

**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 PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC.

**MOTION RECORD  
(Returnable January 30, 2023)**

January 26, 2023

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# Tab 1

Court File No. CV-23-00693280-00CL

**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 PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC.

**NOTICE OF MOTION  
(Returnable January 30, 2023)**

Tehama Inc. (the “**Company**”) will make a motion before the Honourable Madam Justice Kimmel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on January 30, 2023, at 12:30 p.m., or as soon thereafter as the motion can be heard (the “**Comeback Hearing**”).

**PROPOSED METHOD OF HEARING:** The motion is to be heard

- In writing under subrule 37.12.1 (1);
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

at the following location 330 University Ave, Toronto, Ontario, via Zoom (the details of which have been uploaded to Caselines by the Court).



**THE MOTION IS FOR:**

1. An amended and restated initial order (the “**ARIO**”), substantially in the form attached at Tab 3 of the Applicant’s Motion Record dated January 26, 2023:
  - (a) abridging the time for and validating service of this Notice of Motion and the Motion Record and dispensing with further service thereof;
  - (b) extending the Initial Stay Period (as defined herein) to and including March 31, 2023 (as extended, the “**Stay Period**”);
  - (c) increasing the Administration Charge (as defined herein) to \$300,000; and
  - (d) increasing the DIP Lender’s Charge (as defined herein) to \$500,000.
2. Such further and other relief as counsel may request and this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:****Overview**

3. The Company is in the business of providing a next-generation “desktop as a service” (DaaS) platform which enables customers to utilize cloud-based virtual offices, room and desktops from anywhere in the world. The Company’s services are often used in the context of critical services delivery, including services to support IT infrastructure.
4. Following months of liquidity challenges, the Company recently faced a severe liquidity crisis, had limited cash on hand, and was generally unable to meet its obligations as they became due. After exploring various strategic alternatives, the Company’s board of directors determined

to seek urgent relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “**CCAA**”).

5. On January 20, 2023, the Company sought and obtained an initial order (the “**Initial Order**”) under the CCAA, among other things:

- (a) appointing Deloitte Restructuring Inc., as monitor of the Company in these proceedings (in such capacity, the “**Monitor**”);
- (b) granting an administration charge in the amount of \$200,000 (the “**Administration Charge**”), in favour of counsel to the Company, the Monitor and the Monitor’s counsel;
- (c) approving the DIP Facility (as defined herein), authorizing borrowings under the DIP Commitment (as defined herein) in an amount up to \$300,000, and granting a charge in favour of the DIP Lender (the “**DIP Lender’s Charge**”);
- (d) granting a directors’ charge in favour of the Company’s directors and officers in the amount of \$225,000 (the “**Directors’ Charge**”); and
- (e) granting an initial stay of proceedings (the “**Stay of Proceedings**”) to January 30, 2023 (the “**Initial Stay Period**”).

6. The Company commenced these CCAA proceedings to address the challenges facing its business (the “**Business**”) and effect the restructuring transactions necessary to maximize value for its stakeholders.

### **The Stay of Proceedings**

7. The Initial Stay Period will expire on January 30, 2023. At the Comeback Hearing, the Company seeks an extension of the Stay of Proceedings up to and including March 31, 2023.

8. Since the granting of the Initial Order, the Company has acted, and continues to act, in good faith and with due diligence.

9. The extension of the Stay Period will preserve the *status quo* and afford the Company the breathing room and stability required to advance its restructuring efforts, including the implementation of a sale and investment solicitation process (“**SISP**”), which the Company, in consultation with the Monitor, is close to finalizing.

10. The Company has sufficient liquidity, assuming the ARIO is granted, to fund its obligations and the costs of these CCAA proceedings through to the end of the proposed Stay Period.

### **Increasing the Administration Charge**

11. Pursuant to the Initial Order, the Court granted the Administration Charge in the amount of \$200,000 in favour of counsel to the Company, the Monitor and the Monitor’s counsel.

12. The quantum of the Administration Charge under the Initial Order was determined in consultation with the Monitor and limited to the amount to required in the immediate lead-up to and first 10 days following the granting of the Initial Order.

13. The Company proposes to increase the Administration Charge to \$300,000. The proposed increase will ensure the continued participation of the beneficiaries of the Administration Charge

who continue to contribute to these CCAA proceedings and assist the Company with continuing the Business in the ordinary course.

### **Increasing the DIP Lender's Charge**

14. In connection with the commencement of these CCAA proceedings, the Company entered into a DIP facility agreement with 14667913 Canada Inc. (the "**DIP Lender**") on January 19, 2023 (the "**DIP Commitment**").

15. Pursuant to the DIP Commitment, the DIP Lender agreed to provide a debtor in possession facility (the "**DIP Facility**") to the Company in the maximum principal amount of \$500,000.

16. Pursuant to the Initial Order, the DIP Lender was granted a charge on the Property (as defined in the Initial Order) in the maximum amount of \$300,000 to secure all amounts advanced under the DIP Facility.

17. The quantum of the DIP Lender's Charge under the Initial Order was limited to the amount necessary to ensure the Company's continued operations through to the Comeback Hearing.

18. The proposed increase in the amount of the DIP Lender's Charge to \$500,000 is commensurate with the maximum borrowings available under the DIP Facility and the Company's needs during the proposed extended Stay Period.

19. The Monitor is supportive of the proposed increase to the DIP Lender's Charge.

### **Other Grounds**

20. The Company further relies on:

- (a) the provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
- (b) Rules 1.04, 1.05, 2.03, 3.02, 14.05(2), 16, 37 and 39 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended; and
- (c) Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

- 21. The Affidavits of Rob White sworn January 20, 2023, and January 26, 2023, and the exhibits attached thereto.
- 22. The Pre-Filing Report of the Monitor dated January 20, 2023, and the appendices thereto.
- 23. The First Report of the Monitor dated January 26, 2023, and the appendices thereto.
- 24. Such further and other material as counsel may advise and this Honourable Court may permit.

January 26, 2023

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*Lawyers for the Applicant*

**TO: SERVICE 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 PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC.

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

Proceedings commenced at Toronto, Ontario

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**NOTICE OF MOTION  
(Returnable January 30, 2023)**

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*Lawyers for the Applicant*

# Tab 2



Court File No.: CV-23-00693280-00CL

**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 PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC.

**AFFIDAVIT OF ROB WHITE**  
**(sworn January 26, 2023)**

I, **ROB WHITE**, of the City of Ottawa, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Financial Officer of Tehama Inc. (the "**Company**"). As such, I have personal knowledge of the matters deposed to in this affidavit, including the business and financial affairs of the Company. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true.
2. As CFO of the Company, my responsibilities include managing the Company's overall operations and resources, making strategic decisions and acting as the main point of contact between the Company's board of directors and the senior management team.
3. All references to monetary amounts in this affidavit are in Canadian dollars, unless otherwise noted.
4. Capitalized terms used but not otherwise defined herein have the meanings given to them in my affidavit sworn January 20, 2023 (the "**First White Affidavit**"), in support of the

Company's application for an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the "**CCAA**"). A copy of the First White Affidavit (without exhibits) is attached hereto as **Exhibit "A"**.

## **I. RELIEF SOUGHT**

5. I swear this affidavit in support of the Company's motion for:

- (a) an amended and restated initial order (the "**ARIO**"), substantially in the form attached at Tab 3 of the Applicant's Motion Record dated January 26, 2023 (the "**Motion Record**"):
  - (i) abridging the time for and validating service this Motion and the Motion Record and dispensing with further service thereof;
  - (ii) extending the Initial Stay Period (as defined herein) to and including March 31, 2023 (as extended, the "**Stay Period**");
  - (iii) increasing the Administration Charge to \$300,000; and
  - (iv) increasing the DIP Lender's Charge to \$500,000;
- (b) such further and other relief as counsel may request and this Court deems just.

## **II. BACKGROUND OF THESE CCAA PROCEEDINGS**

6. The Company is in the business of providing a next-generation "desktop as a service" (DaaS) platform which enables customers to utilize cloud-based virtual offices, room and desktops

from anywhere in the world. The Company's services are often used in the context of critical services delivery, including services to support IT infrastructure.

7. Following months of liquidity challenges, the Company recently faced a severe liquidity crisis, had limited cash on hand, and was generally unable to meet its obligations as they became due. After exploring various strategic alternatives, the Company's board of directors determined to seek urgent relief under the CCAA.

8. Further details regarding the Company's financial circumstances, liquidity crisis and need for relief under the CCAA are set out in the First White Affidavit.

**A. Initial Order**

9. On January 20, 2023, the Company sought and obtained the Initial Order, among other things:

- (a) appointing Deloitte Restructuring Inc., as monitor in these proceedings (the "**Monitor**");
- (b) granting the Administration Charge in the amount of \$200,000 in favour of counsel to the Company, the Monitor and the Monitor's counsel;
- (c) approving the DIP Facility, authorizing borrowings under the DIP Commitment in an amount up to \$300,000, and granting the DIP Lender's Charge;
- (d) granting the Directors' Charge in favour of the Company's directors and officers in the amount of \$225,000; and

- 4 -

- (e) granting the Stay Period up to and including January 30, 2023 (the “**Initial Stay Period**”).

10. Since the granting of the Initial Order, the Company has, with the assistance and oversight of the Monitor, acted in good faith and with due diligence to, among other things:

- (a) stabilize and continue the Company’s business and ordinary course operations;
- (b) communicate with key stakeholders regarding the CCAA proceedings and the granting of the Initial Order;
- (c) assist the Monitor in preparing notices to creditors and other stakeholders as required under the Initial Order;
- (d) submit an advance request to the DIP Lender to borrow under the DIP Facility in accordance with the DIP Commitment;
- (e) together with the Monitor, develop a sale and investment solicitation process (“**SISP**”), which includes a proposed stalking horse purchase agreement (the “**Stalking Horse APA**”); and
- (f) prepare the materials in support of this motion (the “**Comeback Hearing**”).

11. The Company now seeks additional relief intended to advance the purposes of these CCAA proceedings and facilitate the Company’s restructuring efforts, including the finalization and implementation of the SISP.

### **III. THE ARIO**

12. The Company seeks to extend and expand certain of the limited relief granted under the Initial Order pursuant to the proposed ARIO. Such relief is in the best interests of the Company and its stakeholders, including its employees and service suppliers.

#### **A. Extension to the Stay Period**

13. The Stay Period will expire on January 30, 2023. At the Comeback Hearing, the Company seeks an extension of the Stay Period up to and including March 31, 2023 .

14. Since the granting of the Initial Order, the Company has acted, and continues to act, in good faith and with due diligence. The extension of the Stay of Proceedings will preserve the *status quo* and afford the Company the breathing room and stability required to advance its restructuring efforts, including the finalization and implementation of the SISP.

15. As discussed at paragraphs 90 to 91 of the First White Affidavit, the Company, with the assistance of the then-proposed Monitor, conducted a cash flow analysis to determine the amount required to finance the Company's ordinary course business operations over the 12-week period following the granting of the Initial Order.

16. The Cash Flow Forecast demonstrates that the Company will have sufficient cash to support its ordinary course business operations and the costs of these CCAA proceedings throughout the proposed extension to the Stay Period, provided the ARIO is granted.

17. In addition, the proposed extension of the Stay Period would extend through the term of the anticipated SISP, which is expected to run through to March 31, 2023, subject to Court approval at a subsequent motion.

18. In light of the foregoing, I believe that the proposed extension to the Stay of Proceedings is both necessary and in the best interests of the Company and its stakeholders. Further, I do not believe that any creditor will be materially prejudiced by the proposed extension to the Stay Period.

19. I understand that the Monitor is supportive of the proposed extension to the Stay Period and that it also believes that such extension is reasonable and appropriate in the circumstances.

**B. Increasing the Administration Charge**

20. Pursuant to the Initial Order, the Court granted the Administration Charge in the amount of \$200,000 in favour of counsel to the Company, the Monitor and the Monitor's counsel.

21. The quantum of the Administration Charge under the Initial Order was determined in consultation with the Monitor and was limited to the amount required in the immediate lead-up to and first 10 days following the granting of the Initial Order.

22. The Company proposes to increase the Administration Charge to \$300,000. I believe that the quantum of the increase is reasonably necessary at this time to secure the fees and disbursements of the professionals who continue to contribute to these CCAA proceedings and assist the Company with its restructuring efforts and continuing its business in the ordinary course.

**C. Increasing the DIP Lender's Charge**

23. In connection with the commencement of these CCAA proceedings, the Company entered into a DIP Commitment with the DIP Lender on January 19, 2023.

24. Pursuant to the DIP Commitment, the DIP Lender agreed to provide the DIP Facility to the Company in the maximum principal amount of \$500,000.

25. Pursuant to the Initial Order, the DIP Lender was granted a charge on the Property in the maximum amount of \$300,000 to secure all amounts advanced under the DIP Facility.

26. The quantum of the DIP Lender's Charge under the Initial Order was limited to the amount necessary to ensure the continued operations of the Company prior to the Comeback Hearing.

27. Having regard to the Cash Flow Forecast and the Company's funding requirements during the proposed extension to the Stay Period, the Company proposes to increase in the amount of the DIP Lender's Charge to \$500,000, which is commensurate with the maximum borrowings available under the DIP Facility and the Company's needs during the extended Stay Period.

28. If the DIP Lender's Charge is not increased, the Company will not be permitted to request the additional advances under the DIP Facility necessary to maintain the Company's ordinary course operations or to fund these CCAA proceedings during the Stay Period. Accordingly, absent the proposed increase to the DIP Lender's Charge, the Company will be forced to cease its ongoing operations.

29. The Monitor has advised that it is supportive of the proposed increase to the DIP Lender's Charge and that such increase is in the best interests of the Company and its stakeholders in the circumstances.

#### **IV. CONCLUSION**

30. Since the granting of the Initial Order, the Company has acted in good faith and with due diligence to, among other things, stabilize the Business, apprise its stakeholders of these CCAA proceedings, advance its restructuring efforts, including the development of the SISP and the negotiation of the Stalking Horse APA. In that time, the Company has maintained its ordinary course operations. With the benefit of the relief proposed under the ARIO, and with the assistance of the Monitor, the Company will be able to continue its ordinary course operations and pursue its restructuring objectives for the benefit of its stakeholders.

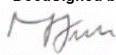
31. I believe that relief sought on this motion will provide stability to the Business and give confidence to the Company's customers, employees, suppliers and other stakeholders that the Business will continue after the conclusion of these CCAA Proceedings.

32. As noted above, the Company, with the assistance of the Monitor is in the process of finalizing the SISP and Stalking Horse APA. The Company anticipates finalizing the SISP and the Stalking Horse APA in the near future and, in that regard, is optimistic it will be in a position to serve an additional notice of motion to have the SISP and Stalking Horse APA approved at the Comeback Hearing.




33. I swear this affidavit in support of the Company's motion for the ARIO and for no other or improper purpose.

**SWORN** by Rob White of the City of Ottawa in the Province of Ontario, before me at the City of Toronto in the Province of Ontario on January 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  
  
02452ECC61C54F6...

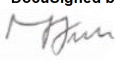
\_\_\_\_\_  
A Commissioner for taking affidavits.



DocuSigned by:  
  
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\_\_\_\_\_  
ROB WHITE

THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF ROB WHITE SWORN BEFORE ME  
THIS 26th DAY OF JANUARY, 2023.

DocuSigned by:  
  
02452ECC61C54F6...

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A Commissioner for Taking Affidavits, etc.

Court File No.

**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 PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC. (the "**Applicant**")

**AFFIDAVIT OF ROB WHITE  
(sworn January 20, 2023)**

I, **ROB WHITE**, of the City of Ottawa, in the Province of Ontario, **MAKE OATH AND  
SAY:**

1. I am the Chief Financial Officer of Tehama Inc. ("**Tehama**" or the "**Company**") As such, I have personal knowledge of the matters deposed to in this affidavit, including the business and financial affairs of the Company. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true.
2. As CFO of the Company, my responsibilities include managing the Company's overall operations and resources, making strategic decisions and acting as the main point of contact between the Company's board of directors and the senior management team.
3. All references to monetary amounts in this affidavit are in Canadian dollars, unless otherwise noted.

**A. RELIEF SOUGHT**

4. I swear this affidavit in support of an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) by the Company for protection from its creditors pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”).

5. The Company is seeking an order (the “**Initial Order**”), substantially in the form attached at Tab 3 of the Application Record herein, granting the Company the following relief under the CCAA:

- (a) declaring that the Company is a party to which the CCAA applies;
- (b) appointing Deloitte Restructuring Inc., as monitor of the Company in these proceedings (the “**Monitor**”), subject to the permissions of the Court as required under section 11.7(2) of the CCAA (as discussed below);
- (c) granting an administration charge in the amount of \$200,000 (the “**Administration Charge**”), in favour of counsel to the Company, the Monitor and its counsel, and counsel to the DIP Lender (as defined herein);
- (d) approving the DIP Facility (as defined herein), authorizing borrowings under the DIP Commitment (as defined herein) in an amount up to \$300,000, and granting a charge in favour of the DIP Lender (the “**DIP Lender’s Charge**”);
- (e) granting a directors’ charge in favour of the Company’s directors and officers in the amount of \$225,000 (the “**Directors’ Charge**”, and together with the Administration Charge and DIP Lender’s Charge, the “**Priority Charges**”); and

- 3 -

(f) granting an initial stay of proceedings to January 30, 2023 (the “**Stay Period**”).

6. If the Initial Order is granted, the Company intends to return to Court no later than January 30, 2023 (the “**Comeback Hearing**”) to seek the issuance of an amended and restated initial order (the “**ARIO**”) that would, among other things:

(a) extend the Stay Period;

(b) increase the amount of the Priority Charges as follows:

(i) the Administration Charge to \$300,000; and

(ii) increase the DIP Lender’s Charge to \$500,000;

(c) approve a key employee retention program (“**KERP**”), and grant a charge in favour of the proposed KERP beneficiaries (“**KERP Charge**”), ranking behind the existing Priority Charges.

7. In the addition, at the Comeback Hearing, the Company intends to seek the approval of a sale and investment solicitation process (“**SISP**”), including the approval of a stalking horse purchase agreement (a “**Stalking Horse Agreement**”) to act as a stalking horse bid in the SISP, which the Company expects will be able to be completed on or before April 14, 2023..

## **A. OVERVIEW**

8. The Company is in the business of providing a next-generation “desktop as a service” (DaaS) platform which enables customers to utilize cloud-based virtual offices, room and desktops from anywhere in the world. The Company’s services are often used in the context of critical services delivery, including services to support IT infrastructure.

9. The Company platform was born inside of a large Canadian based and managed service provider, focused on high-value revenue generating systems in media, technology and e-commerce. Originally known as Adminiscope, Tehama was the technology that permitted the aforementioned service provider's workforce, mostly working from home in 36 countries, to provide privileged services to compliance-sensitive customer data and systems using their own devices.

10. The development of these technological tools enabled teams to work and interact seamlessly with sensitive systems while working from home, eliminating the need to ship laptops all over the world. These tools evolved to become Tehama.

11. In an era of frequent headlines and rising concerns about data breaches, the Tehama platform provides advanced cybersecurity and compliance measures to the Company's customers.

12. The remote work vision for Tehama was dramatically accelerated as a result of the global pandemic. The Company has recognized that businesses are rethinking their way of working and the need to adapt new tools that enable the secure exchange of work over the internet. Despite the financial challenges faced by the Company, the Company's customer base continues to grow, representative of the market demand for Tehama's platform.

13. With the benefit of the protection afforded by the CCAA, the Company will be able to maintain its value, preserve jobs for its employees, and generally stabilize its business operations for the benefit of all the Company's stakeholders.

## B. CORPORATE STRUCTURE

14. The Company is a private company incorporated under the *Canada Business Corporations Act*, RSC, 1985, c. C-44 (“**CBCA**”), and is extra-provincially registered to carry on business in Ontario under the *Ontario Business Corporations Act*, RSO 1990, c. B.16. The Company has its registered head office located at 319 Mcrae Avenue, Suite 701, Ottawa, Ontario, K1Z 0B9 (the “**Office Premises**”). The Company’s corporate profile report is attached as **Exhibit “A”** hereto.

15. The directors of the Company are Paul Vallée (“**Vallée**”), Shawn Chance and Michael Aiello. The Company’s major shareholders in summary are:

- (a) Tehama Holdings Inc. (“**TGI**”) holding approximately 22,666,668 common shares  
9,037,255 preferred shares;
- (b) OMERS Ventures IV LP (“**OMERS**”) holding 12,910,363 preferred shares; and
- (c) BDC Capital Inc (“**BDC**”) holding 3,873,108 preferred shares.

## C. ASSETS AND LIABILITIES

16. Attached as **Exhibit “B”** hereto is a copy of the Company’s most recent internal (unaudited) financial statements for the period ended as at December 31, 2022, on a consolidated basis (the “**2022 Financial Statements**”). Attached as **Exhibit “C”** is the Company’s audited financial statement for the year ended December 31, 2021. The 2022 Financial Statements reveal that Tehama sustained a net loss of US\$7,692,184 on revenue of approximately US\$3,602,040.

### (i) Assets

17. As at December 32, 2022, the Company had total assets with a book value of approximately US\$6,893,347, which primarily consisted of cash, receivables and prepaid expenses, capital and intangible assets.

**(ii) Liabilities**

18. As at December 31, 2022, the Company had total liabilities with a book value of approximately US\$10,203,136, which primarily consisted of accounts payable and accrued liabilities, lease obligations, deferred revenue, convertible debenture and term loan debt liabilities.

**D. THE STAKEHOLDERS**

**(i) Secured Creditors**

19. Until January 11, 2023, the Company's sole secured creditor was Canadian Imperial Bank of Commerce ("**CIBC**").

20. Pursuant to a letter of credit agreement dated April 21, 2021, as amended by the first amending agreement dated May 7, 2021 (collectively, the "**Credit Agreement**"), CIBC made available to the Company a demand operating facility in the maximum amount of US\$1,500,000 million (the "**Operating Facility**"), a term loan in the amount of US\$3,000,000 million (the "**Term Loan**") and a VISA credit facility in the maximum amount of US\$150,000 (the "**Credit Card Facility**"), and collectively with the Operating Facility and the Term Loan, the "**Credit Facilities**"). A copy of the Credit Agreement is attached as **Exhibit "D"** hereto.

21. As security for the Company's indebtedness under the Credit Agreement, CIBC obtained the following documents (the "**Security Documents**"):



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- (a) general security agreement dated April 20, 2021, granting CIBC a first-priority security interest in all present and future personal property of the Company (the “**GSA**”);
  - (b) deposit account control agreement executed by the Company dated April 20, 2021;
  - (c) assignment of insurance agreement executed by TGI dated April 20, 2021 (the “**Assignment of Insurance**”);
  - (d) limited recourse guarantee executed by TGI dated April 20, 2021 (the “**TGI Guarantee**”), which is limited to the insurance proceeds assigned under the Assignment of Insurance plus interest and expenses in connection therewith; and
  - (e) trademark security agreement executed by the Company dated April 20, 2021.
22. Copies of the Security Documents are attached as **Exhibit “E”** hereto.
23. The Company borrowed the total value of the Term Loan, and used the Credit Card Facility to make periodic payments to its vendors. As will be discussed in more detail below, as a result of issues that arose between CIBC and the Company as a result of CIBC demanding repayment on December 14, 2022 of all amounts owing by the Company, being approximately \$3,053,930.77 (the “**CIBC Indebtedness**”), the CIBC Indebtedness and Security Documents were acquired by Newco (as defined herein) pursuant to an assignment of debt and security.

#### *Cash Management System*

24. The Company operates its cash management system (the “**Cash Management System**”) through accounts held with CIBC. As part of the Cash Management System, the Company

maintains one USD chequing account and one CAD chequing account (collectively, the “**Bank Accounts**”) to address its day-to-day cash management requirements.

25. As discussed in paragraphs 50 to 61, on January 6, 2023, CIBC froze the Company’s access to the Bank Accounts. As a result, the Company had no access to its cash contained in the Bank Accounts.

#### *PPSA Registrations*

26. A search under the (Ontario) *Personal Property Security Act* (“**PPSA**”) registry system as at January 4, 2023 in respect of the Company shows one registration made in favour of CIBC on April 9, 2021, which I understand relates to the GSA. The registration is against inventory, equipment accounts, other, motor vehicle included, and includes the general collateral description: “all existing and after-acquired personal property of the debtor”.

27. There are no other PPSA registrations made against the Company. A copy of the PPSA search result in respect of the Company, current to January 4, 2023, is attached as **Exhibit “F”** hereto.

#### **(ii) Unsecured Obligations**

##### *Convertible Promissory Notes*

28. On January 31, 2022, the Company closed an 8% US\$3,000,000 million dollar convertible note purchase agreement (the “**Initial Note Offering**”) with Vallée, OMERS and BDC (collectively, the “**Note Investors**”). The Company issued and the Note Investors agreed to purchase the following convertible promissory notes pursuant to the Initial Note Offering, effective on January 31, 2022: (i) Vallée a US\$2,000,000 convertible promissory note, (ii) OMERS a

US\$500,000 convertible promissory note, and (iii) BDC a US\$500,000 convertible promissory note.

29. Given the liquidity issues faced by the Company in the Fall of 2022 (as described below), the Company and the Note Investors entered into an amended and restated note purchase agreement dated October 24, 2022 (the “**Amended and Restated Note Offering**”). Pursuant to the Amended and Restated Note Offering, Vallée purchased an additional convertible promissory note in the amount of US\$1,000,000 (October 24, 2022). A copy of the Amended and Restated Note Offering is attached as **Exhibit “G”** hereto.

30. As at the date hereof, all amounts advanced pursuant to the Amended and Restated Note Offering remain owing by the Company, being US\$4,000,000 (approximately CA\$5,400,000), plus accrued interest.

*Federal Economic Development Agency for Southern Ontario (“**FEDASO**”)*

31. On August 3, 2021, the Company entered into a Business Scale-up and Productivity Contribution Agreement (the “**Contribution Agreement**”) with FEDASO. The federal government established the business scale-up and productivity stream to accelerate the growth of firms and assist with the adoption and adaption of new, innovative technologies that support scale up, productivity, development of and entry into new markets to help companies become globally competitive. Given the nature of the Company’s business, the Company qualified for this financial support.

32. The Contribution Agreement arises from a government funded program pursuant to which FEDASO funds Eligible and Supported Costs (as defined in the Contribution Agreement) in

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respect of the Company's current and potential new workforce obligations on an unsecured and zero-interest basis. A copy of the Contribution Agreement is attached as **Exhibit "H"** hereto.

33. The maximum amount the Company is eligible to receive under the Contribution Agreement is \$2,700,000. To date, the Company has received approximately \$1,519,570 under the program. Pursuant to the repayment schedule attached as Annex 5 to the Contribution Agreement, the Company's repayment obligations are scheduled to begin on April 15, 2024, with monthly repayment obligations of \$37,500 thereafter until all amounts are repaid (projected to be March 2030 on the basis that the Company borrows the maximum amount available under the Contribution Agreement).

**(iii) Suppliers**

34. As at December 31, 2022, the Company owes approximately US\$666,000 (approximately CA\$890,000) to its suppliers. The most significant trade payable is owed to Amazon Web Services Inc. ("AWS") in the approximate amount of US\$365,000. The Company's platform is operated on and by AWS. The Company cannot serve its customers without the underlying infrastructure provided by AWS.

35. It is proposed that certain key suppliers would not be affected by the commencement of these CCAA proceedings and that amounts owing for goods or services actually provided to the Company prior to the date of the proposed Initial Order may be paid if, in the opinion of the Company and the Monitor, such third party is critical to the ongoing operations of the Company.

**(iv) Employees**

36. Until recent weeks, the Company employed more than 50 people. Following its most recent lay-offs on or about December 30, 2022, the Company currently employs 25 employees, none of whom are unionized.

37. The Company's bi-weekly payroll obligations are approximately \$130,000. As at January 13, 2023, the Company's payroll and all related statutory withholdings were current.

**(v) Litigation Claimants**

38. I am aware of one ongoing legal proceeding against the Company, which is an action commenced by one of its former employees, Terry Ansari, at the Ontario Superior Court of Justice on December 1, 2022 (the "**Statement of Claim**"). In the Statement of Claim, Mr. Ansari seeks damages for, among other things, the Company's alleged failure to provide reasonable notice of termination and damages for earned and unpaid variable incentive compensation. While the action is still at the pleadings stage, the Company denies Mr. Ansari's allegations of wrongdoing. Mr. Ansari's claim is in the amount of \$276,000, plus damages to be quantified prior to trial.

**(vi) Landlord and Lease Obligations**

39. On September 6, 2019, the Company entered into a sub-lease agreement (the "**Sub-Lease Agreement**") with Pythian Services Inc. (the "**Sub-Landlord**"), for the lease of the Office Premises for a term of six years and ten months, commencing on September 6, 2019. The rentable area pursuant to the Sub-Lease Agreement is approximately 19,694 square feet. Basic rent for months 1-22 was payable at \$23.81 per square foot, and months 23-83 payable at \$25.81 per square

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foot. The Company's rent (paid monthly and in advance) is approximately \$110,000 (inclusive of basic rent, additional rent, monthly fees and expenses).

40. The Company is currently two months in arrears in rent payments under the Sub-Lease Agreement. At this time, I am not aware of any default notice, or any actual or threatened claims issued or brought by the Sub-Landlord against the Company.

41. The Company no longer requires the leased space and will take steps within the CCAA proceedings to disclaim the Sub-Lease Agreement.

42. Of note, the Company has sub-leased approximately 4,789 square feet of rentable area for a term of four (4) years and seven (7) months to a third party pursuant to a sub-lease agreement dated July 13, 2021. Gross rent under this sub-lease arrangement is \$26.00 per square foot per annum, payable to the Company in equal monthly instalments in advance on the first day of each month during the sub-lease term.

**(vii) Government and Tax Obligations**

43. As of the date of this Affidavit, the Company's federal and outstanding provincial tax obligations and goods and services tax obligations are all current, as well as their source deduction remittances.

44. I am not aware of any actual or threatened claims or investigations by any government or similar authority in respect of the Company.

**E. STRATEGIC INITIATIVES**

**(i) Efforts to Improve Financial Position**

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45. In the Fall of 2022, the Company made several business decisions in order to improve its financial situation. As noted above, the Company commenced reducing the number of employees and temporary staff in order to save on payroll costs. In addition, the Company's executives have now implemented a salary deferral and/or reduction program, which is intended to continue until the Company's cash position is improved.

46. The Company also implemented a cost-rationalization strategy to try and improve its financial situation. These efforts have included, among other things, the negotiation of payment terms in respect of trade payables, adjusting vendor contracts to achieve better rates and payment terms, and approaching the Company's major stakeholders to support a potential restructuring of the debt.

**(ii) Efforts to Secure New Investment/Financing**

47. Efforts to secure additional investment in the Company have also been ongoing. In July 2022, the Company met with a potential new investor who had an interest in lending a significant amount of funds into the business by way of a convertible promissory note. The cash injection would have assisted with the Company's efforts to continue enhancing its technology and its marketing and sale strategies to increase revenues. Unfortunately, the Company hedged its future with the commitments of the investor that didn't materialize.

**F. FINANCIAL SITUATION AND NEED FOR CCAA RELIEF**

48. The Company is currently facing an immediate and severe liquidity crisis. Without immediate relief, including additional financing and a stay of enforcement actions, the Company will inevitably be forced to cease their going concern operations and liquidate their assets. After

careful consideration of the strategic options and alternatives available, the Company's board of directors with the assistance of their advisors, determined that it is in the best interests of the Company to seek urgent relief under the CCAA.

49. In my view, the Company has a valuable business enterprise built by a considerable amount of up-front and start-up capital which has allowed it to develop a ground-breaking and innovative cloud-based hybrid work platform and solution. However, a combination of external factors have created issues with respect to the Company's liquidity, as discussed below.

**(i) CIBC Demand and Set-Off**

50. As noted above, the Company utilized the availability under the Term Loan and Credit Card Facility in the ordinary course of business. The Company never drew any funds under the Operating Facility.

51. Pursuant to the Credit Agreement, the Company was required to delivery monthly compliance reports to CIBC regarding, among other things, its borrowing base and compliance with its financial and liquidity covenants contained in the Credit Agreement. In particular, the Credit Agreement includes a financial covenant from the Company that it would ensure that its "liquidity is greater than trailing 4-month EBITA burn, at all times, starting in Financial Year 2022, tested monthly" (the "**Financial Covenant**"). From the outset of the credit relationship with CIBC until September 2022, the Company filed its monthly reports based on a consistent methodology without CIBC raising any issues in connection with the Company's borrowing base or Financial Covenant calculations. However, by email sent on September 21, 2022, CIBC advised for the very first time that it took issue with the Company's calculations in its August 2022 compliance report.



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52. The Company disagreed with CIBC's interpretation of the Credit Agreement and discussions regarding compliance with covenants continued over the ensuing weeks. During this time, the Company was also actively seeking investments from existing and new investors and kept CIBC fully apprised of these efforts.

53. By letter sent on December 12, 2022 (the "**December 12 Letter**"), CIBC advised the Company that it was terminating the Operating Facility on the basis of this difference in interpretation.

54. Then, on December 14, 2022, the Company received a letter from CIBC's lawyers (the "**CIBC Demand Letter**") alleging that the Company was in breach of the Financial Covenant, which represented an Event of Default under the Credit Agreement, and declaring the entire outstanding balance of the Credit Facilities to be immediately due and payable. The CIBC Demand Letter also enclosed CIBC's Notice of Intention to Enforce Security under section 244(1) of the *Bankruptcy and Insolvency Act* (Canada). A copy of the CIBC Demand Letter is attached as **Exhibit "I"** hereto.

55. From that time forward, we had various discussions with CIBC and its advisors in relation to reasonable forbearance terms and a sale or investment solicitation process that could be supported by the Company's board and management.

56. On January 6, 2023, representatives of the Company, including myself, met with CIBC regarding the status of the Company's business, operations and efforts to solicit investment or a going concern sale. At that meeting, the Company's management presented a variety of potential options for CIBC to consider. The meeting concluded with CIBC advising that it would consider a more robust proposal but required that management put that revised proposal into a formal

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written offer by Monday, January 9, 2023. Management agreed that it would do so and understood, based on CIBC's request, that CIBC would not take any enforcement steps in the interim.

57. Shortly after the meeting on January 6, 2023, I received a phone call from the account manager at CIBC, advising me that CIBC had frozen the Bank Accounts effective immediately, together with the rolling availability under the Credit Card Facility. Shortly after, I began receiving notices that from the Company's vendors that the Company's credit card payments were being declined.

58. At this time, it became clear to me that, despite our best efforts, the banking relationship as between the Company and the Bank was for all intents and purposes, at an end. Unfortunately, the cash the Company had on that Friday afternoon to support operations on a go-forward basis (being approximately \$1,250,000), was in the process of a "set-off" by CIBC effectively crippling the Company at that point in time.

59. A quick and commercially based solution to this crisis needed to be achieved in order to keep the Company's business alive.

60. Over that weekend, Vallée and I presented CIBC with an offer to acquire the CIBC Indebtedness, together with the Security Documents. Following some lengthy negotiations, business terms for the assignment were reached (the "**Assignment**").

61. Vallée, myself and others incorporated 14667913 Canada Inc. ("**Newco**") for the purposes of completing the Assignment and more importantly, the funding of the critical payments required to be made in order maintain and stabilize the Company's business (considering the Bank Accounts contained no cash in the accounts).

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62. On January 11, 2023, Newco and CIBC entered into an assignment of debt and security.

63. In or around that same time, Newco commenced funding critical payables on behalf the Company, including payroll.

64. As described below, the Company requires additional funding to make its critical payables going forward.

**(ii) Access to Contribution Agreement**

65. While the Company maintains the view that no default occurred under the committed Term Loan, the CIBC Demand Letter created a limitation on my ability to execute the required certificates for further draws under the Contribution Agreement.

66. Since CIBC demanded, I could not affirm in the draw-down certificate that the Company was not in default of its current obligations to CIBC. As a result, the expected advance of approximately \$80,000 was not available to fund operations, in particular payroll as supported by the program.

**(iii) Loss of Customer Contracts**

67. Unfortunately, the Company has suffered the loss of some key customer contracts. The loss of these customer contracts and the revenues arising from such contracts has added to the financial issues currently being faced by the Company.

68. In December 2022, the Company received notice from one of its key customers that it was terminating its month-to-month SaaS agreement effective January 1, 2023, as part of that customer's own cost-rationalization program.

**(iv) Go Forward Plan**

69. The Company has recently been able to sign two new SaaS agreements with new customers, both of which will provide the Company with additional revenues to support the business. I am also in active negotiations with additional new customers, demonstrating the value that the Company's platform continues to have in the marketplace.

70. The go-forward plan that has the highest chance of success is if the Company successfully navigates the proposed CCAA proceedings and implements a successful SISP which results in either the receipt of additional capital or an acquisition by a new entity with access to additional funding to delever the balance sheet and relax the current financial constraints on the Company.

**F. RELIEF SOUGHT UNDER INITIAL ORDER AND ARIO**

**(i) Urgent Need for CCAA Relief and Eligibility**

71. The Company currently has liabilities that exceed \$10,000,000 and is facing a liquidity crisis.

72. As set forth in the Cash Flow Forecast (as defined herein), without interim financing, the Company will be unable to operate in the ordinary course of business where critical payables and payroll obligations will not be met, to the detriment of its stakeholders. Additional funding will be needed by the Company in order to provide it with sufficient liquidity to operate and undertake the proposed restructuring process including the implementation of a SISP.

73. The Company is therefore seeking the Initial Order, substantially in form attached as Tab 3, to the Application Record. Key elements of the Initial Order are discussed below.

**(ii) Stay of Proceedings**

74. The Company is insolvent and urgently requires a stay of proceedings and other protections provided by the CCAA in order to preserve the status quo and secure breathing space to prevent any enforcement by creditors and other stakeholders that could threaten its business. The proposed Initial Order provides for an initial 10-day Stay Period.

**(ii) DIP Financing**

75. Because of the current liquidity challenges, and as demonstrated in the Cash Flow Forecast, the Company requires interim financing to provide stability, continued going concern operations and to restructure their businesses as part of these CCAA proceedings.

76. The Company has requested that Newco (in such capacity, the “**DIP Lender**”) provide interim financing during the CCAA proceedings. The DIP Lender has agreed to provide a debtor in possession facility (the “**DIP Facility**”) pursuant to the terms of the term sheet dated January 19, 2023 (the “**DIP Commitment**”), a copy of which is attached hereto as **Exhibit “J”**. The DIP Commitment provides for the following terms:

- (a) **Borrowers.** Tehama
- (b) **Facility size.** \$500,000.
- (c) **Repayment.** Maturing on the earlier of, (i) April 20, 2023, or (ii) closing of a sale or investment transaction, (iii) the implementation of a plan, (iv) the date on which the Stay Period expires or the CCAA proceedings are terminated, (v) and Event of Default (as defined in the DIP Commitment) occurs.
- (d) **Interest.** 5% per annum.

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- (e) **Costs and Expenses.** The Borrower shall pay: (i) all legal expenses incurred by the DIP Lender in connection with the preparation, negotiation and performance of this Agreement; and (ii) all of the DIP Lender's costs of realization or enforcement on a full indemnity basis in each case in connection with or otherwise related to the DIP Facility, the DIP Lender's Charge, the DIP Commitment or the CCAA proceeding (collectively, the "**DIP Fees and Expenses**").

77. The DIP Facility requires that advances be secured by the DIP Lender's Charge on all of the present and future assets, property and undertaking of the Company (collectively, the "**Property**"). The DIP Lender's Charge will be limited to the amounts actually drawn on the DIP Facility, plus any applicable interest, fees and costs. The DIP Lender's Charge will have priority over all other security interests, charges and liens, except the proposed Administration Charge and Directors' Charge. The Cash Flow Forecast projects that the Company will be required to draw up to the principal amount of \$300,000 under the DIP Facility within the first ten days after the Initial Order is granted.

78. I believe that the DIP Facility is both reasonable and necessary for the Company to continue as a going concern and complete the contemplated restructuring under the CCAA.

**(iii) Appointment of Deloitte as Monitor**

79. Deloitte Restructuring Inc. ("**Deloitte**") has consented to act as the Monitor of the Company under the CCAA. A copy of the Monitor's consent is attached hereto as **Exhibit "K"**.

80. Deloitte LLP, through its Ottawa office, had acted as the auditor of the Company for the 2020 and 2021 fiscal years, at the insistence of CIBC, who demanded that they receive annual

audited information. A different audit firm was retained for the 2022 fiscal year. No party other than CIBC ever really used or accessed the audited financial statements of the Company.

81. Over the past two months, as the Company was experiencing a near term liquidity crisis and was reacting to the demands of CIBC, the Company required the immediate services of restructuring advisors. Because of our historic relationship with the Deloitte firm, we thought of them and quickly connected with the restructuring team from Deloitte's Toronto office. Our initial goal was to reach a consensual resolution with CIBC and we wanted a firm with experience in dealing with the big banks. We also believed that some institutional knowledge of Tehama's operations and financial circumstances would be beneficial and be more cost effective. Frankly, the Company simply did not have the necessary funds or time to get an entirely new advisor up to speed. Deloitte has assisted Tehama with our "filing ready" liquidity forecast, and helped us navigate how to deal with all of our stakeholders, and otherwise assist the Company in positioning for this filing and the Company's restructuring from a commercial standpoint.

82. With the completion of the Assignment and CIBC no longer being a creditor of the Company, I hope and believe that any potential issue involving Deloitte's ability to act as Monitor under the CCAA is significantly mitigated, in addition to the fact that their last completed audit is for the December 31, 2021 year end (they are not our auditor or accountant for the December 31, 2022 year end).

83. I am advised by Phil Reynolds of Deloitte that the proposed Monitor is supportive of the relief being sought in favour of the Company as further set out in this affidavit. Mr. Reynolds has also advised me that the Proposed Monitor will be filing a pre-filing Monitor's report setting out its views and recommendations in connection with such relief.

84. I understand that the Court's permission is required for Deloitte to act as Monitor under the CCAA, which I and Tehama's board support.

85. Deloitte has been assisting the Company with restructuring advice prior to the commencement of these CCAA proceedings and has therefore developed critical knowledge as it relates to the Company's financial challenges, strategic initiatives and restructuring efforts to date.

**(iv) Administration Charge**

86. The Company proposes that its counsel, the Monitor and its counsel, and the DIP Lender's counsel be granted a court ordered charge (the "**Administration Charge**") on the Property as security for their respective fees and disbursements relating to services rendered in respect of the Company as part of the CCAA proceedings. The Administration Charge is proposed to have first priority over all other charges. With the concurrence of the proposed Monitor, the Company is proposing that the Administration Charge for the first ten days be limited to \$200,000. The quantum of the Administration Charge was determined in consultation with the Monitor.

87. I believe that quantum of the Administration Charge sought is reasonably necessary at this time to secure the fees and disbursements of the professionals.

**(v) Directors' Charge**

88. The Company's ordinary course operations give rise to potential director or officer liability, including for employee source deductions and sales tax. To address the concerns of the existing directors and officers if they continue to act, they have requested reasonable protection against personal liability that might arise during the post-filing period. The Directors' Charge is intended to address potential claims that may be brought against directors and officers.



89. The quantum of the Directors' Charge was developed with the assistance of the proposed Monitor and the Company is of the view that the granting and quantum of the Directors' Charge is reasonable and necessary in the circumstances. The Company is proposing that the Directors' Charge for the first ten days be limited to \$225,000, and will have priority over all other security interests, charges and liens, except the Administration Charge.

**(vi) Cash Flow Forecast**

90. The Company has prepared the 13-week cash flow projections and the underlying assumptions as required by the CCAA (the "**Cash Flow Forecast**"). A copy of the Cash Flow Forecast is attached as **Exhibit "L"**. The Cash Flow Forecast demonstrate that the Company has sufficient liquidity and cash on hand, with the support of the DIP Facility, to continue going concern operations during the proposed Stay Period. I confirm that:

- (a) all material information relative to the Cash Flow Forecast and to the underlying assumptions has been disclosed to Deloitte in its capacity as proposed Monitor; and
- (b) senior management has taken all actions that it considers necessary to ensure that the individual assumptions underlying the 13 Cash Flow Forecast are appropriate in the circumstances.

91. The Company anticipates that the Monitor will provide oversight and assistance and will report to the Court in respect of the Company's actual results relative to the Cash Flow Forecast during this proceeding if the relief being requested by the Company is granted by the Court.

**(vi) Payments During this CCAA Proceeding**

92. During the course of this CCAA proceeding, the Company intends to make payments for goods and services supplied post-filing in the ordinary course as set out in the Cash Flow Forecast described above and as permitted by the Initial Order.

93. Moreover, in order to ensure uninterrupted business operations during the CCAA proceeding, the Company is proposing in the Initial Order that they be authorized, with the consent of the Monitor to make certain payments, including payments owing in arrears, to certain third parties that are critical to the Company's business and ongoing operations for the pre-filing period.

**G. RELIEF TO BE SOUGHT AT THE COMEBACK HEARING**

94. If the Initial Order is granted, the Company proposes to return to this Court for a Comeback Hearing on or before January 30, 2023.

95. At the Comeback Hearing, the Company intends to seek the Court's approval of an Amended and Restated Initial Order. For the benefit of this Court and the Company's stakeholders, this section highlights critical relief that the Company intends to seek at the Comeback Hearing. The Company may seek additional relief if determined to be necessary or advisable.

**(i) Extension of Stay of Proceedings**

96. The Company intends to seek an extension of the Stay Period for a sufficient length of time to allow the Applicants to conduct a SISF.

**(ii) Increase Amount of Charges**

97. The Company intends to seek an increase to the quantum of the Administration Charge, Directors' Charge, DIP Lender's Charge to reflect the additional work to be undertaken and done during the CCAA proceedings and the financing needed for the duration of the proceedings.

**(iii) Approval of SISP and Stalking Horse Agreement**

98. The Company also intends to seek approval of a SISP which will allow the Company to canvas the market for an investment in, or sale of, all or substantially all of the Property. The Company is of the view that a Court-supervised SISP under the CCAA will be the most cost-efficient and effective means of maximizing creditor recovery and preserving employment for as many employees as possible.

99. At this time, the Company anticipates that a Stalking Horse Agreement will form part of the SISP and will be submitted by Newco as it will provide certainty in the market place that the Company or its business will emerge from these CCAA proceedings as a going concern entity.

100. The SISP is being developed in consultation with the proposed Monitor taking into account the financial circumstances of the Company and the amount of financing available under the DIP Facility.

**(v) Approval of KERP**

101. The Company is in the process of developing a KERP, with input from the proposed Monitor, to facilitate and encourage the continued participation of certain key management employees in the business and the restructuring for the pendency of these CCAA proceedings.


102. An employee can only be selected for the KERP retention bonus if it is determined by the Company with input from the board and approval from the Monitor and the DIP Lender that the employee is essential to ensure the stability of the business, to enhance the effectiveness of the SISP and to facilitate a successful and efficient restructuring.

103. The KERP will provide appropriate incentives for the Applicants' key employees to remain in their current positions and will ensure that they are properly compensated for their assistance in the restructuring process.

**H. CONCLUSION**

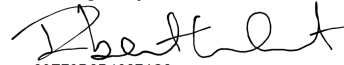
104. I am confident that granting the draft Initial Order sought by the Company is in the best interests of the Company and its stakeholders. The Company is currently in a very challenging financial position and without the relief requested, including the stay of proceedings and approval of the DIP Commitment, the Company faces a cessation of going concern operations, the loss of jobs for numerous employees and the liquidation of its assets. The Company requires the breathing space provided by CCAA protection to engage in a dialogue with and among their stakeholders and to implement a SISP with a view to maximizing the assets and ongoing value of the Company's business.

**SWORN** by Rob White of the City of Ottawa in the Province of Ontario, before me at the City of Toronto in the Province of Ontario on January 20, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  
  
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A Commissioner for taking affidavits.



DocuSigned by:  
  
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ROB WHITE

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 PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC

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

Proceedings commenced at Toronto, Ontario

**AFFIDAVIT OF ROB WHITE**

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*Lawyers for the Applicant*

Court File No.: CV-23-00693280-00CL

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 TEHAMA INC.

**ONTARIO  
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*Lawyers for the Applicant*

# Tab 3

Court File No. CV-23-00693280-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MADAM	)	MONDAY, THE 30 <sup>th</sup>
	)	
JUSTICE KIMMEL	)	DAY OF JANUARY, 2023

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 TEHAMA INC.

**AMENDED AND RESTATED INITIAL ORDER**

**THIS APPLICATION**, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario, by judicial video conference via Zoom.

**ON READING** the affidavit of Rob White sworn January 20, 2023 and the Exhibits thereto (the "**First White Affidavit**"), the affidavit of Rob White sworn January 26, 2023, and the Pre-Filing Report of Deloitte Restructuring Inc. ("**Deloitte**") as the proposed monitor dated January 20, 2023 (the "**Monitor**"), and the First Report of the Monitor dated January \_\_\_, 2023 (the "**First Report**"), 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 Applicant, counsel for Deloitte, and such other counsel that were present, no one appearing for any other party although duly served as appears from the affidavit of service of Amanda Campbell sworn January 26, 2023,



## 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 Applicant is a company to which the CCAA applies.

## PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant 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 Applicant shall remain in possession and control of its respective 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 Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is 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 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 Applicant shall be entitled to continue to utilize the central cash management system currently in place, as described in the First White Affidavit, or replace it with another substantially similar central cash management system (the “**Cash Management System**”), and that any present or future bank providing the Cash Management System shall: (i) not be under any obligation whatsoever to inquire into the propriety, validity or

legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System; (ii) be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System; and (iii) be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable prior to, 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;
- (b) with the consent of the Monitor, amounts owing for goods or services actually provided to the Applicant prior to the date of this Order if, in the opinion of the Applicant and the Monitor, such third party is critical to the Business and ongoing operations of the Applicant; and
- (c) the fees and disbursements of any Assistants retained or employed by the Applicant 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 Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the date of 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 Applicant on or following the date of this Order.

8. **THIS COURT ORDERS** that the Applicant 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 Applicant in connection with the sale of goods and services by the Applicant, 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 Applicant.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable 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 the amounts set out in the

applicable lease. 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.

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

### **RESTRUCTURING**

11. **THIS COURT ORDERS** that the Applicant 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, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate;
- (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 Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s 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 Applicant’s 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 Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, the Applicant 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 Applicant's 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 Applicant 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 Applicant 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 APPLICANT OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including January 30, 2023, 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**", and collectively, "**Proceedings**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant 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 Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicant to carry on any business which the 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 accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant 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 or arrangements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication, cloud and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business of the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant 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 Applicant in accordance with the normal payment practices of such Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant 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 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 Applicant. 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 Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

20. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as a director or officer of the Applicant 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.

21. **THIS COURT ORDERS** that the directors and officers of the Applicant 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 \$225,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 20 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 38 and 40 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (ii) the Applicant 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 is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant 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 Applicant's 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 Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender (as defined herein) and its counsel, from time to time, of financial and other information as agreed to between the Applicant 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 Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, 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 Applicant, to the extent that is necessary to adequately assess the Applicant's 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 the Monitor shall provide any creditor of the Applicant, including, without limitation, the DIP Lender, with information provided by the Applicant 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 Applicant 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 Applicant may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees and representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor’s 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 to the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis or pursuant to such other arrangements agreed to between the Applicant and such parties.

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, if any, and the Applicant's 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 \$300,000, 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 14667913 Canada Inc. (the "**DIP Lender**") in order to finance the Applicant's working capital requirements, the cost of these proceedings and other general corporate purposes and capital expenditures, provided that the principal borrowings under such credit facility shall not exceed \$500,000, plus accrued and unpaid interest, fees and reimbursable expenses, 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 commitment letter between the Applicant and the DIP Lender dated as of January 19, 2023 (the "**Commitment Letter**"), filed and attached as Exhibit "J" to the First White Affidavit.

34. **THIS COURT ORDERS** that the Applicant is 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 Applicant is hereby authorized and directed to pay and perform all of their 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 seven (7) days’ notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant 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 Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant 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 Applicant and for the appointment of a trustee in bankruptcy of the Applicant; 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 Applicant 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 Applicant under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (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 (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$300,000);

Second – Directors' Charge (to the maximum amount of \$225,000); and

Third – DIP Lender's Charge in the amount of \$500,000.

39. **THIS COURT ORDERS** that the filing, registration or perfection of 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, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

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

42. **THIS COURT ORDERS** that the Charges, the Commitment Letter and the Definitive Documents 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: (o) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such

applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, 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 Applicant of any Agreement to which such Applicant 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 Applicant 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 Applicant 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 applicable Applicant’s interest in such real property leases.

44. **THIS COURT ORDERS AND DECLARES** that if any of the provisions of this Order in connection with the Commitment Letter, the Definitive Documents or the DIP Lender’s Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “**Variation**”) whether by subsequent order of this Court, on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender whether under this Order (as made prior to the Variation), under the Commitment Letter and the Definitive Documents, with respect to any

advances made prior to the DIP Lender being given notice of the Variation and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made.

## **SERVICE AND NOTICE**

45. **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish in the *Globe and Mail* a notice containing the information prescribed under the CCAA; and (ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant 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 "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [www.insolvencies.deloitte.ca/en-ca/Tehama](http://www.insolvencies.deloitte.ca/en-ca/Tehama).

47. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant 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, facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery, facsimile or other electronic

transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## **GENERAL**

48. **THIS COURT ORDERS** that the Applicant 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.

49. **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 Applicant, the Business or the Property.

50. **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.

51. **THIS COURT ORDERS** that each of the Applicant 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.

52. **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 the need for entry or filing.



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 TEHAMA INC.

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

Proceedings commenced at Toronto, Ontario

**AMENDED AND RESTATED INITIAL ORDER**

**DENTONS CANADA LLP**

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*Lawyers for the Applicant*

# Tab 4

Court File No. CV-23-00693280-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE <del>—</del> <u>MADAM</u> ) JUSTICE KIMMEL )	<del>FRIDAY</del> <u>MONDAY</u> , THE <del>20</del> <u>20</u> <sup>th</sup> DAY OF JANUARY, 2023
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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 TEHAMA INC. ~~(the "Applicant")~~

**AMENDED AND RESTATED INITIAL ORDER**

**THIS APPLICATION**, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario, by judicial video conference via Zoom.

**ON READING** the affidavit of Rob White sworn January 20, 2023 and the Exhibits thereto (the "First White Affidavit"), the affidavit of Rob White sworn January 26, 2023, and the Pre-Filing Report of Deloitte Restructuring Inc. ("**Deloitte**") as the proposed monitor dated January 20, 2023 (the "Monitor"), and the First Report of the Monitor dated January \_\_\_\_, 2023 (the "First Report"), 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 Applicant, counsel for Deloitte, and such other counsel that were present, no one appearing for any other party although duly served as appears from the affidavit of service of Amanda Campbell sworn January ~~20~~26, 2023 ~~and on reading the consent of Deloitte to act as the monitor (in such capacity, 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 Applicant is a company to which the CCAA applies.

## PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant 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. ~~3.~~ **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its respective 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 Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is 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 it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. ~~4.~~ **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place, as described in the First White Affidavit, or replace it with another substantially similar central cash management system (the “**Cash Management System**”), and that any present or future bank providing the Cash Management

System shall: (i) not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System; (ii) be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System; and (iii) be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. ~~5.~~ **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable prior to, 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;
- (b) with the consent of the Monitor, amounts owing for goods or services actually provided to the Applicant prior to the date of this Order if, in the opinion of the Applicant and the Monitor, such third party is critical to the Business and ongoing operations of the Applicant; and
- (c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. ~~6.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the date of 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 Applicant on or following the date of this Order.

8. ~~7.~~ **THIS COURT ORDERS** that the Applicant 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 Applicant in connection with the sale of goods and services by the Applicant, 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 Applicant.

9. ~~8.~~ **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise

may be negotiated between the applicable 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 the amounts set out in the applicable lease. 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.

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

## **RESTRUCTURING**

11. ~~10.~~ **THIS COURT ORDERS** that the Applicant 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, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate;
- (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 Applicant to proceed with an orderly restructuring of the Business (the “Restructuring”).

12. ~~11.~~ **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s 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 Applicant's 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 Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, the Applicant 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 Applicant's claim to the fixtures in dispute.

13. ~~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 Applicant 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 Applicant 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 APPLICANT OR THE PROPERTY**

14. ~~13.~~ **THIS COURT ORDERS** that until and including January 30, 2023, 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**", and collectively, "**Proceedings**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all



Proceedings currently under way against or in respect of the Applicant 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. ~~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 Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicant to carry on any business which the 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. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

17. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication, cloud and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business of the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the

Applicant, and that the Applicant 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 Applicant in accordance with the normal payment practices of such Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

18. ~~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 leased 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 Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. ~~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 Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

20. ~~19.~~ **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as a director or officer of the Applicant 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.

21. ~~20.~~ **THIS COURT ORDERS** that the directors and officers of the Applicant 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 \$225,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph ~~19~~20 of this Order. The Directors’ Charge shall have the priority set out in paragraphs ~~37~~38 and ~~39~~40 herein.

22. ~~21.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge; and (ii) the Applicant 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 ~~19~~20 of this Order.

#### **APPOINTMENT OF MONITOR**

23. ~~22.~~ **THIS COURT ORDERS** that Deloitte is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions.

24. ~~23.~~ **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 Applicant’s 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 Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender (as defined herein) and its counsel, from time to time, of financial and other information as agreed to between the Applicant 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 Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) ~~(e)~~ 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 Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) ~~(f)~~ 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) ~~(g)~~ perform such other duties as are required by this Order or by this Court from time to time.

25. ~~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.

26. ~~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.

27. ~~26.~~ **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant, including, without limitation, the DIP Lender, with information provided by the Applicant 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 Applicant 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 Applicant may agree.

28. ~~27.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees and representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor’s 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 to the Monitor by the CCAA or any applicable legislation.

29. ~~28.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis or pursuant to such other arrangements agreed to between the Applicant and such parties.

30. ~~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.

31. ~~30.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the Applicant's 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 ~~\$200,000~~\$300,000, 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 ~~37~~38 and ~~39~~40 hereof.

## **DIP FINANCING**

32. ~~31.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from 14667913 Canada Inc. (the "**DIP Lender**") in order to finance the Applicant's working capital requirements, the cost of these proceedings and other general corporate purposes and capital expenditures, provided that the principal borrowings under such credit facility shall not exceed ~~\$300,000~~\$500,000, plus accrued and unpaid interest, fees and reimbursable expenses, unless permitted by further Order of this Court.

33. ~~32.~~ **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of January 19, 2023 (the "**Commitment Letter**"), filed and attached as Exhibit "J" to the First White Affidavit.

34. ~~33.~~ **THIS COURT ORDERS** that the Applicant is 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 Applicant is hereby authorized and directed to pay and perform all of their 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. ~~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, 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 ~~3738~~ and ~~3940~~ hereof.

36. ~~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 seven (7) days’ notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant 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 Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant 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 Applicant and for the appointment of a trustee in bankruptcy of the Applicant; 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 Applicant or the Property.

37. ~~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 Applicant under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

38. ~~37.~~ **THIS COURT ORDERS** that the priorities of the Directors’ Charge, the Administration Charge and the DIP Lender’s Charge (collectively, the “**Charges**”), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of ~~\$200,000~~\$300,000);

Second – Directors’ Charge (to the maximum amount of \$225,000); and

Third – DIP Lender’s Charge in the amount of ~~\$300,000~~\$500,000.

39. ~~38.~~ **THIS COURT ORDERS** that the filing, registration or perfection of 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. ~~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, and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

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

42. ~~41.~~ **THIS COURT ORDERS** that the Charges, the Commitment Letter and the Definitive Documents 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: (o) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, 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 Applicant of any Agreement to which such Applicant 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 Applicant 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 Applicant 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. ~~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 applicable Applicant's interest in such real property leases.

44. ~~43.~~ **THIS COURT ORDERS AND DECLARES** that if any of the provisions of this Order in connection with the Commitment Letter, the Definitive Documents or the DIP Lender's Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "**Variation**") whether by subsequent order of this Court, on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender whether under this Order (as made prior to the Variation), under the Commitment Letter and the Definitive Documents, with respect to any advances made prior to the DIP Lender being given notice of the Variation and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made.

#### **SERVICE AND NOTICE**

45. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish in the *Globe and Mail* a notice containing the information prescribed under the CCAA; and (ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant 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. ~~45.~~ **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service

of documents made in accordance with the Protocol (which can be found on the Commercial List website at

<https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL:

[www.insolvencies.deloitte.ca/en-ca/Tehama](http://www.insolvencies.deloitte.ca/en-ca/Tehama).

47. ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant 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, facsimile or other electronic transmission to the Applicant' creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

48. ~~47.~~ **THIS COURT ORDERS** that the Applicant 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.

49. ~~48.~~ **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 Applicant, the Business or the Property.

50. ~~49.~~ **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.

51. ~~50.~~ **THIS COURT ORDERS** that each of the Applicant 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.

~~51. **THIS COURT ORDERS THIS COURT ORDERS** that any interested party that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court on January 30, 2023 at 12:30 p.m. (Eastern Standard Time) (the “Comeback Date”), and any such interested party shall give not less than two (2) business days’ notice to the service list in these proceedings and any other party or parties likely to be affected by the Order sought in advance of the Comeback Date; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 37 and 39 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.~~

52. **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 the need for entry or filing.

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 TEHAMA INC.

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

Proceedings commenced at Toronto, Ontario

**AMENDED AND RESTATED INITIAL ORDER**

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*Lawyers for the Applicant*

Document comparison by Workshare 10.0 on Thursday, January 26, 2023 10:39:39 AM

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Document 2 ID	iManage://WORKSITE.CA.DENTONS.COM/NATDOCS/68084129/8
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Moved cell
Split/Merged cell
Padding cell

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Deletions	76
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Moved to	0
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Format changes	0
Total changes	169

# Tab 5



Revised: January 21, 2014

Court File No. CV-23-00693280-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MADAM ) ~~WEEKDAY~~ MONDAY, THE #30<sup>th</sup>  
 JUSTICE KIMMEL ) DAY OF ~~MONTH~~ JANUARY,  
 ) 20YR2023

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 ~~[APPLICANT'S NAME]~~ (the  
"Applicant") TEHAMA INC.

**AMENDED AND RESTATED INITIAL ORDER**

**THIS APPLICATION**, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario, by judicial video conference via Zoom.

**ON READING** the affidavit of ~~[NAME]~~ Rob White sworn ~~[DATE]~~ January 20, 2023 and the Exhibits thereto (the "First White Affidavit"), the affidavit of Rob White sworn January 26, 2023, and the Pre-Filing Report of Deloitte Restructuring Inc. ("Deloitte") as the proposed monitor dated January 20, 2023 (the "Monitor"), and the First Report of the Monitor dated January \_\_, 2023 (the "First Report"), 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 ~~[NAMES]~~ the Applicant, counsel for Deloitte, and such other counsel that were present, no one appearing for ~~[NAME]~~ any other party although duly served as appears

<sup>†</sup> ~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2)~~

from the affidavit of service of ~~[NAME]~~ Amanda Campbell sworn ~~[DATE]~~ and on reading the consent of [MONITOR'S NAME] to act as the Monitor January 26, 2023,

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated<sup>2</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

## APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

## PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant 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 Applicant shall remain in possession and control of its respective 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 Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant

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~~may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

~~<sup>2</sup> If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

is 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~~them, 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 Applicant shall be entitled to continue to utilize the central cash management system<sup>3</sup> currently in place, as described in the First White Affidavit ~~of~~ [NAME] sworn [DATE], or replace it with another substantially similar central cash management system (the "Cash Management System"), and that any present or future bank providing the Cash Management System shall: (i) not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, ~~shall~~; (ii) be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System; and ~~shall~~ (iii) be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. }

6. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable prior to, on, or after the date of this Order, in

<sup>3</sup>~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross border and inter company transfers of cash.~~

each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) with the consent of the Monitor, amounts owing for goods or services actually provided to the Applicant prior to the date of this Order if, in the opinion of the Applicant and the Monitor, such third party is critical to the Business and ongoing operations of the Applicant; and

(c) ~~(b)~~ the fees and disbursements of any Assistants retained or employed by the Applicant 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 Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the date of 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 Applicant on or following the date of this Order.

8. **THIS COURT ORDERS** that the Applicant 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 Applicant in connection with the sale of goods and services by the Applicant, 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 Applicant.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed ~~for resiliated~~<sup>4</sup> in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable 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)~~ the amounts set out in the applicable lease. 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.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is 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 the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in

<sup>4</sup>~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

respect of any of ~~its~~the Property; and (~~e~~iii) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicant 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, ~~and~~ to dispose of redundant or non-material assets not exceeding \$•100,000 in any one transaction or \$•250,000 in the aggregate~~;~~<sup>5</sup>;
- (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 Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

12. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's 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 Applicant's 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 Applicant, or by further Order of this Court

<sup>5</sup>~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims ~~for-resiliates~~ the lease governing such leased premises in accordance with Section 32 of the CCAA, ~~the Applicant~~ 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 ~~for-resiliation~~ of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer ~~for-resiliation~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~for-resiliation~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~for-resiliation~~, 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 Applicant 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 APPLICANT OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including ~~{DATE—MAX. January 30-DAYS}~~, 2023, 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", and collectively, "Proceedings") shall be commenced or continued against or in respect of the Applicant or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant 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 Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicant to carry on any business which the 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 accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant 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 or arrangements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication, cloud and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business ~~or~~ of the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant 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 Applicant in accordance with the normal payment practices of ~~the~~ such Applicant or such other practices as may be agreed upon by the supplier or service provider and ~~each of~~ the Applicant 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 ~~lease~~leased 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 Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>6</sup>

## PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by ~~subsection~~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 Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

## DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as ~~directors~~a director or ~~officers~~officer of the Applicant after the commencement of the within proceedings,<sup>7</sup> except to the extent that, with

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<sup>6</sup>~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

<sup>7</sup>~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

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.

21. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")<sup>8</sup> on the Property, which charge shall not exceed an aggregate amount of \$●225,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph {20} of this Order. The Directors' Charge shall have the priority set out in paragraphs {38} and {40} 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 Applicant's 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 {MONITOR'S NAME} Deloitte is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant 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:

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<sup>8</sup> ~~Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

- (a) monitor the Applicant's 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 Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender (as defined herein) and its counsel ~~on a [TIME INTERVAL] basis,~~ from time to time, of financial and other information as agreed to between the Applicant 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 Applicant in its preparation of the Applicant's 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 [TIME INTERVAL], or as otherwise agreed to~~ by the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, 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 Applicant, to the extent that is necessary to adequately assess the Applicant's 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 Applicant ~~and~~, including, without limitation, the DIP Lender, with information provided by the Applicant 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 Applicant 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 Applicant may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees

and representatives acting in such capacities shall incur ~~no~~any liability or obligation as a result of ~~its~~the Monitor's 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 to the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a ~~[TIME INTERVAL]~~weekly basis ~~and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to~~ or pursuant to such other arrangements agreed to between the Applicant, ~~retainers in the amount[s] of \$●[, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time~~ and such parties.

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, if any, and the Applicant's 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 \$●300,000, 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 ~~[DIP LENDER'S NAME]~~14667913 Canada Inc. (the "DIP Lender") in order to finance the Applicant's working capital requirements, the cost of these proceedings and other general corporate purposes and capital expenditures, provided

that the principal borrowings under such credit facility shall not exceed \$●500,000, plus accrued and unpaid interest, fees and reimbursable expenses, unless permitted by further Order of this Court.

33. **THIS COURT ORDERS** ~~THAT~~that such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of ~~{DATE}~~January 19, 2023 (the "Commitment Letter"), filed and attached as Exhibit "J" to the First White Affidavit.

34. **THIS COURT ORDERS** that the Applicant is 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 Applicant is hereby authorized and directed to pay and perform all of ~~its~~their 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 ●seven (7) days' notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant

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 Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant 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 Applicant and for the appointment of a trustee in bankruptcy of the Applicant; 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 Applicant 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 Applicant under the *Bankruptcy and Insolvency Act of Canada, R.S.C. 1985, c. B-3, as amended* (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 (collectively, the "Charges"), as among them, shall be as follows<sup>9</sup>:

<sup>9</sup>~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

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First – Administration Charge (to the maximum amount of \$●300,000);

Second – ~~DIP Lender~~Directors's Charge (to the maximum amount of \$225,000);  
and

Third – ~~Directors~~DIP Lender's Charge (~~to~~in the ~~maximum~~ amount of  
\$●500,000).

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 ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~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, and claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

41. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant 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~~Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the ~~Directors' Charge and the Administration Charge~~Charges, or further Order of this Court.

42. **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge~~Charges, the Commitment Letter, and 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~~ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (~~e~~iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (~~d~~iv) the provisions of any federal or provincial statutes; or (~~e~~v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, 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 Applicant of any Agreement to which ~~it~~such Applicant 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 Applicant 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 Applicant 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 applicable Applicant's interest in such real property leases.

44. THIS COURT ORDERS AND DECLARES that if any of the provisions of this Order in connection with the Commitment Letter, the Definitive Documents or the DIP Lender's Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "Variation") whether by subsequent order of this Court, on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority,

protections, rights or remedies of the DIP Lender whether under this Order (as made prior to the Variation), under the Commitment Letter and the Definitive Documents, with respect to any advances made prior to the DIP Lender being given notice of the Variation and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made.

## SERVICE AND NOTICE

45. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish in ~~[newspapers specified by the Court]~~ the *Globe and Mail* a notice containing the information prescribed under the CCAA; and (ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$~~1000~~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. ~~45.~~ **THIS COURT ORDERS** that the ~~E-Service Protocol of the~~ Guide Concerning Commercial List E-Service (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at ~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~ <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph ~~21~~13 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: ~~@~~ [www.insolvencies.deloitte.ca/en-ca/Tehama](http://www.insolvencies.deloitte.ca/en-ca/Tehama).

47. ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant 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 or other electronic transmission to the Applicant's~~'s~~ creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery~~-or,~~ facsimile or other electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

### GENERAL

48. ~~47.~~ **THIS COURT ORDERS** that the Applicant 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.

49. ~~48.~~ **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 Applicant, the Business or the Property.

50. ~~49.~~ **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.

51. ~~50.~~ **THIS COURT ORDERS** that each of the Applicant 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.

~~51. — THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order 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.~~

52. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Standard/Daylight Time) on the date of this Order without the need for entry or filing.

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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 TEHAMA INC.

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

Proceedings commenced at Toronto, Ontario

**AMENDED AND RESTATED INITIAL ORDER**

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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 TEHAMA INC.

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

Proceedings commenced at Toronto, Ontario

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**MOTION RECORD  
(returnable January 30, 2023)**

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