

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS LIMITED, ARSENAULT'S FISH MART INC. (each a "Debtor" and collectively the "Debtors")

BETWEEN:

THE TORONTO-DOMINION BANK

APPLICANT

- and -

SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS LIMITED, ARSENAULT'S FISH MART INC.

RESPONDENTS

**FIRST REPORT OF THE MONITOR,
DELOITTE RESTRUCTURING INC.**

DATED SEPTEMBER 25, 2023

INTRODUCTION

1. On September 21, 2023, Toronto-Dominion Bank (the "**Applicant**") brought an application (the "**Initial Application**") before the Court of King's Bench of New Brunswick Trial Division (the "**Court**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to, among other things, obtain a stay of proceedings for the Debtors to allow them to prepare for a going concern sale of the Debtors' business while exploring other restructuring alternatives.
2. On that same day, the Court granted orders (the "**Initial Orders**") in these CCAA proceedings (the "**CCAA Proceedings**") that, among other things:
 - i. appointed Deloitte Restructuring Inc. ("**Deloitte**") as the monitor of the Debtors (the "**Monitor**");
 - ii. appointed David Boyd, a representative of Resolve Advisory Services Ltd. ("**Resolve**") as the chief restructuring officer (the "**CRO**") of the Debtors;
 - iii. ordered a stay of proceedings in favor of the Debtors up to and including October 1, 2023 (the "**Stay Period**");
 - iv. granted an administration charge in the amount of \$250,000 (the "**Administration Charge**") in favour of the Monitor, Monitor's counsel, Applicant's counsel, Debtors' counsel (limited to an aggregate maximum amount of \$25,000), and the CRO;
 - v. granted a directors' charge in favour of the directors and officers of the Debtors in the amount of \$375,000 (the "**Directors' Charge**"); and
 - vi. approved an interim financing facility with a maximum borrowing limit of \$3,000,000 (the "**DIP Facility**") provided by the Applicant and granted a charge in favor of the Applicant (the "**DIP Lender's Charge**").
3. Included in the report of the Proposed Monitor dated September 18, 2023 (the "**Pre-Filing Report**") was the Debtors' 13-week cash flow projection (the "**Cash Flow Statement**").
4. On September 22, 2023, the Service List was provided with the Pre-Filing Report that contained the Cash Flow Statement.

5. The comeback motion is scheduled to be heard on September 28, 2023.

PURPOSE

6. The purpose of this first report (the "**First Report**") is to provide information to the Court on:
 - i. the Debtors' activities and communications with stakeholders since the granting of the Initial Orders;
 - ii. an overview of the Debtors' receipts and disbursements since the granting of the Initial Orders;
 - iii. the Monitor's activities since its appointment; and
 - iv. The Applicant's motion for amended and restated Initial Orders (the "**ARIOS**") and a SISP Approval Order substantially in the form provided by the Applicant that would, among other things:
 - a) provide the Monitor with enhanced powers;
 - b) approve the Monitor's proposed sale and investment solicitation process (the "**SISP**")
 - c) increase the quantum of the Administration Charge from \$250,000 to \$500,000;
 - d) increase the maximum borrowing limit under the DIP Facility from the principal amount of \$3,000,000 to \$10,000,000; and
 - e) extend the Stay Period to November 24, 2023 (the "**Revised Stay Period**").

TERMS OF REFERENCE AND DISCLAIMER

7. In preparing this First Report and making the comments herein, the Monitor has been provided with, and has relied upon, audited and unaudited financial information, books and records and financial information prepared by the Debtors, discussions with management of the Debtors ("**Management**"), discussions with the CRO, and information from other third-party sources (collectively, the "**Information**").
8. Except as described in this First Report in respect of the Cash Flow Statement:

- i. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards ("**Canadian GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.
 - ii. Some of the information referred to in this First Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
9. Future oriented financial information referred to in this First Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
10. Unless otherwise indicated, the Monitor's understanding of the factual matters expressed in this First Report concerning the Debtors and their businesses is based on the Information and not independent factual determinations made by the Monitor.
11. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.
12. Capitalized terms not otherwise defined herein are as defined in the Initial Orders or the Pre-Filing Report.
13. The Pre-Filing Report described, among other things, certain background information about the Debtors and their Cash Flow Statement. Copies of the Initial Orders, the Pre-Filing Report, and

the service list in respect of these CCAA Proceedings are available on the Monitor's website at <https://www.insolvencies.deloitte.ca/SouthShoreSeafoods> (the "**Monitors Website**").

UPDATE ON THE DEBTORS' ACTIVITIES AND COMMUNICATIONS

14. Since the granting of the Initial Orders, the Debtors, with the assistance of the CRO and Monitor, have held open communications with effected stakeholders as follows:

Employee Matters

15. The Debtors have prioritized open communication with employees. Subsequent to the granting of the Initial Orders, Management, the CRO and the Monitor held town hall meetings with employees to apprise them of these CCAA Proceedings and address any questions and/or concerns they may have. In addition, the Debtors, with the assistance of the CRO and the Monitor, have provided a written notice to all employees.
16. As at the date of the Initial Orders, the Debtors employed approximately 235 individuals. The Debtors continue to evaluate and adjust their staffing needs based on ongoing operations. As at the date of the First Report, headcount reductions are not expected until mid-November when the current lobster season begins to wind down.

Customers and Suppliers

17. Since the granting of the Initial Orders, the Debtors, with the assistance of the CRO, have participated in discussions with key customers and key suppliers with the intent to minimize business disruptions, maintain an uninterrupted supply of products and services, and continue to fulfill customer orders.
18. On September 24, 2023, the Monitor was provided with copies of correspondence that will be provided to key customers and key suppliers.

Senior Secured Creditors

19. As described in the Pre-Filing Report, in addition to the Applicant, the Debtors have entered into several lending agreements with various parties and below is a summary of the communication activities in anticipation of and subsequent to the granting of the Initial Orders:

*Business Development Bank of Canada ("**BDC**") and BDC Capital Inc. ("**BDC Capital**")*

20. On September 22, 2023, the Monitor participated in a conference call with the individual with carriage of the file for BDC and BDC Capital (the "**BDC Call**"). The purpose of the BDC Call was to discuss the outcome from the Initial Application and outline the go forward strategy within these CCAA Proceedings, specifically relating to the SISP. Commencing October 3, 2023, the Monitor, the CRO, BDC and BDC Capital will participate in a weekly update call.

Other Lenders

21. In its Pre-Filing Report, the Monitor outlined several parties which the Debtors had entered into various lending agreements (the "**Lending Parties**") with. The Lending Parties consist of:
- i. Cooke Group;
 - ii. Arsenault;
 - iii. MTTCI; and
 - iv. ACOA.
22. The Monitor understands that prior to the filing of the Initial Application and prior to the granting of the Initial Orders, Management and the CRO held discussions with several of the Lending Parties.
23. On September 22, 2023, the Monitor participated in a phone call with a representative of MTTCI.
24. On September 24, 2023, the Monitor sent email correspondence to all of the Lending Parties offering to make itself available to discuss any questions and/or concerns with respect to these CCAA Proceedings.

25. As of the date of the First Report, the Monitor is not aware of any objections from BDC, BDC Capital or the Lending Parties with respect to the relief being sought on the Comeback Motion including the increase in the borrowing limit under the DIP Facility. As set out above and as directed by the Court, the Cash Flow Forecast was provided to the Service List on September 21, 2023.

THE DEBTORS' RECEIPTS AND DISBURSEMENTS

26. Due to the limited time between the granting of the Initial Orders and the date of this First Report, the Monitor and Debtors have not yet prepared a variance analysis comparing actual results to those forecasted in the Cash Flow Statement.
27. On September 22, 2023, the Debtors received the initial DIP Facility advance of \$279,000.
28. With the consent of the Monitor, the Debtors paid \$316,133 to critical suppliers in relation to pre-filing obligations relating to fishers' catches landed during the period September 10 to September 16, 2023 and associated wages to employed fishers helpers.
29. As at the date of the First Report, the Monitor is not aware of any material adverse change to the Debtors' Cash Flow Statement or financial position.

THE MONITOR'S ACTIVITIES SINCE ITS APPOINTMENT

30. Since the granting of the Initial Orders, the Monitor has:
- i. engaged in regular communications with Management and the CRO;
 - ii. corresponded regularly with the Applicant and Applicant's counsel regarding all aspects of these CCAA Proceedings;
 - iii. provided support to the Debtors in preparation and disseminating financial information to the Applicant;

- iv. worked with Management and the CRO to review disbursement approval and reporting procedures to allow for the monitoring of the Debtors' receipts and disbursements in accordance with the Cash Flow Statement contained within the Pre-Filing Report;
- v. filed the prescribed documents with the Office of the Superintendent of Bankruptcy as required under section 23(1)(f) of the CCAA;
- vi. developed, in conjunction with the Applicant, Applicant's counsel, Monitor's counsel, Debtors' counsel and the CRO, the SISP;
- vii. responded to inquiries received from creditors and other parties with respect to these CCAA Proceedings;
- viii. activated the Monitor's Website, email address (southshoreseafoods@deloitte.ca) and hotline (833-422-7516) to ensure creditors and interested parties are kept current with respect to these CCAA Proceedings; and
- ix. Pursuant to the Initial Orders:
 - a) the Monitor has posted copies of the Initial Orders, the Pre-Filing Report, and the Initial Application on the Monitor's Website;
 - b) on September 25, 2023, the Monitor provided a notice of these CCAA Proceedings to creditors with claims greater than \$1,000 as contained within the Debtors' books and records as at the date of the Initial Orders (the "**Known Creditors**");
 - c) on September 25, 2023, posted the list of Known Creditors showing their names, addresses and the estimated claim amounts on the Monitor's Website; and
 - d) the Monitor arranged for notices of these CCAA Proceedings to be published in the Charlottetown Guardian and Telegraph Journal on September 27, 2023, in accordance with section 23(1)(a) of the CCAA.

THE APPLICANT'S REQUEST FOR THE AMENDED AND RESTATED INITIAL ORDERS

31. The Applicant is requesting the following changes with respect to the Initial Orders:

Enhanced Powers of the Monitor

32. The Applicant is seeking to expand the powers of the Monitor, in part, to streamline the magnitude of professional fees incurred as part of these CCAA Proceedings and to ensure a timely market sounding process for the Debtors' assets while maintaining integrity of the SISP.

33. The Monitor has held several discussions with Management, the CRO and Debtors' counsel and identified four areas where control was previously with the Debtors and will be transferred over to the Monitor.

34. The proposed relief being requested under the ARIOs would result in the Monitor being authorized and empowered, in consultation with the Applicant and the CRO, to make decisions and take the necessary steps and actions with respect of the following:

- i. Receipts and disbursements – the Monitor shall approve all of the Debtors' receipts and disbursements.
- ii. All decisions with respect to the SISP - The Monitor has been advised by the Shareholders of their intention to participate in the SISP. In addition, the Monitor understands that Bonfire may act as the Shareholders' financial advisor throughout these CCAA Proceedings. Accordingly, the Monitor is of the opinion that to maintain the integrity of the SISP, both the Shareholders and Bonfire should be excluded from the development and execution of the SISP.
- iii. Employees – The retention and termination of the Debtors' employees on such terms and conditions as the Monitor deems appropriate, including the ability to provide employees with discretionary bonuses not considered to be material in these CCAA Proceedings. If granted the expanded powers, the Monitor has confirmed to the Debtors that it will not take any action relating to the termination of employees that in

Management's view will have a material negative impact on the Debtors' business absent further specific authorization from this Court.

iv. Contracts – execute, assign, issue and endorse agreements, instruments, notices, directions, settlements, filings, authorizations and other documents of whatever nature on behalf of each of the Debtors as the Monitor deems appropriate, whether in the Monitor's name or in the name of and on behalf of any of the Companies. These powers will include the ability for the Monitor to disclaim or resiliate any agreement to which the Debtors are a party as at the date of the Initial Orders in accordance with section 32(1) of the CCAA.

35. The Monitor has discussed these enhanced powers with the Applicant, the Debtors and the CRO and understands that all parties are supportive.

36. The Monitor wishes to advise the Court that it is prepared to accept and undertake the proposed expanded powers contained within the ARIOs should the Court see fit to grant the requested relief.

The Monitor's SISP

37. As stated in the Pre-filing Report, the Debtors engaged Bonfire in January 2023 to assess options related to its working capital challenges and Bonfire also completed a brief marketing effort to source additional financing or a potential equity investment.

38. Throughout the Advisory Mandate, Deloitte maintained regular communication with Management and Bonfire and was provided with documentation relating to the Debtors' businesses that was shared with interested parties.

39. The Monitor has been advised that the Applicant remains supportive of these CCAA Proceedings however a key tenet of its ongoing support is to maximum realization for all stakeholders through the SISP.

40. The Monitor, in consultation with the Applicant and the CRO, have developed the SISP to solicit sale and investment proposals from potentially interested parties. A copy of the SISP procedures (the “**SISP Procedures**”) is enclosed to this First Report as **Appendix A**.

41. The following table summarizes the key activities and milestones related to the SISP. Potentially interested parties should review the full terms of the SISP Procedures with their counsel, as the table below sets out a summary of key terms of the SISP only. The summary below is qualified in its entirety by the actual terms of any SISP granted by the Court, and all capitalized terms are as defined in the SISP Procedures.

Phase/Event	Date	Description of Activities
SISP Order	September 28, 2023	<ul style="list-style-type: none"> • The Applicant is seeking an order approving the SISP.
Publication Notice / Advertising / Direct Marketing	Within one (1) week of the SISP Order being granted	<ul style="list-style-type: none"> • No later than October 4, 2023, the Monitor shall prepare a list of Known Potential Bidders. • Publication and direct marketing of the SISP as determined to be appropriate by the Monitor and CRO in consultation with the Applicant. • The Monitor shall send the Teaser Letter and Confidentiality Agreement to each Known Potential Bidder by no later than October 4, 2023.
Phase 1		<ul style="list-style-type: none"> • The Monitor will seek to identify Qualified Phase 1 Bidders and provide each with notice of same. • Certain criteria are required to be met in order to be a Qualified Phase 1 Bidder. • Receipt of Non-Binding Indications of Interest by the deadline of November 13, 2023. • Non-Binding Indications of Interest can be for a Sale or Investment in the Debtors individually, or in the aggregate.

Phase/Event	Date	Description of Activities
Phase 1 Bid Deadline	5:00 pm Atlantic time on November 13, 2023	<ul style="list-style-type: none"> • Non-Binding Indications of Interest due to be provided to the Monitor for each bidder to continue in the process.
Assessment of Non-Binding Indications of Interest		<ul style="list-style-type: none"> • As soon as possible after the Phase 1 Bid Deadline, but no later than November 17, 2023, the Monitor will assess each Non-Binding Indication of Interest and assess whether each party will be qualified for Phase 2 of the SISP. • Notice will be given to each party if they are a Qualified Phase 2 Bidder. • The Monitor may, in consultation with the Applicant, the CRO and the applicable Secured Creditors, deem one or more Qualified Phase 1 Bids received to be a Qualified Bid, Successful Bid, and/or Backup Bid, as applicable, and bypass Phase 2 (and the timelines set out in the SISP Procedures shall be proportionally accelerated). • Monitor to seek directions from the Court if no Non-Binding Indications of Interest are received.
Phase 2		<ul style="list-style-type: none"> • Solicitation of a Qualified Purchase Bid or a Qualified Investment Bid.

Phase/Event	Date	Description of Activities
Phase 2 Bid Deadline	5:00 pm Atlantic time on December 11, 2023	<ul style="list-style-type: none"> • Qualified Phase 2 Bidders to deliver Qualified Purchase Bids or Qualified Investment Bids to the Monitor by the Phase 2 Bid Deadline.
Evaluation and Selection of the Successful Bid		<ul style="list-style-type: none"> • The Monitor will evaluate each Qualified Bid in conjunction with the Applicant, the applicable Secured Creditors and the CRO. • The Monitor will clarify any Qualified Bids received and further negotiation may occur. • The Successful Bid will be chosen and the Successful Bidder will be notified. • The next best Qualified Bidder may be determined to be a Backup Bidder and, if so, will receive notification of same. • Definitive transaction documents will be settled.
Approval Hearing	Target Hearing Date on or before January 12, 2024	<ul style="list-style-type: none"> • As soon as practical, but on not less than five (5) days' notice to the service list, the Monitor will seek Court approval of the Successful Bid and the Backup Bid, if determined to be necessary by the Monitor.
Closing	Target Closing Date on or before February 15, 2024	

Increase to the Administration Charge

42. Pursuant to the Initial Orders, the Court granted the Administration Charge in the amount of up to \$250,000 in favour of the Professionals to secure payment of professional fees and disbursements incurred while planning for and leading up to the expiry of the Stay Period. As part of the Initial Orders, Debtors' counsel's portion of the Administration Charge was limited to \$25,000.

43. The Applicant seeks to increase the Administration Charge to \$500,000. The increase in the Administration Charge is necessary to ensure the Professionals have adequate protection throughout these CCAA Proceedings until the end of the Revised Stay Period.
44. The Administration Charge in favor of Debtors' counsel will remain limited to an aggregate maximum amount of \$25,000 pending further order of the Court.
45. The Monitor is of the view that the Administration Charge is necessary for the effective participation of the Professionals in these CCAA Proceedings, and the quantum of the Administration Charge is reasonable.
46. The Monitor supports the Administration Charge as contained within the ARIOs.

Increase to the DIP Facility and DIP Lender's Charge

47. Pursuant to the Initial Orders, the Court approved the DIP Facility authorizing the Debtors to borrow an initial maximum principal amount of \$3,000,000.
48. The Applicant seeks to increase the maximum principal amount of the post-filing borrowings to \$10,000,000 under the DIP Facility. The Cash Flow Statement appended to the Pre-Filing Report demonstrated that at times the Debtors require access to the full quantum of the DIP Facility. It is crucial for the Debtors to ensure they have access to liquidity provided by the DIP Facility throughout these CCAA Proceedings. Additionally, it is crucial for the Applicant to be entitled to a DIP Lender's Charge for the full quantum of the borrowings under the DIP Facility.
49. The Monitor supports increase in post-filing borrowings as contained within the ARIOs.

Stay of Proceedings

50. The Stay Period contained within the Initial Orders is set to expire on October 1, 2023. The Applicant is requesting an extension of the Stay Period up to and including November 24, 2023.
51. The Monitor is of the opinion that the Applicant's request for the Revised Stay Period is reasonable and just for the following reasons:

- i. the Debtors require further time to complete their participation in the PEI Fall lobster season, currently scheduled for the end of October. As contained within the Cash Flow Statement, the Debtors' are forecasting operations to be accretive during this period are and the Debtors are forecasted to have sufficient liquidity under the DIP Facility;
- ii. as discussed herein, the Monitor requires time to execute the SISP for the benefit of all stakeholders;
- iii. the Debtors have acted and continue to act in good faith and with due diligence since the granting of the Initial Orders; and
- iv. the Monitor is of the view that no creditor will be materially prejudiced by the Revised Stay Period.

52. The Monitor supports the Revised Stay Period as contained within the ARIOs.

CONCLUSION

53. Based on the enclosed, the Monitor recommends the Court grant the Amended and Restated Initial Orders and the SISP Order in the form put forward by the Applicant.

All of which is respectfully submitted this 25th day of September 2023.

Deloitte Restructuring Inc.

Acting in its capacity as CCAA Monitor of
South Shore Seafoods Ltd., Captain Cooke's Seafood Inc., By the Water Shellfish (2012) Inc., South
Shore Seafoods International Ltd., Can-Am Lobster and Shellfish Ltd., Bridge Lobsters Limited and
Arsenault's Fish Mart Inc., and not in its personal capacity

Per:



James Foran, CPA, CA, CIRP, LIT
Senior Vice-President

APPENDIX A – SISP PROCEDURES

SALE AND INVESTMENT SOLICITATION PROCEDURES

SOUTH SHORE LTD., CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC., SOUTH SHORE INTERNATIONAL LTD., CAN-AM LOBSTER & SHELLFISH LTD., ARSENAULT FISH MART INC. AND BRIDGE LOBSTER LIMITED.

RECITALS

1. On September 21, 2023, Toronto-Dominion Bank (the "**Applicant**") brought an application (the "**Initial Application**") before the Court of King's Bench of New Brunswick Trial Division (the "**Court**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to, among other things, obtain a stay of proceedings for South Shore Seafoods Ltd., Captain Cooke's Seafood Inc., By the Water Shellfish (2012) Inc., South Shore Seafoods International Inc., Can-Am Lobster and Shellfish Ltd., Bridge Lobsters Limited and Arsenault's Fish Mart Inc. (each a "**Debtor**" and collectively the "**Debtors**") to allow them to prepare for a going concern sale of the Debtors' businesses while exploring other restructuring alternatives.
2. On that same day, the Court granted orders (the "**Initial Orders**") in these CCAA proceedings (the "**CCAA Proceedings**"), pursuant to which Deloitte Restructuring Inc. ("**Deloitte**") was appointed as the monitor of the Debtors (the "**Monitor**") and David Boyd, was appointed as a representative of Resolve Advisory Services Ltd. ("**Resolve**") as the chief restructuring officer (the "**CRO**") of the Debtors. On September 28, 2023, the Court granted orders:
 - a. amending and restating the Initial Orders (the "**ARIOS**")
 - b. approving and ratifying the sale and investment solicitation procedures (the "**SISP**") and the SISP procedures set forth herein (these "**SISP Procedures**") (such order, (the "**SISP Approval Order**").
3. The SISP Approval Order, the SISP, and these SISP Procedures shall govern the process for soliciting and selecting bids for:
 - a. the sale (a "**Sale**") of some, all or substantially all of the property, assets and undertakings of the Debtors (the "**Property**"), including without limitation:
 - i. South Shore Seafoods Ltd. ("**SSSL**")
 - ii. By the Water Shellfish (2012) Inc. ("**BTW**")
 - iii. Captain Cooke's Seafood Inc. ("**CCSI**")

- iv. South Shore Seafoods International Inc. ("**SSSI**")
 - v. Can-Am Lobster and Shellfish Ltd. ("**Can-Am**")
 - vi. Bridge Lobsters Limited ("**Bridge**"); and
 - vii. Arsenault's Fish Mart Inc. ("**AFM**")
- b. for the restructuring, recapitalization, or refinancing of the Debtors (an "**Investment**", and together with a Sale, a "**Transaction**").
4. All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day.

ARTICLE 1 INTERPRETATION

1.1 Definitions

In these SISP Procedures, the following terms have the definitions given to them below:

- (a) "**BDC Priority Collateral**" means the equipment identified as "BDC Equipment" in the Debtors books and records and the real property located at i) 181 Milton Ave., Summerside, PEI; and (ii) 1368 Route 112, Searletown, PEI.
- (b) "**Business Day**" means a day (other than Saturday or Sunday) on which banks are generally open for business in Halifax, Nova Scotia.
- (c) "**Buchanan Road Properties**" means the real property located at PID 730333 2941 Barclay Rd, Mount Royal Prince Co, PID 619809 1028 Buchanan Rd Mount Royal, PID 584458 1230 Buchanan Rd Mount Royal, PID 58388 1231 Buchanan Rd, PID 58925 1242 Buchanan Rd and PID 58248 1258 Buchanan Rd.
- (d) "**Deposit**" means the cash deposit accompanying a Qualified Purchase Bid or Qualified Investment Bid, as applicable.
- (e) "**Draft Approval Order**" means the form of sale approval and vesting order to be developed by the Monitor, in consultation with the DIP Lender and the CRO and provided to Qualified Phase 2 Bidders making a Sale Proposal (in each case as defined below).
- (f) "**Draft Purchase Agreement**" means the form of purchase and sale agreement to be developed by the Monitor, and provided to Qualified Phase 2 Bidders making a Sale Proposal (in each case as defined below).
- (g) "**DIP Lender**" means The Toronto-Dominion Bank.
- (h) "**CRO**" – means David Boyd of Resolve Advisory Services Limited.
- (i) "**Secured Creditors**" means, as applicable, The Toronto-Dominion Bank, the Business Development Bank of Canada, and the Maplewood Trust and Thunder Cove Investments Inc. with respect to the Buchanan Road Properties.
- (j) "**Monitor**" means Deloitte Restructuring Inc.

**ARTICLE 2
OPPORTUNITY**

2.1 Solicitation Process

- (a) These SISP Procedures describe, among other things, the Property available for sale, the opportunity for an investment in the Debtors, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Debtors' Property, the manner in which bidders and bids become Qualified Bidders and Qualified Bids (in each case as defined below), respectively, the receipt and negotiation of bids received, the ultimate selection of one or more Successful Bids and a Backup Bid (in each case as defined below), if in the discretion of the Monitor in consultation with the DIP Lender, a Backup Bid is identified in accordance with these SISP Procedures, and the approval thereof by the Court (collectively, the "**Solicitation Process**").
- (b) The Monitor shall conduct the Solicitation Process as outlined herein. In the event that there is a disagreement or clarification required as to the interpretation or application of these SISP Procedures, the Monitor shall, within ten (10) Business Days, file a motion with the Court seeking directions.

2.2 Sale and Investment Opportunity

These SISP Procedures are intended to solicit interest in, and opportunities for: (a) a sale of all or part of the Property, and/or (b) an Investment, in each case to be structured in a manner acceptable to the Monitor in consultation with the DIP Lender and the CRO on behalf of the Debtors, and not in his personal capacity. Such offers may include one or more of a restructuring, recapitalization or other form or reorganization of the business and affairs of the Debtors as a going concern, or a sale of all, substantially all, of the Property as a going concern or otherwise.

2.3 "As Is, Where Is"

Any Sale or Investment will be on an "*as is, where is*" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Monitor or the Debtors or any of their agents, estates, advisors, professionals or otherwise, except to the extent set forth in the relevant agreement with the Successful Bidder.

2.4 Timeline

The following table sets out the key milestones under these SISP Procedures:

Milestone	Deadline
Monitor to create list of Known Potential Bidders and distribute Teaser Letters and Confidentiality Agreements	October 4, 2023
Monitor to open data room	October 9, 2023
Phase 1 Bid Deadline	November 13, 2023
Phase 2 Bid Deadline	December 11, 2023
Transaction Approval Hearing	On or before January 12, 2024
Target Closing Date	On or before February 15, 2024

The dates set out in the SISP Procedures may be extended by the Monitor in accordance with the terms hereof.

ARTICLE 3 SOLICITATION OF INTEREST

3.1 Solicitation of Interest

- (a) As soon as reasonably practicable, but in any event by no later than October 2, 2023, the Monitor, in consultation with the CRO, the DIP Lender and BDC, shall prepare a list of: (i) potential bidders capable of submitting a Sale Proposal or Investment Proposal and (ii) local or international strategic and financial parties who may be interested in participating in the SISP (the "**Known Potential Bidders**").
- (b) The CRO and the applicable Secured Creditors may, on a timely basis, identify any parties to the Monitor which shall be included in the list of Known Potential Bidders. Concurrently, the Monitor, in consultation with the DIP Lender will prepare (i) an initial offering summary (the "**Teaser Letter**") to notify Known Potential Bidders of the existence and terms of the Solicitation Process and invite the Known Potential Bidders to express their interest in participating in a Sale or Investment, and (ii) a form of confidentiality agreement satisfactory to the Monitor (a "**Confidentiality Agreement**").
- (c) The Monitor may also publish advertisements setting out the information contained in the Teaser Letter and such other relevant information which the Monitor, in consultation with the CRO considers appropriate for dissemination in Canada.
- (d) The Monitor shall send the Teaser Letter and Confidentiality Agreement to each Known Potential Bidder by no later than October 4, 2023, and to any other party who requests a copy of the Teaser Letter and Confidentiality Agreement or who is identified as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

ARTICLE 4 PRE-QUALIFICATION

4.1 Participation Requirements

- (a) Unless otherwise provided for herein, ordered by the Court, or agreed by the Monitor, in order to participate in the Solicitation Process and be considered for qualification as a Qualified Phase 1 Bidder in accordance with this Article 4, an interested party, including a Known Potential Bidder (a "**Potential Bidder**"), must deliver the following to the Monitor prior to the Phase 1 Bid Deadline (as defined below):
 - (i) an executed Confidentiality Agreement, which shall inure to the benefit of any Successful Bidder in the event that a Transaction is completed;
 - (ii) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder, full disclosure of the direct and indirect owners of the Potential Bidder and their principals;
 - (iii) a written acknowledgment of receipt of a copy of the SISP Approval Order (including these SISP Procedures) agreeing to accept and be bound by the provisions contained therein; and
 - (iv) a form of financial disclosure and credit quality support or enhancement that allows the Monitor and the CRO to make a reasonable determination as to the

Potential Bidder's financial and other capabilities to consummate a Sale or Investment, as applicable.

- (b) If the Monitor, in consultation with the CRO, determines that a Potential Bidder:
 - (i) has satisfied all of the requirements described in Section 4.1(a) above; and
 - (ii) demonstrated to the satisfaction of the Monitor, in its reasonable business judgement, the financial capability of such Potential Bidder to consummate a Transaction and that such Potential Bidder is likely (based on availability of financing, experience and other considerations) to consummate either a Sale or an Investment,

then such Potential Bidder will be deemed to be a "**Qualified Phase 1 Bidder**". For greater certainty, no Potential Bidder shall be deemed to be a Qualified Phase 1 Bidder without the approval of the Monitor. Notwithstanding the foregoing, the Monitor may waive one or more of the requirements set out in Section 4.1(a)(i) to (iv) and designate a Potential Bidder as a Qualified Phase 1 Bidder.

- (c) The determination as to whether a Potential Bidder is a Qualified Phase 1 Bidder pursuant to Section 4.1(a) will be made as promptly as practicable after a Potential Bidder delivers all of the materials required above. If it is determined that a Potential Bidder is a Qualified Phase 1 Bidder, the Monitor will promptly notify the Potential Bidder that it is a Qualified Phase 1 Bidder.
- (d) At any time during Phase 1 of the SISP, the Monitor may eliminate a Qualified Phase 1 Bidder, in which case such bidder will be eliminated from the SISP and will no longer be a Qualified Phase 1 Bidder for the purposes of the SISP.
- (e) If it is determined in accordance with Section 4.1(b) above, that there are no Qualified Phase 1 Bidders and that, as a consequence, proceeding with these SISP Procedures is not in the best interests of the Debtors or its stakeholders, the Monitor shall notify the applicable Secured Creditors and the CRO forthwith, and within ten (10) Business Days of such determination, and either file a motion with the Court seeking directions with respect to the conduct of the SISP or terminate the SISP.

4.2 Due Diligence

- (a) As soon as reasonably practicable after the determination that a party is a Qualified Phase 1 Bidder, the Monitor, with the assistance of the CRO, shall prepare and make available to each Qualified Phase 1 Bidder, in a secure online electronic data room:
 - (i) confidential due diligence information that is in the possession and control of the Monitor, including regarding:
 - (A) the Property available for sale; and
 - (B) the debt of the Debtors .

The Monitor may also prepare a confidential information memorandum (the "**CIM**") providing additional information considered relevant to the Debtors Group if determined to be appropriate.

- (b) At the request of a Qualified Phase 1 Bidder, such confidential due diligence information shall also be provided on a confidential basis satisfactory to the Monitor to a proposed lender of such Qualified Phase 1 Bidder that is reasonably acceptable to the Monitor.

- (c) Each Qualified Phase 1 Bidder shall also have such access to due diligence materials, on-site inspections and information relating to the Property, and other information as the Monitor deems appropriate in its discretion.
- (d) The Monitor shall not be obligated to furnish any due diligence materials or information after the Phase 2 Bid Deadline.
- (e) Without limiting the generality of any term or condition of any Confidentiality Agreement between the Monitor and any Potential Bidder or bidder, unless otherwise agreed by the Monitor or ordered by the Court, no bidder shall be permitted to have any discussions with any counterparty to any contract with the Debtors, any current or former director, officer or employee of the Debtors, or any of their businesses or any other Potential Bidder or bidder in connection with a Non-Binding Indication of Interest (as defined below) or any other bid submitted in accordance with the terms hereof or in contemplation thereof, except that access to and discussions with the CRO may be permitted on such terms as the Monitor, in consultation with the CRO, deems appropriate
- (f) The Monitor, the CRO and the Debtors are not responsible for, and will have no liability with respect to, any information obtained by any Known Potential Bidder, Potential Bidder, or Qualified Bidder in connection with the Property, a Sale or Investment through the SISP. The Monitor, the CRO and the Debtors do not make any representations or warranties whatsoever as to the information or the materials provided, except, to the extent the representations or warranties are contained in any Definitive Purchase Agreement or Definitive Investment Agreement (in each case as defined below) between a Successful Bidder or Backup Bidder and the Monitor. Each Qualified Phase 1 Bidder must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and business in connection with their participation in the SISP and any Transaction arising out of the SISP.

**ARTICLE 5
PHASE 1**

5.1 Seeking Non-Binding Indications of Interest by Qualified Phase 1 Bidders

In order to continue to participate in the Solicitation Process, a Qualified Phase 1 Bidder must deliver a non-binding indication of interest to acquire all, substantially all or a clearly identified portion consisting of a line of business for the Debtors, of the Property or make an Investment (each a "**Non-Binding Indication of Interest**") to the Monitor so as to be received by the Monitor not later than 5:00 p.m. (Atlantic time) on November 13, 2023, or such later date or time as the Monitor may determine appropriate with the prior written consent of the DIP Lender, acting reasonably (the "**Phase 1 Bid Deadline**" and until such time, "**Phase 1**").

5.2 Non-Binding Indications of Interest by Qualified Phase 1 Bidders

- (a) Unless otherwise ordered by the Court or agreed by the Monitor, in order to be considered a "**Qualified Phase 1 Bid**" a Non-Binding Indication of Interest submitted by a Qualified Phase 1 Bidder must be received by the Monitor on or before the Phase 1 Bid Deadline, and contain the following information:
 - (i) An indication of whether the Qualified Phase 1 Bidder is offering to:
 - (A) acquire all or part of the Property (a "**Sale Proposal**"); or
 - (B) make an Investment (an "**Investment Proposal**");
 - (ii) In the case of a Sale Proposal, the Non-Binding Indication of Interest shall identify:

- (A) the purchase price in Canadian dollars (including the cash component thereof and/or the liabilities to be assumed by the Qualified Phase 1 Bidder);
 - (B) the purchase price allocation as it relates to the BDC Priority Collateral and the Buchanan Road Properties to the extent included in the Sale Proposal;
 - (C) the assets included, any of the assets expected to be excluded, and/or any additional assets desired to be included in the Transaction;
 - (D) the structure and financing of the Transaction (including, but not limited to, the sources of financing for the purchase price, preliminary evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the proposed Transaction and any related contingencies, as applicable);
 - (E) an acknowledgement that the contemplated sale will be made on an "as is, where is" basis;
 - (F) the key material contracts and leases, if any, the Qualified Phase 1 Bidder wishes to acquire and the Qualified Phase 1 Bidder's proposed treatment of related cure costs, if any;
 - (G) any anticipated corporate, shareholder, internal or regulatory approvals, including without limitation any approvals with respect to the transfer of any permits or licenses or other approvals with respect to environmental matters, required to close the Transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
 - (H) a timeline to closing with critical milestones and a statement with respect to the Qualified Phase 1 Bidder's ability to consummate the contemplated Transaction by February 15, 2024 (the "**Target Closing Date**");
 - (I) a detailed description of any additional due diligence required or desired to be conducted prior to the Phase 2 Bid Deadline, if any;
 - (J) contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated Transaction;
 - (K) a specific indication of sources of capital for the Qualified Phase 1 Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement, including contact information for capital/financing sources, that will allow the Monitor to make a reasonable business judgement as to the Qualified Phase 1 Bidder's financial or other capabilities to consummate the contemplated Transaction;
 - (L) any conditions to closing that the Qualified Phase 1 Bidder may wish to impose; and
 - (M) any other terms or conditions of the Sale Proposal which the Qualified Phase 1 Bidder believes are material to the Transaction;
- (iii) In the case of an Investment Proposal, it shall identify:

- (A) the aggregate amount of the equity and debt investment (including, the sources of such capital, preliminary evidence of the availability of such capital and the steps necessary and associated timing to obtain the capital and consummate the proposed Transaction and any related contingencies, as applicable) to be made in the Debtors;
 - (B) the underlying assumptions regarding the *pro forma* capital structure (including, the anticipated debt levels, debt service fees, interest and amortization);
 - (C) the consideration to be allocated to the stakeholders including claims of any secured or unsecured creditors of the Debtors and the proposed treatment of employees;
 - (D) the structure and financing of the Transaction including all requisite financial assurance including a specific indication of sources of capital for the Qualified Phase 1 Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement, including contact information for capital/financing sources, that will allow the Monitor to make a reasonable business judgement as to the Qualified Phase 1 Bidder's financial or other capabilities to consummate the contemplated Transaction;
 - (E) any anticipated corporate, shareholder, internal or regulatory approvals, including without limitation any approvals with respect to the transfer of any permits or licenses, required to close the Transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals;
 - (F) the proposed corporate governance structure of the entity or entities owning/operating the business, following implementation of the Investment;
 - (G) contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated Transaction;
 - (H) additional due diligence required or desired to be conducted prior to the Phase 2 Bid Deadline, if any;
 - (I) a timeline to closing with critical milestones and a statement with respect to the Qualified Phase 1 Bidder's ability to consummate the contemplated Transaction by the Target Closing Date;
 - (J) the proposed treatment of stakeholders, including lenders, trade creditors, shareholders and employees;
 - (K) any conditions to closing that the Qualified Phase 1 Bidder may wish to impose;
 - (L) any other terms or conditions of the Investment Proposal which the Qualified Phase 1 Bidder believes are material to the Transaction; and
- (iv) Such other information reasonably requested by the Monitor.
- (b) The Monitor may, in consultation with the CRO and with the consent of the DIP Lender, acting reasonably, waive compliance with any one or more of the requirements specified

herein and deem any non-compliant Non-Binding Indication of Interest to be a Qualified Phase 1 Bid. Notwithstanding the foregoing, prior written consent shall not be required for amendments or modifications to the SISP that are administrative or minor in nature such that they are unlikely (in the Monitor's reasonable discretion) to have a material effect on the results of the SISP or the DIP Lender, provided further that the Monitor shall consult with the DIP Lender in advance of any such matters.

5.3 Assessment of Qualified Phase 1 Bids and Determination of Qualified Phase 2 Bidders

- (a) Within three (3) Business Days of the expiry of the Phase 1 Bid Deadline, the Monitor will provide copies or a summary of any Qualified Phase 1 Bids received to the applicable Secured Creditors and the CRO and set up a meeting by teleconference or other electronic medium to consult with such parties in respect of such bids.
- (b) Following the meeting in (a), the Monitor will, as promptly as practicable after the Phase 1 Bid Deadline but no later than November 17, 2023, assess any Qualified Phase 1 Bids received based on such factors and circumstances as they consider appropriate in the circumstances including, but not limited to:
 - (i) the number of Qualified Phase 1 Bids received;
 - (ii) the extent to which the Qualified Phase 1 Bids relate to the same Property or business or involve Investment Proposals predicated on certain Property or business;
 - (iii) the scope of the Property or business to which any Qualified Phase 1 Bids may relate; and
 - (iv) whether to proceed by way of sealed bid or auction with respect to some or all of the Property.
 - (v) If the Monitor is not satisfied with the number or terms of the Qualified Phase 1 Bids (including if none are received), the Monitor, in consultation with the DIP Lender and the CRO, may: (i) extend the Phase 1 Bid Deadline for no more than an aggregate period of two (2) weeks without further Court approval and, unless otherwise agreed by the Monitor, the Phase 2 Bid Deadline, and any other deadlines or timeframes hereunder, shall be extended by the same time period, as necessary; or (ii) within ten (10) Business Days of such determination, file a motion with the Court seeking directions.
- (c) If the Monitor, in accordance with Section 5.3(b), determines that:
 - (i) one or more Qualified Phase 1 Bids were received, and
 - (ii) proceeding with Phase 2 (as defined below) of these SISP Procedures is in the best interest of the Debtors and its stakeholders,

these SISP Procedures will continue and each Qualified Phase 1 Bidder who has submitted a Qualified Phase 1 Bid that is approved by the Monitor shall be a "**Qualified Phase 2 Bidder**". The Monitor shall provide advance written notice of the commencement of Phase 2 and the names of the Qualified Phase 2 Bidders to the applicable Secured Creditors and the CRO by no later than November 17, 2023.

- (d) Notwithstanding Section 5.3(c), if the Monitor, in accordance with Section 5.3(b), determines that:
 - (i) one or more Qualified Phase 1 Bids were received, and

- (ii) proceeding with Phase 2 of these SISP Procedures is not in the best interest of the Debtors and its stakeholders,

the Monitor may, in consultation with the CRO and with the consent of the DIP Lender and the applicable Secured Creditors, deem one or more of the Qualified Phase 1 Bids received to be a Qualified Bid, Successful Bid and/or Backup Bid, as applicable, and bypass Phase 2. If the Monitor elects to bypass Phase 2, the timelines set out in these SISP Procedures shall be proportionally accelerated.

ARTICLE 6 PHASE 2

6.1 Seeking Qualified Bids by Qualified Phase 2 Bidders

In order to continue to participate in the Solicitation Process, a Qualified Phase 2 Bidder must deliver a Qualified Purchase Bid or Qualified Investment Bid (as applicable, a "**Phase 2 Bid**") to the Monitor so as to be received by the Monitor by no later than 5:00 p.m. (Atlantic time) on December 11, 2023, or such later date or time as the Monitor may determine appropriate (the "**Phase 2 Bid Deadline**" and the period between the foregoing and the Phase 1 Bid Deadline being "**Phase 2**").

6.2 Qualified Purchase Bids

A Sale Proposal submitted by a Qualified Phase 2 Bidder will be considered a "**Qualified Purchase Bid**" only if the Sale Proposal complies with all of the following:

- (a) it includes a letter stating that the Sale Proposal is irrevocable until the earlier of:
 - (i) approval by the Court of a Successful Bid; and
 - (ii) January 12, 2024.

provided, however, that if such Sale Proposal is selected as a Successful Bid or the Backup Bid, it shall remain irrevocable until the earlier of: (i) the closing of such Successful Bid or Backup Bid, as the case may be; and (ii) the outside date stipulated in such Successful Bid or Backup Bid, as applicable;

- (b) it includes a duly authorized and executed purchase and sale agreement substantially in the form of the Draft Purchase Agreement specifying the purchase price that specifically allocates the price in respect of the BDC Priority Collateral and Buchanan Road Properties, including the cash component thereof and/or the liabilities to be assumed by the Qualified Phase 2 Bidder, expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto (the "**Definitive Purchase Agreement**"), and such ancillary agreements as may be required by the Qualified Phase 2 Bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements) and the proposed orders to approve the sale by the Court, as well as copies of such materials marked to show the amendments and modifications to the Draft Purchase Agreement and Draft Approval Order;
- (c) it does not include any request or entitlement to any break-fee, expense reimbursement or similar type of payment. Further, by submitting a Sale Proposal, a Qualified Phase 2 Bidder shall be deemed to waive its right to pursue a claim for any costs or expenses in any way related to the submissions of its Sale Proposal or these SISP Procedures;
- (d) it includes evidence sufficient to allow the Monitor to make a reasonable determination as to the Qualified Phase 2 Bidder's (and its direct and indirect owners and their

principals') financial and other capabilities to consummate the transaction contemplated by the Sale Proposal, which evidence could include but is not limited to evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution;

- (e) it is not conditioned on:
 - (i) the outcome of unperformed due diligence by the bidder; and/or
 - (ii) obtaining any financing capital; andit includes an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its Sale Proposal;
- (f) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Sale Proposal, including the identification of the Qualified Phase 2 Bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
- (g) it includes an acknowledgement and representation that the Qualified Phase 2 Bidder:
 - (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its Sale Proposal;
 - (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Monitor, or any of its advisors, except as expressly stated in the Definitive Purchase Agreement submitted by it;
 - (iii) is a sophisticated party capable of making its own assessments in respect of making its Sale Proposal; and
 - (iv) has had the benefit of independent legal advice in connection with its Sale Proposal;
- (h) it includes evidence, in form and substance reasonably satisfactory to the Monitor, of authorization and approval from the Qualified Phase 2 Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Sale Proposal;
- (i) it is accompanied by a Deposit in the form of a wire transfer (to a trust account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of Deloitte Restructuring Inc., in trust, in an amount equal to 10% of the proposed cash Purchase Price, to be held and dealt with in accordance with these SISP Procedures. For certainty, a Deposit will be required for all Sales Proposals, regardless of whether the consideration offered in the Sale Proposal is cash, credit or otherwise, or a combination of any of the foregoing;
- (j) it includes an acknowledgement and representation that the Qualified Phase 2 Bidder will assume the obligations of the Debtors under executory contracts, unexpired leases, and licenses proposed to be assigned (or identifies with particularity which of such contracts, leases, and licenses of the Debtors, as applicable, that the Qualified Phase 2 Bidder wishes not to assume, or alternatively wishes to assume), contains full details of

the Qualified Phase 2 Bidder's proposal for the treatment of related cure costs, and which of these assumptions is a condition of closing;

- (k) it provides for closing of the Qualified Purchase Bid by no later than the Target Closing Date;
- (l) if the Qualified Phase 2 Bidder is an entity newly formed for the purpose of the Transaction, the bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the Monitor, that names the Monitor as a third party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;
- (m) it includes evidence, in form and substance satisfactory to the Monitor, of compliance or anticipated compliance with any and all applicable regulatory approvals (including, if applicable, anti-trust regulatory approval and any approvals with respect to the transfer of any permits or licenses), the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (n) it contains other information reasonably requested by the Monitor; and
- (o) it is received by no later than the Phase 2 Bid Deadline.

6.3 Qualified Investment Bids

An Investment Proposal submitted by a Qualified Phase 2 Bidder will be considered a "**Qualified Investment Bid**" only if the Investment Proposal complies with all of the following:

- (a) it includes duly authorized and executed binding definitive documentation setting out the terms and conditions of the proposed Transaction, including the aggregate amount of the proposed equity and/or debt investment (the "**Investment Amount**") and details regarding the proposed equity and/or debt structure of the Debtors, if applicable, following completion of the proposed Transaction (a "**Definitive Investment Agreement**");
- (b) it includes a letter stating that the Investment Proposal is irrevocable until the earlier of:
 - (i) approval by the Court of a Successful Bid; and
 - (ii) January 12, 2024.

provided, however, that if such Investment Proposal is selected as the Successful Bid or Backup Bid, it shall remain irrevocable until the earlier of:
 - (iii) the closing of the Successful Bid or the Backup Bid, as the case may be; and
 - (iv) the outside date stipulated in the Successful Bid or the Backup Bid, as applicable;
- (c) it does not include any request or entitlement to any break-fee, expense reimbursement or similar type of payment. Further, by submitting an Investment Proposal, the Qualified Phase 2 Bidder shall be deemed to waive its right to pursue a claim for any costs or expenses in any way related to the submission of its Investment Proposal or these SISP Procedures;
- (d) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed Transaction, or other evidence satisfactory to the Monitor, to allow the Monitor

to make a reasonable determination as to the Qualified Phase 2 Bidder's financial and other capabilities to consummate the transaction contemplated by the Investment Proposal;

- (e) it is not conditioned on:
 - (i) the outcome of unperformed due diligence by the Qualified Phase 2 Bidder; and/or
 - (ii) obtaining any financing capital; andincludes an acknowledgement and representation that the Qualified Phase 2 Bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- (f) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Investment Proposal, including the identification of the Qualified Phase 2 Bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
- (g) it includes an acknowledgement and representation that the Qualified Phase 2 Bidder:
 - (i) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its Investment Proposal;
 - (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the business of the Debtors or the completeness of any information provided in connection therewith, including by the Monitor or any of its advisors, except as expressly stated in the Definitive Investment Agreement;
 - (iii) is a sophisticated party capable of making its own assessments in respect of making its Investment Proposal; and
 - (iv) has had the benefit of independent legal advice in connection with its Investment Proposal;
- (h) it includes evidence, in form and substance satisfactory to the Monitor, of authorization and approval from the Qualified Phase 2 Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Investment Proposal;
- (i) it is accompanied by a Deposit in the form of a wire transfer (to a trust account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of Deloitte Restructuring Inc., in trust, in an amount equal to 10% of the Investment Amount, to be held and dealt with in accordance with these SISP Procedures. For certainty, a Deposit will be required for all Investment Proposals, regardless of whether the consideration offered in the Investment Proposal is cash, credit or otherwise, or a combination of any of the foregoing;
- (j) it provides for closing of the Qualified Investment Bid by no later than the Target Closing Date;
- (k) if the Qualified Phase 2 Bidder is an entity newly formed for the purpose of the Transaction, the Investment Proposal shall contain an equity or debt commitment letter from the parent entity or sponsor, and satisfactory to the Monitor, that names the

Debtors as a third party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;

- (l) it includes evidence, in form and substance reasonably satisfactory to the Monitor, of compliance or anticipated compliance with any and all applicable regulatory approvals (including, if applicable, anti-trust regulatory approval), the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (m) it contains other information reasonably requested by the Monitor; and
- (n) it is received by no later than the Phase 2 Bid Deadline.

6.4 Qualified Bids

- (a) Qualified Purchase Bids and Qualified Investment Bids shall hereinafter be referred to as "**Qualified Bids**" and each a "**Qualified Bid**" and each bidder who has submitted a Qualified Bid shall hereinafter be referred to as a "**Qualified Bidder**". The Monitor may, in consultation with the DIP Lender and the CRO, accept more than one Sale Proposal for specific portions of the Property and each bid will be deemed to be considered Qualified Bid.
- (b) Notwithstanding Section 6.2 and Section 6.3 hereof, the Monitor, in consultation with CRO and with the consent of the DIP Lender, may waive compliance with any one or more of the Qualified Bid requirements specified herein, and deem such non-compliant bids to be Qualified Purchase Bids or Qualified Investment Bids, as the case may be.

6.5 Successful Bids

- (a) Within three (3) Business Days of the expiry of the Phase 2 Bid Deadline, the Monitor will provide copies or a summary of any Qualified Bids received to the applicable Secured Creditors and the CRO and set up a meeting by teleconference or other electronic medium to consult with such parties in respect of such bids.
- (b) Following the meeting in (a), the Monitor will assess the Qualified Bids received, if any, and will determine whether the Transaction(s) contemplated by such Qualified Bids are likely to be consummated and whether proceeding with these SISP Procedures is in the best interests of the Debtors and its stakeholders. Such determination will be made, in consultation with the CRO and is subject to the prior written consent of the DIP Lender, acting reasonably, as promptly as practicable after the Phase 2 Bid Deadline but no later than ten (10) Business Days following its expiry.
- (c) The Monitor shall notify each Qualified Phase 2 Bidder in writing as to whether its Phase 2 Bid constitutes a Successful Bid or Backup Bid within five (5) Business Days of the Phase 2 Bid Deadline, or at such later time as the Monitor deems appropriate.
- (d) If the Monitor, in accordance with Section 6.5(b) above, determines, in consultation with the DIP Lender and the CRO that (i) no Qualified Bid was received, or (ii) at least one Qualified Bid was received but it is not likely that the Transaction(s) contemplated in any such Qualified Bids will be consummated, the Monitor may, with the approval of the DIP Lender either: (iii) terminate the SISP; (iv) extend the Phase 2 Bid Deadline for no more than an aggregate period of two (2) weeks, or (v) within ten (10) Business Days of such determination, file a motion with the Court seeking directions.

6.6 Selection Criteria

- (a) In selecting the Successful Bid, the Monitor, in consultation with the DIP Lender and the CRO, will review each Qualified Bid. Evaluation criteria with respect to a Sale Proposal may include, but are not limited to, items such as:
- (i) whether the Qualified Bid is for all or some of the Property;
 - (ii) the Purchase Price and the net value (including assumed liabilities and other obligations to be performed or assumed by the bidder) provided by such bid;
 - (iii) the claims likely to be created by such bid in relation to other bids;
 - (iv) the counterparties to the Transaction;
 - (v) the proposed revisions to the Draft Purchase Agreement and the Draft Approval Order and the terms of the Transaction documents;
 - (vi) other factors affecting the speed, certainty and value of the Transaction (including any regulatory approvals required to close the Transaction);
 - (vii) the assets included or excluded from the bid and the Transaction costs and risks associated with closing multiple Transactions versus a single Transaction for all or substantially all of the Property;
 - (viii) the transition services required from the Debtors post-closing and any related restructuring costs; and
 - (iv) the likelihood and timing of consummating the Transaction by the Target Closing Date.
- (b) Evaluation criteria with respect to an Investment Proposal may include, but are not limited to items such as:
- (i) the Investment Amount and the proposed sources and uses of such capital;
 - (ii) the debt-to-equity structure post-closing;
 - (iii) the counterparties to the Transaction;
 - (iv) the terms of the Transaction documents;
 - (v) other factors affecting the speed, certainty and value of the Transaction;
 - (vi) planned treatment of and recovery to stakeholders; and
 - (vii) the likelihood and timing of consummating the Transaction by the Target Closing Date.
- (c) The Monitor may select Qualified Bids for further negotiation and/or clarification of any terms or conditions of such Qualified Bids, including the Investment Amount or Purchase Price offered, before identifying the highest or otherwise best Qualified Bid(s) received (the "**Successful Bid**").
- (d) Upon completion of any further negotiations or clarifications that may be conducted pursuant to Section 6.6(b) above, the Monitor will identify the Successful Bid and may identify a next highest or otherwise best Qualified Bid received (such offer, the "**Backup**

Bid"). The Qualified Bidder(s) who made the Successful Bid is/are the "**Successful Bidder**" and the Qualified Bidder(s) who made the Backup Bid (if a Backup Bid is identified in accordance with these SISP Procedures) shall be the "**Backup Bidder**". The Monitor will notify the Successful Bidder and any Backup Bidder that they are, respectively, the Successful Bidder and the Backup Bidder within five (5) Business Days of such determination.

- (e) The Monitor will finalize definitive agreements in respect of the Successful Bid and the Backup Bid, if any, conditional upon approval by the Court (the "**Definitive Agreements**").
- (f) If a Backup Bid is identified in accordance with these SISP Procedures, then such Backup Bid shall remain open until the consummation of the Transaction contemplated by the Successful Bid (the "**Backup Bid Expiration Date**").
- (g) All Qualified Bids (other than the Successful Bid and any Backup Bid) shall be deemed rejected by the Monitor on and as of the date of approval of the Successful Bid or any Backup Bid by the Court.

6.7 Approval Hearing

- (a) After Definitive Agreements in respect of a Successful Bid and Backup Bid, if any, have been finalized, in the case of the Successful Bid, signed (conditional on Court approval) and, in the case of the Backup Bid signed (conditional on non-completion of the Successful Bid and on Court approval), the Monitor shall seek a hearing as soon as practicable on a date to be scheduled by the Court that will permit not less than five (5) Business Days' notice to the service list (the "**Approval Hearing**") to approve the Successful Bid and the Backup Bid, if any, should the Successful Bid not close for any reason. The Approval Hearing may be adjourned or rescheduled by the Monitor, without further notice, by an announcement of the adjourned date at the Approval Hearing.
- (b) If, following approval of the Successful Bid by the Court, the Successful Bidder fails to consummate the Transaction for any reason, then the Backup Bid, if any, will be deemed to be the Successful Bid and the Monitor shall effectuate the Transaction with the Backup Bidder subject to the terms of the Backup Bid, without further order of the Court.

6.8 Deposits

- (a) All Deposits shall be retained by the Monitor and invested in a trust account in a Schedule I bank in Canada. If there is a Successful Bid, the Deposit paid by the Successful Bidder whose bid is approved pursuant to the Approval Hearing shall be applied to the Purchase Price to be paid or Investment Amount to be made by the Successful Bidder upon closing of the Successful Bid. The Deposit paid by the Backup Bidder, if there is one, shall be retained by the Monitor until the Backup Bid Expiration Date or, if the Backup Bid becomes the Successful Bid, shall be applied to the Purchase Price to be paid or Investment Amount to be made by the Backup Bidder upon closing of the Backup Bid. The Deposits of all Qualified Phase 2 Bidders not selected as the Successful Bidder or Backup Bidder shall be returned to such bidders on or before January 5, 2024. If these SISP Procedures are terminated in accordance with the provisions hereof, all Deposits shall be returned to the bidders without interest within five (5) Business Days of the date upon which these SISP Procedures are terminated.
- (b) If an entity selected as the Successful Bidder or Backup Bidder breaches its obligations to close the applicable Transaction, it shall forfeit its Deposit to the Monitor; provided, however, that the forfeiture of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Monitor has or may have against such breaching entity.

6.9 Approvals

For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the SISP Order, any other order in these CCAA Proceedings, any Canadian or other foreign statute or are otherwise required at law in order to implement the Successful Bid or Backup Bid, as the case may be.

6.10 Confidentiality

- (a) Without limiting any provision of any Confidentiality Agreement and for greater certainty, all communications regarding a Sale Proposal, Investment Proposal, Non-Binding Indication of Interest, Qualified Phase 1 Bid or Qualified Bid should be directed through the Monitor. No interested party shall contact employees, management, customers or suppliers of the Debtors without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from these SISP Procedures.
- (b) Participants and prospective participants in these SISP Procedures shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of any bidder, the details of any bids submitted or the details of any confidential discussions or correspondence between the Debtors, the Monitor and/or such other bidders in connection with the SISP, except to the extent the Monitor is seeking to combine separate bids from Qualified Phase 1 Bidders or Qualified Phase 2 Bidders.
- (c) In addition to the consultation rights granted to the DIP Lender, the Monitor may consult with any other parties with a material interest in the CCAA Proceedings regarding the status of and material information and developments relating to the SISP to the extent considered appropriate by the Monitor, provided that such parties shall have entered into confidentiality arrangements satisfactory to the Monitor. For certainty: (i) where this SISP contemplates the Monitor being required to consult with any parties, the nature, extent and frequency of such consultation shall be at the Monitor's sole discretion unless otherwise stated; and (ii) the Monitor may consult with any, some or all such parties, either together, separately or any group thereof, in the manner and frequency as it deems appropriate in the circumstances.
- (d) The CRO shall be the sole agent and/or director from the Debtors entitled to: (i) consultation with the Monitor on matters involving the Solicitation Process and these SISP Procedures; and (ii) receive copies of the Non-Binding Indications of Interest, bids and all other confidential information and documents contemplated hereunder. The CRO shall not share or otherwise disclose any such information to any other past or present member of the Debtors unless approved by the Monitor or necessary to close a Transaction contemplated in a Successful Bid. Prior to the commencement of the SISP, the CRO shall provide an undertaking in writing to the Monitor that the CRO shall not submit, directly or indirectly, any bid in the SISP, and will not provide financing, directly or indirectly, to any Potential Bidder, Qualified Phase 1 Bidder, Qualified Phase 2 Bidder, Successful Bidder, Backup Bidder or otherwise.
- (e) If the Monitor determines that the participation or information from a director, officer, employee or other member of senior management who is participating as a bidder in this SISP is required, such bidder shall participate and provide all information honestly and in good faith as requested by the Monitor, including adhering to any timelines and terms as to confidentiality as set by the Monitor.

6.11 Supervision of the SISP

- (a) The Monitor shall oversee the conduct of the SISP in all respects and the Monitor will participate in the SISP in the manner set out in these SISP Procedures, the SISP

Approval Order, and any other orders of the Court. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

- (b) This SISP does not and will not be interpreted to create any contractual or other legal relationship between the Debtors, the CRO, the Monitor and any bidder or any other party, other than as specifically set forth in the Definitive Agreements that may be entered into in respect of a Transaction.
- (c) The Monitor shall not have any liability whatsoever to any person or party, including without limitation any bidder or any other creditor or other stakeholder of the Debtors, for any act or omission related to the process contemplated by this SISP Procedure, except to the extent such act or omission is the result from gross negligence or willful misconduct of the Monitor. By submitting a bid, each bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever, except to the extent that such claim is the result of gross negligence or willful misconduct of the Monitor.
- (d) Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Non-Binding Indication of Interest, Qualified Phase 1 Bid, Qualified Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a Transaction.
- (e) Subject to the terms of the SISP Approval Order, the Monitor shall have the right to modify these SISP Procedures with the prior written approval of the DIP Lender if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the service list in the CCAA Proceedings shall be advised of any substantive modification to the procedures set forth herein.
- (f) In order to discharge its duties in connection with the SISP, the Monitor may engage professional or business advisors or agents as the Monitor deems fit in its sole discretion.

6.12 Notice to the Monitor

Any notice or other communication to be given to the Monitor in connection with this SISP shall be given in writing and shall be given by personal delivery (in which case it shall be left with a responsible officer of the recipient) or by electronic communication addressed to the Monitor as follows:

Deloitte Restructuring Inc.
Suite 800, 1741 Lower Water
Street Halifax, NS B3J 0J2
Attention: Rob MacNeil
Telephone: (506) 663-6720
Email: romacneil@deloitte.ca

6.13 Reservation of Rights

- (a) The Monitor may, with the consent of the DIP Lender:
 - (i) reject at any time any bid that is:
 - (A) inadequate or insufficient;
 - (B) not in conformity with the requirements of these SISP Procedures or any orders of the Court applicable to the Debtors; or

- (C) contrary to the best interests of the Debtors, its estate, and stakeholders as determined by the Monitor;
 - (ii) in accordance with the terms hereof, accept bids not in conformity with these SISP Procedures to the extent that the Monitor determines, in its reasonable business judgment, that doing so would benefit the Debtors, its estate, and stakeholders;
 - (iii) in accordance with the terms hereof extend the Phase 1 Bid Deadline or Phase 2 Bid Deadline; and
 - (iv) reject all bids.
- (b) The Monitor shall not be required to accept the highest bid and shall be entitled to recommend to the Court a Transaction that in its view maximizes value for all of the Debtors stakeholders.
- (c) These SISP Procedures do not, and shall not be interpreted to, create any contractual or other legal relationship between the Monitor on the one hand and any Known Potential Bidder, Potential Bidder, Qualified Phase 1 Bidder, Qualified Phase 2 Bidder, Qualified Bidder, Successful Bidder or Backup Bidder, on the other hand, except as specifically set forth in Definitive Agreements that may be executed by the Monitor.

6.14 Disclosure to the Secured Creditors

Subject to the terms hereof, the Secured Creditors shall have access to all Non-Binding Indications of Interest, Qualified Phase 1 Bids, Qualified Bids relevant to their security in which they have a first charge and the Monitor, in consultation with the CRO, shall periodically update the applicable Secured Creditors on the Solicitation Process and the prospect of a Successful Bid being completed thereunder as may be required herein.

6.15 Further Orders

At any time during the SISP, the Monitor may apply to the Court for directions with respect to the discharge of its powers and duties hereunder.