

Court File No.: CV-24-00713128-0000

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

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

**AND IN THE MATTER OF A PROPOSED PLAN OF
COMPROMISE OR ARRANGEMENT WITH RESPECT TO
SIMEX INC., IWERKS ENTERTAINMENT INC., AND
SIMEX-IWERKS MYRTLE BEACH LLC**

**SECOND REPORT TO THE COURT
SUBMITTED BY DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS MONITOR**

April 18, 2024

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INTRODUCTION AND PURPOSE

1. On January 19, 2024 (the “**Filing Date**”) SimEx Inc. (“**SimEx**”), Iwerks Entertainment Inc. (“**Iwerks**”) and Simex-Iwerks Myrtle Beach LLC (“**SIMB**” and, together with SimEx and Iwerks, the “**Applicants**”) sought and obtained an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the “**CCAA**”) granting, *inter alia*, a stay of proceedings in favour of the Applicants until January 29, 2024 (the “**Initial Stay Period**”) and appointing Deloitte Restructuring Inc. as monitor (in such capacity, the “**Monitor**”). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the “**CCAA Proceedings**”. A copy of the Initial Order is attached hereto as **Appendix “A”**.
2. On January 29, 2024 the Applicants sought and obtained an amended and restated initial order (the “**ARIO**”). The ARIO, among other things, extended the Initial Stay Period to May 3, 2024 (the “**Stay Period**”); confirmed the maximum amounts to be secured by priority charges; and approved a sales and investment solicitation process (the “**SISP**”). A copy of the ARIO is attached hereto as **Appendix “B”**.
3. The Monitor filed a Pre-filing Report dated January 18, 2024 (the “**Pre-Filing Report**”) with the Court prior to the commencement of the CCAA Proceedings. The Monitor filed its First Report dated January 26, 2024 (the “**First Report**”) in connection with the Applicants’ comeback and stay extension hearing on January 29, 2024. The Pre-Filing Report and the First Report are available on the Monitor’s Website at www.insolvencies.deloitte.ca/en-ca/SimEx. Copies of these reports, without appendices, are attached hereto as **Appendices “C”** and “**D**”, respectively.

4. Capitalized terms not otherwise defined herein shall have the respective meanings attributed to them in the Initial Order, the ARIIO, the Pre-Filing Report and/or the First Report, as applicable.
5. The purpose of this report (the “**Second Report**”) is to provide the Court with information on a material adverse change (the “**MAC**”) in the Applicants’ financial circumstances and the anticipated effects of the MAC on the CCAA Proceedings.

TERMS OF REFERENCE

6. In preparing this Second Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and information prepared by the Applicants, and discussions with management of the Applicants (“**Management**”) (collectively, the “**Information**”).
7. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards (“**Canadian GAAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.
8. The Monitor has prepared this Second Report to provide background to the Court for its consideration in respect of the MAC, and the Second Report should not be relied on for any other purpose.

9. Future orientated financial information reported or relied on in preparing this Second Report is based on the assumptions of Management regarding future events; actual results may vary from forecast and such variations may be material.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in United States Dollars, the Applicants' reporting currency.

SISP UPDATE

11. The Monitor and the Applicants were authorized and directed to conduct the SISP pursuant to the ARIO. A copy of the sale and investment solicitation process as approved pursuant to the ARIO (the "**SISP Procedures**") is attached hereto as **Appendix "E"**. The Monitor solicited interest from approximately 50 parties, both strategic and financial during the SISP. The Monitor also published an advertisement with respect to the SISP in the Insolvency Insider newsletter as required by the ARIO.
12. Thirteen parties executed a non-disclosure agreement and were provided with a confidential information memorandum ("**CIM**") and were invited to an electronic data room that had been populated by the Applicants, with the assistance of the Monitor.
13. The Monitor and the Applicants held multiple meetings with interested parties in order to respond to due diligence questions and provide additional, specific information to bidders on request. The Monitor and the Applicants worked closely together throughout the process to address information requests.
14. The Monitor provided regular updates to Royal Bank of Canada ("**RBC**"), as a senior secured lender of the Applicants, on the SISP, including the number of potential bidders that expressed continued interest in the SISP.

Results of the SISP

15. The deadline established by the SISP Procedures for the submission of binding offers was 5:00 pm EST on March 14, 2024 (the “**Bid Deadline**”). In advance of the Bid Deadline, a number of interested parties advised the Monitor that, while they remained interested, they would require additional time to submit a bid.
16. After discussing the request for additional time with the Applicants and RBC and, pursuant to the SISP, obtaining RBC’s consent to an extension, the Monitor advised interested parties that the Bid Deadline had been extended to 5:00 pm EST on March 21, 2024 (the “**Revised Bid Deadline**”).
17. The SISP did not yield any Qualified Bids (as defined in the SISP). A non-binding letter of intent (the “**LOI**”) was submitted by one interested party, but as it was not a binding offer, it did not qualify as a Qualified Bid. Additionally, the LOI was conditional on additional diligence and included conditions precedent that could not be met by the Applicants or the Monitor.

Monitor’s Comments on the SISP

18. The Monitor is of the view that the business and assets of the Applicants have been adequately exposed to the market through the SISP, and that the SISP provided for a process that was fair and reasonable in the circumstances. In the Monitor’s view, the duration of the SISP was sufficient to allow interested parties to perform diligence and evaluate whether to submit a bid. The Monitor notes that it received no requests for an extension of the bid deadline beyond the Revised Bid Deadline on March 21, 2024. While the SISP generated robust interest from potential bidders, the SISP ultimately did not yield a Qualified Bid.

The Management Offer

19. Following the expiry of the Revised Bid Deadline, the Monitor received a draft offer from Michael Needham, who is part of existing management of SimEx, on behalf of a company to be incorporated (the “**Needham Offer**”). The Needham Offer, in addition to being submitted after the Revised Bid Deadline, was conditional on obtaining financing, and therefore did not satisfy the requirements of a Qualified Bid as set out in the SISP Procedures.
20. The Monitor reviewed both the LOI and the Needham Offer with RBC. The Monitor did not find either offer to be compliant with the terms of the SISP, or had the likelihood of providing sufficient value and / or certainty of closing.
21. On April 4, 2024 RBC received an email from Loopstra Nixon LLP (“**Loopstra**”), counsel to the Applicants, providing details of a proposed offer from Management (the “**MBO**”) pursuant to which a newly incorporated company (“**Newco**”) would purchase certain assets of the Applicants.
22. The Monitor worked with Loopstra and RBC on an urgent basis to explore whether there was a viable transaction that could be pursued, subject to Court approval. Late in the day on April 17, 2024, it became apparent that the MBO would not be advanced any further.
23. While not an explicit condition of the MBO, the Monitor understands that the future viability of Newco and the economic logic of the MBO were highly dependent on the willingness of Warner Bros. Discovery Inc. (“**WB**”) to consent to the assignment to Newco of contracts (the “**WB Contracts**”) between WB and the Applicants.

24. Between April 4 and 17, 2024, the Monitor and RBC reviewed various iterations of the MBO with Management, and the Monitor participated in discussions between WB and Management to discuss the MBO and WB's position on the assignment of the WB Contracts to Newco.
25. On April 17, 2024, WB advised Management (through counsel) that it would not continue discussions in respect of the assignment of WB Contracts, and that it intended to take steps to terminate the WB Contracts. Consequently, Management in turn advised RBC that it would not submit a binding offer in respect of the MBO and would instead move to terminate the CCAA Proceedings.

MATERIAL ADVERSE CHANGE AND ITS EFFECT ON THE CCAA PROCEEDINGS

26. Based on the withdrawal of the MBO, the Monitor has considered whether the lack of a viable Bid arising from the SISF and the failure of the MBO constitute a MAC. To determine if a MAC has occurred, the Monitor has considered the Standards of Professional Practice (the "**Standards**") of the Canadian Association of Insolvency and Restructuring Professionals. The Standards require the following to be considered:
 - a) Whether the change has a significant adverse effect on the projected cash flow;
 - b) Whether the change significantly impairs, or is reasonably expected to significantly impair, the debtor's financial circumstances or the ability of the debtor to carry on operations;
 - c) Whether the change significantly impairs the likelihood of success of a proposal or Plan of Compromise or Arrangement; or

- d) Whether the change significantly prejudices the rights or interests of one or more classes of creditors.
27. The possible termination of the WB Contracts would eliminate the Applicants' largest source of revenue, resulting in a material impact on projected cash flow and the Applicants' ability to carry on business.
28. The possible termination of the WB Contracts has also resulted in the withdrawal of the MBO, resulting in the lack of any viable offer for the purchase of the assets and/or the business of the Applicants, in addition to the lack of Qualified Bids pursuant to the SISP. As such, in the Monitor's view, there is little chance of a viable Plan of Compromise or Arrangement.
29. Furthermore, the Applicants anticipated that the payment of post-filing film royalties would be made from the proceeds of a successful Bid. In the absence of a successful Bid, the Applicants no longer have the ability to satisfy post-filing film royalty obligations in the estimated amount of \$415,000. The continuing non-payment of such post-filing film royalty obligations prejudices the rights and interests of a number of creditors.
30. Based on the foregoing, the Monitor is of the view that the results of the SISP, the failure of the MBO, the anticipated termination of the WB Contracts and the Applicants' inability to meet ongoing post-filing film royalty obligations, satisfy several of the criteria set out above with respect to the Standards and as such, a MAC has occurred.

CONCLUSIONS AND RECOMMENDATIONS

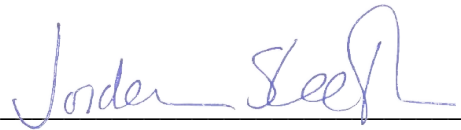
31. As noted above, the Applicants have advised the Monitor that they intend to bring a motion to terminate the CCAA Proceedings and various other ancillary relief. The Monitor will

review the materials prepared and filed by the Applicants and provide a further report to this Court thereafter.

All of which is respectfully submitted at Toronto, Ontario this 18th day of April, 2024.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as Court-Appointed Monitor
of SimEx Inc., Iwerks Entertainment Inc.
and Simex-Iwerks Myrtle Beach LLC
and without personal or corporate liability

Per:

A handwritten signature in blue ink that reads "Jordan Sleeth". The signature is written in a cursive style and is positioned above a horizontal line.

Jordan Sleeth, CPA, CA, CIRP, LIT
Senior Vice-President

Appendix A



Court File No. CV-24-00713128-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM)
)
JUSTICE CONWAY)
)
FRIDAY, THE 19TH
DAY OF JANUARY, 2024

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 SIMEX INC., IWERKS ENTERTAINMENT, INC.
SIMEX-IWERKS MYRTLE BEACH, LLC (the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Michael Needham sworn January 17, 2024, and the Exhibits thereto, the pre-filing report dated January 18, 2024, of the proposed monitor Deloitte Restructuring Inc. ("Deloitte"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for Deloitte, counsel for Royal Bank of Canada, counsel for BDC Capital Inc. and the other parties listed on the participant information form and no one appearing for any other party although duly served as appears from the affidavit of service of Amanda Adamo sworn January 17, 2024, and on reading the consent of Deloitte to act as the Monitor,

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are each a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of its 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 Applicants shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled but not required to 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 on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants 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 Applicants following the date of this Order.

7. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (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 Applicants in connection with the sale of goods and services by the Applicants, 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 thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any

nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants 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) but for greater certainty excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicants or the making of this Order or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by an Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

11. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, the Applicants shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

12. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

13. THIS COURT ORDERS that until and including January 29, 2024, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or

tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. THIS COURT ORDERS that 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 Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower an Applicant to carry on any business which such Applicant is 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) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

15. THIS COURT ORDERS that 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, lease, sublease, licence, sublicense, authorization or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

16. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant 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 Applicants, 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 Applicants, and that the Applicants shall be entitled to the continued use of its 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 Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

17. THIS COURT ORDERS that, notwithstanding anything else in this Order, 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 Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

18. THIS COURT ORDERS that 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 Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

19. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants 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 wilful misconduct (the "D&O Indemnity").

20. THIS COURT ORDERS that the directors and officers of the Applicants 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 USD \$300,000, as security for the indemnity provided in paragraph 20 of this Order, subject to the limited effect of the Director's Charge during the initial 10-days of these proceedings, prescribed by paragraph 44 hereof. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

21. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' 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 paragraph 20 of this Order.

APPOINTMENT OF MONITOR

22. THIS COURT ORDERS that 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 Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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.

23. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' 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 Property, the Business, and such other matters as may be relevant to the proceedings herein;

- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' 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;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to 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; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

24. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever 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.

25. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or

collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor 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 Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are

hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis.

29. THIS COURT ORDERS that 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 a judge of the Commercial List of the Ontario Superior Court of Justice.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor, US counsel to the Monitor, and the Applicants' 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 USD \$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, subject to the limited effect of the Administration Charge during the initial 10-day Stay Period prescribed by paragraph 43 hereof. The Administration Charge shall have the priority set out in paragraphs 37 and 39 hereof.

DIP FINANCING

31. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Royal Bank of Canada (the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed the principal amount of USD \$600,000 unless permitted by further Order of this Court.

32. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender (the "Commitment Letter"), filed.

33. THIS COURT ORDERS that the Applicants 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 "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and

when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “DIP Lender’s Charge”) on the Property, subject to the limited effect of the DIP Lender’s Charge during the initial 10-day Stay Period, as prescribed by paragraph 44 hereof, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 37 and 39 hereof.

35. THIS COURT ORDERS that, notwithstanding any other provision of this 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 any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon two (2) days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender’s Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of any of the Applicants; 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 Applicants or the Property.

36. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or

any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of USD \$500,000);

Second – DIP Lender's Charge (to a maximum principal amount of USD \$600,000; and

Third – Directors' Charge (to the maximum amount of USD \$300,000),

in each case subject to such limitations during the initial 10-day Stay Period prescribed by paragraph 43 hereof.

38. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that 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.

39. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment.

40. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, unless the Applicants also obtains prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

41. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) 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 Applicants, and 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 Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants 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 Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

42. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

LIMITATIONS ON DIP BORROWINGS & CHARGES DURING INTIAL STAY PERIOD

43. THIS COURT ORDERS that notwithstanding anything to the contrary herein, during the period from and after the effectiveness of this Order and the Comeback Hearing (*as defined below*) (the “Interim Period”), the Applicants’ ability to access funding under the Commitment Letter and the scope of the Charges is limited as follows:

- (a) during the Interim Period, advances under the Commitment Letter shall be limited to the principal amount of USD \$200,000 in the aggregate, which is the amount necessary to sustain operations in this Interim Period and to satisfy obligations for payroll and source deductions;
- (b) during the Interim Period, amounts secured by the Administration Charge shall be limited to USD \$390,000 in the aggregate, which is the amount required to fund the professional costs during the Interim Period;
- (c) during the Interim Period, amounts secured by the DIP Lender’s Charge shall be limited to USD \$200,000 in the aggregate, the amount necessary to sustain operations in this Interim Period and to satisfy obligations for payroll and source deductions; and
- (d) during the Interim Period, amounts secured by the D&O Charge shall be limited to USD \$230,000 in the aggregate, which is the amount required secure the potential D&O liability during the Interim Period,

and provided that in the event the Stay Period is not extended at the Comeback Hearing the permitted borrowings under the Commitment Letter and scope of the Charges shall be permanently restricted and limited as set out in this paragraph 43, pending further order of the Court.

COMEBACK HEARING

44. THIS COURT ORDERS that the comeback motion required in this CCAA proceeding shall be heard at 11:00am (Toronto time) on January 29, 2024 (the “Comeback Hearing”).

SERVICE AND NOTICE

45. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the National Post (National Edition) a notice containing the information prescribed under the CCAA, (ii)

within five 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 Applicants 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.

46. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) and paragraph 7 of the Guide, this Order shall constitute an order for substituted service pursuant to Rule 16.04. Subject to Rule 3.01(d) and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL www.insolvencies.deloitte.ca/en-ca/SimEx.

47. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

48. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile 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.

49. THIS COURT ORDERS that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

50. THIS COURT ORDERS that the Applicants 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.

51. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

52. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the 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.

53. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Applicants to

apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1530, as amended.

54. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Hearing, or at any other time, on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 38 and 40 hereof, and subject to the limitations in paragraph 44, with respect to any fees, expenses and disbursements (including amounts loaned to the Applicant pursuant to the Commitment Letter) incurred as applicable, until the date this Order may be amended, varied or stayed.

55. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order without any requirement for issuance and entry.



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 SIMEX INC., IWERKS ENTERTAINMENT, INC., SIMEX-IWERKS MYRTLE BEACH, LLC

Court File No.: CV-24-00713128-0000

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

Proceedings commenced at Toronto

Initial Order

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Lawyers for the Applicants

Appendix B

AMENDMENT AND RESTATEMENT

1. THIS COURT ORDERS that the Initial Order shall be amended and restated with this Amended and Restated Order.

SERVICE

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

APPLICATION

3. THIS COURT ORDERS AND DECLARES that the Applicants are each a company to which the CCAA applies.

PLAN OF ARRANGEMENT

4. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the Applicants 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 Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after the Initial Filing Date:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the Initial Filing Date, 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 Applicants following the Initial Filing Date.

8. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (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 Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the

Initial Filing Date but not required to be remitted until on or after the Initial Filing Date, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants 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) but for greater certainty excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicants or the making of this Order or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Initial Filing Date shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by an Applicant to any of its creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations;
- (b) terminate the employment of such of their employees or temporarily lay off such of its employees as they deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, the Applicants shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing

herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. THIS COURT ORDERS that until and including May 3, 2024, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that 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 Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower an Applicant to carry on any business which such Applicant is 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) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that 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, lease, sublease, licence, sublicense, authorization or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant 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 Applicants, 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 Applicants, and that the Applicants shall be entitled to the continued use of its 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 Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Initial Filing Date, 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 Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that 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 Applicants with respect to any claim against the directors or officers that arose before the Initial Filing Date and that relates to any obligations of the Applicants 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants 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 wilful misconduct (the "D&O Indemnity").

21. THIS COURT ORDERS that the directors and officers of the Applicants 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 USD \$300,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' 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 paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that 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 Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' 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 Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' 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;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to 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; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever 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. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor 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 Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save

and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis.

30. THIS COURT ORDERS that 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 a judge of the Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, US counsel to the Monitor, and the Applicants' 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 USD \$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 in paragraphs 38 and 40 hereof.

DIP FINANCING

32. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Royal Bank of Canada (the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed the principal amount of USD \$600,000 unless permitted by further Order of this Court.

33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender (the "Commitment Letter"), filed.

34. THIS COURT ORDERS that the Applicants 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 “Definitive Documents”), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “DIP Lender’s Charge”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 38 and 40 hereof.

36. THIS COURT ORDERS that, notwithstanding any other provision of this 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 any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon two (2) days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender’s Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of any of the Applicants; 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 Applicants or the Property.

37. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of USD \$500,000);

Second – DIP Lender's Charge (to a maximum principal amount of USD \$600,000; and

Third – Directors' Charge (to the maximum amount of USD \$300,000).

39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that 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.

40. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the

Administration Charge or the DIP Lender's Charge, unless the Applicants also obtain prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) 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 Applicants, and 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 Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants 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 Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SALE AND INVESTMENT SOLICITATION PROCESS

44. THIS COURT ORDERS that the sale and investment solicitation process appended hereto as **Schedule “A”** (the “SISP”) (subject to any amendments thereto that may be made in accordance with the terms thereof and with this Order) be and is hereby approved and the Applicants and the Monitor are hereby authorized and directed to carry out the SISP in accordance with its terms and the terms of this Order.

45. THIS COURT ORDERS that Applicants and the Monitor are hereby further authorized and directed to take such steps as each considers necessary or desirable in carrying out each of the respective obligations under the SISP, subject to the prior approval of this Court being obtained before the completion of any transition(s) under the SISP.

46. THIS COURT ORDERS that the Applicants and the Monitor and their respective affiliates, partners, directors, officers, employees, advisors, agents and representatives 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 performing their duties under the SISP, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or wilful misconduct of the Applicants or the Monitor, as applicable, as determined by the Court.

47. THIS COURT ORDERS that the Applicants and Monitor may apply to this Court for advice and directions with respect to the SISP at any time.

PIPEDA

48. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicants and the Monitor may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to carry out the SISP and to attempt to complete a transaction or transactions pursuant to the SISP (each, a "Transaction"). Each prospective purchaser, bidder or investor 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 Transaction, and if it does not complete a Transaction, shall return all such information to the Applicants, or in the alternative destroy all

such information. The purchaser, bidder or investor in any Transactions shall be entitled to continue to use the personal information provided to it, and related to the Property involved in the Transaction, in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed.

SERVICE AND NOTICE

49. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the National Post (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the Initial Filing Date, (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 Applicants 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.

50. THIS COURT ORDERS that the Guide Concerning Commercial List E-Service (the “Guide”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) and paragraph 7 of the Guide, this Order shall constitute an order for substituted service pursuant to Rule 16.04. Subject to Rule 3.01(d) and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL www.insolvencies.deloitte.ca/en-ca/SimEx.

51. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

52. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile 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.

53. THIS COURT ORDERS that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

54. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

55. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

56. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the 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.

57. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in any jurisdiction outside Canada, including acting as a foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1530, as amended.

58. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Hearing, or at any other time, on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 38 and 40 hereof, and subject to the limitations in paragraph 44, with respect to any fees, expenses and disbursements (including amounts loaned to the Applicant pursuant to the Commitment Letter) incurred as applicable, until the date this Order may be amended, varied or stayed.

59. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order without any requirement for issuance and entry.

A handwritten signature in blue ink, appearing to read "Conway J.", is written above a horizontal line.

SCHEDULE "A"
SISP TERMS AND CONDITOINS

[see attached]

Sale and Investment Solicitation Process

SimEx Inc., Iwerks Entertainment Inc. and SimEx-Iwerks Myrtle Beach LLC

Introduction

1. On January 19, 2024, SimEx Inc., Iwerks Entertainment Inc., and SimEx-Iwerks Myrtle Beach LLC (together, the “**Applicants**”) obtained an initial order (that may be amended or amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**” and the “**CCAA Proceedings**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The Initial Order, among other things:
 - a. Provides for a stay of all proceedings against the Applicants assets, properties and undertaking and their respective directors and officers (the “**Stay of Proceedings**”); and
 - b. Appoints Deloitte Restructuring Inc. as the monitor of the Applicants (in such capacity, the “**Monitor**”).
2. On January 29, 2024, the Court granted an amended and restated initial order (the “**ARIO**”) pursuant to which, among other things:
 - a. the Stay of Proceedings was extended to and including May 3, 2024; and
 - b. the Court approved, and authorized the Monitor to conduct, a sale and investment solicitation process (the “**SISP**”), as described herein, with the assistance of the Applicants. The SISP is intended to solicit interest in an acquisition or refinancing of the business, or a sale of the assets and/or the business of the Applicants by way of merger, reorganization, recapitalization, primary equity issuance, or other similar transaction. The Monitor intends to provide all qualified interested parties with an opportunity to participate in the SISP.

Opportunity

3. The SISP is intended to solicit interest in and opportunities for a sale of, or investment in, all or part of the Applicants’ assets and business operations (the “**Opportunity**”). The Opportunity may include one or more of a restructuring, recapitalization or other form or reorganization of the business and affairs of the Applicants as a going concern, or a sale of all, substantially all or one or more components of the Applicants’ assets (the “**Property**”) and business operations (the “**Business**”) as a going concern or otherwise, or some combination thereof (each, a “**Transaction**”).
4. This document (the “**SISP Procedure**”) describes the SISP, including the manner in which individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures, governmental organizations or other entities (each, a “**Person**”) may gain access to or continue to have access to due diligence materials concerning the Applicants, the Property and the Business, how bids

involving the Applicants, the Property or the Business will be submitted to and dealt with by the Monitor and how Court approval will be obtained in respect of a Transaction.

5. The SISP contemplates a one-stage process that involves the submission by interested parties of binding offers by the Bid Deadline (as defined below).
6. Except to the extent otherwise set forth in a definitive sale or investment agreement with a successful bidder, any Transaction will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Applicants, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.
7. In the SISP, (i) “**Business Day**” means any day (other than Saturday or Sunday) that banks are open for business in Toronto, Ontario. If any deadline date referred to in the SISP falls on a day that is not a Business Day, then such date shall be extended until the next Business Day; and (ii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase, “without limitation”.

Timeline

8. The following table sets out the key milestones under the SISP:

Milestone	Timeline	Targeted Deadline
Commencement date	Immediately following the approval of the SISP Process	January 29, 2024
Preparation of SISP materials (i.e., Teaser, Investment Memorandum, Buyer list, Notices for trade publication, NDA, populate EDR)	10 days (in advance, immediately after the Initial Order)	January 29, 2024
Bid Deadline	[45 days]	March 14, 2024
Auction Date (if applicable)	[1 day]	March 21, 2024
Finalize Transaction agreement	7 days	March 29, 2024
Sale Approval Motion (as defined below) in Court		April 19, 2024 (outside date)
Closing of the Transaction		May 3, 2024 (outside date)

9. The dates set out in the SISP may be extended by either: (i) further order of the Court; or (ii) the Monitor, with the consent of Royal Bank of Canada.

Solicitation of Interest: Notice of the SISP

10. As soon as reasonably practicable:

- a. the Monitor, in consultation with the Applicants, will prepare a list of potential bidders, including (i) parties that have approached the Applicants or the Monitor indicating an interest in the Opportunity, and (ii) local and international strategic and financial parties who the Applicants, in consultation with the Monitor, believe may be interested in a Transaction pursuant to the SISP, in each case whether or not such party has submitted a letter of intent or similar document (collectively, “**Known Potential Bidders**”);
- b. the Monitor will arrange for a notice of the SISP (and such other relevant information which the Monitor, in consultation with the Applicants, considers appropriate) (the “**Notice**”) to be published in *Insolvency Insider*, the Monitor’s website, and any other newspaper or journal or industry website as the Applicants, in consultation with the Monitor, consider appropriate, if any; and
- c. the Monitor, in consultation with the Applicants, will prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Applicants and the Monitor and their respective counsel (an “**NDA**”).

11. The Monitor will send the Teaser Letter and NDA to each Known Potential Bidder and to any other Person who requests a copy of the Teaser Letter and NDA or who is identified to the Applicants or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Potential Bidders and Due Diligence Materials

12. Any party who wishes to participate in the SISP (a “**Potential Bidder**”), must provide to the Monitor an NDA executed by it, and which shall inure to the benefit of any purchaser of the Business or Property, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.

13. The Monitor, in consultation with the Applicants, shall in their reasonable business judgment and subject to competitive and other business considerations, afford each Potential Bidder who has signed and delivered an NDA to the Monitor and provided information as to their financial ability, in the Monitor’s sole discretion, to close a transaction, such access to due diligence material and information relating to the Property and Business as the Applicants or the Monitor deem appropriate. Due diligence shall include access to an electronic data room (“**EDR**”) containing information about the Applicants, the Property and the Business, and may also include management presentations, on-site inspections, and other matters which a Potential Bidder may reasonably request and as to which the Applicants, in their reasonable business judgment and after consulting with the Monitor, may agree. The Monitor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Applicants nor the Monitor will be obligated to furnish any

information relating to the Property or Business to any person other than to Potential Bidders. Furthermore, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders if the Applicants, in consultation with and with the approval of the Monitor, determine such information to represent proprietary or sensitive competitive information. Neither the Applicants nor the Monitor is responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the Sale of the Property and the Business.

14. Potential Bidders 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 they enter into with the Applicants.

Formal Binding Offers

15. Potential Bidders that wish to make a formal offer to purchase or make an investment in the Applicants or their Property or Business (a “**Bidder**”) shall submit a binding offer (a “**Bid**”) that complies with all of the following requirements to the Monitor and Applicants’ counsel at the addresses specified in Schedule “1” hereto (including by e-mail), so as to be received by them not later than **5:00 PM (EST) on March 14, 2024** or as may be modified in the Bid process letter that may be circulated by the Monitor to Potential Bidders, with the approval of the Applicants (the “**Bid Deadline**”):

- a. the Bid must be either a binding offer to:
 - i. acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”); and/or
 - ii. make an investment in, restructure, reorganize or refinance the Business or the Applicants (an “**Investment Proposal**”); or
- b. carry out any combination of a Sale Proposal and an Investment Proposal;
- c. the Bid (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Applicants or their Property or Business and is consistent with any necessary terms and conditions established by the Applicants and the Monitor and communicated to Bidders;
- d. the Bid includes a letter stating that the Bidder’s offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
- e. the Bid includes duly authorized and executed Transaction agreements, including the purchase price, investment amount (the “**Purchase Price**”), together with all exhibits and schedules thereto;

- f. the Bid is accompanied by a deposit (the “**Deposit**”) in the form of a wire transfer (to a trust account specified by the Monitor), in an amount equal to ten percent (10%) of the Purchase Price, investment amount or other consideration to be paid in respect of the Bid, to be held and dealt with in accordance with this SISP;
- g. the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Applicants and the Monitor to make a determination as to the Bidder’s financial and other capabilities to consummate the proposed transaction;
- h. the Bid is not conditioned on (i) the outcome of unperformed due diligence by the Bidder, or (ii) obtaining financing, but may be conditioned upon the Applicants receiving the required approvals or amendments relating to the licenses required to operate the business, if necessary;
- i. the Bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is otherwise participating or benefiting from such bid;
- j. for a Sale Proposal, the Bid includes:
 - i. the purchase price in U.S. dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
 - ii. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - iii. a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;
 - iv. a description of the conditions and approvals required to complete the closing of the transaction;
 - v. a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and
 - vi. any other terms or conditions of the Sale Proposal that the Bidder believes are material to the transaction.
- k. for an Investment Proposal, the Bid includes:
 - i. a description of how the Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;

- ii. the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in U.S. dollars.
 - iii. the underlying assumptions regarding the pro forma capital structure;
 - iv. a specific indication of the sources of capital for the Bidder and the structure and financing of the transaction;
 - v. a description of the conditions and approvals required to complete the closing of the transaction;
 - vi. a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and
 - vii. any other terms or conditions of the Investment Proposal.
- l. the Bid includes acknowledgements and representations of the Bidder that the Bidder:
- i. is completing the Transaction on an “as is, where is” basis;
 - ii. has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Applicants prior to making its Bid;
 - iii. has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
 - iv. did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Applicants or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Applicants;
- m. the Bid is received by the Bid Deadline; and
- n. the Bid contemplates closing the Transaction set out therein immediately following the granting of an order by the Court approving the same.
17. Following the Bid Deadline, the Monitor will assess the Bids received. The Monitor, in consultation with the Applicants and Royal Bank of Canada and will designate the most competitive bids that comply with the foregoing requirements to be “**Qualified Bids**”. No Bids received shall be deemed not to be Qualified Bids without the approval of the Monitor. Only Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

18. The Monitor, in consultation with the Applicants and Royal Bank of Canada, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Bids to be a Qualified Bid. The Monitor and the Applicants will be under no obligation to negotiate identical terms with, or extend identical terms to, each Bidder.
19. The Monitor shall notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within two (2) business days of the Bid Deadline, or at such later time as the Monitor deems appropriate .
20. The Monitor may, in consultation with the Applicants, aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.

Evaluation of Competing Bids

21. A Qualified Bid will be evaluated based upon several factors including, without limitation: (i) the Purchase Price and the net value provided by such bid, (ii) the identity, circumstances and ability of the Bidder to successfully complete such Transaction(s), (iii) the proposed Transaction documents, (iv) factors affecting the speed, certainty and value of the Transaction, (v) the assets included or excluded from the bid, (vi) any related restructuring costs, (vii) the likelihood and timing of consummating such Transaction, each as determined by the Applicants and the Monitor and (viii) any other factor deemed relevant by the Monitor in consultation with the Applicants.

Auction

22. If the Monitor receives at least two Qualified Bids and determines, in consultation with the Applicants and Royal Bank of Canada that they are competitive, the Monitor will conduct and administer an Auction in accordance with the terms of this SISP (the “**Auction**”). Instructions to participate in the Auction, which will take place via video conferencing, or in person, as determined by the Monitor, and will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.
23. Only parties that provided a Qualified Bid by the Bid Deadline, as confirmed by the Monitor, (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. (EST) on the day prior to the Auction, each Qualified Party must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction.

Auction Procedure

24. The Auction shall be governed by the following procedures:
 - a. **Participation at the Auction.** Only the Applicants, the Qualified Parties, the Monitor and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction. The Monitor shall provide all Qualified Bidders with the details of the lead bid by 5:00 PM (EST) by no later than five (5) days after the

Bid Deadline. Each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction no later than 5:00 PM (EST) on the Business Day prior to the Auction;

- b. **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid;
- c. **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Monitor, in consultation with the Applicants (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Monitors announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments of USD \$50,000;
- d. **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference or otherwise, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that the Monitor, in its discretion, may establish separate video conference rooms to permit interim discussions between the Monitor and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- e. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s);
- f. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded; and
- g. **Auction Procedures.** The Monitor shall be at liberty to set additional procedural rules at the Auction as it sees fit.

Selection of Successful Bid

25. Before the conclusion of the Auction, the Monitor, in consultation with the Applicants, will:

- a. review and evaluate each Qualified Bid, considering the factors set out in paragraph 16 and any other factor that the Applicants or the Monitor may reasonably deem relevant, provided that each Qualified Bid may be negotiated among the Monitor

in consultation with the Applicants and the Qualified Bidder, and may be amended, modified or varied to improve such Qualified Bid as a result of such negotiations; and

- b. identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).
26. The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by the Monitor, in consultation with the Applicants, subject to the milestones set forth in paragraph 9.

Sale Approval Motion Hearing

27. At the hearing of the motion to approve any transaction with a Successful Party (the “**Sale Approval Motion**”), the Monitor or the Applicants shall seek, among other things, approval from the Court to consummate any Successful Bid. All the Qualified Bids other than the Successful Bid, if any, shall be deemed to be rejected by the Monitor and the Applicants on and as of the date of approval of the Successful Bid by the Court.

Confidentiality and Access to Information

28. All discussions regarding a Sale Proposal, Investment Proposal, or Bid should be directed through the Monitor. Under no circumstances should the management of the Applicants be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP process.
29. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bids, the details of any Bids submitted or the details of any confidential discussions or correspondence between the Applicants, the Monitor and such other bidders or Potential Bidders in connection with the SISP, except to the extent the Applicants, with the approval of the Monitor and consent of the applicable participants, are seeking to combine separate bids from Qualified Bidders.

Supervision of the SISP

30. The Monitor shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in this SISP Procedure and the ARIO and any other orders of the Court, and is entitled to receive all information in relation to the SISP.
31. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between the Applicants or the Monitor and any Potential Bidder, any Qualified Bidder or any other Person, other than as specifically set forth in a definitive agreement that may be entered into with the Applicants.

32. Without limiting the preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Bidder, the Successful Bidder, the Applicants, the DIP Lender, or any other creditor or other stakeholder of the Applicants, 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, or Successful 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.
33. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a Transaction.
34. The Monitor, in consultation with the Applicants, shall have the right to modify the SISP Procedure (including, without limitation, pursuant to the Bid process letter) if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in these CCAA proceedings shall be advised of any substantive modification to the procedures set forth herein.

Deposits

35. All Deposits received pursuant to this SISP shall be held in trust by the Monitor. The Monitor shall hold Deposits paid by each of the Bidders in accordance with the terms outlined in this SISP. In the event that a Deposit is paid pursuant to this SISP and the Monitor elects not to proceed to negotiate and settle the terms and conditions of a definitive agreement with the Person that paid such Deposit, the Monitor shall return the Deposit to that Person. In the event that the Successful Bidder defaults in the payment or performance of any obligations owed to the Monitor or the Applicants pursuant to any Final Agreement, the Deposit paid by the Successful Bidder, as applicable, shall be forfeited as liquidated damages and not as a penalty.

Schedule “1”

Address of Monitor

To the Monitor:

Deloitte Restructuring Inc.

8 Adelaide Street West, Suite 200
Toronto, ON, Canada, M5H 0A9

Attention: Jordan Sleeth and Richard Williams

Email:

jsleeth@deloitte.ca
richwilliams@deloitte.ca

with a copy to:

Borden Ladner Gervais LLP

Bay Adelaide Centre – East Tower
22 Adelaide Street West, Suite 3400
Toronto, Ontario M5H 4E3

Attention: Roger Jaipargas

Email: rjaipargas@blg.com

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 SIMEX INC., IWERKS ENTERTAINMENT, INC., SIMEX-IWERKS MYRTLE BEACH, LLC

Court File No.: CV-24-00713128-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

Proceedings commenced at Toronto

Amended and Restated Initial Order

LOOPSTRA NIXON LLP

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Lawyers for the Applicants

Appendix C

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

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

**AND IN THE MATTER OF A PROPOSED PLAN OF
COMPROMISE OR ARRANGEMENT WITH RESPECT TO
SIMEX INC., IWERKS ENTERTAINMENT INC., AND
SIMEX-IWERKS MYRTLE BEACH LLC**

**REPORT OF THE PROPOSED MONITOR
January 18, 2024**

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INTRODUCTION

1. Deloitte Restructuring Inc. (“**Deloitte**” or the “**Proposed Monitor**”) understands that SimEx Inc. (“**SimEx**”), Iwerks Entertainment Inc. (“**Iwerks**”) and Simex-Iwerks Myrtle Beach LLC (“**SIMB**” and, together with SimEx and Iwerks, the “**Applicants**”) will be bringing an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) to commence proceedings under the Companies’ Creditors Arrangement Act (the “**CCAA**”) and seek an order (the “**Proposed Initial Order**”), among other things, granting a stay of proceedings (the “**Stay Period**”). The Applicants propose that Deloitte be appointed as Monitor of the Applicants (in such capacity, the “**Monitor**”) in these CCAA proceedings (the “**CCAA Proceedings**”).
2. In the event the Proposed Initial Order is granted, the Applicants intend to return to the Court within ten days on January 29, 2024 (the “**Comeback Hearing**”, and the intervening period, the “**Comeback Period**”) to request that the Court grant an amended and restated initial order (the “**ARIO**”) that would, *inter alia*,:
 - a) extend the Stay Period to allow the Applicants to pursue a Sale and Investment Solicitation Process (“**SISP**”); and
 - b) certain other relief that will be specified in the draft ARIO.
3. This report (the “**Report**”) has been prepared by the Proposed Monitor to provide information to the Court for its consideration at the Applicants’ initial hearing seeking protection under the CCAA.

PURPOSE

4. The purpose of this Report is to provide information to the Court on:

- a) Deloitte's qualifications to act as Monitor;
- b) background information with respect to the Applicants;
- c) an overview of the Applicants' 15-week cash flow forecast (the "**Cash Flow Forecast**") and the proposed DIP Facility;
- d) the proposed SISP;
- e) the relief being sought by the Applicants in the Proposed Initial Order; and
- f) the Proposed Monitor's conclusions and recommendations.

TERMS OF REFERENCE AND DISCLAIMER

- 5. In preparing this Report and making the comments herein, the Proposed Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Applicants, and discussions with management of the Applicants ("**Management**") (collectively, the "**Information**").
- 6. The Proposed Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards ("**Canadian GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Proposed Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.

7. Some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecasts, as outlined in the *Chartered Professional Accounts Canada Handbook*, has not been performed.
8. Future oriented financial information referred to in this Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
9. Unless otherwise stated, all monetary amounts noted herein are expressed in U.S. dollars, the Applicants' reporting currency.

DELOITTE'S QUALIFICATIONS TO ACT AS MONITOR

10. Deloitte is a licensed insolvency trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada). Deloitte is not subject to any of the restrictions set out in section 11.7(2) of the CCAA on who may be appointed as Monitor.
11. As discussed in greater detail herein, Deloitte has obtained a detailed understanding of the Applicants' businesses, as it has been engaged as a financial advisor to the Royal Bank of Canada ("**RBC**") since November 10, 2023. In preparation for the potential appointment as Monitor, Deloitte has spent time with Management to understand the Applicants' operations and debt structure as more fully described in this Report.
12. Deloitte has consented to act as Monitor, should the Court grant the Applicants' request for the Proposed Initial Order. Deloitte's Consent is attached as Exhibit "Q" to the Affidavit

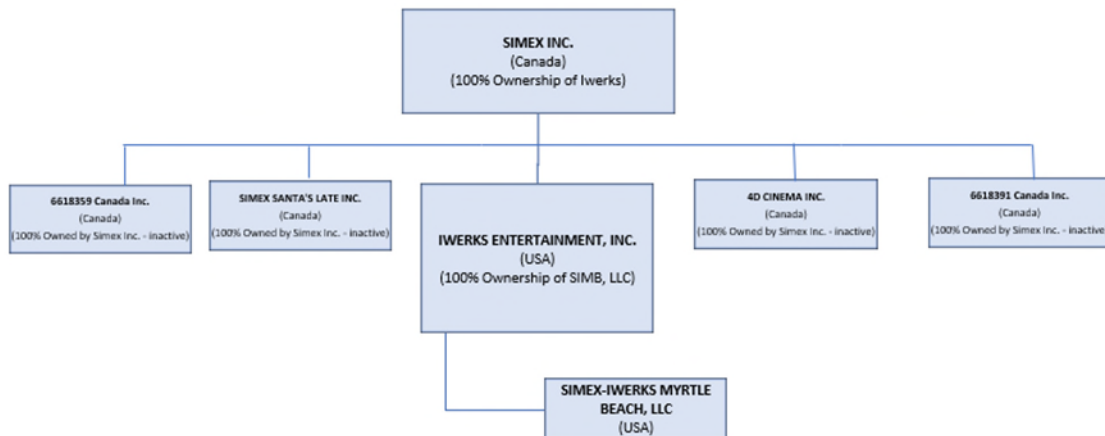
of Michael Needham, sworn January 17, 2024 (the “**Initial Needham Affidavit**”), that is included in the Application Record of the Applicants.

- The Proposed Monitor has retained Borden Ladner Gervais LLP to act as its independent counsel.

BACKGROUND INFORMATION WITH RESPECT TO THE APPLICANTS

- This Report should be read in conjunction with the Initial Needham Affidavit for additional background information with respect to the Applicants, upon which the Proposed Monitor relies.

- The organizational structure of the Applicants is as follows:



- Common shareholders owning more than 10% of the outstanding common shares of SimEx are Michael J. Needham Enterprises Ltd. (38.96%) and Shiori Sudo (15.87%). The balance of the common shares are held by 80 other individual and corporate shareholders.

- The Applicants’ primary business is the design and manufacture of 4D film experiences and motion-based theatres. The Applicants also own and operate one fully themed

attraction and maintain an extensive catalog of films including both licensed and original content.

18. A core element of the Applicants' business is the Attraction Co-Venture ("ACV") division, which the Applicants began 20 years ago to focus on the institutional market in the United States, consisting of large zoos, aquariums and museums.
19. ACV installations are governed by long-term contracts, typically ranging from five to six years, and have a renewal rate of approximately 80%. Under ACV contracts, SimEx installs theatre hardware and provides original or licensed content for the theatres. Revenues are subject to revenue-sharing arrangements, as set out in the ACV contracts.
20. An overview of the Applicants' operating entities is as follows:
 - a) SimEx is a private Canadian corporation incorporated under the laws of Ontario. SimEx and Iwerks operate together as Simex-Iwerks Entertainment to produce and install theatre attractions and distribute film content;
 - b) Iwerks is a Delaware corporation and is a wholly owned subsidiary of SimEx;
 - c) SIMB is a South Carolina limited liability company and is a wholly owned subsidiary of Iwerks. SIMB operates a themed attraction in Myrtle Beach, "The Simpsons in 4D"; and
 - d) 6618359 Canada Inc., Simex Santa's Late Inc., 4D Cinema Inc. and 6618391 Canada Inc. are each inactive, single-use production companies, all of which are not Applicants in the CCAA Proceedings.

21. The Applicants maintain premises in Mississauga, Toronto, Baltimore, Myrtle Beach and Santa Clarita and employ 76 people as more fully described in the Initial Needham Affidavit.
22. None of the Applicants' employees are unionized and the Applicants do not maintain any registered pension plans.
23. The Applicants' fiscal year end ("FY") was June 30th of each calendar year until 2021, when it was changed to December 31st of each calendar year.

Cash Management Systems

24. The cash management systems (the "**CMS**") of the Applicants are as follows:
 - a) Each Applicant maintains several bank accounts (the "**Accounts**");
 - b) The structure of the Accounts maintained by SimEx is as follows:
 - i. SimEx historically maintained two deposit accounts managed through RBC Express (Canadian Dollar and US Dollar), which were linked to a revolving operating line provided by RBC (the "**Operating Line**") (it no longer revolves). The accounts are used to receive customer payments and process disbursements. Following the failure to pay the interest payment due on January 2, 2024 the disbursements are now based on there being an available balance so that SimEx doesn't go into an overdraft position.
 - ii. SimEx maintains a foreign currency account managed through RBC's Foreign Currency Account Portal. The Proposed Monitor understands that this account is used to receive foreign currency payments and convert the payments into USD or CAD currency, as required by SimEx;

- iii. Cheques, electronic fund transfers (“**EFTs**”) and wires require the signature or approval of two signing officers, while online bill payments require the approval of one of a smaller set of signing officers; and
 - iv. Receipts by cheque are rare and are deposited at a branch when received;
- c) The structure of the Accounts maintained by Iwerks and SIMB is as follows:
- i. There is one USD account for Iwerks with Wells Fargo Bank (“**Wells Fargo**”) in the United States which is used to collect payments and to fund payroll and other disbursements;
 - ii. There is one account for SIMB with Wells Fargo in the United States which is used to fund SIMB payroll;
 - iii. Cheque payments are rare. As with the Canadian operations, cheque payments, ACH payments and wires require two signatures. Signing officers are the same as for Canadian operations; and
 - iv. Receipts by cheque are common for Iwerks and are delivered to the Santa Clarita office where they are deposited by a local employee using mobile deposit functionality.
25. The Proposed Monitor understands that the CMS are highly centralized and managed almost entirely from the corporate head office in Toronto.

Senior Secured Debt

26. The Applicants’ senior secured lenders are RBC and BDC Capital Inc. (“**BDC**”).
27. The table below summarizes the Applicants’ secured obligations:

SimEx Inc. - Summary of Secured Debt			
(\$000s)			
	Principal and Interest (CAD)	Principal and Interest (USD)	Total P&I - USD <i>(CAD:USD = 0.74)</i>
RBC - Operating Line (CAD)	1,573	-	1,164
RBC - Operating Line (USD)	-	4,956	4,956
RBC - EGF Facility	-	4,842	4,842
RBC - EDC BCAP Facility	2,868	-	2,122
RBC - BDC BCAP Facility	1,724	-	1,276
RBC - HASCAP Facility	648	-	480
BDC Capital Inc.	-	1,413	1,413
	6,813	11,211	16,253

28. RBC and SimEx are party to an amended and restated loan agreement dated March 31, 2023 (the “**RBC Credit Agreement**”). The RBC Credit Agreement governs four credit facilities available to SimEx, which include:

- a) a US\$6,000,000 revolving demand facility (the “**Operating Line**”);
 - b) a US\$5,500,000 revolving term loan facility used for the finance of export contracts (the “**EGF Facility**”);
 - c) a CAD\$6,250,000 multi-draw term loan facility (the “**EDC BCAP Facility**”) made available under the Export Development Canada (“**EDC**”) Business Credit Availability Program (“**BCAP**”); and
 - d) a CAD\$3,125,000 non-revolving term loan facility (the “**BDC BCAP Facility**”) made available under BDC’s BCAP.
29. RBC and SimEx are also party to a credit agreement dated July 20, 2021 (the “**RBC HASCAP Agreement**”). The RBC HASCAP Agreement governs a \$1,000,000 non-revolving term loan facility (the “**HASCAP Facility**”) made available under BDC’s Highly Affected Sectors Credit Availability Program (“**HASCAP**”).

30. The amounts outstanding under each of the facilities made available pursuant to the RBC Credit Agreement and the RBC HASCAP Agreement (the “**RBC Facilities**”) as at January 17, 2024 are set out in the table above.
31. BDC and SimEx are party to a Letter of Offer dated June 15, 2018 (the “**BDC Letter**”). Pursuant to the BDC Letter, BDC provided a US\$2,500,000 term loan (the “**BDC Loan**”) to SimEx, repayable in fixed monthly instalments followed by a balloon payment after 24 months. The maturity date of the BDC Loan was extended to February 1, 2024.
32. The Applicants, RBC and BDC are parties to a Subordination and Priorities Agreement dated June 29, 2018 (the “**Intercreditor Agreement**”).
33. The Proposed Monitor understands that both RBC and BDC (together, the “**Secured Lenders**”) are supportive of the CCAA Proceedings.

Other Debt

34. The Proposed Monitor understands that the Applicants’ only other secured creditors are equipment lessors in respect of office and photocopy equipment, as discussed in the Initial Needham Affidavit;
35. The Applicants other long-term liabilities include amounts owing to employees who participated in a cost reduction program in 2018, as well as shareholder loans and contingent liabilities associated with severance arrangements made in 2021 with two senior executives.
36. As of January 17, 2023, the Applicants records include outstanding trade payables of \$3,991,597.

RECENT FINANCIAL RESULTS AND CAUSES OF FINANCIAL DIFFICULTY

37. As described in the Initial Needham Affidavit, the Applicants began experiencing financial difficulties in FY 2018, as a result of large cost overruns on a film attraction project (the “**Project**”) resulting in defaults of debt to EBITDA covenants in the Applicants’ then existing credit agreement with RBC for quarters ending September 30, 2017 and December 31, 2017.
38. The Applicants’ financial difficulties worsened in FY 2019. The Applicants’ projections provided to RBC in October 2018 indicated ongoing covenant defaults through June, 2019. SimEx was transferred to RBC’s Special Loans and Advisory Services (“**SLAS**”) group in November, 2018.
39. The Applicants’ financial difficulties continued through the balance of FY 2019, driven by poor revenues associated with the Project once it was fully operational in April, 2019. However, by December, 2019 the Applicants’ financial performance had begun to improve and Management anticipated an exit from SLAS in the spring of 2020.
40. The onset of the COVID-19 pandemic (“**COVID**”) in March, 2020 had a devastating impact on the Applicants’ business. As the Applicants’ revenues are driven almost entirely by attractions such as zoos, entertainment parks and aquariums, all of which were shuttered for extensive periods during COVID, revenues fell sharply in the period 2020 – 2022.
41. In order to mitigate the impact of revenue losses and cover operating expenses, the Applicants took on significant additional debt through the EDC BCAP Facility, the BDC BCAP Facility and the HASCAP Facility. The Applicants also benefited from significant government rent and wage subsidies in both Canada and the United States.

42. While many attractions saw increases in business through 2022 and 2023, the Applicants' revenues have yet to return to pre-pandemic levels. At current revenue levels, the Applicants have been unable to support the material increase in debt service costs incurred to survive the COVID period.

43. The Applicants' recent financial performance is summarized in the following table:

Summary of Financial Results

USD \$000s

For the fiscal year	2018	2019	2020	2021	2022	2023E
Revenue	22,573	30,029	10,811	15,844	16,410	15,611
Earnings (Loss) from Operation	560	(349)	(5,366)	(1,821)	(447)	(938)
Net Income	(612)	(1,691)	(14,854)	(3,123)	(2,989)	(5,004)

OVERVIEW OF THE APPLICANTS' CASH FLOW FORECAST

44. The Applicants, with the assistance of the Proposed Monitor, have prepared the Cash Flow Forecast for the period from the week ending January 19, 2024 to May 3, 2024 (the "Forecast Period"). A copy of the signed Cash Flow Forecast, notes and a report containing the prescribed representations of the Applicants regarding the preparation of the Cash Flow Forecast are attached hereto as **Appendix "A"**. A summary of the Cash Flow Forecast is set out below.

SimEx!Iwerks			
15-Week Cash Flow Forecast			
For the period January 19, 2024 to May 3, 2024			
(in USD)			
Week #	0-1	2-15	
Month	Pre-	Post-	Total
Week Ending	Comeback	Comeback	
Operating Receipts			
Customer receipts	260,619	3,652,491	3,913,111
HST refunds	-	39,898	39,898
Total Operating Receipts	260,619	3,692,389	3,953,009
Operating Disbursements			
Employee costs	(220,000)	(1,858,725)	(2,078,725)
Selling, general and administrative costs	(42,294)	(501,888)	(544,182)
Rent costs	-	(367,123)	(367,123)
Vendor payments	(5,000)	(324,498)	(329,498)
Contingency costs	(20,000)	(140,000)	(160,000)
Total Operating Disbursements	(287,294)	(3,192,235)	(3,479,529)
Operating Cash Flow	(26,675)	500,154	473,480
Restructuring Costs			
Professional fees	-	(983,333)	(983,333)
Total Restructuring Costs	-	(983,333)	(983,333)
Net Operating Cash Flow before Debt Service	(26,675)	(483,179)	(509,854)
Debt Service			
Debt service	-	-	-
Net Cash Flow	(26,675)	(483,179)	(509,854)
Operating Line			
Opening	5,940,000	5,966,675	5,940,000
Net cash flow	(26,675)	(483,179)	(509,854)
Closing	5,966,675	6,449,854	6,449,854
Operating line limit	6,000,000	6,000,000	6,000,000
Excess/(Deficiency)	33,325	(449,854)	(449,854)

45. The Cash Flow Forecast is presented on a weekly basis during the Forecast Period and represents Management’s best estimate of the projected cash flow during the Forecast Period. The Cash Flow Forecast has been prepared by Management, using the probable and hypothetical assumptions set out in the notes to the Cash Flow Forecast (the “Assumptions”).
46. The Proposed Monitor has reviewed the Cash Flow Forecast through inquiries, analytical procedures and discussions, and a review of the supporting documents relating to the

Information supplied to the Proposed Monitor by Management. Based on the Proposed Monitor's review, nothing has come to its attention that causes it to believe, in all material respects, that:

- a) the Assumptions are not consistent with the purpose of the Cash Flow Forecast;
 - b) as at the date of the Report, the Assumptions are not suitably supported and consistent with the plans for the Applicants or do not provide a reasonable basis for the Cash Flow Forecast, given the probable and hypothetical assumptions; or
 - c) the Cash Flow Forecast does not reflect the Assumptions.
47. Since the Cash Flow Forecast is based on Assumptions regarding future events, actual results will vary from the information presented even if the Assumptions occur, and the variations could be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved. In addition, the Proposed Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Cash Flow Forecast or relied upon by the Proposed Monitor in preparing this Report.
48. The Cash Flow Forecast has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.
49. Based on the underlying assumptions, the Cash Flow Forecast indicates that the Applicants would require interim financing of up to \$458,287 during the Forecast Period. There is no remaining availability under the RBC Facilities. However, RBC has agreed, subject to Court approval, to provide interim financing of up to \$600,000 pursuant to a term sheet

dated January 17, 2024 (the “**DIP Facility Agreement**” and the “**DIP Facility**”) which is discussed in greater detail herein.

50. The Cash Flow Forecast does not indicate any draws will be required under the DIP Facility prior to the date of the Comeback Hearing. However, the Applicants advise that there is a high degree of uncertainty with respect to the timing of customer receipts in the interim period. If those receipts were delayed, the Applicants would be unable to fund payroll obligations in the week ending January 26, 2024. The Monitor estimates the Applicants may require access to up to \$200,000 of the DIP Facility if customer receipts are delayed.

DIP FACILITY

51. Based on the Cash Flow Forecast, the Applicants will not have sufficient liquidity to continue normal course operations in the absence of additional financing. As noted above, the Cash Flow Forecast indicates a funding requirement of \$449,854 for the Forecast Period to maintain sufficient liquidity in each week, with a peak requirement of \$458,287 forecast to occur in the week ending February 2, 2024.
52. In light of this, the Applicants are seeking the Court’s approval of the DIP Facility. The material terms of the DIP Facility are as follows:

DIP Facility Agreement¹	
Loan Amount	<ul style="list-style-type: none">• \$600,000 non-revolving term facility
Initial DIP Lender	<ul style="list-style-type: none">• Royal Bank of Canada (the “Bank”)
Interest Rate	<ul style="list-style-type: none">• Royal Bank US Prime Rate (RBUSPR) + 2%

¹ Any defined terms referenced in this chart, but not otherwise defined in this Report, have the meanings ascribed to such term in the DIP Facility Agreement.

DIP Facility Agreement¹	
	<ul style="list-style-type: none">• RBUSBR at January 17, 2024 is 9.0%, giving an effective interest rate of 11.0%
Advances	<ul style="list-style-type: none">• Borrower to deliver a Borrowing Request substantially in the form of Schedule "C" appended to the DIP Facility Agreement
Conditions Precedent to Advances	<ul style="list-style-type: none">• Issuance of the Proposed Initial Order approving the DIP Facility and the DIP Charge;• Absence of any material adverse change in respect of the Borrower or any Guarantor after the date of the Proposed Initial Order;• Delivery of a duly executed copy of the DIP Facility Agreement.• Delivery of such financial or other information or other documents relating to the Borrower or any Guarantor as the Bank may reasonably require;• Compliance with the milestones set out in the SISF to the Bank's satisfaction;• Material compliance with the Cash Flow Forecast; and• Such other authorizations, approvals, opinions and documentation as the Bank may reasonably require.
Maturity	<ul style="list-style-type: none">• Earlier of May 3, 2024 or material noncompliance with Conditions Precedent.

53. The Proposed Monitor has reviewed the terms of various DIP funding facilities granted in insolvency and restructuring proceedings of a similar size and nature in Ontario in 2022 and 2023. The Proposed Monitor has prepared a summary upon which its review of the proposed DIP Facility was based (the “**Comparative DIP Summary**”), a copy of which is attached as **Appendix “B”**.

54. The following table summarizes the observed interest rates in the Comparative DIP Summary:

	<u>Comparables</u>
Maximum	27.2%
Mean	13.7%
Minimum	5.0%

55. The Proposed Monitor notes that the proposed DIP does not contain any fees, commitments or other ancillary charges typically found in similar DIP lending agreements. The interest rate in the DIP Facility Agreement is below the mean interest rate observed and summarized in the Comparative DIP Summary.

56. Furthermore, given the urgency of the Applicants’ financial situation, arranging for alternative interim financing would be challenging and could result in the cessation of the Applicants’ business, which would materially impact the value of the Applicants’ business on a going concern basis.

57. The Proposed Monitor has compared the terms of the proposed DIP Facility to recently issued DIP loans reported in the Insolvency Insider and confirms that the terms of the proposed DIP Facility are consistent with or more favourable than those approved in other CCAA proceedings.

58. Accordingly, the Proposed Monitor is satisfied that the terms of the DIP Facility Agreement do not appear to materially prejudice other lenders or financial stakeholders.
59. The Proposed Monitor therefore recommends the approval of the DIP Facility Agreement.

SALE AND INVESTMENT SOLICITATION PROCESS

60. The Proposed Monitor has been advised by RBC that a key condition of RBC’s support for these CCAA Proceedings is the maximization of realizations through the SISP.
61. The Monitor, in consultation with the Applicants, has developed the SISP to solicit sale and investment proposals from potentially interested parties. A copy of the SISP procedures (the “**SISP Procedures**”) is attached hereto as **Appendix “C”**.
62. The following table summarizes the key activities and milestones related to the SISP. Potentially interested parties should review the full terms of the SISP Procedures with their counsel, as the table below sets out a summary of key terms only. The summary below is qualified in its entirety by the actual terms of any SISP granted by the Court, and all capitalized terms shall have the meaning ascribed to them in the SISP Procedures.

SISP Step	Dates
SISP approval	January 19, 2024 at initial hearing
Preparatory steps (i.e., creation and population of electronic data room, preparation of teaser and confidential investment memo, identification of potential purchasers/investors, arrange publication in newspaper, trade publication)	January 19 – 29, 2024
Launch (i.e., contact Potential Bidders with teaser, NDA, grant access to EDR, etc.)	January 29, 2024

SISP Step	Dates
Bid deadline	March 14, 2024 (45 days from launch)
Bid analysis	March 15-18, 2024
Auction notification to Bidders (if applicable)	March 19, 2024
Auction date	March 21, 2024
Negotiate definitive agreement –	March 22-29, 2024
Court hearing to approve transaction (outside date)	April 19, 2024
Close transaction (outside date)	May 3, 2024

63. The Monitor makes the following observations regarding the proposed SISP:
- a) Pursuant to the SISP Procedures, the Monitor shall administer and be responsible for all material elements of the SISP, although it will consult with the Applicants where the Monitor deems it appropriate;
 - b) the SISP offers sufficient flexibility to address potential issues as they arise;
 - c) the length of the SISP, while abbreviated, is appropriate given the liquidity pressures facing the Applicants. While the Monitor will identify potential purchasers and/or investors in the Comeback Period, they will not be contacted until after the issuance of the ARIO, if issued, to ensure that the Applicants and the Monitor can focus on addressing stakeholder concerns, if any, during the Comeback Period;
 - d) the SISP provides the Applicants with an opportunity to continue as a going concern and preserve jobs for the Applicants' employees; and

e) the SISP Procedures, particularly the ability to conduct an auction among competitive bidders, allow for third party bidders to increase proceeds for the benefit of the Applicants' stakeholders.

64. For the reasons set out above, the Monitor is supportive of the proposed SISP and recommends that the Court approve same.

PROPOSED CHARGES

65. The Proposed Initial Order provides for three priority charges (the "**Proposed Charges**") ranking in the following order (each as defined below):

- a) the Administration Charge;
- b) the DIP Charge; and
- c) the Directors' Charge.

66. A summary of the Proposed Charges is set out in the table below.

Priority Waterfall			
Priority	Proposed Charge	Initial Order	ARIO
First	Administration Charge	\$ 390,000	\$ 500,000
Second	DIP Charge	\$ 200,000	\$ 600,000
Third	Directors Charge	\$ 230,000	\$ 300,000

67. Based on the Proposed Initial Order, each of the Proposed Charges shall constitute a charge on all the property of the Applicants and the Proposed Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise in favour of any person, other than any existing secured creditors who have not been served with this CCAA application prior to this hearing, and provided that the DIP Charge shall

not rank in in priority to any Crown claims which have priority in bankruptcy. Each of the Proposed Charges is discussed in more detail below.

Administration Charge

68. The Proposed Initial Order provides for a charge up to a maximum of \$500,000 (the “**Administration Charge**”) in favour of the Proposed Monitor, the Proposed Monitor’s Counsel and the Applicants’ Canadian and U.S. Counsel (collectively, the “**Professionals**”) as security for the professional fees and disbursements incurred while planning for and after the commencement of these CCAA Proceedings.
69. However, the Proposed Initial Order will limit the Administration Charge to \$390,000 until the Comeback Hearing. The Proposed Monitor is of the view that this limitation is reasonable and provides adequate protection security for the estimated professional fees to be incurred during the Comeback Period.
70. The Proposed Monitor is of the view that the Administration Charge is necessary for the effective participation of the Professionals in these CCAA Proceedings, and the quantum of the Administration Charge is reasonable given the complexity of these CCAA Proceedings, the work that has been done to date, and the anticipated work required from the Professionals.
71. The magnitude of the Administration Charge is limited to the amount necessary to ensure the Professionals have adequate protection through the Forecast Period, given that the Applicants will not be providing retainers for the Professionals and assuming bi-weekly payments of professional fees.

72. The Proposed Monitor supports the Administration Charge, as contained within the Proposed Initial Order.

DIP Charge

73. The Proposed Initial Order also includes a charge in respect of interim financing provided under the DIP Facility Agreement (the “**DIP Charge**”). As set out in the Cash Flow Forecast, the Applicants anticipate that maximum draws under the DIP Facility of approximately \$458,287 will be required during the Forecast Period and are requesting a DIP Charge to secure obligations under the DIP Facility Agreement to the maximum borrowing limit of \$600,000.
74. However, the Proposed Initial Order will limit access to the financing under the DIP Facility Agreement and the DIP Charge to \$200,000 until the Comeback Hearing. The Proposed Monitor is of the view that the proposed financing and limited DIP Charge will provide the Applicants with sufficient liquidity to address payment obligations that may arise during the Interim Period.
75. The DIP Facility provides the Applicants with access to liquidity needed to finance their operations and working capital requirements while they pursue the sale of the business through the SISP. The DIP Charge does not secure any obligations that existed before the issuance of the Proposed Initial Order.
76. The magnitude of the DIP Charge is limited to the amount necessary to ensure the Applicants have sufficient liquidity during the Forecast Period.
77. The Proposed Monitor supports the DIP Charge, as contained within the Proposed Initial Order.

Directors' Charge

78. The Proposed Initial Order also includes a directors' charge (the "**Directors' Charge**") to a maximum of \$300,000. However, the Proposed Initial Order will limit access to the Directors' Charge to \$230,000 until the Comeback Hearing.
79. The directors have potential personal liability for unpaid wages in each of Canada, Maryland, California and South Carolina. Payroll is paid one week in arrears and based on the payroll cycle, the maximum exposure, assuming payroll is paid in the normal course, would be three weeks of Canadian payroll and one week of US payroll plus outstanding vacation pay.
80. The quantum of the proposed Directors' Charge in the Initial Order and in the ARIIO was negotiated and agreed to between RBC and the Applicants. Based on the estimated the payroll amounts that could be outstanding during the CCAA Proceedings, the Proposed Monitor is of the view that the proposed amounts for the Directors' Charge are justified.
81. Given the potential liabilities facing the Applicants' directors and officers, they are at risk should the Applicants not be able to fund operations going forward. The Directors' Charge will allow the directors and officers to remain in place and assist with the administration of these CCAA Proceedings. The proposed Directors' Charge would apply only to the extent that the directors and officers do not have coverage under the directors' and officers' insurance policies which are maintained by the Applicants.
82. The Proposed Monitor supports the Directors' Charge, as contained within the Proposed Initial Order.

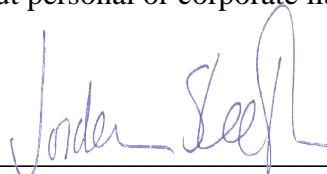
CONCLUSION

83. The Proposed Monitor has reviewed the Applicants' materials and has consented to act as Monitor of the Applicants in these CCAA Proceedings should this Court grant the Proposed Initial Order.
84. The Proposed Monitor is of the view that the relief requested by the Applicants is both appropriate and reasonable. Given the liquidity constraints faced by the Applicants and the need to continue operations, the relief requested is necessary to provide the Applicants with an opportunity to facilitate the sale of the business on a going concern basis. The relief sought in the Proposed Initial Order is supported by the Applicants' key stakeholders.
85. As such, the Proposed Monitor supports the Applicants' application for CCAA protection and respectfully recommends that the Court grant the relief sought in the CCAA Proceedings, in the form of Proposed Initial Order.

All of which is respectfully submitted at Toronto, Ontario this 18th day of January, 2024.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as Proposed Court-Appointed
Monitor of SimEx Inc., Iwerks Entertainment Inc.
and Simex-Iwerks Myrtle Beach LLC
and without personal or corporate liability

Per:



Jordan Sleeth, CPA, CA, CIRP, LIT
Senior Vice-President

Court File No:

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO SIMEX INC., IWERKS ENTERTAINMENT INC., AND SIMEX-IWERKS MYRTLE BEACH LLC

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

REPORT OF THE PROPOSED MONITOR
January 18, 2024

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Appendix D

Court File No.: CV-24-00713128-0000

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

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

**AND IN THE MATTER OF A PROPOSED PLAN OF
COMPROMISE OR ARRANGEMENT WITH RESPECT TO
SIMEX INC., IWERKS ENTERTAINMENT INC., AND
SIMEX-IWERKS MYRTLE BEACH LLC**

**FIRST REPORT TO THE COURT
SUBMITTED BY DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS MONITOR**

January 26, 2024

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INTRODUCTION

1. On January 19, 2024 SimEx Inc. (“**SimEx**”), Iwerks Entertainment Inc. (“**Iwerks**”) and Simex-Iwerks Myrtle Beach LLC (“**SIMB**” and, together with SimEx and Iwerks, the “**Applicants**”) sought and obtained an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the “**CCAA**”) granting, *inter alia*, a stay of proceedings in favour of the Applicants until January 29, 2024 (the “**Stay Period**”) and appointing Deloitte Restructuring Inc. as monitor (in such capacity, the “**Monitor**”). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the (“**CCAA Proceedings**”).
2. The purpose of this, the First Report of the Monitor (the “**Report**”), is to provide the Court with information on the following:
 - a) the Activities of the Monitor since the granting of the Initial Order;
 - b) the filing of petitions under Chapter 15 of the U.S. Bankruptcy Code to commence “recognition proceedings” in the United States (the “**Chapter 15 Proceedings**”);
 - c) the Applicants’ motion for the granting of an Amended and Restated Initial Order (the “**ARIO**”) that, *inter alia*:
 - i. extends the Stay Period to May 3, 2024; and
 - ii. removes the limitations provided by paragraph 43 of the Initial Order on the maximum authorized borrowings under the DIP Facility Agreement and on the amounts secured by the Administration Charge, the DIP Charge and the Directors’ Charge; and

- iii. approves the sale and investment solicitation process (the “SISP”).

TERMS OF REFERENCE

3. In preparing this Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and information prepared by the Applicants, and discussions with management of the Applicants (“**Management**”) (collectively, the “**Information**”).
4. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards (“**Canadian GAAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.
5. The Monitor has prepared this Report in connection with the Applicants’ motion for the ARIO, currently scheduled to be heard on January 29, 2024, and should not be relied on for any other purpose.
6. Future orientated financial information reported or relied on in preparing this Report is based on the assumptions of Management regarding future events; actual results may vary from forecast and such variations may be material.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in United States Dollars, the Applicants’ reporting currency. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Proposed Monitor’s Pre-Filing Report

(the “**Pre-Filing Report**”), a copy of which is attached hereto as **Appendix A**, or in the Initial Order.

ACTIVITIES OF THE MONITOR SINCE THE GRANTING OF THE INITIAL ORDER

8. Since the granting of the Initial Order, the Monitor has been assisting the Applicants in their communications with employees, key suppliers, creditors and other stakeholders.
9. The Monitor established a case website at www.insolvencies.deloitte.ca/en-ca/SimEx (the “**Monitor’s Website**”) where relevant information will be posted, together with all Court materials. In addition, the Monitor has set up a telephone number (416-354-1487) and email address (simexinc@deloitte.ca) to allow parties to contact the Monitor directly.
10. In accordance with paragraph 45 of the Initial Order the Monitor:
 - a) made the Initial Order publicly available on the Monitor’s Website on January 19, 2024;
 - b) sent a notice to every known creditor who has a claim against the Applicants of more than \$1,000 on January 24, 2024;
 - c) posted a list of creditors based on the Applicants’ books and records on the Monitor’s Website on January 24, 2024; and
 - d) published in the National Post (National Edition), a notice containing the information prescribed under the CCAA on January 25, 2024.

THE CHAPTER 15 PROCEEDINGS

11. On January 25, 2024, the Monitor, acting as Foreign Representative of the Applicants pursuant to paragraph 53 of the Initial Order, filed petitions in the United States Bankruptcy Court for the District of Delaware (the “**US Court**”) under Chapter 15 of the *United States Bankruptcy Code* to commence the Chapter 15 Proceedings. The motions in the Chapter 15 Proceedings are scheduled to be heard by the US Court on January 26, 2024 (the “**US Hearing**”).
12. The Monitor, acting as Foreign Representative of the Applicants, is seeking the following relief from the US Court;
 - a) recognition of the Proceedings as a foreign main proceeding;
 - b) recognition of Deloitte Restructuring Inc. as a “foreign representative”;
 - c) enforcing and giving full force and effect in the United States to the CCAA Proceedings and the Initial Order, including any and all extensions or amendments to the Initial Order, as authorized by the Canadian Court on a final basis (e.g., the ARIO);
and
 - d) other ancillary relief as the US Court deems just and proper, including the granting of a provisional Order establishing a stay of proceedings in the United States, to protect the Applicant’s from third parties taking steps that will be harmful to the restructuring, with a view to maximizing the value of the Applicant’s assets, in accordance with section 1501 of the Bankruptcy Code).
13. The Monitor will provide an update to the Court on the outcome of the US Hearing in a

future report that the Monitor will file with the Court in the CCAA Proceedings.

THE AMENDED AND RESTATED INITIAL ORDER

EXTENSION OF THE STAY PERIOD

14. The Stay Period currently expires on January 29, 2024. The Applicants require additional time to undertake the SISP, to seek Court approval of a Successful Bid (as defined in the SISP Procedure) and complete a transaction. An extension of the Stay Period is necessary to provide stability during that time. Accordingly, the Applicants seek an extension of the Stay Period to May 3, 2024.
15. The Cash Flow Forecast attached to the Pre-Filing Report demonstrates that the Applicants will have sufficient liquidity to fund the CCAA Proceedings through May 3, 2024, subject to the availability of the DIP Facility.
16. Based on the information currently available to it, the Monitor believes that circumstances exist to make the proposed extension of the Stay Period appropriate and that the creditors of the Applicants would not be materially prejudiced by the extension of the Stay Period.
17. The Monitor also believes that the Applicants have acted, and are acting, in good faith and with due diligence.
18. The Monitor therefore respectfully recommends that this Court grant the Applicants' request for an extension of the Stay Period to May 3, 2024.

THE DIP FACILITY AGREEMENT

19. Details of the DIP Facility Agreement, together with the Proposed Monitor's (as the Monitor then was) comments and recommendations with respect thereto, were set out in

paragraphs 51-59 of the Pre-Filing Report. The Monitor reiterates the comments and recommendations set out in the Pre-Filing Report.

20. Based on the foregoing, and having regard to the Applicants' funding needs, as set out in the Cash Flow Forecast, the Monitor respectfully recommends that the Court grant the Applicants' request that the amount that the Applicants' are authorized to borrow under the DIP Facility Agreement be increased to the maximum principal amount of \$600,000.

THE COURT-ORDERED CHARGES

21. The Proposed Monitor provided comments and recommendations with respect to the Administration Charge, the DIP Charge and the Directors' Charge (together, the "Charges") at paragraphs 65 – 82 of the Pre-Filing Report. The Monitor reiterates the comments and recommendations set out in the Pre-Filing Report.

Administration Charge

22. The Initial Order granted the Administration Charge in an amount not to exceed \$500,000. Paragraph 43 of the Initial Order limited the maximum amount of the Administration Charge to \$390,000 during the Interim Period.
23. The Monitor is of the view that the maximum amount to be secured by the Administration Charge is reasonable and justified in relation to the complexity of these CCAA Proceedings, the work that has been done to date, and the anticipated work required from the Professionals.

DIP Charge

24. The Initial Order granted the DIP Charge in the maximum principal amount of \$600,000. Paragraph 43 of the Initial Order limited the maximum principal amount of the DIP Charge to \$200,000 during the Interim Period.

25. As discussed above, the Monitor recommends that this Court approve the Applicants' ability to borrow up to \$600,000 under the DIP Facility. The Monitor is of the view that the magnitude of the DIP Charge is limited to the amount necessary to ensure the Applicants have sufficient liquidity during the Forecast Period. The DIP Charge does not secure any obligations that existed prior to the issuance of the Initial Order.

The Directors' Charge

26. The Initial Order granted the Directors' Charge in the maximum amount of \$300,000. Paragraph 43 of the Initial Order limited the maximum amount of the Directors' Charge to \$230,000 during the Interim Period.
27. For the reasons set out in the Pre-Filing Report, the Monitor is of the view that the amount of the Directors' Charge is reasonable and justified.

Monitor's Recommendation

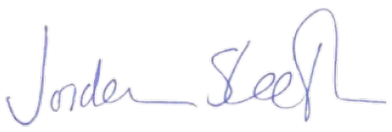
28. Based on the foregoing, the Monitor respectfully recommends that the limitations imposed by paragraph 43 of the Initial Order be removed from the ARIO.

THE SISP

29. In the application for the Initial Order, the Applicants sought approval of the SISP, which relief was put over to the Comeback Hearing.
30. Details of the SISP, together with the Proposed Monitor's comments and recommendations with respect thereto, were set out in paragraphs 60 –64 of the Pre-Filing Report. The Monitor reiterates the comments and recommendations set out in the Pre-Filing Report and respectfully recommends that the Court grant the Applicants' request for approval of the SISP.

All of which is respectfully submitted at Toronto, Ontario this 26th day of January, 2024.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as Court-Appointed Monitor
of SimEx Inc., Iwerks Entertainment Inc.
and Simex-Iwerks Myrtle Beach LLC
and without personal or corporate liability

Per: 

Jordan Sleeth, CPA, CA, CIRP, LIT
Senior Vice-President

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO SIMEX INC., IWERKS ENTERTAINMENT INC., AND SIMEX-IWERKS MYRTLE BEACH LLC

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

FIRST REPORT OF THE MONITOR
January 26, 2024

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Appendix E

Sale and Investment Solicitation Process

SimEx Inc., Iwerks Entertainment Inc. and SimEx-Iwerks Myrtle Beach LLC

Introduction

1. On January 19, 2024, SimEx Inc., Iwerks Entertainment Inc., and SimEx-Iwerks Myrtle Beach LLC (together, the “**Applicants**”) obtained an initial order (that may be amended or amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**” and the “**CCAA Proceedings**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The Initial Order, among other things:
 - a. Provides for a stay of all proceedings against the Applicants assets, properties and undertaking and their respective directors and officers (the “**Stay of Proceedings**”); and
 - b. Appoints Deloitte Restructuring Inc. as the monitor of the Applicants (in such capacity, the “**Monitor**”).
2. On January 29, 2024, the Court granted an amended and restated initial order (the “**ARIO**”) pursuant to which, among other things:
 - a. the Stay of Proceedings was extended to and including May 3, 2024; and
 - b. the Court approved, and authorized the Monitor to conduct, a sale and investment solicitation process (the “**SISP**”), as described herein, with the assistance of the Applicants. The SISP is intended to solicit interest in an acquisition or refinancing of the business, or a sale of the assets and/or the business of the Applicants by way of merger, reorganization, recapitalization, primary equity issuance, or other similar transaction. The Monitor intends to provide all qualified interested parties with an opportunity to participate in the SISP.

Opportunity

3. The SISP is intended to solicit interest in and opportunities for a sale of, or investment in, all or part of the Applicants’ assets and business operations (the “**Opportunity**”). The Opportunity may include one or more of a restructuring, recapitalization or other form or reorganization of the business and affairs of the Applicants as a going concern, or a sale of all, substantially all or one or more components of the Applicants’ assets (the “**Property**”) and business operations (the “**Business**”) as a going concern or otherwise, or some combination thereof (each, a “**Transaction**”).
4. This document (the “**SISP Procedure**”) describes the SISP, including the manner in which individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures, governmental organizations or other entities (each, a “**Person**”) may gain access to or continue to have access to due diligence materials concerning the Applicants, the Property and the Business, how bids

involving the Applicants, the Property or the Business will be submitted to and dealt with by the Monitor and how Court approval will be obtained in respect of a Transaction.

5. The SISP contemplates a one-stage process that involves the submission by interested parties of binding offers by the Bid Deadline (as defined below).
6. Except to the extent otherwise set forth in a definitive sale or investment agreement with a successful bidder, any Transaction will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Applicants, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.
7. In the SISP, (i) “**Business Day**” means any day (other than Saturday or Sunday) that banks are open for business in Toronto, Ontario. If any deadline date referred to in the SISP falls on a day that is not a Business Day, then such date shall be extended until the next Business Day; and (ii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase, “without limitation”.

Timeline

8. The following table sets out the key milestones under the SISP:

Milestone	Timeline	Targeted Deadline
Commencement date	Immediately following the approval of the SISP Process	January 29, 2024
Preparation of SISP materials (i.e., Teaser, Investment Memorandum, Buyer list, Notices for trade publication, NDA, populate EDR)	10 days (in advance, immediately after the Initial Order)	January 29, 2024
Bid Deadline	[45 days]	March 14, 2024
Auction Date (if applicable)	[1 day]	March 21, 2024
Finalize Transaction agreement	7 days	March 29, 2024
Sale Approval Motion (as defined below) in Court		April 19, 2024 (outside date)
Closing of the Transaction		May 3, 2024 (outside date)

9. The dates set out in the SISP may be extended by either: (i) further order of the Court; or (ii) the Monitor, with the consent of Royal Bank of Canada.

Solicitation of Interest: Notice of the SISP

10. As soon as reasonably practicable:

- a. the Monitor, in consultation with the Applicants, will prepare a list of potential bidders, including (i) parties that have approached the Applicants or the Monitor indicating an interest in the Opportunity, and (ii) local and international strategic and financial parties who the Applicants, in consultation with the Monitor, believe may be interested in a Transaction pursuant to the SISP, in each case whether or not such party has submitted a letter of intent or similar document (collectively, “**Known Potential Bidders**”);
- b. the Monitor will arrange for a notice of the SISP (and such other relevant information which the Monitor, in consultation with the Applicants, considers appropriate) (the “**Notice**”) to be published in *Insolvency Insider*, the Monitor’s website, and any other newspaper or journal or industry website as the Applicants, in consultation with the Monitor, consider appropriate, if any; and
- c. the Monitor, in consultation with the Applicants, will prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Applicants and the Monitor and their respective counsel (an “**NDA**”).

11. The Monitor will send the Teaser Letter and NDA to each Known Potential Bidder and to any other Person who requests a copy of the Teaser Letter and NDA or who is identified to the Applicants or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Potential Bidders and Due Diligence Materials

12. Any party who wishes to participate in the SISP (a “**Potential Bidder**”), must provide to the Monitor an NDA executed by it, and which shall inure to the benefit of any purchaser of the Business or Property, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.

13. The Monitor, in consultation with the Applicants, shall in their reasonable business judgment and subject to competitive and other business considerations, afford each Potential Bidder who has signed and delivered an NDA to the Monitor and provided information as to their financial ability, in the Monitor’s sole discretion, to close a transaction, such access to due diligence material and information relating to the Property and Business as the Applicants or the Monitor deem appropriate. Due diligence shall include access to an electronic data room (“**EDR**”) containing information about the Applicants, the Property and the Business, and may also include management presentations, on-site inspections, and other matters which a Potential Bidder may reasonably request and as to which the Applicants, in their reasonable business judgment and after consulting with the Monitor, may agree. The Monitor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Applicants nor the Monitor will be obligated to furnish any

information relating to the Property or Business to any person other than to Potential Bidders. Furthermore, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders if the Applicants, in consultation with and with the approval of the Monitor, determine such information to represent proprietary or sensitive competitive information. Neither the Applicants nor the Monitor is responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the Sale of the Property and the Business.

14. Potential Bidders 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 they enter into with the Applicants.

Formal Binding Offers

15. Potential Bidders that wish to make a formal offer to purchase or make an investment in the Applicants or their Property or Business (a “**Bidder**”) shall submit a binding offer (a “**Bid**”) that complies with all of the following requirements to the Monitor and Applicants’ counsel at the addresses specified in Schedule “1” hereto (including by e-mail), so as to be received by them not later than **5:00 PM (EST) on March 14, 2024** or as may be modified in the Bid process letter that may be circulated by the Monitor to Potential Bidders, with the approval of the Applicants (the “**Bid Deadline**”):

- a. the Bid must be either a binding offer to:
 - i. acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”); and/or
 - ii. make an investment in, restructure, reorganize or refinance the Business or the Applicants (an “**Investment Proposal**”); or
- b. carry out any combination of a Sale Proposal and an Investment Proposal;
- c. the Bid (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Applicants or their Property or Business and is consistent with any necessary terms and conditions established by the Applicants and the Monitor and communicated to Bidders;
- d. the Bid includes a letter stating that the Bidder’s offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
- e. the Bid includes duly authorized and executed Transaction agreements, including the purchase price, investment amount (the “**Purchase Price**”), together with all exhibits and schedules thereto;

- f. the Bid is accompanied by a deposit (the “**Deposit**”) in the form of a wire transfer (to a trust account specified by the Monitor), in an amount equal to ten percent (10%) of the Purchase Price, investment amount or other consideration to be paid in respect of the Bid, to be held and dealt with in accordance with this SISP;
- g. the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Applicants and the Monitor to make a determination as to the Bidder’s financial and other capabilities to consummate the proposed transaction;
- h. the Bid is not conditioned on (i) the outcome of unperformed due diligence by the Bidder, or (ii) obtaining financing, but may be conditioned upon the Applicants receiving the required approvals or amendments relating to the licenses required to operate the business, if necessary;
- i. the Bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is otherwise participating or benefiting from such bid;
- j. for a Sale Proposal, the Bid includes:
 - i. the purchase price in U.S. dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
 - ii. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - iii. a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;
 - iv. a description of the conditions and approvals required to complete the closing of the transaction;
 - v. a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and
 - vi. any other terms or conditions of the Sale Proposal that the Bidder believes are material to the transaction.
- k. for an Investment Proposal, the Bid includes:
 - i. a description of how the Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;

- ii. the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in U.S. dollars.
 - iii. the underlying assumptions regarding the pro forma capital structure;
 - iv. a specific indication of the sources of capital for the Bidder and the structure and financing of the transaction;
 - v. a description of the conditions and approvals required to complete the closing of the transaction;
 - vi. a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and
 - vii. any other terms or conditions of the Investment Proposal.
- l. the Bid includes acknowledgements and representations of the Bidder that the Bidder:
- i. is completing the Transaction on an “as is, where is” basis;
 - ii. has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Applicants prior to making its Bid;
 - iii. has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
 - iv. did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Applicants or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Applicants;
- m. the Bid is received by the Bid Deadline; and
- n. the Bid contemplates closing the Transaction set out therein immediately following the granting of an order by the Court approving the same.
17. Following the Bid Deadline, the Monitor will assess the Bids received. The Monitor, in consultation with the Applicants and Royal Bank of Canada and will designate the most competitive bids that comply with the foregoing requirements to be “**Qualified Bids**”. No Bids received shall be deemed not to be Qualified Bids without the approval of the Monitor. Only Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

18. The Monitor, in consultation with the Applicants and Royal Bank of Canada, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Bids to be a Qualified Bid. The Monitor and the Applicants will be under no obligation to negotiate identical terms with, or extend identical terms to, each Bidder.
19. The Monitor shall notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within two (2) business days of the Bid Deadline, or at such later time as the Monitor deems appropriate .
20. The Monitor may, in consultation with the Applicants, aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.

Evaluation of Competing Bids

21. A Qualified Bid will be evaluated based upon several factors including, without limitation: (i) the Purchase Price and the net value provided by such bid, (ii) the identity, circumstances and ability of the Bidder to successfully complete such Transaction(s), (iii) the proposed Transaction documents, (iv) factors affecting the speed, certainty and value of the Transaction, (v) the assets included or excluded from the bid, (vi) any related restructuring costs, (vii) the likelihood and timing of consummating such Transaction, each as determined by the Applicants and the Monitor and (viii) any other factor deemed relevant by the Monitor in consultation with the Applicants.

Auction

22. If the Monitor receives at least two Qualified Bids and determines, in consultation with the Applicants and Royal Bank of Canada that they are competitive, the Monitor will conduct and administer an Auction in accordance with the terms of this SISP (the “**Auction**”). Instructions to participate in the Auction, which will take place via video conferencing, or in person, as determined by the Monitor, and will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.
23. Only parties that provided a Qualified Bid by the Bid Deadline, as confirmed by the Monitor, (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. (EST) on the day prior to the Auction, each Qualified Party must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction.

Auction Procedure

24. The Auction shall be governed by the following procedures:
 - a. **Participation at the Auction.** Only the Applicants, the Qualified Parties, the Monitor and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction. The Monitor shall provide all Qualified Bidders with the details of the lead bid by 5:00 PM (EST) by no later than five (5) days after the

Bid Deadline. Each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction no later than 5:00 PM (EST) on the Business Day prior to the Auction;

- b. **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid;
- c. **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Monitor, in consultation with the Applicants (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Monitors announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments of USD \$50,000;
- d. **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference or otherwise, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that the Monitor, in its discretion, may establish separate video conference rooms to permit interim discussions between the Monitor and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- e. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s);
- f. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded; and
- g. **Auction Procedures.** The Monitor shall be at liberty to set additional procedural rules at the Auction as it sees fit.

Selection of Successful Bid

25. Before the conclusion of the Auction, the Monitor, in consultation with the Applicants, will:

- a. review and evaluate each Qualified Bid, considering the factors set out in paragraph 16 and any other factor that the Applicants or the Monitor may reasonably deem relevant, provided that each Qualified Bid may be negotiated among the Monitor

in consultation with the Applicants and the Qualified Bidder, and may be amended, modified or varied to improve such Qualified Bid as a result of such negotiations; and

- b. identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).
26. The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by the Monitor, in consultation with the Applicants, subject to the milestones set forth in paragraph 9.

Sale Approval Motion Hearing

27. At the hearing of the motion to approve any transaction with a Successful Party (the “**Sale Approval Motion**”), the Monitor or the Applicants shall seek, among other things, approval from the Court to consummate any Successful Bid. All the Qualified Bids other than the Successful Bid, if any, shall be deemed to be rejected by the Monitor and the Applicants on and as of the date of approval of the Successful Bid by the Court.

Confidentiality and Access to Information

28. All discussions regarding a Sale Proposal, Investment Proposal, or Bid should be directed through the Monitor. Under no circumstances should the management of the Applicants be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP process.
29. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bids, the details of any Bids submitted or the details of any confidential discussions or correspondence between the Applicants, the Monitor and such other bidders or Potential Bidders in connection with the SISP, except to the extent the Applicants, with the approval of the Monitor and consent of the applicable participants, are seeking to combine separate bids from Qualified Bidders.

Supervision of the SISP

30. The Monitor shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in this SISP Procedure and the ARIO and any other orders of the Court, and is entitled to receive all information in relation to the SISP.
31. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between the Applicants or the Monitor and any Potential Bidder, any Qualified Bidder or any other Person, other than as specifically set forth in a definitive agreement that may be entered into with the Applicants.

32. Without limiting the preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Bidder, the Successful Bidder, the Applicants, the DIP Lender, or any other creditor or other stakeholder of the Applicants, 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, or Successful 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.
33. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a Transaction.
34. The Monitor, in consultation with the Applicants, shall have the right to modify the SISP Procedure (including, without limitation, pursuant to the Bid process letter) if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in these CCAA proceedings shall be advised of any substantive modification to the procedures set forth herein.

Deposits

35. All Deposits received pursuant to this SISP shall be held in trust by the Monitor. The Monitor shall hold Deposits paid by each of the Bidders in accordance with the terms outlined in this SISP. In the event that a Deposit is paid pursuant to this SISP and the Monitor elects not to proceed to negotiate and settle the terms and conditions of a definitive agreement with the Person that paid such Deposit, the Monitor shall return the Deposit to that Person. In the event that the Successful Bidder defaults in the payment or performance of any obligations owed to the Monitor or the Applicants pursuant to any Final Agreement, the Deposit paid by the Successful Bidder, as applicable, shall be forfeited as liquidated damages and not as a penalty.

Schedule “1”

Address of Monitor

To the Monitor:

Deloitte Restructuring Inc.

8 Adelaide Street West, Suite 200
Toronto, ON, Canada, M5H 0A9

Attention: Jordan Sleeth and Richard Williams

Email:

jsleeth@deloitte.ca
richwilliams@deloitte.ca

with a copy to:

Borden Ladner Gervais LLP

Bay Adelaide Centre – East Tower
22 Adelaide Street West, Suite 3400
Toronto, Ontario M5H 4E3

Attention: Roger Jaipargas

Email: rjaipargas@blg.com

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO SIMEX INC., IWERKS ENTERTAINMENT INC., AND SIMEX-IWERKS MYRTLE BEACH LLC

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

SECOND REPORT OF THE MONITOR
April 18, 2024

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