

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, AND 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, AND ARSENAULT'S FISH MART INC.**

**RESPONDENTS**

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

**DATED OCTOBER 23, 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 September 23 to December 22, 2023 (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. On September 25, 2023, the Service List was provided with the First Report of the Monitor along with the proposed amended and restated orders (the "**September 25 Draft ARIOs**") and the proposed SISP Order to be sought at the hearing scheduled for September 28, 2023 (the "**Comeback Hearing**").
6. On September 27, 2023, the Monitor provided the Court with a supplemental first report (the "**Supplemental Report**") that provided an update on the Debtors' liquidity and financial position after the issuance of the First Report including events that, in the Monitor's view, resulted in a material adverse change in the Debtors' financial position. In addition to the Supplemental Report, the Court was provided with revised amended and restated Initial Orders (the "**Revised ARIOs**") considering the matters disclosed in the Supplemental Report, which, among other things, significantly shortened the stay extension and deferred approval of the SISP. Copies of the Supplemental Report and the Revised ARIOs were provided to the Service List on the same day.
7. As part of the Comeback Hearing, the Court granted the Revised ARIOs in these CCAA Proceedings that, among other things:
  - i. ordered a stay of proceedings in favor of the Debtors up to and including October 6, 2023 (the "**Revised Stay Period**"); and
  - ii. increased the quantum of the Administration Charge from \$250,000 to \$500,000 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.

8. On October 4, 2023, the Monitor provided the Court with a second report (the "**Second Report**") that:
  - i. provided an update on the Subject Transactions (as defined in the Second Report);
  - ii. provided an update on the magnitude of Pre-Filing Supplier Payments made by the Debtors;
  - iii. an update on the Debtors' financial position;
  - iv. an update on the SISP; and
  - v. requested a further extension of the stay of proceedings to allow the Debtors and the Monitor to continue to work on a longer-term cash flow forecast.
  
9. On October 5, 2023, the Court granted an order (the "**Stay Extension Order**") extending the stay of proceedings to October 25, 2023 and scheduled the next motion in these CCAA Proceedings for the same day.
  
10. On October 16, 2023, the Monitor provided the Court with a third report (the "**Third Report**") that requested an order increasing the authorized borrowings under the DIP Facility from the principal amount of \$3,000,000 to \$4,000,000, which increase would be secured by the DIP Lender's Charge (the "**DIP Increase Order**").
  
11. On October 17, 2023, the Court granted the DIP Increase Order.

## **PURPOSE**

12. The purpose of this fourth report (the "**Fourth Report**") is to provide information to the Court on:
  - i. the Debtors' activities since the First Report;
  - ii. the Monitor's activities since the First Report;
  - iii. an update on the Subject Transactions;
  - iv. the Debtors' updated cash flow forecast for the period October 15, 2023 to February 4, 2024 (the "**Second Cash Flow Statement**");

- v. the Applicant's request for further Amended and Restated Initial Orders (the "**Second ARIOs**") and a SISP Order that:
- a) approve the activities of the Monitor to date as described in the Pre-Filing Report, First Report, Supplemental Report, Second Report, Third Report, and the Fourth Report;
  - b) provide the Monitor with the Proposed Additional Powers (as defined below);
  - c) approve the Monitor's proposed sale and investment solicitation process (the "**SISP**");
  - d) increase the maximum borrowing limit under the DIP Facility from the principal amount of \$4,000,000 to \$7,000,000 of the DIP Facility;
  - e) clarify that the charges created by the Second ARIOs do not apply to the unearned portion of insurance premiums financed by the Debtors; and
  - f) extend the stay of proceedings to January 31, 2024, with the Monitor obligated to provide an update to the Court and Service List as to the results of Phase 1 of the SISP by no later than December 20, 2023 (the "**Extended Stay Period**").

#### **TERMS OF REFERENCE AND DISCLAIMER**

13. In preparing this Fourth 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**").
14. Except as described in this Fourth Report in respect of the Second 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 Fourth 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.
15. Future oriented financial information referred to in this Fourth 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.
  16. Unless otherwise indicated, the Monitor's understanding of the factual matters expressed in this Fourth Report concerning the Debtors and their businesses are based on the Information and not independent factual determinations made by the Monitor.
  17. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.
  18. Capitalized terms not otherwise defined herein are as defined in the Initial Orders, the Pre-Filing Report, the September 25 Draft ARIOs, the First Report, the Revised ARIOs, the Supplemental Report, the Second Report, the Stay Extension Order, the Third Report and DIP Increase Order.
  19. Materials filed with the Court in these CCAA Proceedings can be found on the Monitor's website at: <https://www.insolvencies.deloitte.ca/SouthShoreSeafoods> (the "**Monitors Website**").

#### **ACTIVITIES OF THE DEBTORS**

20. Since the First Report, the activities of the Debtors have included, but have not been limited to the following:
  - i. acquiring approximately 238,000 pounds of live lobster directly from fishers through Arsenault's Fish Mart Inc;

- ii. approximately 57,000 pounds or 24% of live lobster purchased was retained and sold live by By The Water Shellfish (2012) Inc. and approximately 181,000 pounds or 76% was transferred to South Shore Seafoods Ltd for processing;
  - iii. participating in discussions with key stakeholders including employees, customers, and suppliers;
  - iv. providing regular updates, and financial information to the Monitor, the CRO and the Applicant; and
  - v. working in consultation with the Monitor and the CRO to update weekly variance reports and prepare the Second Cash Flow Statement.
21. The PEI lobster season concluded on October 14, 2023. With the conclusion of the season, purchasing and processing of live product has ceased, and the Debtors have reduced weekly compensation by approximately 42% with further reductions anticipated in the near term.
22. In the coming months, the Monitor anticipates that the Debtors operational activities will be significantly reduced and may include:
- i. selling existing frozen inventory;
  - ii. collecting accounts receivable;
  - iii. right-sizing headcount and compensation levels based on reduced operating activity;
  - iv. winterizing processing facilities; and
  - v. supporting diligence and other requests from the Monitor and CRO during its execution of the SISP.

#### **ACTIVITIES OF THE MONITOR**

23. Since the First Report, the activities of the Monitor have included, but have not been limited to the following:
- i. attending all presently operating locations of the Debtors' business, in order to meet with key employees, perform spot checks on inventory, and review current operations;

- ii. preparation of the Supplemental Report, the Second Report, the Third Report, and this Fourth Report filed with the Court in these CCAA Proceedings;
- iii. reviewing and approving all disbursements of the Debtors;
- iv. reviewing and approving daily lobster catch slips and other information used to determine weekly payments to fishers;
- v. reviewing daily reporting to the Applicant regarding availability under the DIP Facility;
- vi. participating in regular update calls with Management regarding sales activities;
- vii. participating in calls with key stakeholders and or their representatives including, but not limited to, the Cooke Group, Arsenault, and MTTCI;
- viii. participating in weekly calls with representatives from BDC and BDC Capital;
- ix. participating in regular calls with Management and the CRO;
- x. participating in regular calls with the Applicant, and its legal counsel;
- xi. preparation of and review weekly variance reports pertaining to the consolidated receipts and disbursements of the Debtors as compared to that contained within the Cash Flow Statement;
- xii. investigating the Subject Transactions as more fully described herein;
- xiii. working in consultation with the Management and the CRO to update weekly cash flow forecasts; and
- xiv. preparation of documents pertaining to the SISP.

## **SUBJECT TRANSACTIONS**

- 24. In its Supplemental Report, the Monitor provided the Court with an initial overview of the Subject Transactions and their associated impact on the financial position of the Debtors.
- 25. In its Second Report, the Monitor provided further information to the Court and advised that Management and the CRO planned to advise the Subject Transaction Customers that 1) credit notes issued with the Subject Transaction were to be reversed and 2) that the Debtors expected full payment for the product delivered (the "**Subject Transaction Correspondence**").



26. On October 19, 2023, Debtors counsel provided the Monitor with copies of the Subject Transaction Correspondence which had been provided to the Customers on the same day.
27. The Monitor will provide further updates to the Court regarding the Subject Transactions in its next report to this Court.

#### **SECOND CASH FLOW STATEMENT**

28. The Debtors, with the assistance of the Monitor and the CRO, have prepared the Second Cash Flow Statement for the 17-week period from October 15, 2023 to February 4, 2024 (the "**Cash Flow Period**") for the purposes of projecting the estimated results of the Debtors' planned operations and other activities during the Cash Flow Period. A copy of the Second Cash Flow Statement along with supporting declarations and assumptions are attached as **Appendix A** to this Fourth Report, and summarized herein:

<b>South Shore Seafoods Group</b>					
<b>Consolidated 16-week cash flow forecast</b>					
<b>For the 16-week period ending February 4, 2024</b>					
<b>Opening</b>	<b>10/15/2023</b>	<b>10/29/2023</b>	<b>12/3/2023</b>	<b>12/31/2023</b>	
<b>Ending</b>	<b>10/29/2023</b>	<b>12/3/2023</b>	<b>12/31/2023</b>	<b>2/4/2024</b>	<b>Total</b>
<b>Opening line of credit position</b>	(9,359,422)	(7,922,244)	(6,738,136)	(4,685,381)	<b>(9,359,422)</b>
<b>Operating inflows</b>					
Collection of pre-filing accounts receivable	2,637,755	2,287,171	66,494	33,751	<b>5,025,171</b>
Collection of new and post-filing sales	-	908,926	2,381,411	591,942	<b>3,882,280</b>
Collection of HST	-	20,655	82,874	70,519	<b>174,048</b>
Other	-	-	-	-	<b>-</b>
	<u>2,637,755</u>	<u>3,216,752</u>	<u>2,530,779</u>	<u>696,213</u>	<b>9,081,498</b>
<b>Operating outflows</b>					
Payment of existing post-filing accounts payable	279,655	120,747	-	-	<b>400,402</b>
Critical pre-filing cost of goods sold	135,358	27,317	-	-	<b>162,675</b>
Cost of goods sold	58,864	70,657	26,698	65,181	<b>221,401</b>
Fixed operating expenses	148,386	145,997	114,993	151,293	<b>560,669</b>
Compensation, remittances and benefits	310,472	241,582	112,022	140,028	<b>804,105</b>
Operating leases	1,511	2,969	1,511	-	<b>5,991</b>
Insurance	32,728	120,606	115,210	140,778	<b>409,322</b>
Bank charges	3,318	3,938	3,318	3,938	<b>14,512</b>
Rent and Property taxes	-	52,125	-	18,093	<b>70,219</b>
Other	3,322	7,822	6,322	7,822	<b>25,288</b>
	<u>973,615</u>	<u>793,760</u>	<u>380,075</u>	<u>527,133</u>	<b>2,674,582</b>
<b>Non-operating outflows</b>					
Repayment of advance from R. Arsenault	-	65,000	-	-	<b>65,000</b>
Interest payments	226,962	292,831	97,948	232,574	<b>624,655</b>
	<u>226,962</u>	<u>357,831</u>	<u>97,948</u>	<u>232,574</u>	<b>915,316</b>
<b>Restructuring costs</b>					
Professional fees	-	881,053	-	450,000	<b>1,331,053</b>
Total outflows	<u>1,200,577</u>	<u>2,032,644</u>	<u>478,023</u>	<u>1,209,707</u>	<b>4,920,951</b>
Net weekly cash flow	1,437,178	1,184,108	2,052,756	(513,494)	<b>4,160,547</b>
<b>Ending line of credit position</b>	<u>(7,922,244)</u>	<u>(6,738,136)</u>	<u>(4,685,381)</u>	<u>(5,198,875)</u>	<b>(5,198,875)</b>
<b>Existing Credit Facility</b>					
Opening balance	(6,765,785)	(4,128,030)	(911,278)	-	(6,765,785)
Add: Cash Receipts	2,637,755	3,216,752	911,278	-	6,765,785
<b>Ending Existing Credit Facility Balance</b>	<b>(4,128,030)</b>	<b>(911,278)</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>DIP Facility</b>					
Opening	(2,593,637)	(3,794,214)	(5,826,858)	(4,685,381)	(2,593,637)
Less: Draws	(1,200,577)	(2,032,644)	(478,023)	(1,209,707)	(4,920,951)
Add: Repayments	-	-	1,619,500	696,213	2,315,713
<b>Ending DIP Facility balance</b>	<u>(3,794,214)</u>	<u>(5,826,858)</u>	<u>(4,685,381)</u>	<u>(5,198,875)</u>	<u>(5,198,875)</u>
<b>Total net indebtedness</b>	<b>(7,922,244)</b>	<b>(6,738,136)</b>	<b>(4,685,381)</b>	<b>(5,198,875)</b>	<b>(5,198,875)</b>

29. The Second Cash Flow Statement is presented on a weekly basis during the Cash Flow Period and represents Management's best estimate of the projected cash flow during the Cash Flow Period. The Second Cash Flow Statement has been prepared by Management, using the probable and hypothetical assumptions set out in the notes to the Cash Flow Statement (the "Assumptions").

30. The Monitor has reviewed the Second Cash Flow Statement through inquiries, analytical procedures and discussions, and a review of the supporting documents relating to the Information supplied to the Monitor by Management of the Debtors. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material respects, that:
- i. the Assumptions are not consistent with the purpose of the Second Cash Flow Statement;
  - ii. as at the date of the Fourth Report, the Assumptions are not suitably supported and consistent with the plans for the Debtors or do not provide a reasonable basis for the Second Cash Flow Statement, given the probable and hypothetical assumptions; or
  - iii. the Second Cash Flow Statement does not reflect the Assumptions.
31. Since the Second Cash Flow Statement is based on Assumptions regarding future events, actual results will vary from the information presented even if the Assumptions occur, and the variations could be material. Accordingly, the Monitor expresses no assurance as to whether the Second Cash Flow Statement will be achieved. In addition, the Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Second Cash Flow Statement or relied upon by the Monitor in preparing this Fourth Report.
32. The Second Cash Flow Statement has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.
33. As contained within the Second Cash Flow, to date the Debtors have drawn approximately \$3,200,000 of the DIP Facility. The Second Cash Flow Statement forecasts that borrowings up to \$5,900,000 are required during the Cash Flow Period.

#### **APPLICANT'S REQUEST FOR RELIEF**

34. The Applicant has brought a motion seeking the relief summarized above. The Monitor's views on the proposed relief is set out herein.

*Enhanced Powers of the Monitor*

35. As outlined in the Monitor's First Report and the Supplemental Report, the Applicant had previously sought to expand the powers of the Monitor, which powers were agreed to by the Debtors as contained within the DIP Facility Agreement. The goal of the enhanced powers was to streamline the magnitude of professional fees incurred as part of these CCAA Proceedings and to ensure a timely marketing process for the Debtors' assets while maintaining integrity of the SISP and to address the Applicant's eroding faith in Management.
36. The Monitor notes that while certain additional powers were granted pursuant to the Revised ARIOs, not all requested enhanced powers were granted at that time. The Monitor now understands that the Applicant is requesting the Court grant the balance of those powers (the "**Proposed Additional Powers**"), which are summarized below.
37. The proposed relief being requested presently is materially similar to that previously requested by the Applicant and would result in the Monitor being authorized and empowered, in consultation with the Applicant and the CRO, to make decisions and take necessary steps and actions with respect to the following:
- i. All decisions with respect to the SISP – The Monitor has been advised by the shareholders of the Debtors (the "**Shareholders**") of their intention to participate in the SISP. Accordingly, the Monitor is of the opinion that to maintain the integrity of the SISP, the Shareholders should be excluded from the development and execution of the SISP.
  - ii. 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 enhanced 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 views will have a material negative impact on the Debtors' business

absent further specific authorization from this Court. The powers would also empower the Monitor to cause the Debtors to engage assistants or advisors as the Monitor deems necessary or desirable and to provide instructions and directions to any current advisors of the Debtors.

- iii. 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 Debtors. These powers will include the ability of 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.
  - iv. Business and Operations - authority to cause the Debtors to administer the business or property as the Monitor deems necessary or desirable for the purposes of completing any transaction involving the business or the property or for purposes of facilitating distributions to creditors of the Debtors.
38. The Monitor has discussed the Proposed Additional Powers with the Debtors and the CRO and understands that the parties will not object to the relief being sought.
39. The Applicant has advised the Monitor that it is not prepared to continue to support these CCAA Proceedings nor allow the Debtors further access to the DIP Facility if the Proposed Additional Powers are not granted. Without access to the DIP Facility, the Debtors will not have the liquidity necessary to continue these CCAA Proceedings. In the event the Proposed Additional Powers are not granted, the Monitor recommends a short stay period (i.e., one week) in order for the Monitor to facilitate consultation with key effected stakeholders.

40. The Monitor and the CRO have collaborated effectively and efficiently throughout the administration of these CCAA Proceedings to ensure limited duplicity of effort and limiting professional fees. The Monitor remains supportive of the engagement of the CRO moving forward, primarily to assist with the execution of and to maintain the integrity of the SISP, and will continue to ensure no duplication of efforts.
41. The Monitor is prepared to accept and undertake the Proposed Additional Powers contained within the Second ARIOs should the Court see fit to grant the requested relief.

*The Monitor's SISP*

42. The Monitor advised in its First Report that a key tenant of the Applicant's support of these CCAA Proceedings was to maximize realizations for all stakeholders through the execution of a SISP.
43. As noted in the Supplemental Report, the commencement of the SISP was delayed until the uncertainty regarding the Debtors' cash flows and financial position could be resolved and the Second Cash Flow Statement could be filed with the Court.
44. Subsequent to the issuance of the Supplemental Report, the Monitor has continued to consult with the Applicant, BDC, BDC Capital and the CRO regarding the structure and milestone dates of the SISP. The output of these consultations is the revised SISP procedures (the "**Revised SISP Procedures**"), a copy of which is enclosed to this Fourth Report as **Appendix B**.
45. The following table summarizes the key activities and milestones related to the SISP. Potentially interested parties should review the full terms of the Revised 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 Revised SISP Procedures.

Phase/Event	Date	Description of Activities
SISP Order	October 25, 2023	<ul style="list-style-type: none"> <li>The Applicant is seeking an order approving the SISP.</li> </ul>
Publication Notice / Advertising / Direct Marketing	Within one (1) week of the SISP Order being granted	<ul style="list-style-type: none"> <li>No later than October 30, 2023, the Monitor shall prepare a list of Known Potential Bidders.</li> <li>Publication and direct marketing of the SISP in the following media channels: <ul style="list-style-type: none"> <li>AllAtlantic;</li> <li>The Guardian;</li> <li>The Telegraph Journal; and</li> <li>Insolvency Insider.</li> </ul> </li> <li>The Monitor shall send the Teaser Letter and Confidentiality Agreement to each Known Potential Bidder by no later than October 30, 2023.</li> </ul>
Phase 1		<ul style="list-style-type: none"> <li>The Monitor will seek to identify Qualified Phase 1 Bidders and provide each with notice of same.</li> <li>Certain criteria are required to be met in order to be a Qualified Phase 1 Bidder.</li> <li>Receipt of Non-Binding Indications of Interest by the deadline of December 11, 2023.</li> <li>Non-Binding Indications of Interest can be for a Sale or Investment in the Debtors individually, or in the aggregate.</li> </ul>
Phase 1 Bid Deadline	5:00 pm Atlantic time on December 11, 2023	<ul style="list-style-type: none"> <li>Non-Binding Indications of Interest due to be provided to the Monitor for each bidder to continue in the process.</li> </ul>
Assessment of Non-Binding Indications of Interest		<ul style="list-style-type: none"> <li>As soon as possible after the Phase 1 Bid Deadline, but no later than December 15, 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.</li> <li>Notice will be given to each party if they are a Qualified Phase 2 Bidder.</li> </ul>

Phase/Event	Date	Description of Activities
Assessment of Non-Binding Indications of Interest (continued)		<ul style="list-style-type: none"> <li>• 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 Qualified Bid, Successful Bid, and/or Backup Bid, as applicable, and bypass Phase 2 (and the timelines set out in the Revised SISP Procedures shall be proportionally accelerated).</li> <li>• Monitor to seek directions from the Court if no Non-Binding Indications of Interest are received.</li> <li>• On or before December 20, 2023, the Monitor will provide an update to the Court and the Service List regarding the results of Phase 1.</li> </ul>
Phase 2		<ul style="list-style-type: none"> <li>• Solicitation of a Qualified Purchase Bid or a Qualified Investment Bid.</li> </ul>
Phase 2 Bid Deadline	5:00 pm Atlantic time on January 12, 2024	<ul style="list-style-type: none"> <li>• Qualified Phase 2 Bidders to deliver Qualified Purchase Bids or Qualified Investment Bids to the Monitor by the Phase 2 Bid Deadline.</li> </ul>
Evaluation and Selection of the Successful Bid		<ul style="list-style-type: none"> <li>• The Monitor will evaluate each Qualified Bid in conjunction with the Applicant, the applicable Secured Creditors and the CRO.</li> <li>• The Monitor will clarify any Qualified Bids received and further negotiation may occur.</li> <li>• The Successful Bid will be chosen and the Successful Bidder will be notified.</li> <li>• The next best Qualified Bidder may be determined to be a Backup Bidder and, if so, will receive notification of same.</li> <li>• Definitive transaction documents will be settled.</li> </ul>



<b>Phase/Event</b>	<b>Date</b>	<b>Description of Activities</b>
Approval Hearing	Target Hearing Date on or before January 31, 2024	<ul style="list-style-type: none"> <li>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.</li> </ul>
Closing	Target Closing Date on or before February 28, 2024	

46. The Monitor is of the opinion that the Revised SISP Procedures are commercially reasonable and will provide potentially interested parties with sufficient time to evaluate the Debtors' business.
47. The Monitor is prepared to execute the Revised SISP Procedures as further outlined herein if the Court grants the requested relief.

*Increase to the DIP Facility, DIP Lender Charge and amendment to the DIP Facility Agreement*

48. Pursuant to the Initial Orders, the Court approved the DIP Facility authorizing the Debtors to borrow a maximum principal amount of \$3,000,000 and granted the DIP Lenders' Charge in favour of the Applicant.
49. Pursuant to the DIP Increase Order, the maximum principal amount was increased to \$4,000,000.
50. As contained within the Second Cash Flow Statement, as at the date of the Fourth Report, borrowings on the DIP Facility are approximately \$3,200,000 and as contained within the Second Cash Flow Statement are anticipated to grow to a maximum of \$5,900,000.
51. The Applicant seeks to increase the maximum principal amount of the DIP Facility to \$7,000,000 in order to align the facility with the anticipated requirements as contained within the Second Cash Flow Statement and to provide an adequate buffer given the length of the

extension being sought.

52. The additional anticipated borrowing will increase the Debtors' over-advance position by an estimated \$3,200,000, a default under the DIP Facility Agreement. This default has been driven in part by the impact of the Subject Transactions, the anticipated aging of certain accounts receivable and the impact of the delayed commencement of the SISP. Challenges pertaining to the over-advance are heightened due to the decreased operating activity of the Debtors and limited new collateral being created.
53. Throughout these CCAA Proceedings the Applicant has provided accommodation to the Debtors including, delaying interest payments in the amount of approximately \$200,000, and permitting a \$150,000 increase to the over-advance position during the week ending October 22, 2023 in order to facilitate payment to fishers. Such accommodation further outlines the importance of the Applicant's continued support in these CCAA Proceedings.
54. The Monitor supports the increase to the DIP Facility as contemplated in the Second ARIOs.

#### *Insurance Charge*

55. Prior to the issuance of the Initial Orders, the Debtors financed insurance premiums with Imperial PFS Payments Canada, ULC ("**Imperial**") in the amount of approximately \$251,000 and are seeking further financing of insurance premiums in the amount of \$280,000 (the "**Financed Premiums**") post filing.
56. The Financed Premiums primarily pertain to property insurance policies maintained by the Debtors which are critical to the Debtors' business, and which provide additional security for the stakeholders in these CCAA Proceedings.
57. In the ordinary course of Imperial's business, their security for the Financed Premiums is limited to a power of attorney to cancel the underlying policies in the event of default coupled with a direction to the insurers to pay to Imperial the unearned portion of the Financed

Premiums (the “**Unearned Premiums**”).

58. The Monitor understands Imperial is willing to finance the Financed Premiums, however, have requested that the Second ARIOs clarify that the various charges granted thereunder do not extend to the Unearned Premiums. As such, the Applicant has agreed to certain requested clarifying wording in the Second ARIOs.

59. As the Financed Premiums ease the immediate cash flow requirements of the Debtors, and the associated policies provide additional protection to the various stakeholders of these CCAA Proceedings, the Monitor supports the proposed language.

#### *Stay of Proceedings*

60. The Stay Period contained within the Stay Extension Order is set to expire on October 25, 2023. The Applicant is requesting an extension to the Stay Period up to and including January 31, 2024.

61. The Monitor is of the opinion that the Applicant’s request for the Extended Stay Period is reasonable and just for the following reasons:

- i. the Monitor requires time to execute the SISP for the benefit of all stakeholders;
- ii. the Monitor and the CRO, with the powers granted to them, have acted and continue to act in good faith and with due diligence in their oversight of the operations of the Debtors; and
- iii. the Monitor is of the view that no creditor will be materially prejudiced by the Extended Stay Period.

62. Furthermore, if the Court sees fit to grant the Second ARIOs, the Monitor will undertake to provide the Court and the Service List with a written update on the outcome of Phase 1 of the SISP on or before December 20, 2023. Providing such an update will ensure the stakeholders are aware of the developments in these CCAA Proceedings ahead of the next anticipated Court

hearing in late January 2024.

63. The Monitor supports the Extended Stay Period as contained within the Second ARIOs.

**CONCLUSION**

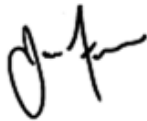
64. Based on the enclosed, the Monitor recommends the Court grant the Second ARIOs and the SISP Order in the form put forward by the Applicant.

All of which is respectfully submitted this 23<sup>rd</sup> day of October 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

Per:



**Kurt Macleod, MBA, CIRP, LIT**  
Vice-President

**APPENDIX A  
SECOND CASH FLOW STATEMENT**

**IN THE MATTER OF  
THE COMPANIES' CREDITOR ARRANGEMENT ACT,  
AND  
IN THE MATTER OF  
THE COMPROMISE OR ARRANGEMENT OF  
SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER  
SHELLFISH (2012) INC., SOUTH SHORE SEAFOODS INTERNATIONAL LTD., CAN-AM LOBSTER  
& SHELLFISH LTD., BRIDGE LOBSTERS LIMITED, AND ARSENAULT'S FISH MART INC.**

The management of South Shore Seafoods Ltd., Captain Cooke's Seafood Inc., By The Water Shellfish (2012) Inc., South Shore Seafoods International Ltd., Can-Am Lobster & Shellfish Ltd., Bridge Lobsters Limited, and Arsenault's Fish Mart Inc. (collectively, the "**Debtors**") has developed the assumptions and prepared the attached consolidated statement of projected cash flow of the Debtors, as of October 20, 2023, consisting of weekly cash flows for the period October 15, 2023 to February 4, 2024 (the "**Cash Flow Statement**").

The hypothetical assumptions are reasonable and consistent with the purpose of the Cash Flow Statement described in Note A, and the probable assumptions are suitably supported and consistent with the plans of the Debtors and provide a reasonable basis for the Cash Flow Statement. All such assumptions are disclosed in Note B.


Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The Cash Flow Statement has been prepared solely for the purpose described in Note A, using a set of hypothetical and probable assumptions set out in Note B. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at Cap Pele, New Brunswick this 23<sup>rd</sup> day of October 2023.

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

Per:

  
Tim Williston (Oct 23, 2023 16:23 ADT)

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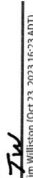
**Tim Williston**  
Chief Operations Officer – Vice President

South Shore Seafoods Group  
 For the 16-week period ending February 4, 2024

Week ending	WK1 10/22/2023	WK2 10/29/2023	WK3 11/5/2023	WK4 11/12/2023	WK5 11/19/2023	WK6 11/26/2023	WK7 12/3/2023	WK8 12/10/2023	WK9 12/17/2023	WK10 12/24/2023	WK11 12/31/2023	WK12 1/7/2024	WK13 1/14/2024	WK14 1/21/2024	WK15 1/28/2024	WK16 2/4/2024	Total
<b>Opening line of credit position</b>	(9,359,422)	(8,743,620)	(7,922,244)	(7,985,939)	(6,896,009)	(6,766,944)	(6,737,042)	(6,738,136)	(6,444,724)	(5,542,565)	(5,091,961)	(4,855,381)	(4,792,879)	(4,627,660)	(4,712,300)	(4,781,705)	(9,359,422)
<b>Operating inflows</b>																	
Collection of pre-filing accounts receivable	1,211,809	1,425,946	762,472	1,287,215	86,389	59,141	93,054	41,576	31,639	1,639	1,639	10,327	1,639	17,376	18,464	4,500	5,025,171
Collection of new and post-filing sales	-	-	-	19,565	157,457	272,956	479,513	601,118	656,517	634,231	489,344	315,377	171,539	79,304	18,464	-	3,174,048
Other	-	-	-	-	-	464	636	82,893	-	-	481	2,707	62,530	-	-	5,282	374,048
<b>Operating outflows</b>																	
Payment of existing post-filing accounts payable	246,461	33,194	61,124	26,121	33,501	-	-	-	-	-	-	-	-	-	-	-	400,402
Critical pre-filing cost of goods sold	27,317	108,041	27,317	27,317	-	7,000	13,237	17,885	2,938	2,938	2,938	28,184	2,938	2,938	2,938	28,184	221,401
Cost of goods sold	37,235	21,629	13,741	21,629	5,304	43,567	66,595	20,740	24,561	18,877	50,613	26,645	25,794	15,190	55,426	28,257	560,669
Pre-filing expenses	197,298	113,174	59,455	59,455	4,893	43,567	38,068	20,006	20,006	20,006	20,006	28,006	28,006	28,006	28,006	28,006	804,105
Operating leases	22,728	10,000	2,698	82,481	2,400	32,728	2,698	63,488	18,993	32,728	1,511	44,528	10,993	32,728	-	44,528	409,322
Bank charges	3,118	-	9,047	-	-	34,033	9,047	-	-	3,318	-	9,310	-	3,318	-	9,310	14,512
Rent and Property taxes	1,822	1,500	18,222	1,500	1,822	1,500	1,500	1,500	1,500	1,822	1,500	1,500	1,500	1,500	1,500	1,500	20,718
Other	383,302	410,253	192,230	217,669	113,781	139,760	130,320	131,519	75,997	87,659	84,769	138,220	77,170	84,003	87,869	139,871	2,874,582
<b>Non-operating outflows</b>																	
Advance from R. Arsenault	32,644	184,318	110,327	61	-	65,000	84,645	55	-	97,577	316	72,600	316	97,577	-	62,081	65,000
Interest payments	32,644	184,318	110,327	61	-	182,839	84,645	55	-	97,577	316	72,600	316	97,577	-	62,081	624,655
<b>Restructuring costs</b>																	
Professional fees	-	-	533,729	-	-	-	337,324	-	-	-	-	225,000	-	-	-	225,000	1,331,053
<b>Total outflows</b>	596,007	604,571	826,197	317,730	113,781	302,658	572,288	131,675	75,997	183,266	85,086	435,820	77,487	181,579	87,169	428,932	4,920,951
<b>Net weekly cash flow</b>	615,803	821,375	(63,715)	1,069,050	128,985	29,802	(1,094)	593,412	602,159	450,604	406,380	(107,498)	165,219	(84,639)	(69,405)	(417,170)	4,160,547
<b>Ending line of credit position</b>	(9,743,620)	(7,922,244)	(7,985,939)	(6,896,009)	(6,766,944)	(6,737,042)	(6,738,136)	(6,144,724)	(5,542,565)	(5,091,961)	(4,685,381)	(4,792,879)	(4,627,660)	(4,712,300)	(4,781,705)	(5,198,875)	(5,198,875)
<b>Existing Credit Facility</b>																	
Opening	(6,165,785)	(5,553,976)	(4,128,030)	(3,365,557)	(2,058,778)	(1,815,032)	(1,482,472)	(911,278)	(186,191)	-	-	-	-	-	-	-	-
Add: Cash Receipts	(596,007)	(604,571)	(826,197)	(1,069,050)	(128,985)	(29,802)	(1,094)	593,412	602,159	450,604	406,380	(107,498)	165,219	(84,639)	(69,405)	(417,170)	(4,781,705)
<b>Ending Existing Credit Facility Balance</b>	<b>(5,533,976)</b>	<b>(4,128,030)</b>	<b>(3,365,557)</b>	<b>(4,038,778)</b>	<b>(3,815,032)</b>	<b>(4,482,472)</b>	<b>(1,482,472)</b>	<b>(186,191)</b>	<b>(186,191)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>DIP Facility</b>																	
Opening	(2,933,637)	(3,189,644)	(3,794,214)	(4,520,401)	(4,838,131)	(4,951,012)	(5,354,870)	(5,826,688)	(5,958,533)	(5,542,565)	(5,091,961)	(4,685,381)	(4,792,879)	(4,627,660)	(4,712,300)	(4,781,705)	(5,198,875)
Less: Repayments	(596,007)	(604,571)	(826,197)	(1,069,050)	(128,985)	(29,802)	(1,094)	593,412	602,159	450,604	406,380	(107,498)	165,219	(84,639)	(69,405)	(417,170)	(4,781,705)
<b>Ending DIP Facility balance</b>	<b>(3,189,644)</b>	<b>(3,794,214)</b>	<b>(4,620,411)</b>	<b>(4,838,131)</b>	<b>(4,951,012)</b>	<b>(5,254,870)</b>	<b>(5,826,688)</b>	<b>(5,958,533)</b>	<b>(5,542,565)</b>	<b>(5,091,961)</b>	<b>(4,685,381)</b>	<b>(4,792,879)</b>	<b>(4,627,660)</b>	<b>(4,712,300)</b>	<b>(4,781,705)</b>	<b>(5,198,875)</b>	<b>(5,198,875)</b>
<b>Total net indebtedness</b>	<b>(8,743,620)</b>	<b>(7,922,244)</b>	<b>(7,985,939)</b>	<b>(6,896,009)</b>	<b>(6,766,944)</b>	<b>(6,737,042)</b>	<b>(6,738,136)</b>	<b>(6,144,724)</b>	<b>(5,542,565)</b>	<b>(5,091,961)</b>	<b>(4,685,381)</b>	<b>(4,792,879)</b>	<b>(4,627,660)</b>	<b>(4,712,300)</b>	<b>(4,781,705)</b>	<b>(5,198,875)</b>	<b>(5,198,875)</b>

Dated at Cup Pele, New Brunswick this 23rd day of October 2023.

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

Per:  
  
 Tim Williamson (October 23, 2023 16:23 ADT)  
 Chief Operations Officer - Vice President

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

**ASSUMPTIONS TO THE CASH FLOW STATEMENT  
FOR THE PERIOD OCTOBER 15 TO FEBRUARY 4, 2024**

**Note A:**

The statement of projected cash flow (the "**Cash Flow Statement**") is being filed pursuant to *the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended* using the probable and hypothetical assumptions set out in Note B.

**Note B:**

The following assumptions were used by Management in the preparation of the Cash Flow Statement of the Debtors:

**General:**

The following is an overview of the current operating activities of each of the Debtors. These activities are integral to the assumptions further discussed herein:

South Shore Seafoods International ("**SSSI**") – SSSI has no operating activity outside of its 100% equity ownership of Can-Am Lobster and Shellfish Ltd. ("**CanAm**").

CanAm – CanAm had previously participated in the US lobster industry however ceased operations in January 2023. Assumptions pertaining to CanAm discussed below are limited to fixed operating expenses currently required relating to a leased facility located in Maine, US.

South Shore Seafoods Ltd. ("**SSSL**") – SSSL operates two processing plants in Alberton, PEI that process raw tails and cooked lobster meat. Following the conclusion of the Prince Edward Island lobster fishing season on October 14, 2023 (the "**Fishing Season**"), operations at SSSL are anticipated to winddown to focusing on selling existing inventory.

Arsenault's Fish Mart Inc. ("**AFM**") – operates as a buying agency procuring lobster for SSSL and BTW (as defined below). With the Fishing Season concluded AFM's operations are limited.

Captain Cooke's Seafoods Inc. ("**CCSI**") – CCSI processes whole cooked lobster using canner lobsters for the European market. Currently, CCSI is not producing product for sale and as such, assumptions discussed below are limited to fixed operating expenses currently required to maintain its processing facility.

By the Water Seafood (2012) Inc. ("**BTW**") – Based in Borden, PEI, BTW participates in the live lobster market (i.e. buying and selling live lobster) selling the majority of its product to Asian and US markets. Following the conclusion of the Fishing Season, operations at BTW are anticipated to winddown to focusing on selling existing inventory.

Bridge Lobsters Limited ("**Bridge**") – Bridge is owned by BTW and had previously purchased and sold lobster to BTW using its Nova Scotia buyers license. Bridge has not operated since the 2022 season and assumptions discussed below are limited to fixed operating expenses currently required to maintain its storage facility.



### **Line of credit position**

- The opening line of credit position represents the actual consolidated cash and line of credit balance net of outstanding cheques (the "**Existing Credit Facility**") of the Debtors as at October 15, 2023.

### **Operating Inflows**

- The accounts receivable balance as at October 15, 2023 is based on the books and records of the Debtors. The collection of these amounts is based on Management expectations taking into consideration existing payment terms with customers and historical collection patterns.
- Collection of new and post-filing sales represents the collection of accounts receivable related to the sale of existing inventory as at October 15, 2023. Further information pertaining to new and post-filing sales is presented below:
  - SSSL/BTW – Timing of new and post-filing sales is forecast based on historically observed inventory turnover. The collection of new and post-filing sales is based on historically observed collection patterns.
- As the Debtors' sales do not attract excise taxes, the Debtors are typically in a net HST refund position. Collection of HST is forecast based on the expenses contemplated in the Cash Flow Statement taking into account a monthly remittance filing period.

### **Operating Outflows**

- Payment of existing post-filing accounts payable represents the payment of expenses incurred since the granting of the Initial Orders. The balance of post-filing accounts payable is based on the books and records of the Debtors as at October 15, 2023.
- Critical pre-filing cost of goods sold represent costs critical to the continued operations of the Debtors' business and are further summarized below:
  - Bait/fuel costs – Historically an employee of AFM has paid for and been reimbursed on a weekly basis for costs such as bait and fuel utilized by fishers. These costs are charged back to fishers and withheld when calculating weekly payments for catches. Prior to the date of the Initial Orders, this employee was owed approximately \$121,000 pertaining to bait and fuel purchased between September 9 and September 23, 2023. Approximately \$47,000 has been repaid since the date of the Initial Orders and the balance approximately \$73,000 is forecasted to be paid in the forecast period.
  - Cold Storage Fees – Approximately \$82,000 relates to amounts outstanding to cold storage suppliers who may have a possessory lien claim against inventory held.
  - Marine Stewardship Counsel Certification – Approximately \$8,000 relates to amounts outstanding to an international seafood certification body. This certification is required to be able to sell the Debtors products.
- Cost of goods sold during the forecast period is comprised of the following:
  - Packaging, transportation and storage – Packaging, transportation and storage costs are estimated based on recently observed percentages of sales and assumed to be paid on a cash on delivery basis.
  - Utilities – Utility costs are estimated based on recently observed levels taking into consideration the winddown of SSSL and BTW operations following the conclusion of the Fishing Season.

- Fixed operating expenses during the projection period are primarily comprised of advertising, repairs and maintenance, vehicle costs, travel, utilities (nonoperating facilities), and office expenses. Fixed operating expenses have been estimated based on actual costs incurred during the period March 2023 to August 2023.
- Compensation, remittances, and benefits are forecast based on current headcount levels and anticipated winddown of operations at SSSL and BTW. The Debtors utilize the services of the third-party payroll provider so amounts presented in the Cash Flow Statement include all statutory remittances and employer matching amounts.
- Insurance represents monthly payments of the Debtors existing insurance policy premiums.
- Rent and property taxes are forecast based on current amounts. Currently, the Debtors rent office space in Cap Pele, New Brunswick and a storage facility located in Maine, US relating to CanAm.

#### **Non-operating outflows**

- Repayment of advance from R. Arsenault represents the repayment of amounts received from this Stakeholder post-filing.
- The Cash Flow Statement contemplates the continued payment of post-filing interest charges on secured encumbrances outstanding to TD Bank, Business Development Bank of Canada and miscellaneous vehicle loans. Post-filing interest payments of subordinated creditors is not contemplated in the statement of projected cash flows.
- Non-operating outflows also includes costs associated with servicing the Existing Credit Facility and DIP Facility.

#### **Restructuring costs**

- Professional fees are based on consultation with the various professional service firms involved in the administration of this CCAA proceeding.


#### **DIP Facility**

- Detailed forecast borrowing base and availability amounts and covenant thresholds tests are assumed to be calculated in accordance with the terms of DIP Facility Agreement.

Dated at Cap Pele, New Brunswick this 23<sup>rd</sup> day of October 2023.

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

Per:

  
Tim Williston (Oct 23, 2023 16:23 ADT)

**Tim Williston**  
 Chief Operations Officer – Vice President



The attached consolidated statement of projected cash flow of South Shore Seafoods Ltd., Captain Cooke's Seafood Inc., By The Water Shellfish (2012) Inc., South Shore Seafoods International Ltd., Can-Am Lobster & Shellfish Ltd., Bridge Lobsters Limited, and Arsenault's Fish Mart Inc. (collectively, the "**Debtors**"), consisting of weekly projections through the week beginning October 15, 2023 to the week ending February 4, 2024 has been prepared by the management of the Debtors for the purpose described in Note A, using the probable and hypothetical assumptions set out in Note B.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied to us by the management and employees of the Debtors. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by management for the probable assumptions and preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects,

- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the Debtors or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the probable and hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in Note A, and readers are cautioned that it may not be appropriate for other purposes.

Dated at Halifax, NS this 23rd day of October 2023.

**DELOITTE RESTRUCTURING INC.**

Acting in its capacity as Proposed Monitor of  
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., and not in its personal capacity

Per:

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

**APPENDIX B  
REVISED SISIP 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.
3. The Initial Orders were amended by the Court on September 28, October 5 and October 17, 2023 respectively to, *inter alia*, extend the initial stay of proceedings, increase the administration charge and increase the charge in favour of the DIP Lender.
4. On October 25, 2023, the Court granted an order 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**").
5. 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**").
6. 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:

<b>Milestone</b>	<b>Deadline</b>
Monitor to create list of Known Potential Bidders and distribute Teaser Letters and Confidentiality Agreements	October 30, 2023
Monitor to open data room	November 6, 2023
Phase 1 Bid Deadline	December 11, 2023
Phase 2 Bid Deadline	January 12, 2024
Transaction Approval Hearing	On or before January 31, 2024
Target Closing Date	On or before February 28, 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 25, 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 30, 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 December 11, 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 28, 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 December 15, 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) or the Monitor otherwise determines that proceeding with Phase 2 (as defined below) is not in the best interest of the Debtors and its stakeholders, 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; (ii) proceed to negotiate a Sale Proposal or Investment Proposal with one or more of the Qualified Phase 1 Bidders directly and waive the SISP Procedures set forth in Phase 2 below, or (iii) 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 December 15, 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 January 12, 2024, 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) February 23, 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; and

it 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) February 23, 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; and
- includes 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](mailto: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 judgement, 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.