

Court File Number: SJM/125/2023

Numéro du dossier :

IN THE COURT OF KING'S BENCH
OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF SAINT JOHN

COUR DU BANC DU ROI DU
NOUVEAU-BRUNSWICK
DIVISION DE PREMIÈRE INSTANCE
CIRCONSCRIPTION JUDICIAIRE DE
SAINT JEAN

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

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

B E T W E E N:

ENTRE :

THE TORONTO-DOMINION BANK

Applicant REQUÉRANT

- and -

- et -

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.

INTIMÉ

Respondents

**NOTICE OF MOTION
(FORM 37A)**

**AVIS DE MOTION
(FORMULE 37A)**

TO: THE RESPONDENT

DESTINATAIRE :

To: The Service List (see Schedule
"A" attached hereto)

The Applicant will apply to the Court before the Court at the Saint John Law Courts, 10 Peel Plaza, Saint John, New Brunswick on the **28th day of September, 2023 at 10:30 a.m., via teleconference**, for an order as set out hereunder.

Le requérant demandera à la Cour au Palais de Justice de _____
Nouveau-Brunswick, _____, le
_____ 2023, à _____ h _____,
d'obtenir l'ordonnance décrite ci-
dessous.:

You are advised that:

Sachez que :

- (a) You are entitled to issue documents and present evidence at the hearing in French or English or both;
- (b) The Applicant intends to proceed in the ENGLISH language; and
- (c) If you intend to proceed in the other official language, an interpreter may be required and you must so advise the clerk at least 5 days before the hearing.

- (a) vous avez le droit d'émettre des documents et de présenter votre preuve à l'audience en français, en anglais ou dans les deux langues;
- (b) le requérant a l'intention d'utiliser la langue ANGLAISE; et
- (c) si vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous devrez en aviser le greffier au moins 5 jours avant l'audience.

MOTION

On hearing of this Motion, The Toronto-Dominion Bank (the “**Applicant**”) intends to apply for the following relief pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), in respect 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. (collectively, the “**Debtors**”):

1. An amended and restated initial order (the “**ARIO**”) substantially in the form of the draft attached hereto as Schedule “B”, *inter alia*:
 - a) if necessary, abridging the time for service of this Motion, the First Report of the Monitor (defined below) dated September 25, 2023 (the “**First Report**”) and/or the Record on Motion or excusing the lack of service of this Motion and/or the Record on Motion;
 - b) extending the Stay Period (defined below) until and including November 24, 2023;
 - c) expanding the powers of Deloitte Restructuring Inc. (“**Deloitte**”), in its capacity as Court-appointed monitor (the “**Monitor**”) as set out in the ARIO;
2. An amended and restated charging order (the “**ARCO**”) substantially in the form of the draft attached hereto as Schedule “C”, *inter alia*:
 - a) increasing the Administration Charge (defined below) from \$250,000 to \$500,000; and
 - b) increasing the maximum principal amount available under the DIP Facility

(defined below) from \$3 million to \$10 million;

3. An order (the “**SISP Approval Order**”) substantially in the form of the draft attached hereto as Schedule “D”, *inter alia*:
 - a) approving a sale and investment solicitation process in respect of the Debtors (the “**SISP**”); and
 - b) authorizing the Monitor to implement the SISP pursuant to the terms thereof and to perform all tasks reasonably necessary to carry out the SISP;
4. Such further and other relief as to this Honourable Court may deem just.

Upon hearing of the Motion, the Applicant intends to argue the following grounds and rely upon the following statutory provisions or rules:

Background

1. On September 21, 2023, upon an application by the Applicant, the Debtors obtained protection under the CCAA pursuant to (a) an initial order and (b) a charging order of this Court (collectively, the “**Initial Orders**”);
2. The Initial Orders, *inter alia*:
 - a) approved a stay of proceedings up to and including October 1, 2023 (the “**Stay Period**”);
 - b) appointed Deloitte to act as the Monitor in these CCAA proceedings;
 - c) appointed David Boyd, a representative of Resolve Advisory Services Ltd.,

to act as the chief restructuring officer (“**CRO**”) of the Debtors;

d) authorized the Debtors to obtain and borrow amounts from the Applicant pursuant to a post-filing debtor in possession financing facility (the “**DIP Facility**”) up to a maximum principal amount of \$3 million (the “**Initial Borrowing Limit**”); and

e) granted the following super-priority charges (ordered in priority):

i. First – a charge in the maximum amount of \$250,000 (the “**Administration Charge**”) to secure payment of the fees and expenses of the Monitor, its counsel, the CRO (excluding any success fee), the Debtors’ counsel (up to a maximum of \$25,000) and the Applicant’s counsel;

ii. Second – a charge in the maximum amount of \$375,000 (the “**Directors’ Charge**”) to secure indemnity in favour of the Debtors’ directors and officers for obligations and liabilities they may incur in such capacity post-filing; and

iii. Third – a charge to secure obligations under the DIP Facility.

3. On September 22, 2023, the Applicant’s counsel served the service list with the Initial Orders and an unredacted copy of the Pre-Filing Report (defined below), which contained the Debtors’ cash flow;

The SISP

4. The Applicant is seeking approval of the SISP Approval Order, which approves the conduct of the proposed SISP;

5. The proposed SISP is to be conducted by the Monitor and provides for the following:
 - a) Commencement of the SISP: October 4-9, 2023;
 - b) Phase 1 Bid Deadline: November 13, 2023;
 - c) Phase 2 Bid Deadline: December 11, 2023;
 - d) Sale approval motion: on or before January 12, 2024;
 - e) Target Closing Date: on or before February 15, 2024;
6. Pursuant to the SISP, the Monitor will solicit interest from potentially interested parties as well as publish ads in relevant publications to solicit both sales and investment proposals;
7. The Monitor has retained significant discretion to provide flexibility in the SISP as needed to maximize value for the Debtors' assets;
8. The Applicant is consenting to the proposed SISP;

Expansion of the Monitor's Powers

9. The proposed expansion of the Monitor's powers are required to, among other things, streamline the magnitude of the professional fees within the CCAA proceedings and to ensure the timely marketing of the Debtors' Property through the SISP;
10. The Monitor has discussed the proposed expansion of powers with the Debtors and the CRO;

Increased Amount of Administration Charge

11. Under the ARCO, the Applicant seeks to increase the Administration Charge from \$250,000 to \$500,000;
12. The increase in the Administration Charge is necessary to ensure the professionals have adequate protection throughout the CCAA proceedings;
13. The Monitor supports this amendment to the Administration Charge and is of the view that the proposed quantum is reasonable and appropriate in the circumstances;

Increase in Borrowing Limit

14. Under the ARCO, the Applicant seeks to increase the Initial Borrowing Limit to \$10 million;
15. The Debtors' cash flow forecast show that at times the Debtors may require access to the full quantum of the DIP Facility;
16. The Monitor supports the increase in the borrowing limit and is of the view that the proposed quantum is reasonable and appropriate in the circumstances;

Extension of the Stay Period

17. Under the ARIO, the Applicant seeks to extend the Stay Period until and including November 24, 2023;
18. An extension of the Stay Period is required to allow the Monitor to proceed with Phase 1 of the SISF;

19. In the event that the Monitor receives Qualified Phase 1 Bids (as defined in the SISP), it is anticipated that the Monitor will seek a further extension of the Stay Period prior to November 24, 2023;
20. The Monitor is satisfied that the Debtors have acted, and continue to act, in good faith and with due diligence during the course of these CCAA proceedings;
21. The Monitor supports the proposed extension to the Stay Period;

Other Grounds

22. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
23. Rules 1.03, 2.01 and 3.02 of the *Rules of Court*, NB Reg 82-73; and
24. Such further and other grounds as counsel may advise and this Court may permit.

Upon hearing of the Motion, the following affidavits or other documentary evidence will be presented:

1. The affidavit of Andrea Jamnisek sworn September 18, 2023, including the Exhibits attached thereto;
2. The Pre-Filing Report of the Monitor dated September 18, 2023, including the Appendices attached thereto (the “**Pre-Filing Report**”);
3. The First Report, including the Appendices attached thereto; and
4. Such further and other materials as counsel may advise and this Honourable

Court may permit.

September 25, 2023

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
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Fax: 416.216.3930



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Lawyers for the Applicant

SCHEDULE "A" – SERVICE LIST

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF SAINT JOHN

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

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

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

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

RESPONDENTS

SERVICE LIST

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| <p>DELOITTE RESTRUCTURING INC. 1741 Lower Water St. Suite 800 Halifax, NS B3J 0J2 Email: southshoreseafoods@deloitte.ca</p> <p>James Foran jforan@deloitte.ca</p> <p>Kurt Macleod kmacleod@deloitte.ca</p> <p>Warren Leung waleung@deloitte.ca</p> <p>Jorden Sleeth jsleeth@deloitte.ca</p> <p>Proposed Monitor</p> | <p>RESOLVE ADVISORY SERVICES LTD</p> <p>David Boyd davidboyd.resolve@gmail.com</p> <p>Chief Restructuring Officer</p> |
| <p>STEWART MCKELVEY Queen's Marque 600-1741 Lower Water Street Halifax, NS B3J 0J2</p> <p>Maurice Chiasson, K.C. Tel: 902.420.3300 mchiasson@stewartmckelvey.com</p> <p>Counsel for the Respondents</p> | <p>SOUTH SHORE SEAFOODS LTD., CAPITAL 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.</p> <p>Michel Jacob michel@southshoreseafoods.ca</p> <p>Tim Williston tim@southshoreseafoods.ca</p> <p>The Respondents / Debtors</p> |
| <p>THORNTON GROUT FINNIGAN LLP 100 Wellington Street, West Toronto-Dominion Centre Toronto, ON M5K1K7</p> <p>Leanne Williams Tel: 416.304.0060 lwilliams@tgf.ca</p> <p>Patrick Power PPower@tgf.ca</p> <p>Lawyers for Business Development Bank of Canada and BDC Capital Inc.</p> | |

| | |
|--|---|
| <p>THUNDER COVE INVESTMENTS INC. Box 1600 Summerside, PE C1N 2V5</p> <p>902.853.7160 warrenellis@summersidechrysler.pe.ca</p> | <p>MAPLEWOOD TRUST, by its Trustee, Warren Ellis</p> <p>warrenellis@summersidechrysler.pe.ca</p> |
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| <p>BTW HOLDINGS INC. PO Box 1651 Summerside, PEI C1N 2V5</p> <p>dewis@bythewaterlobster.com</p> | <p>KEY MURRAY LAW 494 Granville Street, PO Box 1570 Summerside, PE C1N 4K4</p> <p>Derek Key, K.C. Tel: 902.436.4851 derek.key@keymurraylaw.com</p> <p>Lawyers for Dewis Cooke, Randy Cooke, Murphy's Limited Liability Company and BTW Holdings Inc.</p> |
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SCHEDULE "B"

**DRAFT AMENDED AND RESTATED INITIAL ORDER
AND BLACKLINE TO INITIAL ORDER**

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

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

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

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

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

RESPONDENTS

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicant, The Toronto-Dominion Bank, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day in person at the City of Saint John, Province of New Brunswick.

ON READING the affidavit of Andrea Jamnisek sworn September 18, 2023 (the "**Jamnisek Affidavit**") and the Exhibits thereto, the report of Deloitte Restructuring Inc. dated September 18, 2023 (the "**Pre-Filing Report**"), in the capacity of proposed Monitor of the Companies, and the report of Deloitte Restructuring Inc. dated September 25, 2023 (the "**First Report**"), in the capacity of Monitor of the Companies;

AND UPON IT APPEARING from the affidavits of service of Katie Parent sworn September 18, 2023 [and September ●, 2023 (the “Affidavits of Service”)] that the following persons received notice of this Application:

- a) The Companies;
- b) Canada Revenue Agency;
- c) BDC Capital Inc.;
- d) Business Development Bank of Canada;
- e) Robert Arsenault;
- f) Thunder Cove Investments Inc.;
- g) Maplewood Trust, by its trustee, Warren Ellis;
- h) Dewis Cooke;
- i) Randy Cooke;
- j) Murphy’s Limited Liability Company; and
- k) BTW Holdings Inc.

AND ON READING the consent of Deloitte Restructuring Inc. to act as the Monitor, and hearing the submissions of counsel for the Applicant, the proposed Monitor, the Companies and those other parties present, and no one appearing for any other party although duly served as appears from the Affidavits of Service;

IT IS ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Notice of Application, the Application Record and the Pre-Filing Report and the Notice of Motion, the Record on Motion and the First Report as set out in the Affidavits of Service is hereby deemed adequate so that this Application is properly returnable today.

APPLICATION

2. The Companies are affiliated debtor companies within the meaning of the CCAA to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

3. The Companies shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Companies shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property.

4. The Companies shall be entitled to continue to utilize the central cash management system currently in place as described in the Pre-Filing Report or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Companies of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Companies, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under a plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. The Companies may pay the following expenses whether incurred prior to or after this Order:

- a. all outstanding and future wages, salaries, employee and pension benefits, vacation pay, and expenses payable to employees who continue to provide service on or after the date of this Order ("**Active Employees**"), in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- b. all existing and future employee health, dental, life insurance, short and long term disability and related benefits (collectively, the "**Group Benefits**") payable on or after the date of this Order to Active Employees, in each case incurred in the ordinary course of business and consistent with existing policies and arrangements or such amended policies and arrangements as are necessary or desirable to

deliver the existing Group Benefits.

6. With the consent of the Monitor, the Companies may make payments owing to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to the date of this Order where such payments are deemed by the Companies to be necessary for the ongoing operation of the Companies or preservation of the Property, up to an aggregate limit of \$900,000.

7. Except as otherwise provided to the contrary herein, the Companies may pay all reasonable expenses incurred by the Companies in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a. all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- b. payment for goods or services actually supplied to the Companies following the date of this Order.

8. The Companies shall remit or pay, in accordance with legal requirements or on terms as may be agreed to between the Companies and the applicable authority:

- a. any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of: i) employment insurance, ii) Canada Pension Plan, iii) Quebec Pension Plan, and iv) income taxes;
- b. all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Companies in connection with the sale of goods and services by the Companies, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- c. any amount payable to the Crown in right of Canada or of any Province or any

regulatory or administrative body or any other authority, in all cases in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are: i) entitled at law to be paid in priority to claims of secured creditors; ii) attributable to or in respect of the ongoing Business carried on by the Companies; and iii) payable in respect of the period commencing on or after the date of this Order.

9. Until such time as any Company who is a tenant under a lease, disclaims a real property lease in accordance with the CCAA, such Company shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Company and the landlord from time to time, for the period commencing from and including the date of this Order, in accordance with its existing lease agreements. On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid.

10. Except as specifically permitted herein or by further Order of this Court, the Companies are hereby directed, until further Order of this Court: i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Companies to any of their creditors as of the date of this Order without prior written consent of the Monitor; ii) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and iii) to not grant credit or incur liabilities except in the ordinary course of the Business or with the prior written approval of the Monitor.

APPOINTMENT OF CRO

11. David Boyd, as a representative of Resolve Advisory Services Ltd. ("**Resolve**"), is hereby appointed Chief Restructuring Officer (the "**CRO**") over the Companies and shall, subject to the Orders of the Court that have been and may be granted from time to time in these proceedings, have the powers to perform the services set out in the engagement letter dated September 13, 2023 in the form attached as Exhibit "II" to the Jamnisek Affidavit (the "**CRO Agreement**"), provided that all such services are to be performed in conjunction with the Monitor and the Applicant.

12. The CRO Agreement is approved and the Companies are authorized to perform all of

their obligations pursuant to the CRO Agreement.

13. Neither the CRO nor any employee or agent of the CRO shall be deemed to be a director or trustee of any of the Companies.

14. Neither the CRO nor any officer, director, employee or agent of the CRO, including without limitation, David Boyd, shall incur any liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any liability or obligation incurred as a result of gross negligence or wilful misconduct on its or their part; provided that any liability of the CRO hereunder shall in no event exceed the quantum of the fees paid to the CRO.

15. The fees and expenses payable to Resolve pursuant to the CRO Agreement are entitled to the benefit of the Administration Charge, as defined in the companion Amended and Restated Charging Order dated September 21, 2023.

RESTRUCTURING

16. The Companies shall, with the consent of the Monitor and the DIP Lender, have the right to:

- a. permanently or temporarily cease, downsize or shut down any of its business or operations, or
- b. in accordance with its ordinary course of business, dispose of redundant or non-material assets not exceeding \$100,000 in value in the aggregate.

NO PROCEEDINGS AGAINST THE COMPANIES OR THE PROPERTY

17. Until and including November 24, 2023, or such later date as this Court may order (the "**Stay Period**"), no claim, grievance, application, action, suit, right or remedy, proceeding or enforcement process in any court, tribunal or arbitration association (each, a "**Proceeding**") shall be commenced, continued or enforced against or in respect of the Companies, the CRO or the Monitor, or affect the Business or the Property, except with the written consent of the Companies, the CRO, the Monitor and the Applicant, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Companies or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

18. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing collectively being "**Persons**" and each being a "**Person**") against or in respect of the Companies or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Companies, the Monitor and the Applicant, or leave of this Court, provided that nothing in this Order shall: i) empower the Companies to carry on any business which the Companies are not lawfully entitled to carry on; ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; iii) exempt the Companies from compliance with statutory or regulatory provisions relating to health, safety or the environment; iv) prevent the filing of any registration to preserve or perfect a security interest; or v) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder provided that the Companies shall not be required to file a defence during the stay period.

NO INTERFERENCE WITH RIGHTS

19. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Companies, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Companies and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

20. During the Stay Period, all Persons having oral or written agreements with the Companies or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Companies, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Companies, and the Companies shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Companies in accordance with normal

payment practices of the Companies or such other practices as may be agreed upon by the supplier or service provider and each of the Companies and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. Notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property, or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Companies.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Companies with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Companies whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Companies, if one is filed, is sanctioned by this Court or is refused by the creditors of the Companies or this Court, or these proceedings are dismissed by final Order of this Court or with leave of this Court.

APPOINTMENT OF MONITOR

23. Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Companies, the Property and the Companies' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Companies and their shareholders, officers, directors and employees shall advise the Monitor of all material steps taken by the Companies pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- a. approve all of the Companies' receipts and disbursements;
- b. report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Approved Cash Flow, the Property, the Business, the activities of the Companies and such other matters as may be relevant to the proceedings herein; have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents, relating to the Business and Property of the Companies, to the extent that is necessary to adequately assess the Companies' Business and financial affairs or to perform its duties arising under this Order;
- c. engage independent legal counsel or such other Persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including any affiliate of or Person related to the Monitor;
- d. develop a claims process to ascertain the quantum of the claims of all creditors;
- e. develop and conduct a sales and investment solicitation process ("**SISP**") for some or all of the Property and bring one or more motions seeking approval of transactions resulting from the SISP;
- f. execute, assign, issue and endorse agreements, instruments, notices, directions, settlements, filings, authorizations and other documents of whatever nature on behalf of each of the Companies as the Monitor deems appropriate, whether in the Monitor's name or in the name of and on behalf of any of the Companies;
- g. retain or hire employees or other assistants on behalf of the Companies and take any other steps in respect of the Companies' employees it deems appropriate including awarding non-material discretionary bonuses and terminating the employment of the Companies' employees or temporarily laying off such of the Companies' employees as the Monitor deems appropriate;
- h. take steps to cause the Companies to disclaim any agreements to which any of the Companies are party in accordance with the CCAA, provided, however, that the Monitor shall consult with the Applicant with respect to any such disclaimer and that any such disclaimer shall be subject to the prior consent of the Applicant;

- i. report to, meet with, discuss and share information with such Persons as the Monitor deems appropriate, subject to such terms as to confidentiality as the Monitor deems advisable;
- j. cause the Companies to administer the Business or the 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 Companies;
- k. cause the Companies to engage assistants or advisors as the Monitor deems necessary or desirable and to provide instructions and directions to any current advisors of the Companies; and
- l. perform such other duties as are required by this Order or by this Court from time to time.

25. The Monitor shall not take possession of the Property and shall take no part in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. Nothing herein contained shall limit the protections afforded the Monitor at law including those protections set out in the CCAA.

27. The Monitor shall provide any creditor of the Companies or a potential debtor-in-possession lender (“**DIP Lender**”) with information provided by the Companies in response to reasonable requests for information made in writing by such creditor or DIP Lender addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Companies is confidential, the Monitor shall not provide such information to creditors or a DIP Lender unless otherwise directed by this Court or on such terms as the Monitor and the Companies may agree.

28. The Monitor, counsel to the Monitor, counsel to the Applicant and all counsel to the Companies shall be paid their reasonable fees and disbursements, in each case not to exceed their standard rates and charges, by the Companies as part of the costs of these proceedings. The Companies are hereby authorized and directed to pay the accounts of the Monitor, counsel

for the Monitor, counsel for the Applicant and counsel for the Companies immediately upon receipt of an invoice.

29. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to the Clerk of the Court of King's Bench in New Brunswick, in accordance with the Rules of Court, or a Justice of the Court of King's Bench in New Brunswick.

SERVICE AND NOTICE

30. The Monitor shall: i) without delay, publish in Saltwire/Telegraph a notice containing the information prescribed under the CCAA; and ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Companies of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

31. The Monitor and the Applicant shall be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Companies' creditors or other interested parties at their respective addresses as last shown on the records of the Companies and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

32. The Applicant and the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the service list from time to time, and the Monitor may post a copy of any or all such materials on its website at <https://www.insolvencies.deloitte.ca/SouthShoreSeafoods>.

33. A party who makes a motion in these proceedings shall, subject to further Order, serve a motion record at least ten (10) calendar days' before the date on which the motion is to be heard (the "**Return Date**").

34. Any responding party objecting to the relief sought in a motion must serve responding materials no later than 4 p.m. on the date that is four (4) calendar days before the Return Date (the “**Objection Deadline**”). If the responding party will not be serving responding material but nevertheless intends to object to the relief sought in a motion, then such responding party must serve, by the Objection Deadline, a notice stating its objection to the relief sought and the grounds for such an objection (a “**Notice of Objection**”).

35. If either (i) responding materials, or (ii) a Notice of Objection is served in respect of a motion, the motion shall be heard on the Return Date, unless the Court orders otherwise.

36. If neither (i) responding materials; nor (ii) a Notice of Objection is served by the Objection Deadline, the Monitor shall contact the judge having carriage of the motion (the “**Presiding Judge**”) and request a determination as to (a) whether a hearing is necessary, (b) whether such hearing will be in person, by telephone or by written submissions only, and (c) which parties, if any, are required to make submissions on the motion (collectively, the “**Hearing Details**”). Promptly after being advised by the Presiding Judge of the Hearing Details, the Monitor shall advise the service list of such Hearing Details. If the Presiding Judge does not direct otherwise in any Hearing Details, then the motion shall be heard on the Return Date.

GENERAL

37. The Applicant, the Companies or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

38. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, construction lien trustee or a trustee in bankruptcy of the Companies, the Business or the Property.

39. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States is requested to give effect to this Order and to assist the Companies, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Companies and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order,

to grant representative status to the Monitor in any foreign proceeding or to assist the Companies and the Monitor and their respective agents in carrying out the terms of this Order.

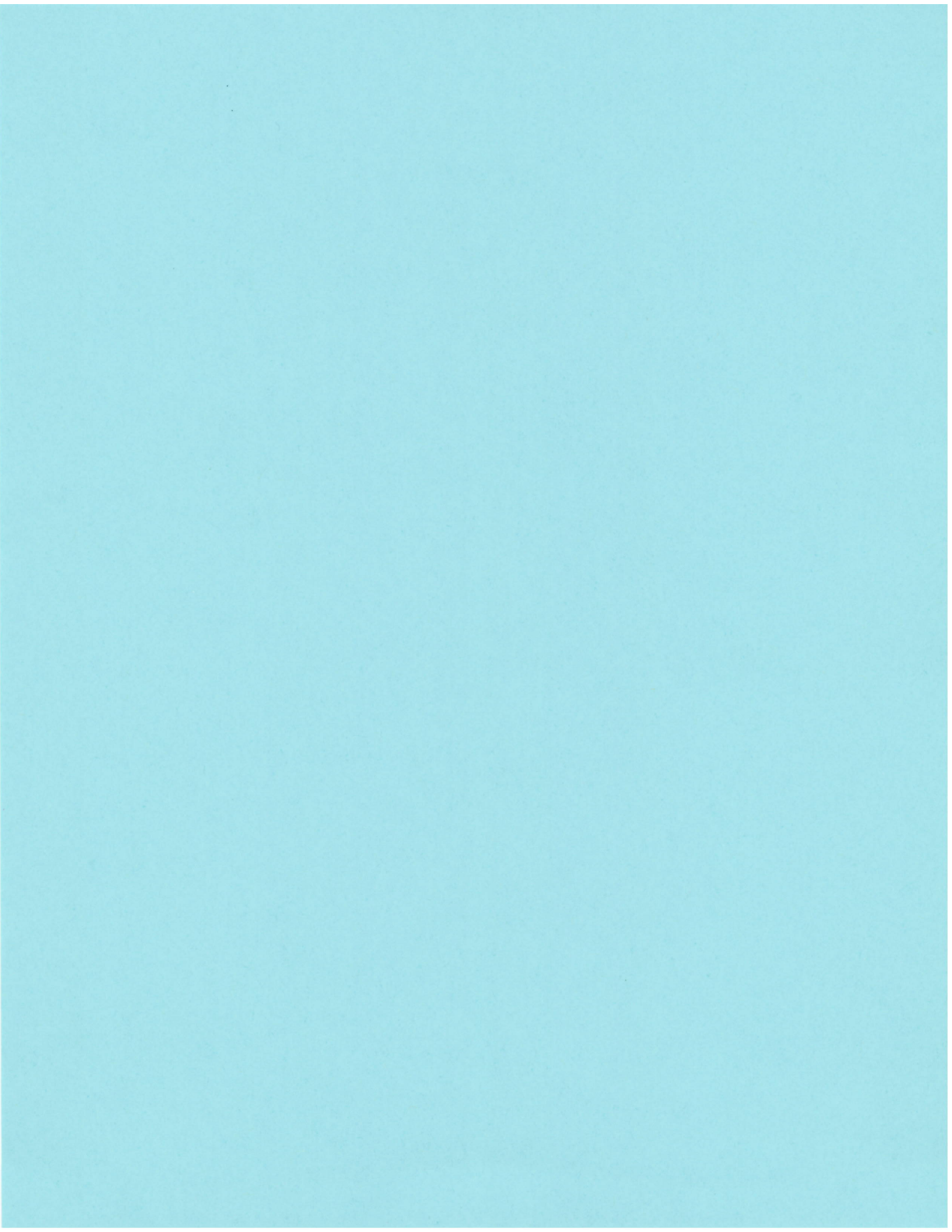
40. Each of the Companies and the Monitor is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Monitor is authorized and empowered to act in a representative capacity in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

41. This Order and all of its provisions are effective as of 12:01 a.m. Atlantic Standard/Daylight Time on the 21st day of September, 2023.

Dated at Saint John, New Brunswick, this 21st day of September, 2023.

Justice of the Court of King's Bench
of New Brunswick

CAN_DMS: \1001295540



IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

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

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

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

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

RESPONDENTS

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicant, The Toronto-Dominion Bank, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day in person at the City of Saint John, Province of New Brunswick.

ON READING the affidavit of Andrea Jamnisek sworn September 18, 2023 (the "**Jamnisek Affidavit**") and the Exhibits thereto, ~~and~~ the report of Deloitte Restructuring Inc. dated September 18, 2023 (the "**Pre-Filing Report**")¹, in the capacity of proposed Monitor of the Companies, and the report of Deloitte Restructuring Inc. dated September 25, 2023 (the "**First**

Report”), in the capacity of Monitor of the Companies;

AND UPON IT APPEARING from the affidavits of service of Katie Parent sworn September 18, 2023 [and September 20, 2023] (the “Affidavits of Service”) that the following persons received notice of this Application:

- a) The Companies;
- b) Canada Revenue Agency;
- c) BDC Capital Inc.;
- d) Business Development Bank of Canada;
- e) Robert Arsenault;
- f) Thunder Cove Investments Inc.;
- g) Maplewood Trust, by its trustee, Warren Ellis;
- h) Dewis Cooke;
- i) Randy Cooke;
- j) Murphy’s Limited Liability Company; and
- k) BTW Holdings Inc.

AND ON READING the consent of Deloitte Restructuring Inc. to act as the Monitor, and hearing the submissions of counsel for the Applicant, the proposed Monitor, the Companies and those other parties present, and no one appearing for any other party although duly served as appears from the Affidavits of Service;

IT IS ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Notice of Application, the Application Record and the Pre-Filing Report and the Notice of Motion, the Record on Motion and the First Report as set out in the Affidavits of Service is hereby deemed adequate so that this Application is properly returnable today.

APPLICATION

2. The Companies are affiliated debtor companies within the meaning of the CCAA to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

3. The Companies shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Companies shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property.

4. The Companies shall be entitled to continue to utilize the central cash management system currently in place as described in the Pre-Filing Report or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Companies of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Companies, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under a plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. The Companies may pay the following expenses whether incurred prior to or after this Order:

- a. all outstanding and future wages, salaries, employee and pension benefits, vacation pay, and expenses payable to employees who continue to provide service on or after the date of this Order ("**Active Employees**"), in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- b. all existing and future employee health, dental, life insurance, short and long term disability and related benefits (collectively, the "**Group Benefits**") payable on or after the date of this Order to Active Employees, in each case incurred in the ordinary course of business and consistent with existing policies and arrangements or such amended policies and arrangements as are necessary or

desirable to deliver the existing Group Benefits.

6. With the consent of the Monitor, the Companies may make payments owing to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to the date of this Order where such payments are deemed by the Companies to be necessary for the ongoing operation of the Companies or preservation of the Property, up to an aggregate limit of \$900,000.

7. Except as otherwise provided to the contrary herein, the Companies may pay all reasonable expenses incurred by the Companies in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a. all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- b. payment for goods or services actually supplied to the Companies following the date of this Order.

8. The Companies shall remit or pay, in accordance with legal requirements or on terms as may be agreed to between the Companies and the applicable authority:

- a. any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of: i) employment insurance, ii) Canada Pension Plan, iii) Quebec Pension Plan, and iv) income taxes;
- b. all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Companies in connection with the sale of goods and services by the Companies, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- c. any amount payable to the Crown in right of Canada or of any Province or any regulatory or administrative body or any other authority, in all cases in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are: i) entitled at law to be paid in priority to claims of secured creditors; ii) attributable to or in respect of the ongoing Business carried on by the Companies; and iii) payable in respect of the period commencing on or after the date of this Order.

9. Until such time as any Company who is a tenant under a lease, disclaims a real property lease in accordance with the CCAA, such Company shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Company and the landlord from time to time, for the period commencing from and including the date of this Order, in accordance with its existing lease agreements. On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid.

10. Except as specifically permitted herein or by further Order of this Court, the Companies are hereby directed, until further Order of this Court: i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Companies to any of their creditors as of the date of this Order without prior written consent of the Monitor; ii) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and iii) to not grant credit or incur liabilities except in the ordinary course of the Business or with the prior written approval of the Monitor.

APPOINTMENT OF CRO

11. David Boyd, as a representative of Resolve Advisory Services Ltd. ("**Resolve**"), is hereby appointed Chief Restructuring Officer (the "**CRO**") over the Companies and shall, subject to the Orders of the Court that have been and may be granted from time to time in these proceedings, have the powers to perform the services set out in the engagement letter dated September 13, 2023 in the form attached as Exhibit "II" to the Jamnisek Affidavit (the "**CRO Agreement**"), provided that all such services are to be performed in conjunction with the

Monitor and the Applicant.

12. The CRO Agreement is approved and the Companies are authorized to perform all of their obligations pursuant to the CRO Agreement.

13. Neither the CRO nor any employee or agent of the CRO shall be deemed to be a director or trustee of any of the Companies.

14. Neither the CRO nor any officer, director, employee or agent of the CRO, including without limitation, David Boyd, shall incur any liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any liability or obligation incurred as a result of gross negligence or wilful misconduct on its or their part; provided that any liability of the CRO hereunder shall in no event exceed the quantum of the fees paid to the CRO.

15. The fees and expenses payable to Resolve pursuant to the CRO Agreement are entitled to the benefit of the Administration Charge, as defined in the companion [Amended and Restated](#) Charging Order dated September 21, 2023.

RESTRUCTURING

16. The Companies shall, with the consent of the Monitor and the DIP Lender, have the right to:

a. permanently or temporarily cease, downsize or shut down any of its business or operations, or

b. in accordance with its ordinary course of business, dispose of redundant or non-material assets not exceeding \$100,000 in value in the aggregate.

NO PROCEEDINGS AGAINST THE COMPANIES OR THE PROPERTY

17. ~~16.~~ Until and including ~~October 4~~ November 24, 2023, or such later date as this Court may order (the "**Stay Period**"), no claim, grievance, application, action, suit, right or remedy, proceeding or enforcement process in any court, tribunal or arbitration association (each, a "**Proceeding**") shall be commenced, continued or enforced against or in respect of the Companies, the CRO or the Monitor, or affect the Business or the Property, except with the

written consent of the Companies, the CRO, the Monitor and the Applicant, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Companies or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

18. ~~17.~~ During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing collectively being "**Persons**" and each being a "**Person**") against or in respect of the Companies or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Companies, the Monitor and the Applicant, or leave of this Court, provided that nothing in this Order shall: i) empower the Companies to carry on any business which the Companies are not lawfully entitled to carry on; ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; iii) exempt the Companies from compliance with statutory or regulatory provisions relating to health, safety or the environment; iv) prevent the filing of any registration to preserve or perfect a security interest; or v) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder provided that the Companies shall not be required to file a defence during the stay period.

NO INTERFERENCE WITH RIGHTS

19. ~~18.~~ During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Companies, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Companies and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

20. ~~19.~~ During the Stay Period, all Persons having oral or written agreements with the Companies or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or

other services to the Business or the Companies, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Companies, and the Companies shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Companies in accordance with normal payment practices of the Companies or such other practices as may be agreed upon by the supplier or service provider and each of the Companies and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. ~~20.~~ Notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property, or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Companies.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. ~~21.~~ During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Companies with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Companies whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Companies, if one is filed, is sanctioned by this Court or is refused by the creditors of the Companies or this Court, or these proceedings are dismissed by final Order of this Court or with leave of this Court.

APPOINTMENT OF MONITOR

23. ~~22.~~ Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Companies, the Property and the Companies' conduct of the Business with the powers and

obligations set out in the CCAA or set forth herein and that the Companies and their shareholders, officers, directors and employees shall advise the Monitor of all material steps taken by the Companies pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. ~~23.~~ The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- a. ~~monitor~~ approve all of the Companies' receipts and disbursements;
- b. report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Approved Cash Flow, the Property, the Business, the activities of the Companies and such other matters as may be relevant to the proceedings herein; have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents, relating to the Business and Property of the Companies, to the extent that is necessary to adequately assess the Companies' Business and financial affairs or to perform its duties arising under this Order;
- c. engage independent legal counsel or such other Persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including any affiliate of or Person related to the Monitor;
- d. develop a claims process to ascertain the quantum of the claims of all creditors;
~~and~~
- e. develop and conduct a sales and investment solicitation process ("SISP") for some or all of the Property and bring one or more motions seeking approval of transactions resulting from the SISP;
- f. execute, assign, issue and endorse agreements, instruments, notices, directions, settlements, filings, authorizations and other documents of whatever nature on

behalf of each of the Companies as the Monitor deems appropriate, whether in the Monitor's name or in the name of and on behalf of any of the Companies;

- g. retain or hire employees or other assistants on behalf of the Companies and take any other steps in respect of the Companies' employees it deems appropriate including awarding non-material discretionary bonuses and terminating the employment of the Companies' employees or temporarily laying off such of the Companies' employees as the Monitor deems appropriate;
- h. take steps to cause the Companies to disclaim any agreements to which any of the Companies are party in accordance with the CCAA, provided, however, that the Monitor shall consult with the Applicant with respect to any such disclaimer and that any such disclaimer shall be subject to the prior consent of the Applicant;
- i. report to, meet with, discuss and share information with such Persons as the Monitor deems appropriate, subject to such terms as to confidentiality as the Monitor deems advisable;
- j. cause the Companies to administer the Business or the 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 Companies;
- k. cause the Companies to engage assistants or advisors as the Monitor deems necessary or desirable and to provide instructions and directions to any current advisors of the Companies; and
- l. ~~e.~~ perform such other duties as are required by this Order or by this Court from time to time.

25. ~~24.~~ The Monitor shall not take possession of the Property and shall take no part in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. ~~25.~~ Nothing herein contained shall limit the protections afforded the Monitor at law including those protections set out in the CCAA.

27. ~~26.~~ The Monitor shall provide any creditor of the Companies or a potential debtor-in-possession lender (“**DIP Lender**”) with information provided by the Companies in response to reasonable requests for information made in writing by such creditor or DIP Lender addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Companies is confidential, the Monitor shall not provide such information to creditors or a DIP Lender unless otherwise directed by this Court or on such terms as the Monitor and the Companies may agree.

28. ~~27.~~ The Monitor, counsel to the Monitor, counsel to the Applicant and all counsel to the Companies shall be paid their reasonable fees and disbursements, in each case not to exceed their standard rates and charges, by the Companies as part of the costs of these proceedings. The Companies are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicant and counsel for the Companies immediately upon receipt of an invoice.

29. ~~28.~~ The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to the Clerk of the Court of King’s Bench in New Brunswick, in accordance with the Rules of Court, or a Justice of the Court of King’s Bench in New Brunswick.

SERVICE AND NOTICE

30. ~~29.~~ The Monitor shall: i) without delay, publish in Saltwire/Telegraph a notice containing the information prescribed under the CCAA; and ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Companies of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

31. ~~30.~~ The Monitor and the Applicant shall be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Companies' creditors or other interested parties at their respective addresses as last shown on the records of the Companies and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

32. ~~31.~~ The Applicant and the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the service list from time to time, and the Monitor may post a copy of any or all such materials on its website at <https://www.insolvencies.deloitte.ca/SouthShoreSeafoods>.

33. ~~32. Except with respect to the Comeback Hearing (as defined below), a~~ A party who makes a motion in these proceedings shall, subject to further Order, serve a motion record at least ten (10) calendar days' before the date on which the motion is to be heard (the "**Return Date**").

34. ~~33.~~ Any responding party objecting to the relief sought in a motion must serve responding materials no later than 4 p.m. on the date that is four (4) calendar days before the Return Date (the "**Objection Deadline**"). If the responding party will not be serving responding material but nevertheless intends to object to the relief sought in a motion, then such responding party must serve, by the Objection Deadline, a notice stating its objection to the relief sought and the grounds for such an objection (a "**Notice of Objection**").

35. ~~34.~~ If either (i) responding materials, or (ii) a Notice of Objection is served in respect of a motion, the motion shall be heard on the Return Date, unless the Court orders otherwise.

36. ~~35.~~ If neither (i) responding materials; nor (ii) a Notice of Objection is served by the Objection Deadline, the Monitor shall contact the judge having carriage of the motion (the "**Presiding Judge**") and request a determination as to (a) whether a hearing is necessary, (b) whether such hearing will be in person, by telephone or by written submissions only, and (c)

which parties, if any, are required to make submissions on the motion (collectively, the “**Hearing Details**”). Promptly after being advised by the Presiding Judge of the Hearing Details, the Monitor shall advise the service list of such Hearing Details. If the Presiding Judge does not direct otherwise in any Hearing Details, then the motion shall be heard on the Return Date.

COMEBACK HEARING

~~36. The comeback motion in these CCAA proceedings (the “**Comeback Hearing**”) shall be heard on September 28, 2023 at 10:30 a.m. at the Saint John Law Courts, 10 Peel Street, Saint John, New Brunswick.~~

GENERAL

37. The Applicant, the Companies or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

38. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, construction lien trustee or a trustee in bankruptcy of the Companies, the Business or the Property.

39. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States is requested to give effect to this Order and to assist the Companies, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Companies and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding or to assist the Companies and the Monitor and their respective agents in carrying out the terms of this Order.

40. Each of the Companies and the Monitor is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Monitor is authorized and empowered to act in a representative capacity in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside

Canada.

41. This Order and all of its provisions are effective as of 12:01 a.m. Atlantic Standard/Daylight Time on the 21st day of September, 2023.

Dated at Saint John, New Brunswick, this 21st day of September, 2023.

Justice of the Court of King's Bench
of New Brunswick

| CAN_DMS: \10012239275540

SCHEDULE "C"

**DRAFT AMENDED AND RESTATED CHARGING ORDER
AND BLACKLINE TO CHARGING ORDER**

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

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

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

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

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

RESPONDENTS

AMENDED AND RESTATED CHARGING ORDER

THE INITIAL APPLICATION, made by the Applicant, The Toronto-Dominion Bank, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard in person and the Court granted an Order (the "**Initial Order**") on the 21st day of September, 2023.

WHEREAS the Applicant also requested in its initial application the granting of certain Charges, as defined below, in priority to the interests of the Companies' existing secured creditors.

ON READING the affidavit of Andrea Jamnisek sworn September 18, 2023 and the Exhibits thereto (the "**Jamnisek Affidavit**"), the report of Deloitte Restructuring Inc. dated

September 15, 2023 (the “**Pre-Filing Report**”), in its capacity as proposed Monitor of the Companies, the report of Deloitte Restructuring Inc. dated September 25, 2023 (the “**First Report**”), in its capacity as Monitor of the Companies, and on being satisfied that, Canada Revenue Agency, BDC Capital Inc., Business Development Bank of Canada, Robert Arsenault, Thunder Cove Investments Inc., Maplewood Trust, by its trustee, the secured creditors who are likely to be affected by the Charges, as defined below, created herein were given notice as set out in the affidavits of service of Katie Parent sworn September 18, 2023 [and September ●, 2023] and the Exhibits thereto (the “**Affidavits of Service**”), and on hearing the submissions of counsel for the Applicant, the Monitor, the Companies and those other parties present, and no one appearing on the Service List, although duly served as appears from the Affidavits of Service.

IT IS ORDERED AND DECLARED THAT:

SERVICE

1. The service of the Notice of Application, the Application Record and the Pre-Filing Report and the Notice of Motion, the Record on Motion and the First Report as set out in the Affidavits of Service is deemed adequate so that this Application is properly returnable today and further service thereof is hereby dispensed with.

INTERPRETATION

2. All Capitalized words used in this Order that are not otherwise defined in this Order have the meanings ascribed to them in the Initial Order.

DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE

3. The Companies shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Companies after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or actionable misconduct.

4. The directors and officers of the Companies shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$375,000, as security for the indemnity provided in this Order. The Directors’ Charge shall have the priority set out herein.

5. Notwithstanding any language in any applicable insurance policy to the contrary, (a) the Companies' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with this Order, and (b) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge.

ADMINISTRATIVE CHARGE

6. The Monitor, counsel to the Monitor, counsel to the Applicant, the Chief Restructuring Officer and, subject to Paragraph 7, the Companies' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out herein.

7. Subject to further order of this Court, the Companies' counsel shall be entitled to the benefit of the Administration Charge on the Property up to an aggregate maximum amount of \$25,000.

DIP FINANCING

8. The Companies are hereby authorized and empowered to obtain and borrow under a credit facility from The Toronto-Dominion Bank (the "**DIP Lender**") in order to finance the Companies' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$10,000,000 (the "**DIP Facility**") unless permitted by further order of this Court.

9. The DIP Facility shall be substantially on the terms and subject to the conditions set forth in the Dip Facility Agreement between the Companies and the DIP Lender dated as of September 18, 2023 (the "**DIP Facility Agreement**") annexed to the Jamnisek Affidavit as Exhibit "JJ" as same may be amended from time to time with the Monitor's written consent provided any amendment may not affect a secured creditor's rights without further order of this Court.

10. The Companies are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and

other definitive documents (collectively, the "**DIP Documents**"), as are contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Companies are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations including, on account of any pre-filing obligations, to the DIP Lender under and pursuant to the DIP Facility Agreement as and when the same become due and are to be performed, from funds on hand or from funds generated by ordinary course post-filing sales, notwithstanding any other provision of this Order or the Initial Order. For certainty, no advance under the DIP Facility shall be used to pay any pre-filing obligations of the Companies, with the exception of the pre-filing payments specifically authorized pursuant to the Initial Order.

11. The DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for any and all obligations of the Companies under or pursuant to the DIP Facility and the DIP Facility Agreement, which charge shall not exceed the aggregate amount owed to the DIP Lender under or pursuant to the DIP Facility and the DIP Facility Agreement. The DIP Lender's Charge shall have the priority set out herein.

12. Notwithstanding any other provision of this Order or the Initial Order:

- a. the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or the DIP Facility Agreement or any of the DIP Documents;
- b. upon the occurrence of an event of default under the DIP Facility Agreement or DIP Documents or the DIP Lender's Charge, the DIP Lender, upon five (5) days notice to the Companies and the Monitor, may with leave of the Court exercise any and all of its rights and remedies against the Companies or the Property under or pursuant to the DIP Facility Agreement, DIP Documents and the DIP Lender's Charge; and
- c. the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Companies or the Property.

13. The DIP Lender shall be treated as unaffected in any plan under the CCAA, or any proposal filed by the Companies under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the DIP Facility Agreement or the DIP

Documents and with respect to any claims and rights the DIP Lender may have under or pursuant to any agreements related to the DIP Facility.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

14. The priorities of the Directors' Charge, the Administration Charge, and the DIP Lender's Charge as among them, and as against the existing security held by any secured creditor prior to the issuance of this Order (the "**Existing Security**") subject to Paragraph 17, shall be as follows:

- a. First – Administration Charge;
- b. Second – Directors' Charge;
- c. Third – DIP Lender's Charge; and
- d. Fourth - Existing Security in such priority as they currently have.

15. The filing, registration or perfection of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

16. Each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, other than any secured creditors under the Existing Security who have not been served with this Application prior to this hearing including the providers of vehicle financing referenced in the Pre-Filing Report, and provided that the DIP Lender's Charge shall not rank in priority to any of the security interests, liens, charges and encumbrances granted by the Companies in favour of the Business Development Bank of Canada in respect of any BDC Priority Loans and BDC Priority Collateral (as both terms are defined in the Jamnisek Affidavit) or in respect of any Crown claims which have priority in bankruptcy.

17. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Companies shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Existing Security or any of the Charges unless the Companies also obtain the prior written consent of the Monitor, their existing secured creditors and the beneficiaries of

the Charges (the “**Chargees**”), or further Order of this Court.

18. The Charges, the DIP Facility Agreement and the DIP Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by i) the pendency of these proceedings and the declarations of insolvency made herein; ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; iv) the provisions of any federal or provincial statutes; or v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Companies. Notwithstanding any provision to the contrary in any Agreement:

- a. neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Facility Agreement or the DIP Documents shall create or be deemed to constitute a breach by the Companies of any Agreement to which it is a party;
- b. none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Companies entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the DIP Documents; and
- c. the payments made by the Companies pursuant to this Order, the DIP Facility Agreement or the DIP Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

19. Any Charge created by this Order over leases of real property in Canada shall only be a Charge on the Companies' interest in such real property leases.

20. The Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to:

- a. assist the Companies, to the extent required by the Companies, in their dissemination to the DIP Lender and its counsel on a weekly basis of financial and

other information as agreed to between the Companies and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender; and

- b. advise and/or assist the Companies in their preparation of the Companies' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender.

21. Any amounts actually advanced or expended pursuant to any of the Charges shall have the priority as provided for herein regardless of the time of advance or the use to which funds were actually put.

SERVICE AND NOTICE

22. The Applicant and the Monitor shall serve a copy of this Order on all secured creditors of the Companies and shall be at liberty to serve this Order on such other Persons as either determines is appropriate. All such service shall be made in accordance with the provisions of the Initial Order.

GENERAL

23. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States is hereby requested, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

24. Each of the Applicant and the Monitor is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

25. A party who makes a motion in these proceedings shall, subject to further Order, serve a motion record at least ten (10) calendar days before the date on which the motion is to be heard (the “**Return Date**”).

26. Any responding party objecting to the relief sought in a motion must serve responding materials no later than 4 p.m. on the date that is four (4) calendar days before the Return Date (the “**Objection Deadline**”). If the responding party will not be serving responding material but nevertheless intends to object to the relief sought in a motion, then such responding party must serve, by the Objection Deadline, a notice stating its objection to the relief sought and the grounds for such an objection (a “**Notice of Objection**”).

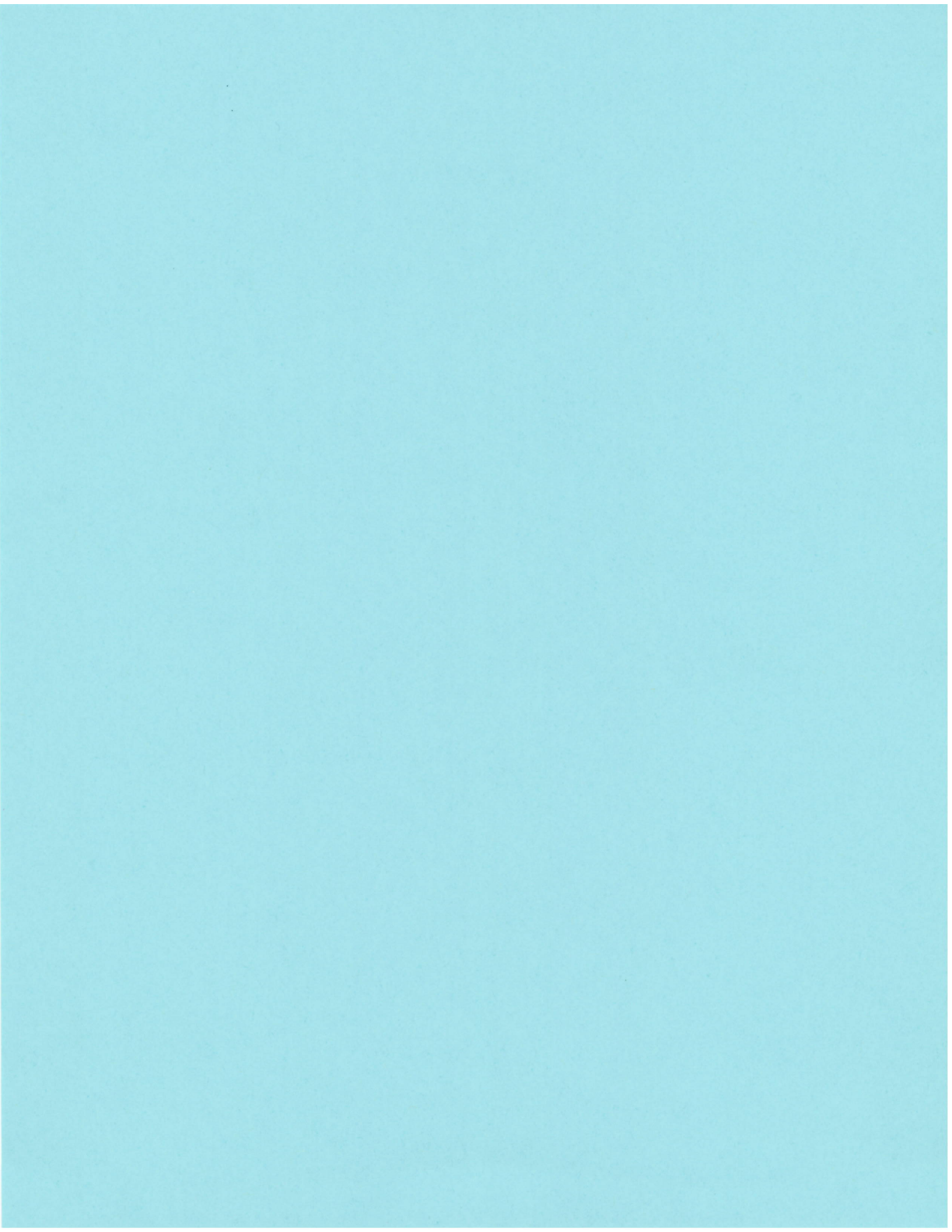
27. If either (i) responding materials, or (ii) a Notice of Objection is served in respect of a motion, the motion shall be heard on the Return Date, unless the Court orders otherwise.

28. If neither (i) responding materials; nor (ii) a Notice of Objection is served by the Objection Deadline, the Monitor shall contact the judge having carriage of the motion (the “**Presiding Judge**”) and request a determination as to (a) whether a hearing is necessary, (b) whether such hearing will be in person, by telephone or by written submissions only, and (c) which parties, if any, are required to make submissions on the motion (collectively, the “**Hearing Details**”). Promptly after being advised by the Presiding Judge of the Hearing Details, the Monitor shall advise the service list of such Hearing Details. If the Presiding Judge does not direct otherwise in any Hearing Details, then the motion shall be heard on the Return Date.

29. This Order and all of its provisions are effective as of 12:01 a.m. Atlantic Standard/Daylight Time on the 21st day of September, 2023.

Dated at Saint John, New Brunswick, this 21st day of September, 2023.

Justice of the Court of King’s Bench
of New Brunswick



IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

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

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

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

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

RESPONDENTS

AMENDED AND RESTATED CHARGING ORDER

THE INITIAL APPLICATION, made by the Applicant, The Toronto-Dominion Bank, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard in person and the Court granted an Order (the "**Initial Order**") on the 21st day of September, 2023.

WHEREAS the Applicant also requested in its initial application the granting of certain Charges, as defined below, in priority to the interests of the Companies' existing secured creditors.

ON READING the affidavit of Andrea Jamnisek sworn September 18, 2023 and the

Exhibits thereto (the “**Jamnisek Affidavit**”), the report of Deloitte Restructuring Inc. dated September 15, 2023 (the “**Pre-Filing Report**”), in its capacity as proposed Monitor of the Companies, the report of Deloitte Restructuring Inc. dated September 25, 2023 (the “**First Report**”), in its capacity as Monitor of the Companies, and on being satisfied that, Canada Revenue Agency, BDC Capital Inc., Business Development Bank of Canada, Robert Arsenault, Thunder Cove Investments Inc., Maplewood Trust, by its trustee, the secured creditors who are likely to be affected by the Charges, as defined below, created herein were given notice as set out in the affidavits of service of Katie Parent sworn September 18, 2023 [and September ●, 2023] and the Exhibits thereto (the “**Affidavits of Service**”), and on hearing the submissions of counsel for the Applicant, the ~~proposed~~ Monitor, the Companies and those other parties present, and no one appearing on the Service List, although duly served as appears from the Affidavits of Service.

IT IS ORDERED AND DECLARED THAT:

SERVICE

1. The service of the Notice of Application ~~and~~ the Application Record and the Pre-Filing Report and the Notice of Motion, the Record on Motion and the First Report as set out in the Affidavits of Service is deemed adequate so that this Application is properly returnable today and further service thereof is hereby dispensed with.

INTERPRETATION

2. All Capitalized words used in this Order that are not otherwise defined in this Order have the meanings ascribed to them in the Initial Order.

DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE

3. The Companies shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Companies after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or actionable misconduct.
4. The directors and officers of the Companies shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not

exceed an aggregate amount of \$375,000, as security for the indemnity provided in this Order. The Directors' Charge shall have the priority set out herein.

5. Notwithstanding any language in any applicable insurance policy to the contrary, (a) the Companies' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with this Order, and (b) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge.

ADMINISTRATIVE CHARGE

6. The Monitor, counsel to the Monitor, counsel to the Applicant, the Chief Restructuring Officer and, subject to Paragraph 7, the Companies' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$~~250~~500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out herein.

7. Subject to further order of this Court, the Companies' counsel shall be entitled to the benefit of the Administration Charge on the Property up to an aggregate maximum amount of \$25,000.

DIP FINANCING

8. The Companies are hereby authorized and empowered to obtain and borrow under a credit facility from The Toronto-Dominion Bank (the "**DIP Lender**") in order to finance the Companies' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$~~310~~310,000,000 (the "**DIP Facility**") unless permitted by further order of this Court.

9. The DIP Facility shall be substantially on the terms and subject to the conditions set forth in the Dip Facility Agreement between the Companies and the DIP Lender dated as of September 18, 2023 (the "**DIP Facility Agreement**") annexed to the Jamnisek Affidavit as Exhibit "JJ", as same may be amended from time to time with the Monitor's written consent provided any amendment may not affect a secured creditor's rights without further order of

this Court.

10. The Companies are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**DIP Documents**"), as are contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Companies are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations including, on account of any pre-filing obligations, to the DIP Lender under and pursuant to the DIP Facility Agreement as and when the same become due and are to be performed, from funds on hand or from funds generated by ordinary course post-filing sales, notwithstanding any other provision of this Order or the Initial Order. For certainty, no advance under the DIP Facility shall be used to pay any pre-filing obligations of the Companies, with the exception of the pre-filing payments specifically authorized pursuant to the Initial Order.

11. The DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for any and all obligations of the Companies under or pursuant to the DIP Facility and the DIP Facility Agreement, which charge shall not exceed the aggregate amount owed to the DIP Lender under or pursuant to the DIP Facility and the DIP Facility Agreement. The DIP Lender's Charge shall have the priority set out herein.

12. Notwithstanding any other provision of this Order or the Initial Order:

- a. the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or the DIP Facility Agreement or any of the DIP Documents;

- b. upon the occurrence of an event of default under the DIP Facility Agreement or DIP Documents or the DIP Lender's Charge, the DIP Lender, upon five (5) days notice to the Companies and the Monitor, may with leave of the Court exercise any and all of its rights and remedies against the Companies or the Property under or pursuant to the DIP Facility Agreement, DIP Documents and the DIP Lender's Charge; and
- c. the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Companies or the Property.

13. The DIP Lender shall be treated as unaffected in any plan under the CCAA, or any proposal filed by the Companies under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the DIP Facility Agreement or the DIP Documents and with respect to any claims and rights the DIP Lender may have under or pursuant to any agreements related to the DIP Facility.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

14. The priorities of the Directors' Charge, the Administration Charge, and the DIP Lender's Charge as among them, and as against the existing security held by any secured creditor prior to the issuance of this Order (the "**Existing Security**") subject to Paragraph 17, shall be as follows:

- a. First – Administration Charge;
- b. Second – Directors' Charge;
- c. Third – DIP Lender's Charge; and
- d. Fourth - Existing Security in such priority as they currently have.

15. The filing, registration or perfection of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

16. Each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, other than any secured creditors under the Existing Security who have not been served with this Application prior to this hearing including the providers of vehicle financing referenced in the Pre-Filing Report, and provided that the DIP Lender's Charge shall not rank in priority to any of the security interests, liens, charges and encumbrances granted by the Companies in favour of the Business Development Bank of Canada in respect of any BDC Priority Loans and BDC Priority Collateral (as both terms are defined in the Jamnisek Affidavit) or in respect of any Crown claims which have priority in bankruptcy.

17. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Companies shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Existing Security or any of the Charges unless the Companies also obtain the prior written consent of the Monitor, their existing secured creditors and the beneficiaries of the Charges (the "**Chargees**"), or further Order of this Court.

~~18. Any responding party who objects to the DIP Lender's Charge on the basis that they are prejudiced may do so at the Comeback Hearing in accordance with paragraphs 32 to 33 of the Initial Order provided however that the DIP Lender is entitled to rely on the DIP Lender's Charge for any advances under the DIP Facility made prior to the Comeback Hearing.~~

18. ~~19.~~ The Charges, the DIP Facility Agreement and the DIP Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by i) the pendency of these proceedings and the declarations of insolvency made herein; ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; iv) the provisions of any federal or provincial statutes; or v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Companies. Notwithstanding any provision to the contrary in any Agreement:

- a. neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Facility Agreement or the DIP Documents shall create or be deemed to constitute a breach by the Companies of any Agreement to which it is a party;
- b. none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Companies entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the DIP Documents; and
- c. the payments made by the Companies pursuant to this Order, the DIP Facility Agreement or the DIP Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

19. ~~20.~~ Any Charge created by this Order over leases of real property in Canada shall only be a Charge on the Companies' interest in such real property leases.

20. ~~21.~~ The Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to:

- a. assist the Companies, to the extent required by the Companies, in their dissemination to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Companies and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender; and
- b. advise and/or assist the Companies in their preparation of the Companies' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender.

21. ~~22.~~ Any amounts actually advanced or expended pursuant to any of the Charges shall have the priority as provided for herein regardless of the time of advance or the use to which

funds were actually put.

SERVICE AND NOTICE

22. ~~23.~~ The Applicant and the Monitor shall serve a copy of this Order on all secured creditors of the Companies and shall be at liberty to serve this Order on such other Persons as either determines is appropriate. All such service shall be made in accordance with the provisions of the Initial Order.

GENERAL

23. ~~24.~~ The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States is hereby requested, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

24. ~~25.~~ Each of the Applicant and the Monitor is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

25. ~~26.~~ A party who makes a motion in these proceedings shall, subject to further Order, serve a motion record at least ten (10) calendar days before the date on which the motion is to be heard (the “**Return Date**”).

26. ~~27.~~ Any responding party objecting to the relief sought in a motion must serve responding materials no later than 4 p.m. on the date that is four (4) calendar days before the Return Date (the “**Objection Deadline**”). If the responding party will not be serving responding material but nevertheless intends to object to the relief sought in a motion, then such responding party must serve, by the Objection Deadline, a notice stating its objection to the relief sought and the grounds for such an objection (a “**Notice of Objection**”).

27. ~~28.~~ If either (i) responding materials, or (ii) a Notice of Objection is served in respect of a motion, the motion shall be heard on the Return Date, unless the Court orders otherwise.

28. ~~29.~~ If neither (i) responding materials; nor (ii) a Notice of Objection is served by the Objection Deadline, the Monitor shall contact the judge having carriage of the motion (the “**Presiding Judge**”) and request a determination as to (a) whether a hearing is necessary, (b) whether such hearing will be in person, by telephone or by written submissions only, and (c) which parties, if any, are required to make submissions on the motion (collectively, the “**Hearing Details**”). Promptly after being advised by the Presiding Judge of the Hearing Details, the Monitor shall advise the service list of such Hearing Details. If the Presiding Judge does not direct otherwise in any Hearing Details, then the motion shall be heard on the Return Date.

29. ~~30.~~ This Order and all of its provisions are effective as of 12:01 a.m. Atlantic Standard/Daylight Time on the 21st day of September, 2023.

Dated at Saint John, New Brunswick, this 21st day of September, 2023.

Justice of the Court of King’s Bench
of New Brunswick

SCHEDULE "D" – DRAFT SISP APPROVAL ORDER

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

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

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

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

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

RESPONDENTS

SISP APPROVAL ORDER

THIS MOTION, made by the Applicant, The Toronto-Dominion Bank, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard by telephone conference;

WHEREAS the Applicant requested in its motion *inter alia* the granting of an order (the "**Order**") (i) approving a sale and investment solicitation process substantially in the form attached hereto as Schedule "A" (the "**SISP**"); and (ii) authorizing and directing Deloitte Restructuring Inc., in its capacity as Monitor of the Companies (the "**Monitor**"), to conduct the SISP;

ON READING the Notice of Motion and the Motion Record, including the first report of the Monitor dated September 25, 2023 (the “**First Report**”);

AND ON HEARING the submissions of counsel for the Applicant, the Monitor, the Companies and counsel for those other parties present, no one else appearing from the Service List although duly served as appears from the affidavits of service of Katie Parent sworn September 25, 2023 and the Exhibits thereto (the “**Affidavit of Service**”);

IT IS HEREBY ORDERED THAT:

SERVICE

1. The service of the Notice of Motion, First Report and/or the Record on Motion as set out in the Affidavit of Service is deemed adequate so that this Motion is properly returnable today and further service thereof is hereby dispensed with.

INTERPRETATION

2. The Capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them under the SISP as the case may be.

APPROVAL OF SALE AND INVESTMENT SOLICITATION PROCESS

3. The SISP is hereby approved.
4. The Monitor is authorized and directed to take such steps as it deems necessary or advisable to carry out and perform its obligations under the SISP.
5. The Monitor and its respective affiliates, partners, employees, representatives and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Monitor in performing its obligations under the SISP as determined by this Court.
6. The Monitor and its counsel are hereby authorized, but not obligated, to serve or distribute this Order, any other materials, orders, communication, correspondence or other information as may be necessary or desirable in connection with the SISP to any Person (as defined in the Initial Order dated September 21, 2023) or interested party that the Monitor

considers appropriate. For greater certainty, any such distribution, communication or correspondence shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of Section 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

7. Pursuant to Section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Monitor is hereby authorized and permitted to disclose and transfer to potential bidders (the “**Bidders**”) and to their advisors, if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Companies’ records pertaining to their past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale of the Property (“**Sale**”) or investment in the Companies (“**Investment**”). Each Bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale or Investment, and if it does not complete a Sale or Investment, shall return all such information to the Monitor, or in the alternative destroy all such information. The successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Property acquired pursuant to the Sale in a manner which is in all material respects identical to the prior use of such information by the Companies, and shall return all other personal information to the Monitor or ensure that all other personal information is destroyed.

GENERAL

8. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States is hereby requested, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

9. Each of the Applicant and the Monitor is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of

this Order and for assistance in carrying out the terms of this Order.

10. This Order and all of its provisions are effective as of _____ a.m./p.m Atlantic Standard/Daylight Time on the _____ day of _____.

Dated at Saint John, New Brunswick, this 28th day of September, 2023.

Justice of the Court of King's Bench
of New Brunswick

SCHEDULE "A"
SALE AND INVESTMENT SOLICITATION PROCESS

SALE AND INVESTMENT SOLICITATION PROCEDURES

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

RECITALS

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

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

ARTICLE 1 INTERPRETATION

1.1 Definitions

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

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

**ARTICLE 2
OPPORTUNITY**

2.1 Solicitation Process

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

2.2 Sale and Investment Opportunity

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

2.3 "As Is, Where Is"

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

2.4 Timeline

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

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

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

ARTICLE 3 SOLICITATION OF INTEREST

3.1 Solicitation of Interest

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

ARTICLE 4 PRE-QUALIFICATION

4.1 Participation Requirements

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

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

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

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

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

4.2 Due Diligence

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

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

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

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

**ARTICLE 5
PHASE 1**

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6 PHASE 2

6.1 Seeking Qualified Bids by Qualified Phase 2 Bidders

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

6.2 Qualified Purchase Bids

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

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

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

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

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

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

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

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

6.3 Qualified Investment Bids

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

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

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

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

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

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

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

6.4 Qualified Bids

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

6.5 Successful Bids

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

6.6 Selection Criteria

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

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

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

6.7 Approval Hearing

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

6.8 Deposits

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

6.9 Approvals

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

6.10 Confidentiality

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

6.11 Supervision of the SISP

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

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

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

6.12 Notice to the Monitor

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

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

6.13 Reservation of Rights

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

- (C) contrary to the best interests of the Debtors, its estate, and stakeholders as determined by the Monitor;
 - (ii) in accordance with the terms hereof, accept bids not in conformity with these SISP Procedures to the extent that the Monitor determines, in its reasonable business 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.