDERS MUST OBTAIN ALL NECESSARY APPROVALS AND FUNDING COMMITMENTS IN ADVANCE OF THE AUCTION.

- (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the next round of the Auction.
- e) Additional Procedures. The Receiver, in consultation with Bridging, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Bidding Procedures and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.
- f) Closing the Auction. The Auction shall be closed after the Receiver, in consultation with Bridging, has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Bid and the Back-Up Bid and the Receiver has advised the Qualified Bidders participating in the Auction of such determination
- g) Finalizing Documentation. Promptly following a Bid of a Qualified Bidder being declared the Successful Bid or the Back-Up Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid. For greater certainty, every Bid made at Auction is deemed to be a signed and binding bid based on the bidder's original Qualified Bid.

### Schedule "A"

<b>Private Company</b>	<b>Number of Shares</b>
Archeoptix Biomedical Inc.	760,000
Phononic, Inc.	66,700
Performance Phenomics Inc.	1,000,000
Conavi Medical Inc.	24,193
Synaptive Medical Inc. – Common Shares	740,000
Synaptive Medical Inc. – Common Share Warrants (CAD\$25.52 strike price until September 21, 2026)	21,000
Synaptive Medical Inc. – Class B Shares	2,365,622
Synaptive Medical Inc. – Class B Warrants (US\$3.75 strike price for 3 years)	1,182,811
Orthogonal Inc.	185,903
Mobility View Inc.	7,187
Sage Senses Inc. (operating as Motion Gestures)	172,163
Hammerhead Resources Inc. (formerly Canadian International Oil Corp.)	40,000
Panaxium Inc.	969,767
EdgeHill Partners	18 units
BioSteel Sports Nutrition Inc.	All shares held by Audible Capital Corp.

**SCHEDULE “B”**  
**List of Purchased Assets**

<b>Private Company</b>	<b>Number of Shares</b>
Archeoptix Biomedical Inc.	760,000
Phononic, Inc.	66,700
Performance Phenomics Inc.	1,000,000
Conavi Medical Inc.	24,193
Synaptive Medical Inc. – Common Shares	740,000
Synaptive Medical Inc. – Common Share Warrants (CAD\$25.52 strike price until September 21, 2026)	21,000
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Sage Senses Inc. (operating as Motion Gestures)	172,163
Hammerhead Resources Inc. (formerly Canadian International Oil Corp.)	40,000
Panaxium Inc.	969,767
EdgeHill Partners	18 units
BioSteel Sports Nutrition Inc.	All shares held by Audible Capital Corp.

## **Appendix “B”**

**Summary of Break Fees in Recent Canadian Restructuring Proceedings**

Company	Monitor/Trustee	Stalking Horse Price	Break Fee	Break Fee %
Urthecast Corp. 110-112 Avenue Road; 114 Avenue Road and 116 Avenue Road	EY	69,000,000	3,070,000	4.4%
Bow River Energy Ltd.	RSM	16,100,000	385,000	2.4%
James E. Wagner Cultivation Corporation	BDO	4,290,221	175,000	4.1%
Traverse Energy Ltd.	KSV	11,700,000	100,000	0.9%
Viafoura Inc.	EY	3,250,000	97,500	3.0%
Trade Secret Web Printing Inc.	KSV	1,491,000	70,000	4.7%
3070 Ellesmere Developments Inc.	Crowe Soberman	1,800,000	50,000	2.8%
Orbcare Inc.	Crowe Soberman	16,000,000	400,000	2.5%
Strategic Oil & Gas Ltd.	MNP	1,200,000	60,000	5.0%
	KPMG	1,500,000	75,000	5.0%
			<b>Average Fee</b>	<b>3.5%</b>



# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	WEDNESDAY, THE 6 <sup>th</sup>
	)	
JUSTICE HAINEY	)	DAY OF JANUARY, 2021

**BRIDGING FINANCE INC., AS AGENT**

Applicant

**AUDIBLE CAPITAL CORP., AVENIR TRADING CORP.,  
1892244 ALBERTA LTD., AVENIR SPORTS  
ENTERTAINMENT LTD., AVENIR SPORTS  
ENTERTAINMENT CORP. and PORTLAND WINTER  
HAWKS, INC.**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c.B 3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, AS AMENDED

**ORDER**  
(Bidding Procedures and  
Stalking Horse APA Approval)

**THIS MOTION**, made by KSV Restructuring Inc.<sup>1</sup> in its capacity as Court-appointed receiver (in such capacity, the "**Receiver**") of the Property (as defined in the Receivership Order dated May 7, 2020) of Audible Capital Corp., Avenir Trading Corp., 1892244 Alberta Ltd., Avenir Sports Entertainment Ltd., Avenir Sports Entertainment Corp. and Portland Winter Hawks, Inc. for an order, among other things: (i) abridging the time for service of the Notice of Motion and Motion Record herein, if necessary, and validating service thereof; (ii) approving the bidding procedures substantially in the form attached as Schedule "A" hereto (the "**Bidding Procedures**"); and (iii) approving the Stalking Horse APA (as defined below) for the purpose of acting as stalking horse bidder, was heard this day by videoconference due to the COVID-19 pandemic.

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<sup>1</sup> Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

**ON READING** the Notice of Motion of the Receiver, the Fourth Report of the Receiver dated December 22, 2020 (the "**Fourth Report**"), filed, and on hearing the submissions of counsel for the Receiver and counsel for those other parties appearing as indicated by the counsel sheet, no one else appearing although properly served, as appears from the affidavits of Aiden Nelms, sworn, filed:

## **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record in respect of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that all capitalized terms used in this Order and not otherwise defined shall have the meanings ascribed to them in the Fourth Report, the Bidding Procedures and the Stalking Horse APA, as applicable.

## **BIDDING PROCEDURES**

3. **THIS COURT ORDERS** that that the Bidding Procedures (subject to any amendments thereto that may be made in accordance therewith) are hereby approved.

4. **THIS COURT ORDERS** that the Receiver and its advisors are hereby authorized and directed to carry out the Bidding Procedures and to take such steps and execute such documentation as may be necessary or incidental to the Bidding Procedures.

5. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, employees, advisors, 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 the Bidding Procedures, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of the Receiver in performing its obligations under the Bidding Procedures (as determined by this Court).

## **STALKING HORSE APA**

6. **THIS COURT ORDERS** that the bid made by the Purchaser pursuant to the Asset Purchase Agreement dated as of December 15, 2020 among the Receiver and Avina Acquisition Corp., as Purchaser, in the form attached as Appendix "A" to the Fourth Report (the "**Stalking Horse APA**") is hereby approved as the stalking horse bid, provided that nothing herein approves the sale and the vesting of the Purchased Assets to the Purchaser pursuant to the Stalking Horse APA and that the approval of the sale and vesting of such assets shall be considered by this Court on a subsequent motion made to this Court following completion of the sale process pursuant to the terms of the Bidding Procedures if the Stalking Horse Bidder is the Successful Bidder.

7. **THIS COURT ORDERS** that the Receiver's obligation to pay the Break Fee pursuant to section 3.4 of the Stalking Horse APA is hereby approved.

## **REQUESTED INFORMATION**

8. **THIS COURT ORDERS** that all Investment Companies who have not provided the Requested Information to the Receiver as of the date of this Order are hereby directed and ordered to provide the Requested Information to the Receiver forthwith, and in any event no later than January 13, 2021.

## **GENERAL**

9. **THIS COURT ORDERS** that this Order shall have full force and-effect in all provinces and territories in Canada.

10. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder or under the Bidding Procedures.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as

may be necessary or desirable to give effect to this Order, or to assist the Receiver and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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**Schedule "A"**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**BRIDGING FINANCE INC. AS AGENT**

Applicant

- and -

**AUDIBLE CAPITAL CORP.,  
AVENIR TRADING CORP., 1892244 ALBERTA LTD.,  
AVENIR SPORTS ENTERTAINMENT LTD.,  
AVENIR SPORTS ENTERTAINMENT CORP. and  
PORTLAND WINTER HAWKS, INC.**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

**Bidding Procedures**

Set forth below are the bidding procedures (the “**Bidding Procedures**”) to be employed with respect to the sale (the “**Sale**”) of certain of Audible Capital Corp.'s ("Audible") assets set out in Schedule "A" hereto (the "**Investment Assets**") pursuant to a court approved solicitation process in the receivership proceedings bearing Court File No. CV-20-00640212-00CL.

On January 6, 2021, the Court issued an order (the “**Sale Process Order**”) approving and accepting for the purpose of conducting a “stalking horse” solicitation process (the “**Stalking Horse Process**”) in accordance with these Bidding Procedures that certain asset purchase agreement dated December 15, 2020 (the “**Stalking Horse Bid**”) between KSV Restructuring Inc., in its capacity as Court-appointed Receiver of Audible et al, and not in its personal capacity (the “**Receiver**”), and Avina Acquisition Corp. (the “**Stalking Horse Bidder**”), including, without limitation, the payment of a break fee (the “**Break Fee**”) by the Receiver to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid, and approving these Bidding Procedures.

Subject to Court availability and the terms hereof, the Receiver shall bring a motion (the “**Approval and Vesting Order Motion**”) on or before March 2, 2021 (or, if there is no Auction, on or before February 23, 2021) seeking the granting of an order by the Court authorizing the Receiver to proceed with the Sale of the Investment Assets to the Qualified Bidder(s) making the Successful Bid (each as defined below) (the “**Successful Bidder**”) (such order, as approved, the “**Approval and Vesting Order**”).

#### **Key Dates**

On or before January 7, 2021 at 5:00 p.m. (prevailing Eastern Time)	Delivery of Teasers and Sales Packages
On or before January 7, 2021 at 5:00 p.m. (prevailing Eastern Time)	Confidential Data-Site to be established
February 4, 2021 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline - Due Date for Bids and Deposits
February 8, 2021 at 5:00 p.m. (prevailing Eastern Time)	Receiver to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth either or both: (i) the highest or otherwise best fully binding offer for all of the Investment Assets; and (ii) the highest or otherwise best fully binding offer(s) for all or any combination of the Investment Assets
February 11, 2021 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any)



February 23, 2021 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if the Auction is not required	Approval and Sale Order hearing
March 2, 2021 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if the Auction is required	Approval and Sale Order hearing

### **Assets to Be Sold En Bloc or Piecemeal**

The Receiver is offering for sale all of the Investment Assets and the Receiver will consider (i) a bid for all of the Receiver's right, title and interest in and to the Investment Assets (an “**En Bloc Bid**”); or (ii) separate bids to acquire some but not all of the Investment Assets (a “**Piecemeal Bid**”), provided that the Receiver will only consider Piecemeal Bids if a combination of one or more Piecemeal Bids in the aggregate meet the requirements to be a Qualified Bid (as defined below). The Receiver will be responsible for conducting the solicitation process and an auction (the “**Auction**”) (if any). The Auction, if any, will be conducted by the Receiver.

### **The Bidding Process**

The Receiver shall be responsible for the marketing and sale of the Investment Assets pursuant to the process described by the Receiver's Report to Court dated December ●, 2020 (the “**Bidding Process**”), which is set out below. The Receiver shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Process, *provided, however*, that the adoption of any rule that materially deviates from these Bidding Procedures shall require the prior written consent of the Stalking Horse Bidder and Bridging Finance Inc., as agent (“**Bridging**”) or a further Order of the Court.

### **Participation Requirements**

“**Qualified Bidder**” is a bidder who submits a bid in substantially the same form as the Stalking Horse Bid, for a cash purchase price of at least CAD\$4,936,000 million and includes the Required Bid Terms and Materials (as defined below).

### **Bid Deadline**

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Terms and Materials to the Receiver no later than 5:00 p.m. (prevailing Eastern time) on February 4, 2021 (the “**Bid Deadline**”). Bridging has confirmed to the Receiver that it will not participate in the process as a bidder, and accordingly, the Receiver shall forthwith provide copies of any bids received to Bridging.

### **Bid Requirements**

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Receiver after consultation with Bridging, the following (collectively, the “**Required Bid Terms and Materials**”):

- (i) A base cash purchase price equal to or greater than CAD\$4,936,000, being the amount payable under the Stalking Horse Bid plus the Break Fee (CAD\$186,000) and CAD\$100,000 bid increment (collectively, the “**Base Purchase Price**”);
- (ii) A provision stating that the bidder’s offer is irrevocably open for acceptance until the earlier of (i) the date that the Investment Assets have been sold pursuant to the closing of the sale approved by the Court; and (ii) the Outside Date;
- (iii) An executed copy of a proposed purchase agreement and a redline of the bidder’s proposed purchase agreement reflecting variations from the Stalking Horse Bid (the “**Marked Agreement**”);
- (iv) A cash deposit in the amount of not less than five *per cent* (5%) of the amount of the Base Purchase Price, in the form of a wire transfer, certified cheque or such other form acceptable to the Receiver (the “**Bid Deposit**”), which shall be held in the trust account of the Receiver’s solicitors (the “**Escrow Account**”). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest on Closing to the purchase price payable by it under its bid on the closing thereof; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer (which in the case of the Back-Up Bidder shall be following closing of the sale to the Successful Bidder).

A bid received from a Qualified Bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a “**Qualified Bid**”. The Receiver, in consultation Bridging, reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the best offer (the “**Lead Bid**”). For greater certainty, the Lead Bid can be two or more Piecemeal Bids. Details of the Lead Bid will be provided by the Receiver to all Qualified Bidders after the Bid Deadline and no later than 5:00p.m. (Eastern Time) two (2) Days before the date scheduled for the Auction.

Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

### **“As Is, Where Is, With All Faults”**

The Sale of the Investment Assets shall be on an “as is, where is” and “with all faults” basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Receiver or its agents, representatives, partners or employees, or any of the other parties participating in the sales process pursuant to these Bid Procedures, except as may otherwise be provided in a definitive purchase agreement with the Receiver. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Investment Assets prior to making its bid, that it has relied solely upon its own

independent review, investigation and/or inspection of any documents and/or the Investment Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Investment Assets, the financial performance of the Investment Assets or the location of the Investment Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Receiver.

### **Free of Any and All Liens**

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder's purchase agreement, and subject to any permitted encumbrances therein, all of the Receiver's and Audible's right, title and interest in and to the Investment Assets shall be sold free and clear of all liens and encumbrances pursuant to the Approval and Vesting Order.

### **The Sale and Auction Process**

If one or more Qualified Bids (other than that submitted by the Stalking Horse Bidder) have been received by the Receiver on or before the Bid Deadline, the Receiver shall advise all Qualified Bidders of the Lead Bid and invite all Qualified Bidders (including the Stalking Horse Bidder) to attend the Auction to be conducted by the Receiver in accordance with the Auction Procedures attached hereto as Appendix 1. The Auction shall be conducted by video conference. The Qualified Bid that is selected by the Receiver as the successful bid in accordance with the Auction Procedures shall be the "**Successful Bid**".

If no Qualified Bid (other than the Stalking Horse Bid) is submitted by the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, the Stalking Horse Bidder shall be the Successful Bidder and the Auction shall be cancelled.

**The Receiver to Determine Highest and/or Best Bid:** The Receiver shall determine after each round of offers in the Auction, in its reasonable business judgment, the best bid and this bid shall be the Lead Bid. In making such determination, the Receiver may consider, without limitation: (i) the amount and nature of the consideration; (ii) the ability of the Qualified Bidder in question to close the proposed transaction; (iii) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (iv) any purchase price adjustment; (v) the net economic effect of any changes made to the Stalking Horse Bid; and (vi) such other considerations as the Receiver deems relevant in its reasonable business judgment. At the end of each round of offers, the Receiver shall advise the Qualified Bidders of the material terms of the then highest and/or best bid, and the basis for calculating the total consideration offered in such offer. If at the end of any round of bidding a Qualified Bidder has elected not to submit a further bid meeting the criteria set out herein (including the Minimum Bid Increment), then such Qualified Bidder shall not be entitled to continue to participate in the next round of offers or in any subsequent round.

If only one Qualified Bid is submitted after a round of offers then that Qualified Bid shall be the Successful Bid. The next highest offer, as determined by the Receiver (the "**Back-up Bid**"), shall be required to keep its offer open and available for acceptance until the closing of the Court Approved Sale of the Investment Assets to the Successful Bidder.

### **Highest versus Best Offer**

In determining the Lead Bid, the highest and/or best sale offer or offers during each round of offers, and the Successful Bid, the Receiver, in consultation with Bridging, is not required to select the offer with the highest purchase price and may, exercising its reasonable business judgment, select another offer or offers on the basis that it or they are the best offer even though not the highest purchase price, individually or in the aggregate. Without limiting the foregoing, the Receiver, in consultation with Bridging, may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgment, is appropriate and reasonable, including those considerations described above under “The Receiver to Determine Highest and/or Best Bid”.

### **Break Fee**

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Receiver has agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, a Break Fee of \$186,000 inclusive of HST (if any), in the event that the Stalking Horse Bidder is not the Successful Bidder.

The Break Fee is a material inducement for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Bid. The Break Fee, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Sale Process Order.

### **Acceptance of Qualified Bids**

The sale of the Investment Assets to any Successful Bidder by the Receiver is expressly conditional upon the approval of the Successful Bid by the Court at the hearing of the Approval and Vesting Order Motion. The presentation of the Successful Bid to the Court for approval does not obligate the Receiver to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. The Receiver will be deemed to have accepted a bid only when the bid has been approved by the Court at the hearing on the Approval and Vesting Order Motion.

### **Approval and Vesting Order Motion Hearing**

The Approval and Vesting Order Motion shall, subject to court availability, be made returnable on or before March 2, 2021 (or, if there is no Auction, as soon as practicable). The Receiver, in consultation with Bridging, reserves its right to the extent consistent with the Stalking Horse Bid to change the date of the hearing of Approval and Vesting Order Motion in order to achieve the maximum value for the Investment Assets.

### **Miscellaneous**

The solicitation process and these Bidding Procedures are solely for the benefit of the Receiver and nothing contained in the Sale Process Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Sale

Process Order. The bid protections incorporated in these Bidding Procedures are solely for the benefit of the Stalking Horse Bidder.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order, the Stalking Horse Process and the Bidding Procedure.

## APPENDIX I

### Auction Procedures

#### Auction

1. If the Receiver, in consultation with Bridging, determines to conduct an Auction pursuant to the Bidding Procedures, the Receiver will notify the Qualified Bidders who made a Qualified Bid that an Auction will be conducted. The Auction will be convened by the Receiver and conducted by video conference at 10:00 a.m. (Eastern Time) on February 11, 2021, or such other place and time as the Receiver may advise. Capitalized terms used but not defined have the meaning given to them in the Bidding Procedures. The Auction shall be conducted in accordance with the following procedures:
  - a) Participation at The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Receiver shall provide all Qualified Bidders with the amount of the Leading Bid by 5:00pm (Eastern Time) two (2) Days before the date scheduled for the Auction. Each Qualified Bidder must inform the Receiver whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, Bridging, the Receiver and their respective counsel and other advisors shall be permitted to attend the Auction.
  - b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the “Opening Bid” for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the “Opening Bid” for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
  - c) Receiver Shall Conduct the Auction. The Receiver and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Receiver shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take

into account any factors that the Receiver reasonably deems relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the Receiver's assessment of the certainty of the Qualified Bidder to close the proposed transaction on or before the Outside Date; (iii) the likelihood, extent and impact of any potential delays in closing; (iv) the net economic effect of any changes from the Opening Bid of the previous round, and (v) such other considerations as the Receiver deems relevant in its reasonable business judgment (collectively, the “**Bid Assessment Criteria**”). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Receiver shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.

- d) Terms of Overbids. An “**Overbid**” is any Bid made at the Auction subsequent to the Receiver's announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in minimum Cash Purchase Price increments of CAD\$100,000 above the Opening Bid, or such increments as the Receiver, in consultation with Bridging, may determine in order to facilitate the Auction (the “**Minimum Overbid Increment**”). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.
  - (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply. Any Overbid made by a Qualified Bidder must provide that it remains irrevocable and binding on the Qualified Bidder and open for acceptance as a Back-Up Bid until the closing of the Successful Bid.
  - (iii) *Announcing Overbids:* At the end of each round of bidding, the Receiver shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid, including the assets proposed to be acquired and the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
  - (iv) *Consideration of Overbids:* The Receiver, in consultation with Bridging, reserves the right to make one or more adjournments in the Auction in durations set by the Receiver to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and, (C) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Receiver may have clarifying discussions with a Qualified Bidder, and the Receiver may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such

discussions. BIDDERS MUST OBTAIN ALL NECESSARY APPROVALS AND FUNDING COMMITMENTS IN ADVANCE OF THE AUCTION.

- (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the next round of the Auction.
- e) Additional Procedures. The Receiver, in consultation with Bridging, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Bidding Procedures and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.
- f) Closing the Auction. The Auction shall be closed after the Receiver, in consultation with Bridging, has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Bid and the Back-Up Bid and the Receiver has advised the Qualified Bidders participating in the Auction of such determination
- g) Finalizing Documentation. Promptly following a Bid of a Qualified Bidder being declared the Successful Bid or the Back-Up Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid. For greater certainty, every Bid made at Auction is deemed to be a signed and binding bid based on the bidder's original Qualified Bid.



## Schedule "A"

<b>Private Company</b>	<b>Number of Shares</b>
Archeoptix Biomedical Inc.	760,000
Phononic, Inc.	66,700
Performance Phenomics Inc.	1,000,000
Conavi Medical Inc.	24,193
Synaptive Medical Inc. – Common Shares	740,000
Synaptive Medical Inc. – Common Share Warrants (CAD\$25.52 strike price until September 21, 2026)	21,000
Synaptive Medical Inc. – Class B Shares	2,365,622
Synaptive Medical Inc. – Class B Warrants (US\$3.75 strike price for 3 years)	1,182,811
Orthogonal Inc.	185,903
Mobility View Inc.	7,187
Sage Senses Inc. (operating as Motion Gestures)	172,163
Hammerhead Resources Inc. (formerly Canadian International Oil Corp.)	40,000
Panaxium Inc.	969,767
EdgeHill Partners	18 units
BioSteel Sports Nutrition Inc.	All shares held by Audible Capital Corp.

**BRIDGING FINANCE INC., AS AGENT**

Applicant

-and-

**AUDIBLE CAPITAL CORP. *et al***

Respondents

Court File No.: CV-20-00640212-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceedings commenced in Toronto

**BIDDING PROCEDURES AND STALKING**  
**HORSE APA APPROVAL ORDER**

**BENNETT JONES LLP**  
One First Canadian Place  
Suite 3400, P.O. Box 130  
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M5X 1A4

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Lawyers for KSV Restructuring Inc., solely in its  
capacity as Court-appointed Receiver and not in  
its personal capacity

**BRIDGING FINANCE INC., AS AGENT**

Applicant

-and-

**AUDIBLE CAPITAL CORP. *et al***

Respondents

Court File No.: CV-20-00640212-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceedings commenced in Toronto

**Motion Record**

**BENNETT JONES LLP**

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capacity as Court-appointed Receiver and not in  
its personal capacity