

**STALKING HORSE PURCHASE AGREEMENT**

**BETWEEN**

**TEHAMA INC.**

**AND**

**14667913 CANADA INC.**

**MADE AS OF**

**February 7, 2023**

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## **STALKING HORSE PURCHASE AGREEMENT**

**THIS AGREEMENT** is made as of February 7, 2023

BETWEEN

**TEHAMA INC.**, a corporation incorporated under the laws of  
Canada (the “**Vendor**”),

- and -

**14667913 CANADA INC.**, a corporation incorporated under the  
laws of Canada (the “**Purchaser**”),

**WHEREAS** pursuant to the Order of the Honourable Madam Justice Kimmel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued on January 20, 2023, (as may be further amended or amended and restated from time to time) (the “**Initial Order**”) the Vendor was granted, among other things, creditor protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c-36, as amended (the “**CCA**”) and Deloitte Restructuring Inc. was appointed monitor of the Vendor (in such capacity, the “**Monitor**”),

**AND WHEREAS** in connection with the proceedings initiated by the Initial Order (the “**CCA Proceedings**”), the Vendor intends to seek the approval of the Court to run a SISP (as defined below) pursuant to which this Agreement will serve as the Stalking Horse Bid (as defined below) for the Purchased Assets (as defined below),

**AND WHEREAS** in the event that this Agreement is selected as the Successful Bid (as defined below) in the SISP, the Vendor has agreed to sell and transfer to the Purchaser, and the Purchaser has agreed to purchase from the Vendor, all of the Vendor’s right, title and interest in and to the Purchased Assets, subject to and in accordance with the terms and conditions set forth in this Agreement,

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the parties hereto (collectively, the “**Parties**”, and each, a “**Party**”) hereby acknowledge and agree as follows:

### **ARTICLE 1 – INTERPRETATION**

#### **1.01 Definitions**

(1) In this Agreement, unless something in the subject matter or context is inconsistent therewith:

“**Affiliates**” means, with respect to any Person, any other Person that controls or is controlled by or is under common control with the referent Person.

“**Agreement**” means this agreement, including its recitals and schedules, as amended from time to time.

“**Applicable Law**” means:

- (i) any applicable domestic or foreign law including any statute, subordinate legislation or treaty, as well as the common law; and
- (ii) any applicable and enforceable rule, requirement, order, judgment, injunction, award or decree of a Governmental Authority.

“**Approval and Vesting Order**” means an order of the Court substantially in the form attached hereto as **Schedule A**: (i) approving the sale of the Purchased Assets by the Vendor to the Purchaser pursuant to the terms of this Agreement, (ii) authorizing and directing the Vendor to complete the Transaction to convey to the Purchaser the Purchased Assets, and (iii) providing for the vesting of the right, title, benefit and interest of the Vendor in and to the Purchased Assets in and to the Purchaser, free and clear of all Liens, other than the Permitted Encumbrances.

“**Assigned Contracts**” means those Contracts and Permits set out in **Schedule B**.

“**Assignment and Assumption Agreement**” means an agreement pursuant to which the Vendor will assign the Assigned Contracts to the Purchaser and the Purchaser will assume the Assumed Liabilities at the Time of Closing, substantially in the form of the document set out in **Schedule C**.

“**Assumed Liabilities**” has the meaning set out in Section 2.07.

“**Bid Deadline**” has the meaning set out in **Schedule “G”**.

“**Books and Records**” means all personnel records, inspection records, financial records, and other records, books, documents and data bases recorded or stored by means of any device, including in electronic form, relating to the Business, the Purchased Assets and Employees as are in the possession or under the control of the Vendor.

“**Business**” means the business conducted by Tehama Inc., being a technology company engaged in the development, marketing and sale of a “desktop as a service” (DaaS) service platform.

“**Business Day**” means a day other than a Saturday, Sunday, statutory or civic holiday in Toronto, Ontario.

“**Claim**” means any actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, investigation or proceeding and any loss, claim or demand relating thereto or resulting therefrom, or any other claim or demand of whatever nature or kind.

“**Closing Date**” means five (5) Business Days following the date of the Approval and Vesting, or such other date as may be agreed in writing between the parties hereto, but in any case, not later than the Outside Date.

“**Contract**” means any contract, agreement, license, instrument or commitment recognized at law or equity, whether express or implied, or arising by a course of conduct or usage of trade to which the Vendor is a party and which relate to the Purchased Assets.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Credit Bid Amount**” has the meaning set out in section 2.09.

“**Cure Costs**” means the amount of all monetary defaults, if any, existing in respect of any Assigned Contracts that are required to be paid in order to obtain the consent necessary to permit the assignment under 2.08(2).

“**Employees**” means all persons currently employed by the Vendor in connection with the Business as at the Time of Closing.

“**Excluded Assets**” has the meaning set out in Section 2.02.

“**Excluded Contracts**” means any Contracts or Permits that are not assignable as contemplated in Section 2.08(3), and any other Contracts or Permits that are not Assigned Contracts.

“**Governmental Authority**” means any domestic or foreign legislative, executive, judicial or administrative body or Person having jurisdiction in the relevant circumstances.

“**Initial Order**” has the meaning set out in the recitals hereto.

“**Intellectual Property**” means intellectual property of any nature and kind including all domestic and foreign trade-marks, business names, trade names, domain names, trading styles, patents, trade secrets, confidential information, software, industrial designs and copyrights, whether registered or unregistered, and all applications for registration thereof, and inventions, formulae, recipes, product formulations and chemistries, processes and processing methods, technology and techniques and know-how.

“**Liabilities**” means all costs, expenses, charges, debts, liabilities, commitments and obligations of any nature or kind, whether accrued or fixed, actual, absolute, contingent, latent or otherwise, matured or unmatured or determined or undeterminable, including those arising under any Applicable Law or Claim and those arising under any Contract or undertaking or otherwise, including any tax liability or tort liability of the Vendor.

“**Liens**” means any lien (statutory or otherwise), mortgage, pledge, security interest (whether contractual, statutory or otherwise), hypothecation, trust or deemed trust (whether contractual, statutory, or otherwise), execution, levy, charge, encumbrance, interest in property, or other financial or monetary Claim which, in each case, in substance, secures payment or performance of an obligation, or similar charge of any kind.

“**Monitor’s Certificate**” means a certificate signed by the Monitor substantially in the form attached as Schedule A to the Approval and Vesting Order.

“**Outside Date**” means 11:59 pm (Toronto time) on March 31, 2023 or such later date and time as the Vendor and the Purchaser may agree in writing;

“**Permits**” means all permits, licences, certificates, approvals, authorizations, and registrations, or any item with a similar effect, issued or granted by any Governmental Authority.

“**Permitted Encumbrances**” means only those Liens and other registrations or encumbrances related to the Purchased Assets set forth on **Schedule D**.

“**Person**” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or other entity.

“**Personal Information**” means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

“**Purchase Price**” has the meaning set out in Section 2.03.

“**Purchased Assets**” has the meaning set out in Section 2.01.

“**Qualified Bid**” has the meaning set out in **Schedule G**.

“**Secured Indebtedness**” means the amount of \$2,812,833.33 due and owing by the Vendor pursuant to a credit agreement dated April 21, 2021, as amended by the first amending agreement dated May 7, 2021, between the Vendor and the Canadian Imperial Bank of Commerce (“**CIBC**”), as assigned to the Purchaser pursuant to an assignment of debt and security between CIBC and the Purchaser dated January 11, 2023.

“**SISP**” means the sale and investment solicitation process, substantially in the form set out in **Schedule “G”** hereto.

“**SISP Approval Order**” means an order of the Court, in form and substance acceptable to the Purchaser, approving the SISP.

“**Stalking Horse Bid**” has the meaning set out in Section 3.01(1).

“**Successful Bid**” has the meaning set out in section 3.01(5).

“**Successful Bidder**” has the meaning set out in section 3.01(5).

“**Tax Act**” means the *Income Tax Act* (Canada).

“**Time of Closing**” means 10:00 a.m. (Toronto Time) on the Closing Date.

“**Transfer Taxes**” has the meaning set out in Section 2.06.

“**Transaction**” means the transaction of the purchase and sale of the Purchased Assets as contemplated by this Agreement.

“Vendor” has the meaning set out in the recitals hereto.

## **1.02 Headings**

(1) The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles and Sections of and Schedules to this Agreement.

## **1.03 Extended Meanings**

(1) In this Agreement words importing the singular number include the plural and vice versa, words importing any gender include all genders and words importing Persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities. The term “including” means “including without limiting the generality of the foregoing” and the term “third party” means any Person other than the Vendor and the Purchaser.

## **1.04 Statutory References**

(1) In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

## **1.05 Currency**

(1) All references to currency herein are to lawful money of Canada.

## **1.06 Schedules**

(1) The following are the Schedules to this Agreement:

- Schedule A** - Form of Approval and Vesting Order
- Schedule B** - Assigned Contracts and Permits
- Schedule C** - Form of Assignment and Assumption Agreement
- Schedule D** - Permitted Encumbrances
- Schedule E** - Other Excluded Assets
- Schedule F** - Allocation of Purchase Price
- Schedule G** - SISP

The Schedules hereto are for the sole benefit of the Purchaser. The parties hereto acknowledge and agree that the Purchaser, in its sole discretion, may revise the Schedules up to and until the Time of Closing.



## ARTICLE 2 – SALE AND PURCHASE

### 2.01 Assets to be Sold and Purchased

(1) Upon and subject to the terms and conditions hereof, the Vendor will sell to the Purchaser and the Purchaser will purchase from the Vendor, as of and with effect from the Time of Closing, all of the right, title, benefit and interest of the Vendor in and to the following assets (collectively, the “**Purchased Assets**”):

- (a) all equipment and machinery (including computer hardware, software and telecommunications equipment), chattels, improvements, furniture, furnishings, peripheral equipment, supplies and accessories, and other tangible property owned or held by the Vendor and related to the Business;
- (b) all inventory and supplies of any nature or kind, including inventory manufactured by the Vendor or purchased from third party vendors;
- (c) all accounts receivable relating to the Business or otherwise;
- (d) all cash on hand, cash equivalents, bank deposits, cash floats and petty cash of the Vendor;
- (e) all Contracts, and to the extent not otherwise included in this Section 2.01, the Assigned Contracts;
- (f) all Intellectual Property owned by the Vendor that is used in connection with the Purchased Assets;
- (g) the goodwill of the Business, together with the exclusive right of the Purchaser to represent itself as carrying on the Business in continuation of and in succession to the Vendor, including all choses in action where the Vendor is the plaintiff or moving party and other intangibles relating to the Business that do not form part of the Intellectual Property;
- (h) all authorizations owned, held or used by the Vendor in connection with the Business to the extent they are transferable;
- (i) all rights of the Vendor to tax refunds, credits, rebates or similar benefits relating to the Purchased Assets for the period prior to the Closing Date;
- (j) all funds or deposits held by suppliers, customers or any other Person in trust for or on behalf of the Vendor (if any) including any pre-paid expenses;
- (k) any Claim of the Vendor to reimbursement under any insurance policy applicable to the Vendor for the period prior to the Closing Date;
- (l) the issued and outstanding shares of Tehama USA, Inc.; and

- (m) the Books and Records;

but excluding, for greater certainty, in each and every case the Excluded Assets (as hereinafter defined).

## **2.02 Excluded Assets**

(1) Notwithstanding Section 2.01 or any other provision in this Agreement to the contrary, the Vendor will retain its right, title, benefit and interest in and to, and the Purchaser will have no rights with respect to the right, title, benefit and interest of the Vendor in and to the following assets (collectively, the “**Excluded Assets**”):

- (a) the Excluded Contracts;
- (b) shares and other interests or capital in the Vendor;
- (c) the tax records and insurance policies of the Vendor, save and except for those tax records that are required with respect to any Purchased Assets;
- (d) Books and Records not pertaining primarily to the Purchased Assets;
- (e) any other assets listed in **Schedule E**.

## **2.03 Purchase Price**

(1) The aggregate purchase price payable by the Purchaser to the Vendor for the Purchased Assets excluding all applicable Taxes (such amount being hereinafter referred to as the “**Purchase Price**”) is an amount equal to a sum of the following:

- (a) the amount of \$2,812,833.33; plus
- (b) the amount of the Assumed Liabilities.

## **2.04 Allocation of Purchase Price**

(1) The Purchase Price will be allocated among the Purchased Assets as set out in **Schedule F**. The Vendor and Purchaser will make and file all tax returns and filings on a basis which is consistent with the amount and allocation of the Purchase Price.

## **2.05 Elections**

(1) The Vendor and the Purchaser will on or before the Time of Closing jointly execute an election (if applicable), in the prescribed form and containing the prescribed information, to have subsection 167(1.1) of the *Excise Tax Act* (Canada) apply to the sale and purchase of the Purchased Assets hereunder so that no tax is payable in respect of such sale and purchase under Part IX of the *Excise Tax Act* (Canada). The Purchaser will file such election with the Minister of National Revenue within the time prescribed by the *Excise Tax Act* (Canada).

## 2.06 Transfer Taxes

(1) The Purchaser will be liable for and, subject to Section 2.05, will pay, or will cause to be paid, all transfer, land transfer, value added, *ad-valorem*, excise, sales, use, consumption, goods or services, harmonized sales, retail sales, social services, or other similar taxes or duties (collectively, “**Transfer Taxes**”) payable under any Applicable Law on or with respect to the sale and purchase of the Purchased Assets under this Agreement. The Purchaser will prepare and file any affidavits or returns required in connection with the foregoing at its own cost and expense.

(2) The Purchaser shall indemnify and save harmless the Vendor and its employees, advisors and agents from all Claims incurred, suffered or sustained as a result of a failure by the Purchaser:

- (a) to pay any Transfer Taxes payable by the Purchaser; and/or
- (b) to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser with any federal, provincial or other taxing authorities in connection with the conveyance or transfer of the Purchased Assets.

## 2.07 Assumption of Liabilities

(1) At the Time of Closing, the Purchaser will assume and thereafter fulfil, perform and discharge when due the following Liabilities of the Vendor outstanding as at the Closing Date (collectively, the “**Assumed Liabilities**”):

- (a) all Liabilities relating to Employees as set out in section 5.03;
- (b) all Liabilities arising from or in connection with the Assigned Contracts, including any Cure Costs; and
- (c) all Liabilities arising from or in connection with any tax, levy, penalty, interest or costs for which the Purchaser is responsible pursuant section 2.06 and any Permitted Encumbrances.

(2) In addition to any other provision for indemnification by the Purchaser contained in this Agreement, the Purchaser will, on and after the Closing Date, indemnify and save harmless the Vendor on its own behalf and as trustee for its Affiliates and its and their current and former directors and officers, employees, agents, advisors and representatives (including the Vendor) (collectively, the “**Indemnitees**”) from and against all Claims asserted against any of the Indemnitees in any way directly or indirectly arising from, relating to or in connection with any of the Assumed Liabilities.

## 2.08 Assigned Contracts

(1) Subject to Section 2.08(2), the Purchaser, with the Vendor’s consent, will request any consents necessary to permit the assignment to the Purchaser of the Assigned Contracts. The Vendor will provide its reasonable cooperation to assist the Purchaser to obtain such consents, including providing financial and other information of the Vendor requested by the Purchaser or party to such Assigned Contract.

- (2) The Purchaser will be responsible for all Cure Costs in respect of any Assigned Contracts.
- (3) Nothing in this Agreement will constitute an agreement to assign or an attempted assignment of any non-assignable rights or any Contracts or Permits for which any requisite consent or approval has not been obtained or which as a matter of Applicable Law or by its terms is not assignable.

## **2.09 Payment of Purchase Price**

- (1) The Purchase Price will be satisfied by the Purchaser as follows:
  - (a) Credit Bid: payment of the amount of \$2,812,833.33 shall happen by the credit bid of the Secured Indebtedness (as of the Closing Time including any accrued and unpaid interest, expenses, fees and other amounts) (the "**Credit Bid Amount**"), which shall cause the release thereof at Closing in favour of the Vendor; and
  - (b) Assumed Liabilities: by the Purchaser assuming the Assumed Liabilities.

## **2.10 Delivery of Purchased Assets**

- (1) At the Time of Closing, the Purchaser will take possession of the Purchased Assets where situated. The Purchaser acknowledges that the Vendor has no obligation to deliver possession of the Purchased Assets to the Purchaser at any location other than where situated.

## **ARTICLE 3 – SISP BIDDING PROCEDURE**

### **3.01 SISP**

- (1) The Parties hereby agree as follows:
  - (a) the Vendor shall bring a motion for the SISP Approval Order to be heard on or before February 9, 2023 seeking to approve the terms of the SISP. The SISP Approval Order shall recognize the within offer by the Purchaser and the Purchase Price: (i) as a baseline or "stalking horse bid" in respect of the Purchased Assets (the "**Stalking Horse Bid**"); and (ii) as a deemed "Qualified Bid", with an attendant right on the part of the Purchaser to participate as a bidder in any Auction. The Purchaser acknowledges and agrees that the aforementioned process is in contemplation of determining whether a superior bid can be obtained for the Purchased Assets;
  - (b) in the event that one or more Persons submit a Qualified Bid before the Bid Deadline, the Monitor, shall conduct an auction (the "**Auction**") for the determination and selection of a winning bid (the "**Successful Bid**" and the Person submitting such bid being the "**Successful Bidder**");
  - (c) upon the selection of a Successful Bidder, there shall be a binding agreement of purchase and sale between the Successful Bidder and the Vendor. The Vendor shall

forthwith bring a motion following the selection of the Successful Bidder for an order approving the agreement reached with the Successful Bidder and to vest the Purchased Assets in the Successful Bidder and, if granted, shall proceed with closing the transaction forthwith;

- (d) notwithstanding anything contained herein to the contrary, in the event that the Purchaser is not the Successful Bidder under the SISF, then upon selection of the other Successful Bid: (i) this Agreement shall be terminated, and (ii) neither Party hereto shall have any further Liability or obligation hereunder, except as expressly provided for in this Agreement; and
- (e) if no Qualified Bids are received by the Bid Deadline (other than the Stalking Horse Bid), the Vendor shall forthwith bring a motion to the Court to obtain the Approval and Vesting Order and, if granted, shall proceed with completing the Transaction contemplated hereby forthwith.

#### **ARTICLE 4 – REPRESENTATIONS AND WARRANTIES**

##### **4.01 Vendor's Representations and Warranties**

- (1) The Vendor represents and warrants to the Purchaser that, as at the date hereof and as of the Closing Date:
  - (a) the Vendor is a corporation duly incorporated, organized and existing under the laws of Canada;
  - (b) the Vendor has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;
  - (c) this Agreement constitutes a valid and legally binding obligation of the Vendor, enforceable against the Vendor in accordance with its terms;
  - (d) the Vendor has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement and completion of the transactions contemplated herein and the entering into of this Agreement in completion of the transactions contemplated herein will not breach its constating documents, any agreement binding on the Vendor, or Applicable Laws relating to the Vendor;
  - (e) subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, the Vendor has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;
  - (f) subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, this Agreement constitutes a valid and legally binding obligation of the Vendor, enforceable against the Vendor in accordance with its terms;

- (g) the Vendor is registered under Part IX of the *Excise Tax Act* (Canada) with registration number 79246 8332 RT0001; and
- (h) the Vendor is not a non-resident of Canada within the meaning of section 116 of the *Tax Act*.

#### **4.02 Purchaser's Representations and Warranties**

- (1) The Purchaser represents and warrants to the Vendor that:
  - (a) the Purchaser is a corporation duly incorporated, organized and existing under the laws of Canada;
  - (b) the Purchaser has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;
  - (c) this Agreement constitutes a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms;
  - (d) the Purchaser has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement and completion of the transactions contemplated herein and the entering into of this Agreement in completion of the transactions contemplated herein will not breach its constating documents, any agreement binding on the Purchaser, or Applicable Laws relating to the Purchaser;
  - (e) there are no orders of or proceedings before or pending before any Governmental Authority, or threatened to be brought by or before any Governmental Authority by or against the Purchaser affecting the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby by the Purchaser;
  - (f) no authorizations, consents or approvals of, or filing with or notice to, any Governmental Authority is required in connection with the execution, delivery or performance of this Agreement;
  - (g) except for the Approval and Vesting Order, no consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement;
  - (h) the Purchaser is or will be a registrant under Part IX of the *Excise Tax Act* (Canada) on the Closing Date; and
  - (i) the Purchaser is not a non-resident of Canada within the meaning of section 116 of the *Tax Act*.

#### 4.03 “As Is, Where Is”

(1) The Purchaser acknowledges and agrees that it is purchasing the Purchased Assets on an “as is, where is” basis and on the basis that the Purchaser has conducted to its satisfaction an independent inspection, investigation and verification of the Purchased Assets (including a review of title), Assumed Liabilities, Assumed Contracts and all other relevant matters and has determined to proceed with the transaction contemplated herein and will accept the same at the Time of Closing in their then current state, condition, location, and amounts, subject to all Permitted Encumbrances.

(2) Except as otherwise expressly provided in Section 4.01, no representation, warranty or condition whether statutory (including under the *Sale of Goods Act* (Ontario), the *International Sale of Goods Contracts Convention Act* (Canada) and the *International Sale of Goods Act* (Ontario) or any international equivalent act which may be applicable to the subject matter pursuant to the provisions of this Agreement, including but not limited to the *United Nations Convention on Contracts for the International Sale of Goods*), or express or implied, oral or written, legal, equitable, conventional, collateral, arising by custom or usage of trade, or otherwise is or will be given including as to title, outstanding Liens or encumbrances, description, fitness for purpose, merchantability, merchantable quality, quantity, condition (including physical environmental condition), suitability, durability, assignability, or marketability thereof or any other matter or thing whatsoever, and all of the same are expressly excluded and disclaimed and any rights pursuant to such statutes have been waived by the Purchaser. The Purchaser acknowledges and agrees that it has relied entirely and solely on its own investigations as to the matters set out above and in determining to purchase the Purchased Assets and assume the Assumed Liabilities and Assumed Contracts pursuant to this Agreement.

(3) The description of the Purchased Assets, Assumed Liabilities and Assumed Contracts contained herein is for the purpose of identification only and the inclusion of any item in such description does not confirm the existence of any such items or that any such item is owned by the Vendor. Except as otherwise explicitly set forth in Section 4.01, no representation, warranty or condition has been given by the Vendor concerning the completeness or accuracy of such descriptions and the Purchaser acknowledges and agrees that any other representation, warranty, statements of any kind or nature, express or implied, (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Vendor or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Vendor.

(4) Any documents, materials and information provided by or on behalf of the Vendor to the Purchaser with respect to the Purchased Assets, Assumed Liabilities and Assumed Contracts (including any confidential information memorandums, management presentations, or material made available in the electronic data room) have been provided to the Purchaser solely to assist the Purchaser in undertaking its own due diligence, and the Vendor has not made and is not making any representations or warranties, implied or otherwise, to or for the benefit of the Purchaser as to the accuracy and completeness of any such documents, materials or information or the achievability of any valuations, estimates or projections. The Purchaser acknowledges that it has not and will not rely upon any such documents, materials or information in any manner, whether as a substitute for or supplementary to its own due diligence, searches, inspections and evaluations.

The Vendor and their respective Affiliates, directors, officers, employees, agents and advisors shall not be liable for any inaccuracy, incompleteness or subsequent changes to any such documents, materials or information.

## **ARTICLE 5 - COVENANTS**

### **5.01 Covenants of the Vendor**

(1) As soon as practicable after the selection of this Agreement as the Successful Bid in the SISF, the Vendor shall serve and file with the Court a motion for the issuance of the Approval and Vesting Order, seeking relief that will, among other things, approve this Agreement and the Transaction. The Vendor shall use its best efforts to seek the issuance and entry of the Approval and Vesting Order and the Purchaser shall cooperate with the Vendor in its efforts to obtain the issuance and entry of the Approval and Vesting Order.

(2) The Vendor will ensure that the representations and warranties of the Vendor set out in Section 4.01 are true and correct in all material respects at the Time of Closing and use reasonable commercial efforts to ensure that the conditions of closing for the benefit of the Purchaser set out in Section 6.02 over which it has reasonable control have been performed or complied with in all material respects by the Time of Closing.

### **5.02 Covenants of the Purchaser**

(1) The Purchaser will ensure that the representations and warranties of the Purchaser set out in Section 4.02 are true and correct in all material respects at the Time of Closing and use reasonable commercial efforts to ensure that the conditions of closing for the benefit of the Vendor set out in Section 6.03 over which it has reasonable control have been performed or complied with in all material respects by the Time of Closing.

(2) The Purchaser will provide the Vendor with all information within its possession or control that the Vendor may reasonably request to assist the Vendor in obtaining the Approval and Vesting Order.

(3) The Purchaser will comply with the *Personal Information Protection and Electronic Documents Act* (Canada) and other similar Applicable Laws relating to privacy and the protection of Personal Information in respect of the Books and Records, Contracts and any other business and financial records related to the Purchased Assets.

### **5.03 Employee Matters**

(1) The Purchaser:

- (a) will, prior to the Closing Date, offer to employ all of the Employees who are currently employed by the Vendor in the Business, on substantially the same terms and conditions of employment as are in effect on the date hereof;



- (b) will, effective the opening of business on the Closing Date, assume responsibility, statutory and otherwise, for the rights, obligations and Liabilities relating to or arising out of the employment of the Employees and will recognize all past service of the Employees with the Vendor for all purposes; and
- (c) in addition to any other provision for indemnification by the Purchaser contained in this Agreement, will indemnify and save harmless against any Claims arising out of, as a result of, or relating in any manner whatsoever to the assumption by the Purchaser of the responsibilities, rights, obligations and liabilities as set out in this Section 5.03.

## **ARTICLE 6 – CONDITIONS AND TERMINATION**

### **6.01 Mutual Conditions**

(1) The obligation of the Parties to complete the Transaction is subject to the following joint conditions being satisfied, fulfilled or performed on or prior to the Closing Date:

- (a) the Court shall have issued and entered the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated;
- (b) no Applicable Law and no judgment, injunction, order or decree shall have been issued by a Governmental Authority or otherwise in effect that restrains or prohibits the completion of the Transaction; and
- (c) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.

(2) The foregoing conditions are for the mutual benefit of the Parties. If any condition set out in this section 6.01 is not satisfied, performed or mutually waived on or prior to the Outside Date, any Party may elect on written notice to the other Party to terminate this Agreement.

### **6.02 Conditions for the Benefit of the Purchaser**

(1) The sale by the Vendor and the purchase by the Purchaser of the Purchased Assets is subject to the following conditions, which are for the exclusive benefit of the Purchaser and which are to be performed or complied with at or prior to the Time of Closing:

- (a) the representations and warranties of the Vendor set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;
- (b) the Vendor will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Vendor at or prior to the Time of Closing; and

- (c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the sale and purchase of the Purchased Assets.

### **6.03 Conditions for the Benefit of the Vendor**

(1) The sale by the Vendor and the purchase by the Purchaser of the Purchased Assets is subject to the following conditions, which are for the exclusive benefit of the Vendor and which are to be performed or complied with at or prior to the Time of Closing:

- (a) the representations and warranties of the Purchaser set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;
- (b) the Purchaser will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Purchaser at or prior to the Time of Closing;
- (c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the purchase and sale of the Purchased Assets; and
- (d) the Purchaser will have paid or will have made arrangements, satisfactory to the Vendor, to pay all Cure Costs pursuant to Section 2.08(2).

### **6.04 Waiver of Condition**

(1) The Purchaser, in the case of a condition set out in Section 6.02, and the Vendor, in the case of a condition set out in Section 6.03 (for greater certainty, other than Section 6.01(a)), will have the exclusive right to waive the performance or compliance of such condition in whole or in part and on such terms as may be agreed upon without prejudice to any of its rights in the event of non-performance of or non-compliance with any other condition in whole or in part. Any such waiver will not constitute a waiver of any other conditions in favour of the waiving party. Such waiving party will retain the right to complete the purchase and sale of the Purchased Assets herein contemplated.

### **6.05 Termination**

- (1) This Agreement may be terminated, by notice given prior to or on the Closing Date:
  - (a) by the Vendor (only with the consent of the Monitor) or the Purchaser if a material breach of any representation, warranty, covenant, obligation or other provision of this Agreement has been committed by the other party and such breach has not been waived or cured within five days following the date on which the non-breaching party notifies the other party of such breach;
  - (b) by the Purchaser if a condition in Section 6.01 or 6.02 become impossible to satisfy prior to the Outside Date (other than through the failure of the Purchaser to comply with its obligations under this Agreement) and the Purchaser has not waived such condition;

- (c) by the Vendor (only with the consent of the Monitor) if a condition in Section 6.01 or 6.03 becomes impossible to satisfy prior to the Outside Date (other than through the failure of the Vendor to comply with its obligations under this Agreement) and the Vendor has not waived such condition;
- (d) by written agreement of the Purchaser and the Vendor, and on consent of the Monitor;
- (e) by the Vendor (only with the consent of the Monitor) or the Purchaser if the completion of the sale of Purchased Assets herein contemplated has not occurred (other than through the failure of the party seeking termination to comply with its obligations under this Agreement) on or before the Outside Date.

### **6.06 Effect of Termination**

(1) Each party's right of termination under Section 6.05 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 6.05, all further obligations of the parties under this Agreement will terminate, except that the obligations in sections 7.04, 9.03 and 9.04 will survive; provided, however, that if this Agreement is terminated by a party because of a material breach of a representation or warranty, covenant, obligation or other provision of this Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

## **ARTICLE 7 – CLOSING ARRANGEMENTS**

### **7.01 Closing**

(1) The sale and purchase of the Purchased Assets will be completed at the Time of Closing at the offices of Dentons Canada LLP, 77 King Street West, Suite 400, Toronto-Dominion Centre, Toronto, Ontario M5K 0A1.

### **7.02 Vendor's Closing Deliveries**

(1) On or before the Time of Closing, the Vendor will deliver or cause to be delivered to the Purchaser the following:

- (a) a certificate from the Vendor, dated as of the Closing Date, certifying:
  - (i) that, except as disclosed in the certificate, the Vendor has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction; and

- (ii) that all representations, warranties and covenants of the Vendor contained in this Agreement are true as of the Time of Closing, with the same effect as though made on and as of the Time of Closing;
- (b) an acknowledgement, dated as of the Closing Date, that each of the conditions in Section 6.01 and 6.03 hereof have been fulfilled, performed or waived as of the Time of Closing;
- (c) a copy of the issued and entered Approval and Vesting Order;
- (d) if available, the tax election as contemplated by Section 2.05 executed by the Vendor;
- (e) a bill of sale, duly executed by the Vendor, if necessary;
- (f) the share certificate, if any, with respect to the issued and outstanding shares of Tehama USA, Inc.;
- (g) the executed Monitor's Certificate;
- (h) if applicable, the Assignment and Assumption Agreement executed by the Vendor with respect to Assigned Contracts; and
- (i) such other documents or instruments as contemplated or required to be delivered pursuant to this Agreement, all of which shall be in form and substance satisfactory to the parties, acting reasonably.

### **7.03 Purchaser's Closing Deliveries**

- (1) On or before the Time of Closing, the Purchaser will deliver or cause to be delivered to the Vendor the following:
  - (a) a receipt and release with respect to the Credit Bid Amount;
  - (b) evidence, satisfactory to the Vendor, of the payment of or arrangements to pay all Cure Costs as contemplated by Section 2.08(2).
  - (c) a certificate executed by a senior officer of the Purchaser confirming that the representations and warranties of the Purchaser in this Agreement are true and correct in all material respects as of the Time of Closing and that the obligations of the Purchaser to be performed prior to the Time of Closing have been performed in all material respects;
  - (d) an acknowledgement, dated as of the Closing Date, that each of the conditions in Section 6.01 and 6.02 hereof have been fulfilled, performed or waived as of the Time of Closing;

- (e) if available, the tax election as contemplated by Section 2.05 executed by the Purchaser;
- (f) if applicable, the Assignment and Assumption Agreement executed by the Purchaser with respect to Assigned Contracts; and
- (g) such other documents or instruments as contemplated or required to be delivered pursuant to this Agreement, all of which shall be in form and substance satisfactory to the parties, acting reasonably.

#### **7.04 Confidentiality**

(1) Subject to the terms of any non-disclosure agreement, both prior to the Closing Date and, if the sale and purchase of the Purchased Assets hereunder fails to occur for whatever reason thereafter, the Purchaser will not disclose to anyone or use for its own or for any purpose other than the purpose contemplated by this Agreement any confidential information concerning the Vendor or the operations obtained by the Purchaser pursuant hereto, and will hold all such information in the strictest confidence and, if the sale and purchase of the Purchased Assets hereunder fails to occur for whatever reason, will return all documents, records and all other information or data relating to the Vendor or to the operations which the Purchaser obtained pursuant to this Agreement.

#### **7.05 Delivery of Monitor's Certificate**

(1) The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the Purchaser, and file with the Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Monitor shall have no Liability to the Parties in connection therewith. The Parties further acknowledge and agree that upon written confirmation from both Parties that all conditions of Closing in favour of such Party have been satisfied or waived, the Monitor may deliver the executed Monitor's Certificate to the Purchaser's counsel in escrow, with the sole condition of its release from escrow being the Monitor's written confirmation that all deliveries set forth in sections 7.02 and 7.03 have been received, the Monitor's Certificate will be released from escrow to the Purchaser, and the Closing shall be deemed to have occurred.

### **ARTICLE 8 – SURVIVAL**

#### **8.01 Survival**

(1) No covenants, representations and warranties of each party contained in this Agreement will survive the completion of the sale and purchase of the Purchased Assets and assumption of the Assumed Liabilities hereunder, except for the covenants that by their terms are to be satisfied or survive after the Time of Closing, which covenants will continue in full force and effect in accordance with their terms.

## **ARTICLE 9 – GENERAL**

### **9.01 Further Assurances**

(1) Each of the Vendor and the Purchaser will from time to time at the request and expense of the other execute and deliver all such further documents and instruments and do all acts and things as the other party may, either before or after the Closing Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

### **9.02 Time of the Essence**

(1) Time is of the essence of this Agreement.

### **9.03 Fees, Commissions and other Costs and Expenses**

(1) Each of the Vendor and the Purchaser will pay its respective legal and accounting costs and expenses and any other commissions incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred and will indemnify and save harmless the other from and against any Claim resulting from any broker's, finder's or placement fee or commission alleged to have been incurred as a result of any action by it in connection with the transactions under this Agreement.

### **9.04 Public Announcements**

(1) Except as required by Applicable Law or with respect to the implementation of the SISP, no public announcement or press release concerning the sale and purchase of the Purchased Assets may be made by the Vendor or the Purchaser without the prior consent and joint approval of the Vendor and the Purchaser.

### **9.05 Benefit of the Agreement**

(1) This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties.

### **9.06 Entire Agreement**

(1) This Agreement (including the agreements contemplated hereby) constitutes the entire agreement between the parties with respect to the subject matter hereof and such agreements cancel and supersede any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement (including the agreements contemplated hereby).

### **9.07 Amendments and Waivers**

(1) No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

### **9.08 Assignment**

(1) This Agreement may not be assigned by the Vendor or the Purchaser without the written consent of the other provided that the Purchaser may assign this Agreement without the consent of the Vendor to an Affiliate of the Purchaser provided that: (i) such Affiliate enters into a written agreement with the Vendor to be bound by the provisions of this Agreement in all respects and to the same extent as the Purchaser is bound, (ii) that the Purchaser will continue to be bound by all the obligations hereunder as if such assignment had not occurred and perform such obligations to the extent that such Affiliate fails to do so, and (iii) such assignment occurs prior to the issuance of the Approval and Vesting Order.

### **9.09 Notices**

(1) Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery or by electronic means of communication addressed to the recipient as follows:

to the Vendor:

Tehama Inc.  
319 McRae Avenue, Suite 700  
Ottawa, Ontario K1Z0B9  
Attention:  
E-mail:  
Fax:

with a copy to:

Dentons Canada LLP  
77 King Street West Suite 400,  
Toronto, Ontario M5K 0A1  
Attention: Robert Kennedy  
E-mail: [robert.kennedy@dentons.com](mailto:robert.kennedy@dentons.com)  
Fax: 416.863.4760

and with a copy to:

Deloitte Restructuring Inc.

8 Adelaide Street West Suite 200  
Toronto, Ontario M5H 0A9  
Attention: Phil Reynolds  
E-mail: [philreynolds@deloitte.ca](mailto:philreynolds@deloitte.ca)

With a copy to:

Goodmans LLP  
333 Bay Street Suite 3400  
Toronto, Ontario M5H 2S7  
Attention: Joe Latham  
E-mail: [jlatham@goodmans.ca](mailto:jlatham@goodmans.ca)

to the Purchaser:

14667913 Canada Inc.  
38 Morningsun Crescent  
Stittsville, Ontario K2S 1J6  
Attention: Rob White  
E-mail: [robwhitecpa@gmail.com](mailto:robwhitecpa@gmail.com)

With a copy to:

Thornton Grout Finnigan LLP  
100 Wellington Street West Suite 3200  
Toronto, Ontario M5K 1K7  
Attention: Rebecca Kennedy  
E-mail: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

## **9.10 Remedies Cumulative**

(1) The right and remedies of the parties under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.



### **9.11 No Third Party Beneficiaries**

- (1) This Agreement is solely for the benefit of:
  - (a) the Vendor, and its successors and permitted assigns, with respect to the obligations of the Purchaser under this Agreement, and
  - (b) the Purchaser, and its successors and permitted assigns, with respect to the obligations of the Vendor under this Agreement,

and this Agreement will not be deemed to confer upon or give to any other Person any Claim or other right or remedy.

### **9.12 Governing Law**

- (1) This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### **9.13 Attornment**

- (1) For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Vendor and the Purchaser each attorns to the jurisdiction of the courts of the Province of Ontario.

### **9.14 Severability**

- (1) If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect.

### **9.15 Counterparts**

- (1) This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

### **9.16 Electronic Execution**

- (1) Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

*[The balance of this page has been intentionally left blank]*



**SCHEDULE A**

**FORM OF APPROVAL AND VESTING ORDER**

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

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**(COMMERCIAL LIST)**

THE HONOURABLE MADAM	)	_____DAY, THE _____
	)	
JUSTICE KIMMEL	)	DAY OF MARCH, 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. (the "**Applicant**")

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by the Tehama Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by a stalking horse purchase agreement (the "**Stalking Horse APA**") between the Applicant and 14667913 Canada Inc. (the "**Purchaser**") dated \_\_\_, 2023 and vesting in the Purchaser all of the Applicant's right, title, benefit and interest in and to the assets described in the Stalking Horse APA, was heard this day at 330 University Avenue, Toronto, Ontario, by judicial video conference via Zoom.

**ON READING** the Notice of Motion of the Applicant, the affidavit of Rob White sworn \_\_\_, 2023, and the Exhibits thereto (the "**White Affidavit**"), the Third Report of Deloitte Restructuring Inc., in its capacity as Monitor (the "**Monitor**") dated \_\_\_, 2023, filed, and on hearing the submissions of counsel for the Applicant, the Monitor and no one else appearing although fully served as appears from the Affidavit of Service of \_\_\_\_\_ sworn February \_\_\_, 2023, filed:

1. **THIS COURT ORDERS** that unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Stalking Horse APA.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Stalking Horse APA by the Vendor is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary, with the approval of the Monitor. The Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Monitor's Certificate**"), all of the Applicant's right, title, benefit and interest in and to the Purchased Assets described in the Stalking Horse APA shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order dated January 20, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule B** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule C**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
4. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in connection with the Transaction.
5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead

of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicant.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act (Canada)* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **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 Vendor and its 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 Vendor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Vendor and its agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. prevailing eastern time on the date hereof.

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**Schedule A – Form of Monitor’s Certificate**

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. (the “**Applicant**”)

**MONITOR’S CERTIFICATE**

**RECITALS**

**A.** Pursuant to an Order of the Honourable Madam Justice Kimmel of the Ontario Superior Court of Justice (the “**Court**”) dated January 20, 2023, Deloitte Restructuring Inc. was appointed as monitor (in such capacity, the “**Monitor**”) of Tehama Inc. (the “**Vendor**”);

**B.** Pursuant to an Order of the Court dated March \_\_\_, 2023, the Court approved the stalking horse purchase agreement dated January \_\_\_, 2023 (the “**Stalking Horse APA**”) between the Vendor and 14667913 Canada Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser all of the Vendor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Vendor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets, (ii) that the conditions to closing as set out in the Stalking Horse APA have been satisfied or waived by the Vendor and the Purchaser, and (iii) the Transaction has been completed to the satisfaction of the Vendor.

**C.** Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Stalking Horse APA.

**THE MONITOR CERTIFIES** the following:

1. The Purchaser has delivered the Purchase Price and closing deliveries and the Vendor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Stalking Horse APA;
2. The conditions to closing as set out in the Stalking Horse APA have been satisfied or waived by the Vendor and the Purchaser, respectively; and
3. The Transaction has been completed to the satisfaction of the Vendor.
4. This Certificate was delivered by the Vendor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**DELOITTE RESTRUCTURING INC., solely  
in its capacity as Monitor of Tehama Inc., and  
not in any other capacity**

Per: \_\_\_\_\_

Name:

Title:



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  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at Toronto, Ontario

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**MONITOR'S CERTIFICATE**

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**DENTONS CANADA LLP**  
77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto, ON M5K 0A1

**Robert Kennedy** (LSO # 474070)  
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*Lawyers for the Applicant*

**Schedule B – Claims to be deleted and expunged**

**Schedule C – Permitted Encumbrances**  
**(unaffected by the Vesting Order)**

None.

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  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at Toronto, Ontario

**APPROVAL AND VESTING ORDER**

**DENTONS CANADA LLP**  
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*Lawyers for the Applicant*

## **SCHEDULE B**

### **ASSIGNED CONTRACTS AND PERMITS**

The existing contracts between the Vendor and the following parties:

1. Adobe - <https://www.adobe.com/ca/legal/terms.html>
2. Atlassian (Jira, Confluence, Statuspage, Bitbucket) - <https://www.atlassian.com/legal/cloud-terms-of-service>
3. AWS - <https://aws.amazon.com/agreement/>
4. BambooHR - <https://www.bamboohr.com/terms-of-service/>
5. ControlUp Hosting Partner Agreement with an October 31, 2020 Effective Date as amended
6. Figma - <https://www.figma.com/summary-of-policy/>
7. GitHub - <https://docs.github.com/en/site-policy/github-terms/github-terms-of-service>
8. Google DNS - <https://domains.google.com/tos?pli=1>
9. Google GSuite - <https://policies.google.com/terms?hl=en>
10. Lacework - <https://www.lacework.com/terms-of-use/>
11. Loom - <https://www.loom.com/terms>
12. Microsoft - <https://www.microsoft.com/en-ca/servicesagreement/default.aspx>
13. Oracle (NetSuite) Order signed July 16, 2020 and related Payment Plan signed July 17, 2020
14. PagerDuty Order Form signed June 23, 2022
15. Secureship - <https://secureship.ca/terms.aspx>
16. Slack - <https://slack.com/terms-of-service>
17. Tenable - <https://cloud.tenable.com/print-eula.html>
18. Teradici Addendum No. 2 to the Teradici Advantage Partner Program made as of April 1, 2021
19. Testlodge - <https://www.testlodge.com/policies-procedures/terms>
20. Twilio (Send Grid) - <https://www.twilio.com/legal/tos>
21. Upwork (WordPress website development) April 2022
22. WP Engine - <https://wpengine.com/legal/terms-of-service/>
23. Zendesk - <https://www.zendesk.com/company/agreements-and-terms/master-subscription-agreement/>

**SCHEDULE C**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**THIS AGREEMENT** is made as of ●, 2023

**BETWEEN**

**TEHAMA INC.**, a corporate incorporated under the laws  
of Canada (the “**Vendor**”)

-and-

**14667913 CANADA INC.**, a corporation incorporated under the laws  
of Canada (the “**Purchaser**”)

**WHEREAS** the parties hereto have entered into a stalking horse purchase agreement dated as of ●, 2023 (the “**Stalking Horse APA**”), and the Vendor has agreed to assign all of Vendor’s right, title, benefit and interest in and to the Assigned Contracts to the Purchaser, and the Purchaser has agreed to assume, perform and indemnify and hold harmless the Vendor from the Assumed Liabilities, upon the terms and conditions set forth therein;

**AND WHEREAS** pursuant to Sections 7.02 and 7.03 of the Stalking Horse APA, the Vendor and the Purchaser are required to enter into and deliver this Agreement at the Time of Closing;

**NOW THEREFORE** in conjunction with and in consideration of the completion of the transactions to be effected at the Time of Closing as contemplated by the Stalking Horse APA, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vendor and the Purchaser agree as follows:

**ARTICLE 1 - INTERPRETATION**

**1.01 Definitions**

Unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Stalking Horse APA.

**1.02 Headings**

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or

interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles and Sections of, and Schedules to, this Agreement.

### **1.03 Extended Meanings**

In this Agreement words importing the singular number include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities. The term “including” means “including without limiting the generality of the foregoing”.

## **ARTICLE 2 - ASSIGNMENT AND ASSUMPTION**

### **2.01 Assignment by Vendor**

Upon and subject to the terms of the Stalking Horse APA, effective at the Time of Closing, the Vendor hereby assigns and transfers to the Purchaser all of Vendor’s right, title, benefit and interest under or in respect of the Assigned Contracts.

### **2.02 Assumption by the Purchaser**

Upon and subject to the terms of the Stalking Horse APA, effective at the Time of Closing, the Purchaser hereby assumes and agrees to fulfill, perform and discharge the Assumed Liabilities.

### **2.03 Release by the Purchaser**

The Purchaser hereby: (i) unconditionally and irrevocably fully releases and discharges the Vendor from any Claim which the Purchaser may now or hereafter have against the Vendor by reason of any matter or thing arising out of, or resulting from, any of the Assumed Liabilities, and (ii) agrees that the Purchaser will not make or take any Claim with respect to any matter released and discharged in this Section 2.03 which may result in any Claim against the Vendor for contribution or indemnity or other relief.

### **2.04 Indemnity by the Purchaser**

The Purchaser hereby indemnifies and saves harmless the Vendor on its own behalf and as trustee for its Affiliates and its and their current and former directors and officers, employees, agents, advisors, and representatives (collectively, the “**Indemnitees**”) from and against all Claims asserted against any of the Indemnitees in any way directly or indirectly arising from, relating to or in connection with any of the Assumed Liabilities.

## **ARTICLE 3 - GENERAL**

### **3.01 Further Assurances**

The Vendor and the Purchaser will from time to time execute and deliver all such further documents and instruments and do all acts and things as any of the other parties may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

### **3.02 Time of the Essence**

Time is of the essence of this Agreement.

### **3.03 Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

### **3.04 Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by each of the parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

### **3.05 Assignment**

This Agreement may not be assigned by the Vendor or by the Purchaser without the consent of: (i) in the case of an assignment by the Vendor, the Purchaser; and (ii) in the case of an assignment by the Purchaser, the Vendor.

### **3.06 Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and in accordance with Section [9.09] of the Stalking Horse APA.

### **3.07 Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### **3.08 Attornment**

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have



jurisdiction to entertain any action arising under this Agreement. The Vendor and the Purchaser each attorn to the jurisdiction of the courts of the Province of Ontario.

### **3.09 Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

### **3.10 Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

### **3.11 Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any of the parties.

*[The balance of this page has been intentionally left blank]*

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first above written.

**14667913 CANADA INC.**

Per: \_\_\_\_\_

Name:

Title:

*I have authority to bind the Corporation.*

**TEHAMA INC.**

Per: \_\_\_\_\_

Name:

Title:

*I have authority to bind the Corporation.*

**SCHEDULE D**

**PERMITTED ENCUMBRANCES**

None.

**SCHEDULE E**

**OTHER EXCLUDED ASSETS**

None.

**SCHEDULE F**

**ALLOCATION OF PURCHASE PRICE**

**[The Purchase Price allocation will be determined by the Purchaser prior to the Closing Date]**

## SCHEDULE G

### SALE AND INVESTMENT SOLICITATION PROCESS

#### **Introduction**

- A. On January 20, 2023 (the “**Filing Date**”), Tehama Inc. (“**Tehama**” or the “**Company**”) obtained an initial order (as amended, supplemented or amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (“**CCAA**” and the proceedings commenced thereby, the “**CCAA Proceedings**”) from the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”).
- B. Pursuant to the Initial Order, Deloitte Restructuring Inc. was appointed as monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”).
- C. On January 30, 2023, the CCAA Court granted the Amended and Restated Initial Order (the “**ARIO**”).
- D. Prior to the Filing Date, Tehama engaged in certain limited activities to solicit further equity and debt investments, in an attempt to assist in the further development of the Tehama business (the “**Preliminary Process**”).
- E. On February 9, 2023, the CCAA Court granted an Order (the “**SISP Approval Order**”), among other things, approving the sale and investment solicitation process (“**SISP**”) described herein and the Asset Purchase Agreement dated as of February 7, 2023 (the “**Stalking Horse APA**”) entered into by Tehama, as seller, and 14667913 Canada Inc. (the “**Stalking Horse Bidder**”), as buyer, pursuant to which the Stalking Horse Bidder has agreed to purchase substantially all of the assets of the Company (the “**Stalking Horse Transaction**”).
- F. The purpose of this SISP is to set out terms and procedures for a fair and efficient sale process so as to (i) obtain the highest and best offer for Tehama’s business operations and activities (the “**Business**”), including all of their assets, rights, undertakings and properties (collectively, the “**Property**”), and (ii) ensure certainty for the growth and the long-term continuation of the Business, the whole in the best interests of the Tehama’s stakeholders, including their employees, their creditors, their suppliers and contracting parties.
- G. Accordingly, this SISP describes, among other things: (a) the Property available for sale and the opportunity for an investment in the Business, (b) the manner in which prospective bidders may gain access to due diligence materials concerning the Property and the Business, (c) the manner in which bidders and bids may become Qualified Bidders, Qualified Bids, and Auction Bidders, as applicable, (d) the evaluation of bids received, (e) the guidelines for the ultimate selection of the Successful Bid and/or the Back-Up Bid, and

(f) the process for obtaining such approvals (including the approval of the CCAA Court) as may be necessary or appropriate in respect of a Successful Bid.

H. Capitalized terms used in this SISF and not otherwise defined have the meanings given to them in paragraph 1 below.

### **Defined Terms**

1. The following capitalized terms have the following meanings when used in this SISF:

- (a) “**Approval Motion**” is defined in paragraph 26.
- (b) “**Approval Motion Date**” is defined in paragraph 2.
- (c) “**ARIO**” is defined in paragraph C.
- (d) “**Auction**” is defined in paragraph 23.
- (e) “**Auction Bidders**” is defined in paragraph 24.
- (f) “**Auction Date**” is defined in paragraph 2.
- (g) “**Back-Up Bid**” is defined in paragraph 25(i).
- (h) “**Back-Up Bidder**” is defined in paragraph 25(i).
- (i) “**Bid**” is defined in paragraph 17.
- (j) “**Bid Deadline**” is defined in paragraph 2.
- (k) “**Business**” is defined in paragraph F of the introduction.
- (l) “**Business Day**” means a day (other than Saturday or Sunday) on which banks are generally open for business in Montreal, Quebec and New York, New York.
- (m) “**CCAA**” is defined in paragraph A of the introduction.
- (n) “**CCAA Court**” is defined in paragraph A of the introduction.
- (o) “**CCAA Proceedings**” is defined in paragraph A of the introduction.
- (p) “**Closing**” means the completion of the transaction contemplated by the Successful Bid.

- (q) “**Data Room**” is defined in paragraph 10.
- (r) “**Deposit**” is defined in paragraph 17(c)(xiv).
- (s) “**Filing Date**” is defined in paragraph A of the introduction.
- (t) “**Independent Director**” means Michael Aeillo, designated as independent director on behalf of Tehama.
- (u) “**Initial Order**” is defined in paragraph A of the introduction.
- (v) “**Monitor**” is defined in paragraph B of the introduction.
- (w) “**Monitor’s Website**” means [www.insolvencies.deloitte.ca/en-ca/Tehama](http://www.insolvencies.deloitte.ca/en-ca/Tehama)
- (x) “**NDA**” means a non-disclosure agreement in form and substance satisfactory to Tehama and the Monitor, which will inure to the benefit of any Successful Bidder at Closing.
- (y) “**Opening Bid**” is defined in paragraph 25(b).
- (z) “**Outside Date**” is defined in paragraph 2.
- (aa) “**Overbid**” is defined in paragraph 25(e).
- (bb) “**Participation Deadline**” is defined in paragraph 2.
- (cc) “**Participation Letter**” is defined in paragraph 7(a).
- (dd) “**Potential Bidder**” is defined in paragraph 4.
- (ee) “**Preliminary Process**” is defined in paragraph D of the introduction.
- (ff) “**Property**” is defined in paragraph F of the introduction.
- (gg) “**Qualified Bid**” is defined in paragraph 17.
- (hh) “**Qualified Bidder**” is defined in paragraph 8.
- (ii) “**SISP**” is defined in paragraph E of the introduction.
- (jj) “**SISP Approval Order**” is defined in paragraph E of the introduction.
- (kk) “**Solicitation Materials Distribution Date**” is defined in paragraph 2.
- (ll) “**Solicitation Notice**” is defined in paragraph 6.



- (mm) “**Stalking Horse APA**” is defined in paragraph E of the introduction.
- (nn) “**Stalking Horse Bid**” is defined in paragraph 18.
- (oo) “**Stalking Horse Bidder**” is defined in paragraph E of the introduction.
- (pp) “**Stalking Horse Transaction**” is defined in paragraph E of the introduction.
- (qq) “**Successful Bid**” is defined in paragraph 25(i).
- (rr) “**Successful Bidder**” is defined in paragraph 25(i).
- (ss) “**Superior Offer**” mean a credible and fully financed offer made by a Qualified Bidder which (i) provides for consideration in excess of the aggregate purchase price contemplated by the Stalking Horse Transaction, which shall include cash consideration not less than \$2,812,833.33 plus \$100,000, and (ii) the Monitor, in consultation with the Independent Director, considers to be better than the Stalking Horse Transaction.

### Key Dates

2. The key dates for the SISP are as follows:

By no later than February 10, 2023 at 5:00 p.m. (prevailing Eastern Time) or such later date as may be agreed to by Tehama with the consent of the Monitor  <b>(“Solicitation Materials Distribution Date”)</b>	Distribution of the Solicitation Notice, form of NDA and the Participation Letter to the Potential Bidders
March 2, 2023, 2023 at 5:00 p.m. (prevailing Eastern Time)  <b>(“Participation Deadline”)</b>	Due date for delivery by Potential Bidders of a Participation Letter and an executed NDA
March 16, 2023 at 5:00 p.m. (prevailing Eastern Time)  <b>(“Bid Deadline”)</b>	Due date for Bids and Deposits (subject to extension of up to 1 week if the Monitor believes same to be appropriate)
March 20, 2023  <b>(“Auction Date”)</b>	Date of the Auction (if any) (subject to being 1 week later if Bid Deadline is moved back 1 week)

<p>No later than seven (7) calendar days following either the conclusion of the Auction, or the date on which a determination is made by the Monitor not to proceed with an Auction in accordance with paragraph 22</p> <p>(“<b>Approval Motion Date</b>”)</p>	<p>Hearing of the Approval Motion</p>
<p>March 31, 2023, or such later date as may be agreed to by Tehama and the Successful Bidder, with the consent of the Monitor</p> <p>(“<b>Outside Date</b>”)</p>	<p>Deadline for completion of the transaction represented by the Successful Bid</p>

### Supervision of the SISP

3. The Monitor shall conduct the SISP as outlined herein, with such input and advice from the Independent Director as the Monitor may consider appropriate from time to time, and Tehama shall conclude any sale or investment transactions resulting herefrom. In the event that there is disagreement, or if a clarification is required, as to the interpretation or application of this SISP or the responsibilities of the Monitor and Tehama, the CCAA Court will have jurisdiction to hear such matter and provide advice and directions, upon application of the Monitor, Tehama or any other party on not less than five (5) Business Days’ notice.

### Solicitation of Interest

4. For all purposes of this SISP, any party identified as a potential bidder by any of the Monitor, the Independent Director or Tehama shall be considered a potential bidder (each, a “**Potential Bidder**”).
5. As soon as reasonably practicable after the granting of the SISP Approval Order:
  - (a) the Monitor will post the SISP Approval Order and the SISP on the Monitor’s Website; and
  - (b) the Monitor will cause a notice of the SISP (and such other relevant information which Tehama, in consultation with the Monitor, considers appropriate) to be published in The Globe and Mail (National Edition)]; and [**NTD: is there a trade magazine or website to post on?**]

6. By no later than the Solicitation Materials Distribution Date, the Monitor shall distribute to each Potential Bidder a solicitation notice describing the opportunity and inviting Potential Bidders to submit a bid pursuant to these SISP procedures (the “**Solicitation Notice**”), and containing the form of NDA.

### **Participation Requirements**

7. In order to participate in the SISP, on or before the Participation Deadline, each Potential Bidder (or other interested party) must deliver the following information and executed documents to the Monitor at the email address specified in 0 hereto:
  - (a) a letter (a “**Participation Letter**”) providing (i) the identity, the type and the jurisdiction of organization of the Potential Bidder, (ii) the contact information for such Potential Bidder, (iii) information sufficient to enable the Monitor to make a reasonable determination that the Potential Bidder has the financial and other capabilities to consummate a transaction pursuant to a Superior Offer, and (iv) an acknowledgement that the Potential Bidder agrees to be bound by the provisions of the SISP Approval Order and this SISP; and
  - (b) an executed NDA.
8. A Potential Bidder that has delivered the necessary documents and information in accordance with paragraph 7, and that the Monitor determines, in consultation with the Independent Director, is likely to be able to consummate a transaction on or before the Outside Date, will be deemed a “Qualified Bidder”, and will be promptly notified of such determination by the Monitor.
9. Notwithstanding paragraphs 7 and 8, the Stalking Horse Bidder shall be deemed to be a Qualified Bidder for all purposes under, and at all times in connection with, this SISP.

### **Access to Data Room**

10. Contemporaneously with the determination that a Potential Bidder is a Qualified Bidder, the Monitor shall provide such Qualified Bidder with access to a secure online electronic data room (the “**Data Room**”) containing due diligence information regarding:
  - (a) the Property and the Business; and
  - (b) the debt of, and equity interests in, Tehama.
11. The Monitor shall coordinate all reasonable requests from Qualified Bidders for additional information and due diligence access; provided Tehama may decline to provide (or elect to withdraw access to) due diligence information to any Qualified Bidder who, at such time

and in the reasonable business judgment of the Monitor, after consultation with the Independent Director, has not established (or there is otherwise a reasonable basis to doubt), that such Qualified Bidder intends in good faith to, or has the capacity to, consummate a transaction.

12. The Monitor, in consultation with the Independent Director, reserves the right to withhold any diligence materials that the Monitor determines are sensitive or otherwise not appropriate for disclosure to a Qualified Bidder that the Monitor determines is a competitor or is otherwise an entity to which the disclosure of sensitive or competitive information, in the Monitor's exercise of their reasonable business judgment (in consultation with the Independent Director), may risk unduly placing Tehama at a competitive disadvantage.
13. All due diligence and information requests must be directed to the Monitor at the email address specified in 0 hereto.
14. Tehama (including the Independent Director), the Monitor and their respective employees, officers, directors, agents, advisors and other representatives make no promise, representation, warranty, condition or guarantee of any kind, nature or description as to the information (a) contained in the Data Room, or (b) otherwise made available in connection with this SISP, except, in the case of Tehama only, to the extent expressly contemplated in any executed definitive sale or investment agreement with a Successful Bidder.
15. Without limiting the generality of any term or condition of any NDA between Tehama and any Potential Bidder or Qualified Bidder, unless otherwise agreed by Tehama and the Monitor or ordered by the CCAA Court, no Potential Bidder or Qualified Bidder (other than the Stalking Horse Bidder) shall be permitted to have any discussions with (a) any counterparty to any contract with any of Tehama, any current or former director, manager, shareholder, officer, member or employee of Tehama, other than in the normal course of business and wholly unrelated to Tehama, the potential transaction, the Confidential Information (as defined in the NDA), the SISP or the CCAA Proceedings, and (b) any other Potential Bidder or Qualified Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto. In the case of the Stalking Horse Bidder, it shall not be permitted to have any communications (verbal and in written form) with any other Potential Bidder or Qualified Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto, unless the Monitor and Tehama's counsel are parties to any and all such communications.

### **Qualified Bids**

16. A Qualified Bidder that wishes to make a bid must deliver its bid to the Monitor at the email address specified in 0 hereto so as to be actually received by them not later than the Bid Deadline.

17. All offers submitted to the Monitor (“**Bids**”) for consideration in accordance with paragraph 16 must comply with all of the following requirements (any such complying Bid, a “**Qualified Bid**”):
- (a) **Asset Sales:** In the case of an offer to purchase some or all of the Property:
    - (i) **Purchase Price:** Each Bid must clearly set forth the purchase price in Canadian dollars, stated on a total enterprise value basis (including the cash and any non-cash components thereof, the sources of such capital, evidence of the availability of such capital and the steps necessary and associated timing to obtain the capital and consummate the proposed transaction and any related contingencies, as applicable);
    - (ii) **Assets:** Each Bid must clearly state the Property to be included in the transaction and any Property to be excluded or divested or disclaimed prior to Closing (including the contracts and leases not to be assumed);
    - (iii) **Assumption of Obligations:** Each Bid must clearly state which liabilities and obligations of Tehama are to be assumed; and
    - (iv) **Mark-up:** Each Bid must include a full mark-up of the Stalking Horse APA to be included in the Data Room, and not only an issues list or comments of a conceptual nature.
  - (b) **Investments:** In the case of an offer to make an investment in the Business:
    - (i) **Amount/Type of Investment:** Each Bid must clearly state the aggregate amount of the equity and/or debt investment in Canadian dollars (including the sources of such capital, evidence of the availability of such capital and the steps necessary and associated timing to obtain the capital and consummate the proposed transaction and any related contingencies, as applicable) to be made; and
    - (ii) **Treatment of Obligations:** Each Bid must include the proposed treatment of the liabilities and obligations of Tehama.
  - (c) **All Bids:** In the case of all offers to purchase some or all of the Property and/or to make an investment in the Business:
    - (i) **Bid Deadline:** Each Bid must be received by the Bid Deadline as set forth herein;
    - (ii) **Superior Offer:** Each Bid must represent a Superior Offer;

- (iii) **Key Terms:** Each Bid must set forth key terms including (A) economic terms, (B) the basis and rationale of the valuation, and (C) any other material terms and conditions required to consummate the transaction;
- (iv) **Irrevocable Offer:** Each Bid must be irrevocable until the earlier of (A) the approval by the CCAA Court of a Successful Bid (and the Back-Up Bid) and (B) 21 days following the Bid Deadline, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer will remain irrevocable until the Closing (or ten (10) days after the Outside Date as set forth herein);
- (v) **Executed Documents:** Each Bid must be accompanied by a duly authorized and executed asset purchase agreement or investment commitment, as applicable, and an electronic copy of such agreement, as well as duly authorized and executed transaction documents necessary to effectuate the transactions contemplated thereby;
- (vi) **Financial Wherewithal:** Each Bid must include written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Monitor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction;
- (vii) **Authorization:** Each Bid must include evidence, in form and substance reasonably satisfactory to the Monitor of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Bid;
- (viii) **No Other Authorization, Diligence, Financing Conditions:** Each Bid must not be conditional upon the following:
  - A. any internal approval(s);
  - B. the outcome of unperformed due diligence by the Qualified Bidder; or
  - C. obtaining financing;
- (ix) **"As Is, Where Is"; Other Acknowledgements:** Each Bid must include an acknowledgement and representation that the Qualified Bidder:

- A. is making its offer to purchase the Property or make an investment in the Business on an “*as is, where is*” basis and without surviving representations or warranties of any kind, nature, or description by Tehama, the Monitor or any of their respective employees, officers, directors, agents, advisors, other representatives and estates, except to the extent set forth in the definitive sale or investment agreement;
  - B. has had an opportunity to conduct any and all due diligence regarding the Business and the Property prior to making its Bid;
  - C. has relied solely upon its own independent review, investigation and inspection of any documents and the assets to be acquired and liabilities to be assumed in making its Bid; and
  - D. is not relying upon any written or oral statements, representations, promises, warranties, conditions, or guaranties whatsoever, whether express or implied (by operation of law or otherwise), made by any person or party, including Tehama, the Independent Director, the Monitor and their respective employees, officers, directors, agents, advisors and other representatives, regarding the Business, the Property, the assets to be acquired or liabilities to be assumed, the Auction, this SISP, or any information (or the completeness of any information) provided in connection therewith, except as expressly stated in the definitive sale or investment agreement.
- (x) **Disclaimer of Fees:** Each Bid must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation;
  - (xi) **Treatment of Employees:** Each Bid must include full details of the Qualified Bidder’s intention towards offering continued employment to Tehama’s employees and provide details on the terms and conditions of employment that will be offered to any continuing employees. For greater certainty, each Bid must include the proposed approximate number of employees of Tehama who will become employees of the bidder or remain employees of the Business;
  - (xii) **Cure Costs:** To the extent applicable, each Bid must contain full details of the Qualified Bidder’s proposal for the treatment of related cure costs (including the Qualified Bidder’s ability to perform under any assigned

agreements) and identify with particularity any executory contract or unexpired lease the assumption and assignment of which is a condition to closing;

- (xiii) **Timeline:** Each Bid must provide a timeline to Closing with critical milestones with a closing date not exceeding the Outside Date;
  - (xiv) **Deposit:** Each Bid must be accompanied by a refundable deposit (the “**Deposit**”) in the form of a wire transfer to the account specified on **Error! Reference source not found.** hereto (or such other form acceptable to the Monitor), payable to the order of the Monitor, on behalf of Tehama, in trust, in an amount equal to fifteen percent (15%) of the total consideration contemplated by the Bid, to be held and dealt with in accordance with the terms of this SISP;
  - (xv) **Terms of Court Order(s):** Each Bid must describe the key terms and provisions to be included in any order of the CCAA Court approving the contemplated transaction, including, in the case of an asset sale, whether the transaction requires that all of the rights, title and interests of Tehama in and to the subject Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (except to the extent otherwise set forth in the definitive sale or investment agreement); and
  - (xvi) **Other Information:** Each Bid must contain such other information as may be reasonably requested by Tehama or the Monitor in writing from time to time.
18. Notwithstanding anything herein to the contrary, the offer represented by the Stalking Horse APA (the “**Stalking Horse Bid**”) shall be deemed to be a Qualified Bid for all purposes under, and at all times in connection with, this SISP.
19. Notwithstanding anything herein to the contrary, the Monitor, in consultation with the Independent Director, will review and assess each Bid to determine whether such Bid is a Qualified Bid. In performing such review and assessment, the Monitor and the Independent Director shall evaluate the following as primary considerations: (a) the purchase price and net value (including assumed liabilities and other obligations to be performed by the bidder); (b) the firm, irrevocable commitment for financing of the transaction; (c) the closing conditions and other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction); and (d) the terms of transaction documents, including, if applicable, the proposed revisions to



the Stalking Horse APA. In addition, they may consider the following non-exhaustive list of considerations: (i) the claims likely to be created by such Bid in relation to other Bids; (ii) the counterparties to the transaction; (iii) planned treatment of stakeholders; (iv) the assets included or excluded from the Bid; (v) any transition services required from Tehama post-closing and any related restructuring costs; (vi) the likelihood and timing of consummating the transaction; (vii) whether there is sufficient capital post-closing for the wind-down of Tehama (if contemplated); and (viii) proposed treatment of the employees.

20. The Monitor, in consultation with the Independent Director, may reject any Bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements pursuant to these SISP procedures; (iii) contrary to the best interest of Tehama; or (iv) not a Qualified Bid.

#### **Right of Stalking Horse Bidder to Credit Bid**

21. The Stalking Horse Bidder has the right to credit bid for all of the Property subject to the security granted in favour of the Stalking Horse Bidder (including their agents), up to the full face value amount of the Stalking Horse Bidder's claims, including principal, interest and any other obligations owing to the Stalking Horse Bidder, whether for pre-filing indebtedness or advances under the DIP facility. For the avoidance of doubt, each \$1.00 of credit bid of the Stalking Horse Bidder shall be equal to \$1.00 of cash.

#### **Auction; Successful Bid**

22. In the event that no Participation Letters are received by the Participation Deadline, or that no Qualified Bid other than the Stalking Horse Bid is received by the Bid Deadline, then (a) there will be no auction, (b) the Stalking Horse Bid will be deemed to be the Successful Bid, and (c) Tehama shall seek approval of, and authority and direction for Tehama to consummate, the Stalking Horse APA and the transactions provided for therein at the Approval Motion.
23. If one or more Qualified Bids other than the Stalking Horse Bid are received, then the Monitor, in consultation with the Independent Director, shall conduct an auction to determine the highest and best Qualified Bid (the "**Auction**").
24. If the Auction is to take place, then as soon as practicable and no later than 10:00 am (Eastern Standard Time) (3) Business Days prior to the Auction, the Monitor shall provide the Stalking Horse Bidder and all Qualified Bidders having submitted a Qualified Bid (collectively, the "**Auction Bidders**") with a copy of the Opening Bid for the Auction together with a copy of the mark-up of the Stalking Horse APA.
25. The Auction shall commence on the Auction Date by videoconference and shall be conducted according to the following procedures:

- (a) **Participation:** The Monitor shall direct and preside over the Auction. Only Auction Bidders are eligible to participate in the Auction. Each Auction Bidder must have present or available the individual or individuals with the necessary decision-making authority to submit Overbids and to make such necessary and ancillary decisions as may be required during the Auction. Only the authorized representatives, including counsel and other advisors, of Tehama, the Monitor and each of the Auction Bidders shall be permitted to attend the Auction.
- (b) **Rounds.** Bidding at the Auction shall be conducted in rounds. The Qualified Bid that is the highest and best bid shall constitute the “**Opening Bid**” for the first round of bidding. The highest and best Overbid at the end of each round shall constitute the “**Opening Bid**” for the following round. The Monitor, in consultation with the Independent Director, shall determine what constitutes the Opening Bid for each round in accordance with the assessment criteria set out in paragraph 25(d) below. In each round, an Auction Bidder may submit no more than one Overbid. The Monitor may impose such time limits for the submission of Overbids as it deems reasonable.
- (c) **Failure to Submit an Overbid.** If, at the end of any round of bidding, an Auction Bidder fails to submit an Overbid, then such Auction Bidder may not participate in the next or any subsequent round of bidding at the Auction. Any Auction Bidder that submits an Overbid during a round (including the Auction Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
- (d) **Bid Assessment Criteria.** The Monitor, in consultation with the Independent Director, shall determine which Qualified Bid constitutes the Opening Bid for the first round of bidding and the determination of which Overbid constitutes the Opening Bid for each subsequent round of bidding, taking into account all factors that the Monitor, with the assistance of the Independent Director, reasonably deems relevant to the value of such bid, including, among other things, those considerations listed in paragraph 19, above.
- (e) **Overbids.** All Bids made during the Auction must be Overbids and shall be submitted in a form to be determined by the Monitor, which form shall be provided to all Auction Bidders no later than two (2) Business Days prior to the start of the Auction. The identity of each Auction Bidder and all material terms of each Overbid must be fully disclosed by the Monitor to all other Auction Bidders participating in the Auction. The Monitor shall maintain a transcript of the Opening Bid and all Overbids made and announced at the Auction, including the Successful Bid (as defined below) and the Back-Up Bid. To be

considered an “**Overbid**”, a Bid made during the Auction must satisfy the following criteria:

- (i) **Minimum Consideration.** The overall amount of consideration of any Overbid shall not be less than the value of the Opening Bid of the applicable round of bidding, plus a minimum amount of \$100,000 (which, in the case of the Stalking Horse Bidder, may be by way of credit bid) or such higher amount as the Monitor, in consultation with the Independent Director, may determine in advance of such round of bidding in order to facilitate the Auction; and
- (ii) **Remaining terms are the same as for Qualified Bids.** Except as modified herein, an Overbid must comply with the conditions for a Bid set forth in paragraph 17 above (provided, for greater certainty, that the Bid Deadline shall not apply and Overbids need not be accompanied by additional cash deposits (subject to subsection (h) hereof)). To the extent not previously provided (which shall be determined by the Monitor), an Auction Bidder submitting an Overbid must submit, as part of its Overbid, evidence acceptable to Tehama and the Monitor demonstrating such Auction Bidder’s ability (including financial ability) to close the transaction contemplated by its Overbid;
- (f) **Overbid Alterations:** An applicable Overbid may contain alterations, modifications, additions, or deletions of any terms of the prior Overbid so long as, after giving effect to the same, the terms of the new Overbid are no less favorable than any prior Overbid of such Auction Bidder, as determined by the Monitor, in consultation with the Independent Director.
- (g) **Announcing Highest Overbids.** At the end of each round of bidding, the Monitor, in consultation with the Independent Director, shall (i) immediately review each Overbid made in such round; (ii) identify the highest and best Overbid; and (iii) announce the terms of such highest and best Overbid to all Auction Bidders entitled to participate in the next round of bidding. Such highest and best Overbid shall be the Opening Bid for the next round of the Auction.
- (h) **Adjournments.** The Monitor may, in its reasonable business judgment, make one or more adjournments in the Auction (other than for adjournments at the end of an Auction day to the next morning, such adjournments not to exceed two (2) Business Days in the aggregate) to, among other things: (i) facilitate discussions with individual Auction Bidders, including any discussion, negotiation or clarification of any Overbid; (ii) allow individual Auction

Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and best Overbid at any given time during the Auction; (iv) give Auction Bidders the opportunity to provide such additional evidence as the Monitor may require, in their reasonable business judgment, that the Auction Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the Overbid amount; and (v) subject to such rules and guidelines as the Monitor may consider appropriate, facilitate any appropriate consultation by Auction Bidders with third party stakeholders.

- (i) **Closing the Auction.** If, in any round of bidding, no Overbid is made, the Auction shall be closed and the Monitor shall: (i) declare the last Opening Bid as the successful Bid (the “**Successful Bid**” and the party submitting such Successful Bid, the “**Successful Bidder**”); (ii) immediately review the other Overbids made in the previous round (or the Qualified Bid(s) if no Overbids were made at the Auction) and identify and record the next highest and best Overbid (or Qualified Bid) (the “**Back-Up Bid**” and the party or parties submitting such Back-Up Bid, the “**Back-Up Bidder**”); and (iii) advise the Successful Bidder and the Back-Up Bidder of such determinations and all other Auction Bidders that they are not a Successful Bidder or a Back-Up Bidder. If a Back-Up Bid is identified in accordance with this SISP, then such Back-Up Bid shall remain open until the earlier of (i) the consummation of the transaction contemplated by the Successful Bid, and (ii) ten (10) days after the Outside Date.
- (j) **Executed Documentation:** The Successful Bidder and the Back-Up Bidder (if any) shall, within two (2) Business Days after the conclusion of the Auction, or such longer delay acceptable to Tehama and the Monitor, submit to Tehama and the Monitor executed revised documentation memorializing the terms of the Successful Bid and the Back-Up Bid (if any). Subject to the terms of the Successful Bid documentation, the Successful Bid and the Back-Up Bid may not be assigned to any party without the consent of Tehama and the Monitor.
- (k) **Reservation of Rights.**

Subject to the maximum length of adjournments contemplated by Section 25(h), the Monitor, in consultation with the Independent Director, reserve their rights to modify the conduct of the Auction at any time, acting reasonably, in any manner that would best promote the goals of the Auction process, including to select the

Successful Bid and/or Back-Up Bid prior to the completion of the Auction.

- (1) **No Collusion.** Each Auction Bidder shall be required to confirm that it has not engaged in any discussions or any other collusive behavior with respect to the submission of Overbids. The Monitor may permit discussions between Auction Bidders at the Auction, subject to such rules and guidelines as the Monitor considers appropriate and on notice to all of the Auction Bidders.

### **Approval Motion**

26. Tehama shall apply to the CCAA Court (the “**Approval Motion**”) for an order approving the Successful Bid and authorizing and directing Tehama to enter into any and all necessary agreements with respect to the Successful Bid and to undertake such other actions as may be necessary or appropriate to give effect to the Successful Bid. Such order shall also approve the Back-Up Bid, if any, should the Successful Bid not close for any reason.
27. The Approval Motion will be heard on the Approval Motion Date. The Approval Motion may be adjourned or rescheduled by Tehama, with the consent of the Monitor and the Successful Bidder, without further notice by an announcement of the adjourned date at the Approval Motion.
28. All Qualified Bids (other than the Successful Bid and the Back-Up Bid) will be deemed rejected on the date of approval of the Successful Bid by the CCAA Court.

### **Closing the Successful Bid**

29. Tehama and the Successful Bidder shall take all reasonable steps to complete the transaction contemplated by the Successful Bid as soon as possible after the Successful Bid is approved by the CCAA Court. Tehama will be deemed to have accepted the Successful Bid only when the Successful Bid has been approved by the CCAA Court, provided that following designation of the Successful Bid by the Monitor, neither Tehama (including its legal advisors) nor the Monitor shall be entitled to solicit any further bids or engage with any bidder (other than the Successful Bidder and, solely with respect to the Back-Up Bid, the Back-Up Bidder) and shall seek approval of the Successful Bid as contemplated hereby. If the transaction contemplated by the Successful Bid has not closed by the Outside Date or the Successful Bid is terminated for any reason prior to the Outside Date, Tehama may elect, with the consent of the Monitor, on not less than two (2) Business Day’s notice to the CCAA Service List, to seek to complete the transaction contemplated by the Back-Up Bid, and will promptly seek to close the transaction contemplated by the Back-Up Bid. In such event, the Back-Up Bid will be deemed to be the Successful Bid and Tehama will be

deemed to have accepted the Back-Up Bid only when Tehama has made such election with the consent of the Monitor.

### **General**

30. All Deposits will be retained by the Monitor and invested in an interest-bearing trust account. If there is a Successful Bid and/or Back-Up Bid, the Deposit (plus accrued interest) paid by the Successful Bidder and/or Back-Up Bidder whose bid is approved at the Approval Motion will be applied to the purchase price to be paid or investment amount to be made by the Successful Bidder and/or Back-Up Bidder, as applicable upon closing of the approved transaction and will be non-refundable. The Deposits (plus applicable interest) of Qualified Bidders and Auction Bidders not selected as the Successful Bidder and/or Back-Up Bidder will be returned to such bidders within five (5) Business Days of the date upon which the Successful Bid is approved by the CCAA Court or any earlier date as may be determined by the Monitor. The Deposit of the Back-Up Bidder shall be returned to such Back-Up Bidder no later than 5 Business Days after Closing.
31. If a Successful Bidder breaches its obligations under the terms of the SISP, or fails to close the Transaction after they are approved by the CCAA court, its Deposit shall be forfeited as liquidated damages and not as a penalty.
32. All bidders (including Auction Bidders and Qualified Bidders) shall be deemed to have consented to the exclusive jurisdiction of the CCAA Court and waived any right to a jury trial in connection with any disputes relating to the SISP, including the qualification of bids, the Auction, if any, the construction and enforcement of the SISP, the transaction documents and the Closing, as applicable.
33. There will be no amendments to this SISP without the consent of the Monitor, the Independent Director, and the Stalking Horse Bidder or, in the absence of consent, the approval of the CCAA Court.
34. This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between any Qualified Bidder or Auction Bidder and either Tehama or the Monitor, or any obligation to enter into any contractual or other legal relationship between any Qualified Bidder or Auction Bidder and either Tehama or the Monitor, other than as specifically set forth in a definitive agreement that may be signed with Tehama.
35. Neither Tehama nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the SISP arising out of any agreement or arrangement entered into by the parties that submitted the Successful Bid and Back-Up Bid.

**SCHEDULE "A"**  
**CONTACT INFORMATION**

**SCHEDULE "B"**  
**WIRE INSTRUCTIONS**