

**DISTRICT OF: NOVA SCOTIA**

**DIVISION NO: 01 – HALIFAX**

**COURT NO: 531915**

**ESTATE NOs: 51-126479/51-126481/51-126482/51-126483**

**SECOND REPORT OF DELOITTE RESTRUCTURING INC.**

**IN ITS CAPACITY AS RECEIVER AND MANAGER OF**

**TCAS HOLDINGS LIMITED, SUSTAINABLE FISH FARMING (CANADA) LIMITED,  
SUSTAINABLE BLUE INC., AND TCAS IP INC. (COLLECTIVELY, THE “SUSTAINABLE GROUP”)**

**MAY 27, 2024**

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## INTRODUCTION AND BACKGROUND

1. On April 4, 2024 (the “**Date of Receivership**”), the Supreme Court of Nova Scotia in Bankruptcy and Insolvency (the “**Court**”) granted an order (the “**Receivership Order**”) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as the receiver and manager (the “**Receiver**”) without security, of all the assets, undertakings and properties of TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc., and TCAS IP Inc. (collectively the “**Sustainable Group**” or the “**Debtors**”) acquired for, or used in relation to a business carried on by the Sustainable Group. A copy of the Receivership Order is attached hereto as **Appendix A**.
2. The Sustainable Group owns and operates a land-based marine aquaculture facility in Hants County, Nova Scotia (the “**Facility**”), where it grows Atlantic salmon. As at the Date of Receivership, the Sustainable Group employed approximately 30 personnel to care for and maintain the live inventory of approximately 512,000 fish in various growth stages.
3. The Receivership Order was granted as a result of an application by 4595756 Nova Scotia Limited (“**459NSL**”), with the consent of the Debtors, who holds registered security over the Sustainable Group’s present and after acquired personal property (the “**459NSL Security**”). The Receiver’s counsel has reviewed the 459NSL Security and provided the Receiver with a report thereon (the “**459NSL Security Opinion**”). The 459NSL Security Opinion notes that, subject to the usual qualifications therein, the 459NSL Security is valid and enforceable.
4. The first report of the Receiver dated May 2, 2024 (the “**First Report**”) advised the Court that the Receiver would be providing a further report in attendance of its motion scheduled for May 21, 2024 and the Receiver is providing this report dated May 27, 2024 (the “**Second Report**”) in order to do so.
5. The purpose of the First Report was to provide the Court with the Receiver’s request to amend the quantum of the Receiver’s Borrowing Charge from \$1,600,000 to \$2,500,000. A copy of the Order Amending Receiver’s Borrowings, dated May 14, 2024, is attached hereto as **Appendix B**.

## PURPOSE

6. The purpose of this Second Report is to provide information to the Court with respect to:
- i. the Receiver's activities since the First Report, including an update on the financial position of the estate (the "**Interim R&D**"), attached hereto as **Appendix C**;
  - ii. provide the Court with information regarding the insurance claim being pursued by the Receiver on behalf of the Debtors;
  - iii. provide the Court with an update on certain correspondence received from the Atlantic Canada Opportunities Agency ("**ACOA**") and the Canada Revenue Agency ("**CRA**");
  - iv. the Receiver's request for an increase in the Receiver's Borrowing Charge (as defined herein);
  - v. the Receiver's request for Court approval of a sale and investment solicitation process (the "**SISP**") which is attached to this Second Report as **Appendix D**. The proposed SISP includes a "stalking horse bid" component; and
  - vi. the Receiver's request for an order approving the Receiver's activities as contained in the First Report and the Second Report.

## TERMS OF REFERENCE AND DISCLAIMER

7. In preparing this Second Report, the Receiver has relied upon unaudited financial information prepared by the Debtors' management and agents (collectively "**Management**"), the Debtors' books and records, and discussions with Management (collectively, the "**Information**"). Except as described in this Second Report:
- i. The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Audit Standards ("**CAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.

- ii. Deloitte has prepared this Second Report in its capacity as Receiver to provide background to the Court for its consideration of the relief being sought. Parties using this Second Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
8. Unless otherwise stated, all dollar amounts contained in this Second Report are expressed in Canadian Dollars.
9. The Receivership Order, together with related Court documents have been posted on the Receiver's website at [www.insolvencies.deloitte.ca/en-ca/Sustainable-Group](http://www.insolvencies.deloitte.ca/en-ca/Sustainable-Group) (the "**Receiver's Website**").

## **ACTIVITIES OF THE RECEIVER AND INTERIM R&D**

10. The First Report included a number of activities undertaken by the Receiver since the date of the Receivership Order. Such activities included details regarding possession-taking and statutory noticing.
11. In addition to the activities in the First Report, the Receiver notes the following activities that have been undertaken since the Date of Receivership:
- i. held discussions with both 459NSL and external parties involved in the insurance claims further described herein;
  - ii. held discussions with its legal counsel and 459NSL's legal counsel with respect to position taken by ACOA as further described herein;
  - iii. worked with staff of the Sustainable Group to create the Revised Forecast (as defined herein);
  - iv. worked in conjunction with its legal counsel to create the SISP as further described herein;
  - v. worked in conjunction with 459NSL, its legal counsel and external advisors to create the Stalking Horse Bid as further described herein;
  - vi. maintained the Receiver's Website; and
  - vii. prepared this Second Report.
12. As at the date of this Second Report, the Receiver wishes to provide the Court an update with respect to the operations of the Sustainable Group as follows:

- i. the repair work to the biofilter in RBR5 has been completed and on April 30, 2024, the Debtors moved approximately 1,000 fish from RBR4 to RBR5 to test water quality;
- ii. on May 7, 2024, the Debtors moved approximately 25,000 fish from RBR4 to RBR5 and envision having all fish moved from RBR4 to RBR5 on or before June 7, 2024;
- iii. the Facility's fish count is approximately 550,000 with a biomass of approximately 164,000 kilograms (or 41% of capacity). With RBR5 now back online, the farm is fully operational and should reach full biomass by December 2024; and
- iv. at the commencement of the receivership proceedings, the Sustainable Group had identified several critical path capital projects required, an update of which is as follows:
  - i. *RBR2 Water Chiller* – the water chiller has arrived, and the installation process will commence in the coming weeks;
  - ii. *Effluent Recovery System Tank 1* – the panels and lids have been ordered and are anticipated to arrive at the Facility on or before June 7, 2024. The concrete base has been ordered and work has commenced on installation; and
  - iii. *Hatchery UV Lights* – orders have been placed with suppliers and are anticipated to arrive at the farm in a two-stage process during June and August.

13. A copy of the Interim R&D is enclosed as **Appendix C** and the Receiver offers the following commentary relating to the Interim R&D:

- i. the estate has borrowed \$2,500,000 of the Receiver's Borrowing Charge from 459NSL;
- ii. the estate received \$71,018 from the Debtors' February 2024 HST return;
- iii. the estate has disbursed \$545,739 relating to capital projects as further discussed above;
- iv. the estate has paid \$330,118 with respect to feed for the biomass;
- v. the estate has paid \$217,655 relating to compensation inclusive of statutory remittances;
- vi. the estate has incurred and paid \$123,885 of HST to date; and
- vii. the estate has paid \$119,512 in respect of utilities.

14. As at the date of the Second Report the Receiver is holding \$1,032,128 in its trust account.

## DEBTORS' INSURANCE CLAIM

15. As detailed in the affidavit of Thane Stevens dated March 26, 2024 and previously filed with this Court, the Debtors were subject to a catastrophic equipment failure on November 4, 2023 (the "**November 4 Incident**"). As a result of the November 4 Incident, all of the Sustainable Group's inventory of live fish that were scheduled to be harvested between November 28, 2023 and July 31, 2024 perished and, as such, the Sustainable Group was subject to a significant and immediate revenue and liquidity shortfall for that period.
16. In order to mitigate risks contemplated by the November 4 Incident, the Sustainable Group maintained an insurance policy related to business interruptions (the "**BI Policy**"). The BI Policy is underwritten by a syndicate of insurers as detailed below (along with each insurer's share of the liability):
- i. Definity Insurance Company – 50%
  - ii. ICEPI – 16%
  - iii. Burns & Wilcox – 12.5%
  - iv. Everest – 11.5%
  - v. Echelon – 10% (collectively, the "**Insurers**").
17. In order to advance the Sustainable Group's claim under the BI Policy (the "**BI Claim**"), the Receiver has:
- i. on April 15, 2024, held an initial call with AMG Claims Inc. ("**AMG**"), the insurance adjuster engaged by the Insurers to review the BI Claim;
  - ii. on April 16, 2024, provided correspondence to AMG requesting a copy of the loss quantification report prepared by a professional advisory firm on behalf of AMG (the "**Loss Quantification Report**"). On April 19, 2024, the Receiver received a draft copy of the Loss Quantification Report which was shared with 459NSL and its advisors that same day;
  - iii. engaged subject matter experts from within Deloitte (the "**Subject Matter Experts**") to review the Loss Quantification Report, including discussions with the former Chief Executive Officer of the Sustainable Group (the "**CEO**");



- iv. on May 7, 2024, held a follow-up call with AMG to obtain an update on the status of the BI Claim;
  - v. on May 10, 2024, attended a meeting with 459NSL and the CEO where the BI Claim was discussed; and
  - vi. on May 10, 2024, the Subject Matter Experts participated in a tour of the Facility with the CEO to further advance a critique of the Loss Quantification Report.
18. In addition to the BI Claim, the Receiver, with assistance of the Sustainable Group's former employees, is in the process of preparing a property claim for damages caused by the November 4 Incident (the "**Property Claim**"). The Receiver anticipates that the magnitude of the Property Claim will be materially lower than the BI Claim.
19. As at the date of this Second Report, activities with respect to the BI Claim and the Property Claim are ongoing and the Receiver will provide the Court with an update in a subsequent report.

## **ACOA CORRESPONDENCE**

20. The Debtors, prior to the Date of Receivership, borrowed approximately \$1,600,000 (in six instalments) from ACOA pursuant to certain programs administered by the federal government. The purpose of such borrowings was to fund certain capital equipment purchases at the Debtors' production facility.
21. On April 3, 2024, after receiving notice of the Debtors' pending insolvency proceeding, ACOA provided correspondence (the "**ACOA Correspondence**") that it would be requesting CRA to withhold amounts that were otherwise due to the Debtors on account of refunds related to Harmonized Sales Tax ("**HST**"). ACOA advised that they were relying on certain sections of the *Financial Administration Act* that permits such set-off. Copies of the ACOA Correspondence are attached as **Appendix E**.
22. On April 9, 2024, the Debtors received \$71,018 relating to the HST return filed for the period ending February 29, 2024 (the "**February HST Refund**"). The February HST Refund was subsequently transferred to the Receiver's account and is accounted for in the Interim R&D.
23. Subsequent to the Date of Receivership, the Debtors filed their HST returns for the period ending March 31, 2024 which projected a refund of \$88,662 (the "**March HST Refund**"). On or about May 1, 2024, CRA provided the Debtors with a notice of assessment and contact letter (the "**CRA Correspondence**")

advising that the HST Refund had been set off by ACOA. A copy of the CRA Correspondence is attached as **Appendix F**.

24. On May 13, 2024, Receiver's legal counsel provided correspondence to ACOA regarding the March HST Refund (the "**Cox and Palmer Correspondence**"). A copy of the Cox and Palmer Correspondence is attached as **Appendix G**.
25. On May 24, 2024, the Receiver received a response from ACOA in respect of the Cox and Palmer Correspondence (the "**ACOA Response**"). The ACOA Response is attached to this Second Report as **Appendix H**. In summary, the ACOA Response denies that there was any interference with the Debtors' property and that any set-off exercised was provided for in by the *Financial Administration Act*.
26. As at the date of this Second Report, the Receiver and its legal counsel are assessing the options with respect to the set-off by ACOA, however, the Cox and Palmer Correspondence has advised ACOA that the Receiver is of the view that such set-off is prohibited by the Receivership Order. The Receiver will provide an update to this Court in a subsequent report.

## **INCREASE TO RECEIVER'S BORROWING CHARGE**

27. As set out in its motion materials, the Receiver is currently seeking an increase in the Receiver's Borrowing Charge. The total authorized borrowings, should the Court approve the Receiver's request, will be \$6,000,000. The Court has already authorized borrowings of \$2,500,000.
28. The Receiver has worked diligently with the Debtor's senior staff to prepare an updated cash flow forecast through August 25, 2024 (the "**Revised Forecast**"). A copy of the Revised Forecast is enclosed as **Appendix I**.
29. The Receiver has shared the Revised Forecast with 459NSL and at the date of this Second Report understands 459NSL have the financial capacity and willingness to fund the Debtor's operations as contained therein.
30. A summary of the Revised Forecast is set out below:

<b>\$'000s</b>	<b>Total Forecast (13 weeks)</b>
Receipts	547
Disbursements	(4,012)
<b>Forecast operating cash flow</b>	<b>(3,464)</b>
<b>Receiver's Borrowings</b>	<b>3,250</b>
Restructuring fees	(725)
<b>Opening cash balance as at May 27, 2024</b>	<b>1,032</b>
<b>Forecast closing cash balance as at August 25, 2024</b>	<b>93</b>

31. The Revised Forecast is on a *status quo* basis whereby the Receiver continues to operate the Debtors' business and administers the SISP until such time as a transaction is closed.
32. As mentioned in the First Report, the Receiver is wholly dependent on the funding provided by 459NSL to support the Debtors' inventory of live fish. Without increased borrowings, the Receiver has no way to support such inventory through to maturity to harvest and eventual sale and would need to consider assigning the Debtors into bankruptcy as there would be no available liquidity to support their operations.
33. The requested borrowings are also necessary to provide the Receiver sufficient liquidity to administer the SISP for the benefit of the Debtors' stakeholders.
34. The Receiver is of the view that the requested increase to its borrowings will allow it to:
- administer the SISP and close any transaction that results therefrom;
  - continue to maintain the Debtors' live inventory, which currently represents approximately 550,000, fish. Given that the Debtors' inventory represents live animals, it is necessary to support them through to maturity in order to prevent them from becoming a total loss; and
  - continue to provide employment to the Debtors' former employees.
35. If the Receiver's requested relief is granted and the Receiver borrows an additional \$3,250,000, the total principal outstanding to 459NSL will be approximately \$5,750,000. The full value of this debt may be employed as part of the Stalking Horse Bid (as discussed below).
36. The Receiver is of the view that increasing the limit it is allowed to borrow may be beneficial to the Debtors' stakeholders overall, as it will support the raising of inventory for sale and allow the Receiver to Administer the SISP as described below. As such, the Receiver respectfully recommends that the Court

approve its request to increase the Receiver's borrowing limit to \$6,000,000, which includes a contingency of \$250,000 beyond what is required in the Revised Forecast.

## SALE AND INVESTOR SOLICITATION PROCESS

37. As noted earlier in this Second Report, the Receiver is currently seeking the Court's approval to implement and administer the SISP. As further detailed herein, the SISP has been structured to include a "**stalking horse**" component whereby 459NSL will act as the "**Stalking Horse Bidder**".

38. A copy of the SISP is attached hereto as **Appendix D** and undefined terms in this section of the Second Report shall have the meanings ascribed to them in the SISP.

39. A high-level summary of the proposed SISP timeline is set out below:

Item	Details
Commencement date	• Immediately following the granting of the SISP Order
Phase 1 EOI Deadline	• June 21, 2024
Phase 2 Bid Deadline	• August 2, 2024
Auction date	• August 7, 2024
Hearing to approve the transaction	• Forthwith after the conclusion of the Auction
Sale closing	• Within 2 days of the Sale Approval Motion

40. Further material elements of the SISP are set out below:

- i. the SISP will be administered by the Receiver. The Receiver, with the input of Management, will develop a list of potential bidders, which shall include any party that has expressed an interest in participating in the SISP (each, a "**Known Potential Bidder**");
- ii. the Receiver will advertise the SISP in the Insolvency Insider newsletter and post a notice of the SISP on the Receiver's Website. The Receiver will be at liberty to post additional notices if it deems it advisable to do so;
- iii. the Receiver will prepare a description of the opportunity (the "**Teaser**") and a nondisclosure agreement (an "**NDA**") to be sent to Known Potential Bidders. The Teaser is attached to this Second Report as **Appendix J**. Upon executing an NDA, a Known Potential Bidder shall become a "**Potential Bidder**";
- iv. Potential Bidders will be granted access to an electronic data room that will contain details of the Debtors' business and affairs. They may also receive presentations from Management

and undertake site visits of the Sustainable Group's facilities in Phase 2 of the SISP. They may also request information regarding the Debtors' affairs from the Receiver;

- v. Potential Bidders that wish to make a non-binding expression of interest for either a sale or investment proposal (each, an "**EOI**") that complies with the SISP shall submit their EOIs by the Phase 1 EOI Deadline. EOIs shall specify a number of particulars including the purchase price to be paid by the Potential Bidder submitting the EOI (with each being a "**Bidder**");
- vi. once each EOI is evaluated by the Receiver, each Bidder that submitted an EOI will be advised by the Receiver if it is being advanced into Phase 2 of the SISP. The Receiver will attempt to notify such Bidders by June 24, 2024;
- vii. Phase 2 of the SISP is designed to allow relevant Bidders additional access to the Debtors' proprietary technology and additional technical material will be made available in the electronic data room at that time. Participants in Phase 2 may also be offered the opportunity to tour the Facility;
- viii. the Bid Deadline shall be August 2, 2024. At this time Bidders are required to submit binding offers that conform with the requirements set out in the SISP. The SISP also allows for an investment proposal in addition to a sale proposal;
- ix. Binding Bids must be accompanied by a 10% deposit of the total purchase price contemplated by each Bidder. Deposits of unsuccessful bidders, once determined, will be returned by the Receiver as soon as possible;
- x. once the Bids are received, the Receiver will designate appropriate Bids as "**Qualified Bids**". In order to be designated a Qualified Bid by the Receiver, each Bid must meet the criteria set out in the SISP and be greater than the Stalking Horse Bid by a minimum of \$100,000. Pursuant to the SISP, the Stalking Horse Bid shall be deemed to be a Qualified Bid and each Bidder that has made a Qualified Bid shall be a "**Qualified Bidder**";
- xi. paragraph 29 of the SISP contains the criteria against which the Receiver shall evaluate Qualified Bids;

- xii. if there is at least one Qualified Bid in addition to the Stalking Horse Bid, the Receiver shall conduct an auction in accordance with the terms of the SISP (the "**Auction**"). Each Qualified Bidder must confirm to the Receiver that it intends to participate in the Auction;
- xiii. each Qualified Bidder participating in the Auction shall be notified of other participants by the Receiver by 5:00 p.m. (Halifax time) the day prior to the Auction;
- xiv. the Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Receiver (the "**Initial Bid**"). The next bid at the Auction (each, an "**Overbid**") must exceed the Initial Bid by minimum additional cash increments of \$100,000. Each Overbid shall be provided to all participants of the Auction;
- xv. the Auction shall continue until such time as there is no party that wishes to make another Overbid. This will continue for as many rounds as are required, with the last bidder being deemed the "**Successful Party**" that submitted the "**Successful Bid**"; and
- xvi. once a Successful Bid has been identified, the Receiver shall seek Court approval of same as soon as possible.

41. As set out in the SISP, the Receiver may waive strict compliance with the provisions above where it sees fit to do so.

### **The Stalking Horse Bid**

42. As set out in the Receiver's motion materials, 459NSL has agreed to act as the "Stalking Horse Bidder" in the SISP. The Stalking Horse Bidder's proposed offer is attached hereto as **Appendix K** (the "**Stalking Horse Bid**"). The Receiver notes that the Stalking Horse Bidder is the Sustainable Group's senior secured creditor.

43. The following summarizes some of the key terms of the Stalking Horse Bid:

- i. the Stalking Horse Bid contemplates the purchase of substantially all of the Debtors' assets, but with the ability to exclude assets as the Stalking Horse Bidder sees fit;
- ii. the purchase price paid by the Stalking Horse Bidder, which will be paid at closing, shall be the sum of:
  - i. costs to cure any assumed contracts;

- ii. the senior secured debt held by 459NSL (which will include accrued interest and professional fees incurred) which the Receiver estimates could be \$24,000,000 including interest and fees;
  - iii. the total of the Receiver's Borrowings which, if borrowings are advanced pursuant to the Revised Forecast, could total \$5,750,000;
  - iv. the sum of any assumed liabilities; and
  - v. professional fees payable to the Receiver and its counsel to the degree they are not paid out of the Receiver's borrowings noted in subparagraph iii above.
- iii. the Stalking Horse Bidder will offer employment to the Debtors' former employees on terms no less favourable than prior to the Date of Receivership;
  - iv. the Stalking Horse Bidder shall assume liabilities after the close of the transaction contemplated by the Stalking Horse Bid (the "**Stalking Horse Transaction**") but will have the ability to exclude assumed liabilities at its discretion;
  - v. the Receiver shall assist the Stalking Horse Bidder in transferring any contracts that require counterparty consents and, if such consents cannot be obtained, bring a motion before the Court to force the assignment of same;
  - vi. the assets shall be purchased on an "as is, where is" basis with limited representations and warranties on the part of the Receiver;
  - vii. the Receiver will cooperate with the Stalking Horse Bidder on tax matters and related elections;
  - viii. the Receiver shall operate the Facility on the same basis as it is currently run until Closing;
  - ix. no break fee will be payable to the Stalking Horse Bidder; and
  - x. conditions to closing relate primarily to the Stalking Horse Bidder being the Successful Party and the Receiver obtaining a vesting order in favour of the Stalking Horse Bidder.

#### **The Receiver's Observations Regarding the SISP and the Stalking Horse Bid**

44. The Receiver makes the following observations regarding the proposed SISP:

- i. pursuant to the terms of the SISP, the Receiver shall administer and be responsible for all material elements of the SISP;
- ii. the SISP offers enough flexibility to address potential issues that may arise;
- iii. the length of the SISP, while expedited given the subject assets, is appropriate given the liquidity resources available to the Debtors (i.e. the estate is entirely funded by 459NSL, the Stalking Horse Bidder). However, given the technology employed by the Sustainable Group, the Receiver is of the view that a two-stage SISP is appropriate to ensure only appropriate bidders are granted access to same;
- iv. the Stalking Horse Bid provides certainty regarding a minimum known outcome of the SISP;
- v. the SISP provides the Debtors with an opportunity to continue as a going concern and preserve jobs for their employees; and
- vi. the terms of the SISP allow for third party bidders to increase proceeds for the benefit of the Debtors' stakeholders.

45. The Receiver also notes that, should all of the requested borrowings be approved by the Court and such borrowings occur, that the total value of the debt owed to the Stalking Horse Bidder at the Phase 2 Bid Deadline will total approximately \$30,000,000. The full amount of these borrowings will be bid in the SISP as part of the Stalking Horse Bid.

46. The Receiver respectfully recommends that the Court approve the Receiver's requested relief with request to the SISP.

#### **Additional SISP Consideration**

47. The technology employed by the Debtors was not developed by an employee, but rather a party who is contracted to provide services to the Debtors (the "**Contractor**"). The Contractor has a long relationship with 459NSL, who is the Stalking Horse Bidder.

48. Prior to issuing this Second Report, the Receiver made certain inquiries of the Contractor to assess his willingness to partner with a party other than the Stalking Horse Bidder. The Receiver of the view that the Contractor has not foreclosed the idea of working with other parties but will need to assess the ultimate successful party in the SISP prior to making any commitments.



49. The Receiver and its counsel have reviewed a co-ownership and intellectual property agreement between the Contractor and the Debtors which provide the Contractor with a right of first refusal over certain technology used by the Debtors (the "**ROFR**"). The Receiver has also reviewed an acknowledgement from the Contractor whereby the Contractor has waived their ROFR as it relates to the insolvency of the Debtors and as against the Stalking Horse Bidder. The Contractor retains its ROFR with respect to any third-party who may participate in the SISP.
50. The Contractor has engaged legal counsel and as at the date of this Second Report and the Receiver's legal counsel has been in contact with them regarding the IP disclosure contemplated by the Receiver in the SISP.

## RECEIVER'S ACTIVITIES

51. The Receiver is currently seeking the Court's approval of the First Report and the Second Report, including the conduct and activities described therein.
52. As at the date of the Second Report, the Receiver is not aware of any objection of the Receiver's conduct or activities.

## CONCLUSION

53. The Second Report has been prepared to provide this Court with information regarding the Receiver's activities since the granting of the Receivership Order and in support of the relief requested herein.
54. Based on the foregoing, the Receiver respectfully requests the Court grant the requested relief.

All of which is respectfully submitted at Halifax, Nova Scotia this 27<sup>th</sup> day of May, 2024.

### DELOITTE RESTRUCTURING INC.,

Acting solely in its capacity as  
Court-appointed Receiver and Manager of TCAS Holdings Limited,  
Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc., and TCAS IP Inc.  
and not in its personal or corporate capacity

Per:



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



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**Todd Ambachtsheer, CPA, CA, CIRP, LIT**  
Senior Vice-President

# APPENDIX A

2024



Hfx No. 53 19 15

**SUPREME COURT OF NOVA SCOTIA  
IN BANKRUPTCY AND INSOLVENCY**

**In the Matter of the Receivership of TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc. and TCAS IP Inc.**

Between:

**4595756 Nova Scotia Limited**

**Applicant**

and

**TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc. and TCAS IP Inc.**

**Respondents**



**Receivership Order**

**Justice Darlene A. Jamieson**

in Chambers:

The Applicant started this proceeding for an order, under both subsection 243(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**") and the equitable jurisdiction of this Court as partially codified by s. 43(9) of the *Judicature Act*, to appoint Deloitte Restructuring Inc. as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc. and TCAS IP Inc. (collectively, the "**Companies**") acquired for, or used in relation to a business carried on by the Companies.

The Receiver satisfies the requirement for appointment without security in Rule 73.07(a).

On motion of the Applicant the following is ordered:

**Service**

1. The time for service of the Notice of Application and the supporting materials is hereby abridged and validated so that the application is properly returnable today and further service thereof is hereby dispensed with.

**Appointment**

2. Pursuant to the equitable jurisdiction, subsection 43(9) of the *Judicature Act*, Rule 73 – Receiver, and subsection 243(1) of the BIA, the Receiver is hereby appointed receiver

and manager, without security, of all of the assets, undertakings, and properties of the Companies acquired for, or used in relation to a business carried on by the Companies, including all proceeds thereof (the "**Property**").

### **Receiver's Powers**

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without limiting the generality of the foregoing, the Receiver is hereby empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession and control of the Property and any proceeds or receipts arising from the Property but, while the Receiver is in possession of any of the Property, the Receiver must preserve and protect it;
  - (b) to change locks and security codes, relocate the Property to safeguard it, engage independent security personnel, take physical inventories, and place insurance coverage;
  - (c) to manage, operate, and carry on the business of the Companies, including the powers to enter into any agreements, incur and pay any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Companies;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel, and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises, or other assets to continue the business of the Companies, or any part or parts thereof;
  - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Companies and to exercise all remedies of the Companies in collecting such monies, including, without limitation, to enforce any security held by the Companies;
  - (g) to settle, extend, or compromise any indebtedness owing to the Companies;
  - (h) to execute, assign, issue, and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Companies, for any purpose pursuant to this Order;
  - (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Companies;
  - (j) to initiate, prosecute, and continue the prosecution of any proceedings and to defend proceedings now pending or hereafter instituted with respect to the Property or the Receiver, and to settle or compromise any such proceedings, which authority extends to appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (k) to make payment of any and all costs, expenses, and other amounts that the Receiver determines, in its sole discretion, are necessary or advisable to preserve, protect, or maintain the Property, including, without limitation taxes, municipal taxes, insurance premiums, repair and maintenance costs, costs or charges related to security, management fees, and any costs and disbursements incurred by any manager appointed by the Receiver;
- (l) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (m) to sell, convey, transfer, lease, or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under section 60 of the *Personal Property Security Act* shall not be required.

- (n) to sell the right, title, interest, property, and demand of the Companies in and to the Property at the time the Companies granted a security interest or at any time since, free of all claims including the claims of subsequent encumbrancers bound as named respondents, bound as parties joined as unnamed respondents, or bound under Rule 35.12;
- (o) to report to, meet with, and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property;
- (q) to apply for any permits, licences, approvals, or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Companies;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Companies including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Companies;
- (s) to exercise any shareholder, partnership, joint venture, or other rights which the Companies may have; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps it shall be authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Companies, and without interference from any other Person.

#### **Duty to Provide Access and Co-Operation to the Receiver**

4. The Companies, all of their respective current and former directors, officers, employees, agents, accountants, legal counsel, and shareholders, and all other persons acting on their instructions or behalf, and all other individuals, firms, corporations, governmental bodies, or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, and information of any kind related to the business or affairs of the Companies, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall, subject to their right to seek a variation of this Order, provide to the Receiver or permit the Receiver to make, retain, and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall, subject to their right to seek a variation of this Order, forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper, making copies of computer disks, or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase, or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

#### **No Proceedings Against the Receiver**

7. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

### **No Proceedings Against the Companies or the Property**

8. No Proceeding against or in respect of the Companies or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Companies or the Property are hereby stayed and suspended pending further order of this Court.

### **No Exercise of Rights or Remedies**

9. All rights and remedies of any individual, firm, corporation, governmental body or agency or any other entities against the Companies, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Companies to carry on any business which the Companies are not lawfully entitled to carry on, (ii) exempt the Receiver or the Companies from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder, provided that the Applicant shall not be required to file a defence to same as the further prosecution of any such claim is stayed except with the written consent of the Applicant or the Receiver, or leave of this Court.

### **Personal Property Lessors**

10. All rights and remedies of any Person pursuant to any arrangement or agreement to which any of the Companies are a party for the lease or other rental of personal property of any nature or kind are hereby restrained except with consent of the Receiver in writing or leave of this Court. The Receiver is authorized to return any Property which is subject to a lease from a third party to such Person on such terms and conditions as the Receiver, acting reasonably, considers appropriate and upon the Receiver being satisfied as to the registered interest of such Person in the applicable Property. The return of any item by the Receiver to a Person is without prejudice to the rights or claims of any other Person to the property returned or an interest therein.

### **No Interference with the Receiver**

11. Subject to paragraph 16 of this Order related to the Companies' employees, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by the Companies, without written consent of the Receiver or leave of this Court.

### **Continuation of Services**

12. All Persons having oral or written agreements with the Companies or statutory or regulatory mandates for the supply of goods or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Companies are hereby restrained until further order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Companies' current telephone numbers, facsimile numbers, internet addresses, and



domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Companies or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

13. The Receiver, in its sole discretion, may, but shall not be obligated to, establish accounts or payment on delivery arrangements with suppliers in its name on behalf of the Companies for the supply of goods or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Companies, or any of them, if the Receiver determines that the opening of such accounts is appropriate.
14. No creditor of the Companies, or any of them, shall be under any obligation as a result of this Order to advance or re-advance any monies or otherwise extend any credit to the Companies.

#### **Receiver to Hold Funds**

15. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

#### **Employees**

16. All employees of the Companies shall remain the employees of the Companies until such time as the Receiver, on the Companies' behalf, may terminate the employment of such employees or they resign in accordance with their employment contract. The Receiver shall not be liable as a result of this Order for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, such amounts as may be determined by a court or tribunal of competent jurisdiction.
17. Pursuant to paragraph 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**") as permitted at law. Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. A prospective purchaser or bidder requesting the disclosure of personal information shall execute such documents to confirm the agreement of such Person to maintain the confidentiality of such information on terms



acceptable to the Receiver. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Companies, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **Limitation on Environmental Liabilities**

18. Nothing herein contained shall require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession, or management (separately or collectively, "**Possession**") of any of the Property that might, or any part thereof, which may be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial, or other legislation, statute, regulation or, rule of law or equity respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, *Canadian Environmental Protection Act, 1999* or the *Nova Scotia Environment Act* (collectively, the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

#### **Limitation on Liability**

19. Deloitte Restructuring Inc. and, without limitation, a director, officer, or employee of the Receiver, shall incur no liability or obligation as a result of its appointment as the Receiver or the carrying out the provisions of this Order, or in the case of any party acting as a director, officer, or employee of the Receiver so long as acting in such capacity, save and except for any negligence, breach of contract, or actionable misconduct on the part of such party, or in respect of the Receiver's obligations under subsections 81.4(5) and 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **Receiver's Accounts**

20. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge to a maximum of \$150,000.00 (the "**Administrative Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and the Administrative Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
21. The Receiver and its legal counsel shall pass its accounts from time to time before a judge of this Court or a referee appointed by a judge.
22. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees, expenses and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **Receiver's Indemnity Charge**

23. The Receiver shall be entitled to and is hereby granted a charge (the "**Receiver's Indemnity Charge**") upon all of the Property as security for all of the obligations incurred by the Receiver including obligations arising from or incident to the performance of its duties and functions under this Order including the management, operation, and carrying on of all or part of the business of the Companies, under the *Bankruptcy and Insolvency Act*, or otherwise, saving only liability arising from negligence or actionable misconduct of the Receiver.
24. The Receiver's Indemnity Charge shall form a second charge on the Property in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA and subordinate in priority to the Administrative Charge.

### **Allocation of Costs**

25. The Receiver shall file with the Court for its approval a report setting out the costs, fees, expenses, and liabilities of the Receiver giving rise to the Administrative Charge, the Receiver's Indemnity Charge, and the Receiver's Borrowings Charge, as defined below, and, unless the Court orders otherwise, all such costs, fees, expenses, and liabilities shall be paid in the following manner:
  - (a) Firstly, applying the costs incurred in the receivership proceedings specifically attributable to an individual asset or group of assets against the realizations from such asset or group of assets;
  - (b) Secondly, applying the costs *pro rata* against all of the assets based on the net realization from such asset or group of assets; and
  - (c) Thirdly, applying non-specific costs incurred in the receivership proceedings *pro rata* against the assets based on the net realization from such asset or group of assets.

### **Funding of the Receivership**

26. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,600,000.00, or such greater amount as this Court may by further order authorize, at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of making payments, including interim payments, required or permitted to be made by this Order, including, without limitation, payments of amounts secured by the Administrative Charge and the Receiver's Indemnity Charge. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Indemnity Charge, the Administrative Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

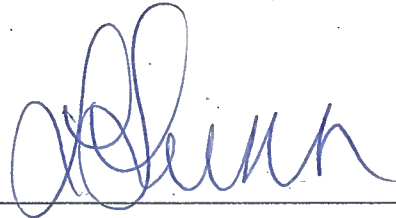
27. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court on seven days' notice to the Receiver and the Applicant.
28. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
29. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **General**

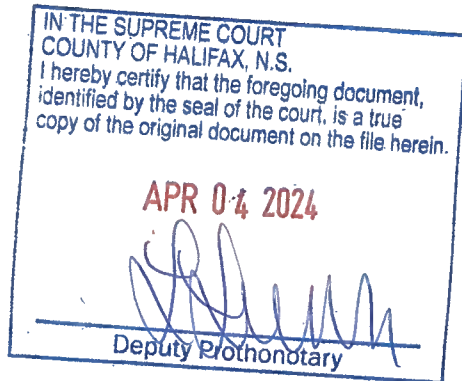
30. The Receiver may from time to time make a motion for advice and directions in the discharge of its powers and duties hereunder.
31. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Companies.
32. The aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction outside Nova Scotia is hereby requested to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, and regulatory or administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
33. The Receiver is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
34. The Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Companies' estate with such priority and at such time as this Court may determine.
35. Any interested party may make a motion to vary or amend this Order upon such notice required by the *Civil Procedure Rules* or on such notice as this Court may order.
36. Any Person affected by this Order which did not receive notice in advance of the hearing may make a motion to vary or amend this Order within five days of such Person being served with a copy of this Order.
37. In addition to the reports to be filed by the Receiver under legislation, the Receiver shall file a report of its activities with the Court when the Receiver determines that a report should be made, when the Court orders the filing of a report on the motion of an interested party or on the Court's own motion, and at the conclusion of the receivership.

38. The Receiver shall not be discharged without notice to such secured creditors and other parties as the Court directs.

Issued April 4<sup>th</sup>, 2024



Prothonotary



LORRAINE LUNN  
Deputy Prothonotary

LORRAINE LUNN  
Deputy Prothonotary

**Schedule "A"**

**CERTIFICATE NO.** \_\_\_\_\_ **AMOUNT \$** \_\_\_\_\_

**THIS IS TO CERTIFY** that Deloitte Restructuring Inc., the receiver and manager (the "**Receiver**") of the assets, undertakings and properties of TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc. and TCAS IP Inc. (collectively, the "**Companies**") acquired for, or used in relation to the business carried on by the Companies, including all proceeds thereof (collectively, the "**Assets**"), appointed by Order of the Nova Scotia Supreme Court (the "**Court**") dated the \_\_\_\_ day of \_\_\_\_\_, 2024 (the "**Order**") in the matter having court file number Hfx No. \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded daily after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

Such principal sum with interest thereon is, by the terms of this Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Assets in priority to the secured interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Assets in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_.

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Assets as authorized by the Order and as authorized by any further or other order of the Court.

The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of this Order.

**DATED** the \_\_\_\_ day of \_\_\_\_\_, 2024.

Deloitte Restructuring Inc., solely in its  
capacity as Receiver and Manager of the  
Companies and not in its personal capacity

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **APPENDIX B**

**Justice Darlene A. Jamieson  
Supreme Court of Nova Scotia**

Tel: 902.424.6941  
Fax: 902.424.0524



The Law Courts  
1815 Upper Water Street  
Halifax, NS B3J 1S7  
Canada

May 14, 2024

**VIA EMAIL**

Gavin MacDonald  
Cox & Palmer  
1500-1625 Grafton Street  
PO Box 2380 Central  
Halifax, NS B3J 3E5

Mr. MacDonald:

**Re: HFX 531915 - 4595756 Nova Scotia Limited Vs. TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc. and TCAS IP Inc.**

Enclosed is the Order I have granted approving the requested increase in the amount of authorized borrowing and the Receiver's Borrowings Charge to \$2,500,000 (from \$1,600,000) in accordance with the April 4, 2024 Appointment of Receiver Order. I have reviewed all of the materials submitted. I refer to the first report of the Receiver dated May 2, 2024, setting out the reasons the increase is necessary and recommending the increase. I also refer to the letter of April 30, 2024, indicating 459 NSL have agreed to provide the further advance. I note there is no opposition to the Order requested. As indicated above, having reviewed all of the materials filed, I accept the Receiver's recommendation and the Order is granted.

Yours very truly,

A handwritten signature in blue ink, which appears to read "Jamieson J.", is written over a horizontal line.

Justice Darlene A. Jamieson  
DAJ/sns

2024

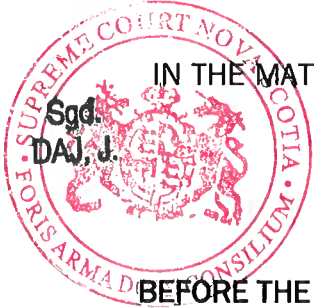
SUPREME COURT  
OF NOVA SCOTIA

MAY 14 2024

HALIFAX, N.S.

Hfx No. 531915

Supreme Court of Nova Scotia  
In Bankruptcy and Insolvency



IN THE MATTER OF: THE RECEIVERSHIP OF TCAS HOLDINGS LIMITED, SUSTAINABLE FISH FARMING (CANADA) LIMITED, SUSTAINABLE BLUE INC. and TCAS IP INC.

BEFORE THE HONOURABLE JUSTICE DARLENE JAMIESON BY CORRESPONDENCE:

UPON the motion of Deloitte Restructuring Inc., in its capacity as court appointed receiver (the "Receiver") pursuant to order of this Court issued April 4, 2024 (the "Appointment Order");

AND UPON reading the First Report of the Receiver dated May 2, 2024 and written submissions from Gavin MacDonald, counsel to the Receiver;

IT IS HEREBY ORDERED THAT:

1. The Receiver's borrowing authority set out in Section 26 of the Appointment Order is increased to \$2,500,000 and the Receiver's Borrowings Charge is increased by an equal amount.

DATED this 14 day of May, 2024

*Susan Snow*

**SUSAN SNOW**  
Deputy Prothonotary

IN THE SUPREME COURT  
COUNTY OF HALIFAX, N.S.  
I hereby certify that the foregoing document,  
identified by the seal of the court, is a true  
copy of the original document on the file herein.

MAY 14 2024

*Susan Snow*

Deputy Prothonotary

**SUSAN SNOW**  
Deputy Prothonotary

\*50062420/00001/4226600/v1



## **APPENDIX C**

District of: Nova Scotia  
Court No: 531915  
Estate No: 51-126479/51-126481/51-126482/51-126483

**In the matter of the receivership of  
TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable  
Blue Inc., and TCAS IP Inc.  
of the town of Centre Burlington , in the Province of Nova Scotia**

**Interim Statement of Receipts and Disbursement  
for the period from April 4 to May 27, 2024**

**RECEIPTS**

Borrowings under Receiver's Certificates	2,500,000.00	
HST refund (Pre-Receivership)	71,018.29	
Interest income	2,501.71	2,573,520.00

**TOTAL RECEIPTS**

**2,573,520.00**

**DISBURSEMENTS**

Capital projects	545,738.59	
Biomass feed	330,117.65	
Compensation (including remittances)	217,655.14	
HST paid on disbursements	123,885.06	
Utilities	119,511.88	
Operating expenses	87,643.09	
Insurance premiums	48,850.77	
Repairs and maintenance	38,963.91	
Equipment rental	17,175.00	
Purchase of biomass	11,367.89	
Interest and bank charges	402.77	
Filing fees paid to Official Receiver	80.42	1,541,392.17

**TOTAL DISBURSEMENTS**

**1,541,392.17**

**AMOUNT RETAINED IN TRUST ACCOUNT BY THE RECEIVER**

**1,032,127.83**

**DELOITTE RESTRUCTURING INC.**

Acting solely in its capacity as  
Receiver and Manager of TCAS Holdings Limited,  
Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc., and TCAS IP Inc.  
and not in its personal capacity



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

## **APPENDIX D**

## Sale and Investment Solicitation Process

### Sustainable Group

#### Introduction

1. On April 4, 2024 the Supreme Court of Nova Scotia in Bankruptcy and Insolvency (the “**Court**”) issued an Order (the “**Receivership Order**”) regarding the assets, undertakings and property of TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc, and TCAS IP Inc. (together, the “**Debtors**” or the “**Sustainable Group**”). Deloitte Restructuring Inc. (“**Deloitte**”) was appointed receiver (the “**Receiver**”) of the Debtors. The Receivership Order, among other things:
  - a. stayed all proceedings against the Debtors and their assets; and
  - b. granted the Receiver the power to sell the right, title and interest in the property of the Debtors;
2. The Debtors’ assets are encumbered by the security interest of 4595756 Nova Scotia Limited (“**459NSL**”), the applicant in the Debtors’ receivership proceedings.
3. The Receiver obtained Court approval (the “**SISP Order**”) to administer a sale and investor solicitation process (the “**SISP**”) for the Sustainable Group’s business and/or assets on June ●, 2024. The Receiver plans to administer the SISP employing a “stalking horse” bidder. 459NSL is the “**Stalking Horse Bidder**” and its bid the “**Stalking Horse Bid**”.
4. The value of the Stalking Horse Bid is approximately \$30 million as detailed in the agreement of purchase and sale between the Receiver and 459NSL dated May ●, 2024 the “**Stalking Horse Purchase Agreement**”. The Stalking Horse Purchase Agreement is attached hereto as Appendix “A”. As detailed herein, the Stalking Horse Bid represents a bid for all of the assets of the Debtors with the Stalking Horse Bidder having the ability to exclude certain assets as it sees fit.

#### Opportunity

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

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

7. The SISP contemplates a two-stage process that involves the submission by interested parties of binding offers by the Bid Deadline (as defined below) after being allowed into Phase 2 of the SISP by the Receiver (as defined herein). The Receiver shall have the right to allow or disallow which party/parties are allowed into Phase 2 of the SISP in its absolute discretion.
8. Phase 1 of the SISP (as defined below) will involve the submission of non-binding expressions of interest that the Receiver will review. After such review, the Receiver will conclude which parties may be allowed into the second phase of the SISP wherein additional due diligence materials will be provided (“**Phase 2**”). Materials related to the Sustainable Group’s proprietary technology will only be provided in Phase 2 and the Receiver’s ability to restrict interested parties’ access to such technology is the primary reason for a two phase SISP. The Stalking Horse Bidder shall not be consulted by the Receiver prior to determining which parties should be advanced to Phase 2 of the SISP. Consultations shall be limited to the Receiver and other non-bidding stakeholders in the Receiver’s sole discretion.
9. Except to the extent otherwise set forth in a definitive sale or investment agreement with a successful bidder, any Transaction will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Receiver, the Debtors, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Debtors in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.
10. It may be desirable for participants in the SISP to come to an agreement with certain non-employees of the Debtors given their knowledge and expertise regarding the Debtors’ operations.
11. In the SISP, (i) “**Business Day**” means any day (other than Saturday or Sunday) that banks are open for business in Halifax, Nova Scotia. If any deadline date referred to in the SISP falls on a day that is not a Business Day, then such date shall be extended until the next Business Day; and (ii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase, “without limitation”.

## Timeline

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

Milestone	Deadline
Commencement date	<ul style="list-style-type: none"><li>Immediately following the granting of the SISP Order</li></ul>
Non-binding expressions of interest for Phase 1	<ul style="list-style-type: none"><li>June 21, 2024</li></ul>

<b>Phase 2 Bid Deadline</b>	<ul style="list-style-type: none"> <li>• August 2, 2024</li> </ul>
<b>Auction Date</b>	<ul style="list-style-type: none"> <li>• August 7, 2024</li> </ul>
<b>Sale Approval Motion (as defined below) in Court</b>	<ul style="list-style-type: none"> <li>• Forthwith after the conclusion of the auction</li> </ul>
<b>Closing of the Transaction</b>	<ul style="list-style-type: none"> <li>• Within 2 days of the Sale Approval Motion</li> </ul>

13. Subject to any order of the Court, the dates set out in the SISP may be extended by the Receiver.

#### **Solicitation of Interest: Notice of the SISP**

14. As soon as reasonably practicable:

- a. the Receiver will prepare a list of potential bidders, including (i) parties that have approached the Debtors or the Receiver indicating an interest in the Opportunity, and (ii) local and international strategic and financial parties who the Sustainable Group, in consultation with the Receiver, believe may be interested in a Transaction pursuant to the SISP, in each case whether or not such party has submitted a letter of intent or similar document (collectively, “**Known Potential Bidders**”);
- b. the Receiver will arrange for a notice of the SISP (and such other relevant information which the Receiver, in consultation with the Debtors, considers appropriate) (the “**Notice**”) to be published in Insolvency Insider, the Receiver’s website, and any other newspaper, journal, website or media outlet as the Receiver considers appropriate, if any; and
- c. the Receiver will prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; (ii) a non-disclosure agreement in form and substance satisfactory to the Receiver and its counsel (an “**NDA**”) and (iii) a confidential information memorandum (the “**CIM**”) that provides additional details regarding the Debtors business and assets. The CIM will only be available to those Known Potential Bidders that have executed an NDA.

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

#### **Potential Bidders and Due Diligence Materials**

16. Any party who wishes to participate in the SISP (a “**Potential Bidder**”), other than the Stalking Horse Bidder, must provide to the Receiver an NDA executed by it and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder. Once such NDA is executed by a Known Potential Bidder, CIM and access to an electronic data room will be provided to such Known Potential Bidder.

17. The Receiver shall, in its reasonable business judgment and subject to competitive and other business considerations, afford each Potential Bidder who has signed and delivered an NDA to the Receiver and provided information as to their financial wherewithal to close a transaction such access to due diligence material and information relating to the Property and Business as the Debtors or the Receiver deem appropriate. Due diligence shall include access to an electronic data room containing information about the Debtors, the Property and the Business, and, as part of Phase 2, may also include management presentations, on-site inspections, and other matters which a Potential Bidder may reasonably request and as to which the Receiver, in its reasonable business judgment, may agree. The Receiver will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Debtors nor the Receiver will be obligated to furnish any information relating to the Property or Business to any person other than to Potential Bidders. Furthermore, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders if the Receiver determines such information to represent proprietary or sensitive competitive information. Neither the Debtors nor the Receiver is responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Property and the Business.
18. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Debtors.

### **Non-Binding Expressions of Interest**

19. Potential Bidders that wish to be admitted to Phase 2 shall, by June 21, 2024 (the “**Phase 1 EOI Deadline**”), submit a non-binding expression of interest to the Receiver (each, an “**EOI**”). Each EOI shall contain, at a minimum, the following information:
- a. the indicative purchase price being contemplated by each party submitting an EOI (with each party being a “**Bidder**”);
  - b. the nature of the offer i.e., an asset purchase (a “**Sale Proposal**”) or an investment in the business (an “**Investment Proposal**”);
  - c. evidence of each Bidder’s ability to consummate a transaction for the purchase price contained in each Bidder’s EOI; and
  - d. the parties involved in each Bidder’s EOI such that the Receiver is able to make an informed assessment of competitive matters that may be implicit in each Bidder’s EOI.
20. Once each EOI is assessed by the Receiver, each Bidder will be notified whether its EOI has been accepted for admission into Phase 2 of the SISP. The Receiver will attempt to notify each Bidder no later than June 24, 2024.
21. Admission into Phase 2 will allow each Bidder to access additional due diligence materials related to the Sustainable Group’s operations, including additional details regarding its proprietary technology for raising fish on land (the “**Technology**”).

22. Information related to the Technology will not be made available in Phase 1 of the SISP and the Receiver may determine that certain Bidders admitted to Phase 2 will not be provided with details relating to the Technology if the Receiver determines, in its sole discretion, that such access could negatively affect the value of the Debtor's business as part of Phase 2 of the SISP.

### **Formal Binding Offers**

23. Bidders that have been admitted to Phase 2 that wish to make a formal offer to purchase or make an investment in the Debtors or their Property or Business shall submit a binding offer (a "**Bid**") that complies with all of the following requirements to the Receiver at the addresses specified in Schedule "1" hereto (including by e-mail), so as to be received by them not later than 5:00 PM (Halifax time) on August 2, 2024 or as may be modified in the Bid process letter that may be circulated by the Receiver to Bidders (the "**Bid Deadline**"):

- a. the Bid must be either a binding offer to:
  - i. make a Sale Proposal;
  - ii. make an Investment Proposal; or
  - iii. carry out any combination of a Sale Proposal and an Investment Proposal by one or more parties acting together or separately;
- b. the Bid (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Debtors or their Property or Business and is consistent with any necessary terms and conditions established by the Debtors and the Receiver and communicated to Bidders;
- c. the Bid includes a letter stating that the Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
- d. the Bid includes duly authorized and executed Transaction agreements, including the purchase price, investment amount (the "**Purchase Price**"), together with all exhibits and schedules thereto;
- e. the Bid is accompanied by a deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Receiver), in an amount equal to ten percent (10%) of the Purchase Price, investment amount or other consideration to be paid in respect of the Bid, to be held and dealt with in accordance with this SISP;
- f. the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Receiver to make a determination as to the Bidder's financial and other capabilities to consummate the proposed transaction;



- g. the Bid is not conditioned on (i) the outcome of unperformed due diligence by the Bidder, or (ii) obtaining financing, but may be conditioned upon the Bidder receiving the required approvals or amendments relating to the licenses required to operate the business, if necessary;
- h. the Bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is otherwise participating or benefiting from such bid;
- i. for a Sale Proposal, the Bid includes:
  - i. the purchase price in Canadian dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
  - ii. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - iii. a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;
  - iv. a description of the conditions and approvals required to complete the closing of the transaction;
  - v. a description of the treatment of employees of the Debtors by the Purchaser;
  - vi. a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume (including those that may be related to ongoing employee obligations) and which such liabilities and obligations it does not intend to assume; and
  - vii. any other terms or conditions of the Sale Proposal that the Bidder believes are material to the transaction.
- j. for an Investment Proposal, the Bid includes:
  - i. a description of how the Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;
  - ii. the aggregate amount of the equity and/or debt investment to be made in the Business or the Debtors in Canadian dollars.
  - iii. the underlying assumptions regarding the pro forma capital structure;

- iv. a specific indication of the sources of capital for the Bidder and the structure and financing of the transaction;
  - v. a description of the conditions and approvals required for to complete the closing of the transaction;
  - vi. a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and
  - vii. any other terms or conditions of the Investment Proposal.
- k. the Bid includes acknowledgements and representations of the Bidder that the Bidder:
- i. is completing the Transaction on an “as is, where is” basis;
  - ii. has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Debtors prior to making its Bid;
  - iii. has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
  - iv. did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Debtors or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Debtors;
- l. the Bid is received by the Bid Deadline; and
- m. the Bid contemplates closing the Transaction set out there in immediately following the granting of the Sale Approval Order and applicable appeal period.
23. Following the Bid Deadline, the Receiver will assess the Bids received. The Receiver will designate the most competitive bids that comply with the foregoing requirements to be “**Qualified Bids**”. No Bids received shall be deemed not to be Qualified Bids without the approval of the Receiver. Only Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).
24. The Stalking Horse Bid shall be deemed to be a Qualified Bid.
25. The Receiver may only designate a Bid as a Qualified Bid where the proposed purchase price is equal to or greater than that contained in the Stalking Horse Bid and includes a cash purchase price in an amount equal to or greater than the Stalking Horse Bid, plus CAD\$100,000.

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

### **Evaluation of Competing Bids**

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

### **Auction**

30. If the Receiver receives at least one additional Qualified Bid in addition to the Stalking Horse Bid, the Receiver will conduct and administer an Auction in accordance with the terms of this SISP (the “**Auction**”). Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.
31. Only parties that provided a Qualified Bid by the Bid Deadline, as confirmed by the Receiver, including the Stalking Horse Bid (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. (Halifax time) on the day prior to the Auction, each Qualified Party must inform the Receiver whether it intends to participate in the Auction. The Receiver will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party provides such expression of intent, the Stalking Horse Bidder shall be the Successful Bid (as defined below).

### **Auction Procedure**

32. The Auction shall be governed by the following procedures:
  - a. **Participation at the Auction.** Only the Debtors, the Qualified Parties, including the Stalking Horse Bidder, the Receiver and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction. The Receiver shall provide all Qualified Bidders with the details of the lead bid by 5:00 PM

(Halifax time) two (2) Business Days after the Bid Deadline. Each Qualified Bidder must inform the Receiver whether it intends to participate in the Auction no later than 5:00 PM (Halifax time) on the Business Day prior to the Auction;

- b. **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer, and it intends to consummate the proposed transaction if selected as the Successful Bid;
- c. **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Receiver (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Receiver’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments of \$100,000;
- d. **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction by video conference room, or such other method of communication the Receiver advises; provided, however, that the Receiver, in its discretion, may establish separate video conference rooms to permit interim discussions between the Receiver and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- e. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s); and
- f. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.
- g. **Auction Procedures.** The Receiver shall be at liberty to set additional procedural rules at the Auction as it sees fit.

### **Selection of Successful Bid**

33. Before the conclusion of the Auction the Receiver will:

- a. review and evaluate each Qualified Bid, considering the factors set out in paragraph 29 and any other factor that the Debtors or the Receiver may reasonably deem relevant, provided that each Qualified Bid may be negotiated among the Receiver in consultation with the Debtors and the Qualified Bidder, and may be amended,

modified or varied to improve such Qualified Bid as a result of such negotiations;  
and

- b. identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).

34. The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by the Receiver, in consultation with the Debtors, subject to the milestones set forth in paragraph 12.

### **Sale Approval Motion Hearing**

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

### **Confidentiality and Access to Information**

36. All discussions regarding a Sale Proposal, Investment Proposal, or Bid should be directed through the Receiver. Under no circumstances should the current management of the Debtors be contacted directly without the prior consent of the Receiver. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP process.
37. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bids, the details of any Bids submitted or the details of any confidential discussions or correspondence between the Receiver and such other bidders or Potential Bidders in connection with the SISP, except to the extent, with the approval of the Receiver and consent of the applicable participants, are seeking to combine separate bids from Qualified Bidders.
38. Participants in this SISP acknowledge that the Stalking Horse Bidder, by virtue of its role as senior secured pre-filing creditor, may have received information that is not being made available in as part of the SISP.

### **Supervision of the SISP**

39. The Receiver shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Receiver will participate in the SISP in the manner set out in this SISP Procedure, the SISP Order, the Initial Order and any other orders of the Court and is entitled to receive all information in relation to the SISP.
40. This SISP does not, and will not, be interpreted to create any contractual or other legal relationship between the Debtors or the Receiver and any Potential Bidder, any Qualified

Bidder or any other Person, other than as specifically set forth in a definitive agreement that may be entered into with the Receiver.

41. Without limiting the preceding paragraph, the Receiver shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Bidder, the Successful Bidder, or any other creditor or other stakeholder of the Debtors, for any act or omission related to the process contemplated by this SISP Procedure, except to the extent such act or omission is the result from gross negligence or willful misconduct of the Receiver. By submitting a bid, each Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Receiver for any reason whatsoever, except to the extent that such claim is the result of gross negligence or willful misconduct of the Receiver.
42. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a Transaction.
43. The Receiver shall have the right to modify the SISP (including, without limitation, pursuant to the Bid process letter) if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in these receivership proceedings shall be advised of any substantive modification to the procedures set forth herein.

## **Deposits**

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

**Schedule “1”**

**Address of Receiver**

**To the Receiver:**

**Deloitte Restructuring Inc.**

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

Attention: Todd Ambachtsheer and Naomi McGregor

Email: [tambachtsheer@deloitte.ca](mailto:tambachtsheer@deloitte.ca)  
[naomcgregor@deloitte.ca](mailto:naomcgregor@deloitte.ca)

with a copy to:

**Cox & Palmer LLP**

Suite 300, TD Tower  
77 Westmorland Street  
Fredericton, NB E3B 6Z3

Attention: Josh McElman

Email: [jmcelman@coxandpalmer.com](mailto:jmcelman@coxandpalmer.com)

## **APPENDIX E**





Atlantic Canada  
Opportunities  
Agency

Agence de  
promotion économique  
du Canada atlantique

## REGISTERED MAIL

April; 3, 2024

Sustainable Fish Farming (Canada) Limited  
20 MacDonald Avenue  
Dartmouth, Nova Scotia  
B3B 1C5

Head Office  
P.O. Box 6051  
Moncton, N.B.  
Canada E1C 9J8

Siège social  
C.P. 6051  
Moncton (N.-B.)  
Canada E1C 9J8

**Attention: Kirk Havercroft**

Dear Kirk Havercroft:

**Re: Sustainable Fish Farming (Canada) Limited (the Recipient)**  
**Project No(s). 225101, 208733, 206729, 201529, 202299 & 198885**

This letter constitutes formal demand for payment of the monies the Recipient owes to the Atlantic Canada Opportunities Agency (the Agency) totalling \$1,628,820.40.

The Recipient has defaulted under the terms and conditions of an agreement with another creditor and the Agency is of the opinion that it is unlikely that the Recipient will meet its obligations under the contribution agreement with the Agency; therefore, the Recipient is in default of its obligations and the total amount of the contributions previously disbursed, less payments already received, is repayable with interest at the rate specified in the contribution agreements. A summary of the debt due as of today's date is as follows:

Project No.	Principal Outstanding	Interest Outstanding	NSF fees	Total Amount Outstanding
225101	\$252,500.00	\$0.00	\$0.00	\$252,500.00
208733	\$721,000.00	\$0.00	\$0.00	\$721,000.00
206729	\$283,316.00	\$0.00	\$0.00	\$283,316.00
201529	\$170,886.00	\$0.00	\$0.00	\$170,886.00
202299	\$194,382.40	\$0.00	\$0.00	\$194,382.40
198885	\$ 6,736.00*	\$0.00	\$0.00	\$ 6,736.00

*(\*) this assumes the payment of \$1,041 for April 1, 2024 has been honored.*

The Agency hereby demands payment of \$1,628,820.40 plus accrued interest, by no later than April 17, 2024. Payment shall be made payable to the Receiver General for Canada and should be sent to the attention of Pierrette LeBlanc at the address indicated above.

Additionally, you are advised that Canada Revenue Agency has been requested to register a set-off redirecting to this Agency any and all refunds payable to the Recipient until such time as the debt due is satisfied.

Should you have any questions, please contact the undersigned at 1-800-561-7862, at (506) 961-4835, via fax at 506-851-4855 or via e-mail at [pierrette.leblanc@acoa-apeca.gc.ca](mailto:pierrette.leblanc@acoa-apeca.gc.ca).

Yours truly,

Pierrette LeBlanc  
Special Accounts Officer

Canada



Atlantic Canada  
Opportunities  
Agency

Agence de  
promotion économique  
du Canada atlantique

## REGISTERED MAIL

April 3, 2024

Sustainable Fish Farming (Canada) Limited  
20 MacDonald Avenue  
Dartmouth, Nova Scotia  
B3B 1C5

Head Office  
P.O. Box 6051  
Moncton, N.B.  
Canada E1C 9J8

Siège social  
C.P. 6051  
Moncton (N.-B.)  
Canada E1C 9J8

**Attention:** Kirk Havercroft

Dear Kirk Havercroft:

**Re: Contribution Agreement (the Agreement) between His Majesty the King in right of Canada, as represented by the Atlantic Canada Opportunities Agency (the Agency) and Sustainable Fish Farming (Canada) Limited (the Recipient)  
Project No(s). 225101, 208733, 206729, 201529, 202299 and 198885**

The Atlantic Canada Opportunities Agency (the Agency) offered contributions to Sustainable Fish Farming (Canada) Limited subject to terms and conditions contained in the Letters of Offer issued for the above-mentioned projects.

The present debt outstanding to the Agency under the Agreements is \$1,628,820.40.

The Agency has taken steps to inform the Minister of National Revenue of the Recipient's indebtedness to the Agency and has asked that the amount of any refund or repayment that might otherwise be made to the debtor under section 164 of the Income Tax Act and under section 155 of the Financial Administration Act be applied to reduce or discharge the indebtedness to the Agency.

This letter is without prejudice to any other rights which His Majesty may have under the Agreement or otherwise.

Should you have any questions, please contact the undersigned at 1-800-561-7862, at (506) 961-4835 via fax at 506-851-4855 or via e-mail at [pierrette.leblanc@acoa-apeca.gc.ca](mailto:pierrette.leblanc@acoa-apeca.gc.ca).

Yours truly,

Pierrette LeBlanc  
Special Accounts Officer



Atlantic Canada  
Opportunities  
Agency

Agence de  
promotion économique  
du Canada atlantique

## REGISTERED MAIL

April; 3, 2024

Sustainable Fish Farming (Canada) Limited  
259 Red Bank Road  
Centre Burlington, Nova Scotia  
B0N 1E0

**Attention: Kirk Havercroft**

Dear Kirk Havercroft:

**Re: Sustainable Fish Farming (Canada) Limited (the Recipient)**  
**Project No(s). 225101, 208733, 206729, 201529, 202299 & 198885**

This letter constitutes formal demand for payment of the monies the Recipient owes to the Atlantic Canada Opportunities Agency (the Agency) totalling \$1,628,820.40.

The Recipient has defaulted under the terms and conditions of an agreement with another creditor and the Agency is of the opinion that it is unlikely that the Recipient will meet its obligations under the contribution agreement with the Agency; therefore, the Recipient is in default of its obligations and the total amount of the contributions previously disbursed, less payments already received, is repayable with interest at the rate specified in the contribution agreements. A summary of the debt due as of today's date is as follows:

Project No.	Principal Outstanding	Interest Outstanding	NSF fees	Total Amount Outstanding
225101	\$252,500.00	\$0.00	\$0.00	\$252,500.00
208733	\$721,000.00	\$0.00	\$0.00	\$721,000.00
206729	\$283,316.00	\$0.00	\$0.00	\$283,316.00
201529	\$170,886.00	\$0.00	\$0.00	\$170,886.00
202299	\$194,382.40	\$0.00	\$0.00	\$194,382.40
198885	\$ 6,736.00*	\$0.00	\$0.00	\$ 6,736.00

*(\*) this assumes the payment of \$1,041 for April 1, 2024 has been honored.*

The Agency hereby demands payment of \$1,628,820.40 plus accrued interest, by no later than April 17, 2024. Payment shall be made payable to the Receiver General for Canada and should be sent to the attention of Pierrette LeBlanc at the address indicated above.

Additionally, you are advised that Canada Revenue Agency has been requested to register a set-off redirecting to this Agency any and all refunds payable to the Recipient until such time as the debt due is satisfied.

Should you have any questions, please contact the undersigned at 1-800-561-7862, at (506) 961-4835, via fax at 506-851-4855 or via e-mail at [pierrette.leblanc@acoa-apeca.gc.ca](mailto:pierrette.leblanc@acoa-apeca.gc.ca).

Yours truly,

Pierrette LeBlanc  
Special Accounts Officer

Canada

Head Office  
P.O. Box 6051  
Moncton, N.B.  
Canada E1C 9J8

Siège social  
C.P. 6051  
Moncton (N.-B.)  
Canada E1C 9J8



Atlantic Canada  
Opportunities  
Agency

Agence de  
promotion économique  
du Canada atlantique

**REGISTERED MAIL**

April 3, 2024

Head Office  
P.O. Box 6051  
Moncton, N.B.  
Canada E1C 9J8

Siège social  
C.P. 6051  
Moncton (N.-B.)  
Canada E1C 9J8

Sustainable Fish Farming (Canada) Limited  
259 Red Bank Road  
Centre Burlington, Nova Scotia  
B0N 1E0

**Attention:** Kirk Havercroft

Dear Kirk Havercroft:

**Re: Contribution Agreement (the Agreement) between His Majesty the King in right of Canada, as represented by the Atlantic Canada Opportunities Agency (the Agency) and Sustainable Fish Farming (Canada) Limited (the Recipient)  
Project Nos. 225101, 208733, 206729, 201529, 202299 and 198885**

The Atlantic Canada Opportunities Agency (the Agency) offered contributions to Sustainable Fish Farming (Canada) Limited subject to terms and conditions contained in the Letters of Offer issued for the above-mentioned projects.

The present debt outstanding to the Agency under the Agreements is \$1,628,820.40.

The Agency has taken steps to inform the Minister of National Revenue of the Recipient's indebtedness to the Agency and has asked that the amount of any refund or repayment that might otherwise be made to the debtor under section 164 of the *Income Tax Act* and under section 155 of the *Financial Administration Act* be applied to reduce or discharge the indebtedness to the Agency.

This letter is without prejudice to any other rights which His Majesty may have under the Agreement or otherwise.

Should you have any questions, please contact the undersigned at 1-800-561-7862, at (506) 961-4835 via fax at 506-851-4855 or via e-mail at [pierrette.leblanc@acoa-apeca.gc.ca](mailto:pierrette.leblanc@acoa-apeca.gc.ca).

Yours truly,

Pierrette LeBlanc  
Special Accounts Officer

## **APPENDIX F**



Canada Revenue  
Agency

Agence du revenu  
du Canada

Summerside PE C1N 5Z7

SUSTAINABLE FISH FARMING  
(CANADA) LIMITED  
20 MACDONALD AVE  
DARTMOUTH NS B3B 1C5

Date	May 2, 2024
Business Number	86169 6896 RT0001

0000001

Dear Sustainable Fish Farming (Canada) Limited,

We have been informed that you have an outstanding debt with Atlantic Canada Opportunities Agency (ACOA). As a result, we have applied \$88,662.00 of your refund dated May 1, 2024, to this debt. If you need more information about your debt, please contact:

Atlantic Canada Opportunities Agency (ACOA)  
Head Office, Blue Cross Centre  
644 Main St  
PO Box 6051  
Moncton, NB E1C 9J8

OGD Contact name: Chantal Saucier  
Phone: 1-506-851-7833

For more information, phone or write to:

Business Accounting  
Prince Edward Island TC/TSO  
275 Pope Road  
Summerside

PE C1N 5Z7

Fax 418-566-4863  
Toll free number 1-800-959-5525

Please quote: Case/Reference SA2411 70545310

You can find general information on our website at [canada.ca/revenue-agency](https://canada.ca/revenue-agency).

Canada



Summerside PE C1N 6A2

0015956

## Notice details

**Business number** 86169 6896 RT0001

**Period covered** Mar 1, 2024 - Mar 31, 2024

**Date issued** May 1, 2024

SUSTAINABLE FISH FARMING  
(CANADA) LIMITED  
20 MACDONALD AVE  
DARTMOUTH NS B3B 1C5

## Notice of assessment for goods and services tax/harmonized sales tax (GST/HST)

This notice explains the results of our assessment of your GST/HST return(s).

Thank you,

Bob Hamilton  
Commissioner of Revenue

### Account summary

**Total balance:** \$88,662.00 CR

#### Sign up for MyBA

MyBA lets you:

- Submit elections online
- View filed returns; and
- View account history.

Go to:  
[canada.ca/my-cra-business-account](https://canada.ca/my-cra-business-account)

SUSTAINABLE FISH FARMING  
(CANADA) LIMITED

## Notice details

<b>Business number</b>	86169 6896 RT0001
<b>Period covered</b>	Mar 1, 2024 - Mar 31, 2024
<b>Date issued</b>	May 1, 2024

## GST/HST assessment

### Results

This notice explains the results of our assessment of the GST/HST return(s) received on **April 26, 2024**, for the period shown above.

<b>Description</b>	<b>\$ Amount</b>	<b>CR</b>
Result of this assessment	88,662.00	CR
Previous balance	0.00	
<b>Total balance</b>	<b>88,662.00</b>	<b>CR</b>

We are holding your credit while we review your account.

For more information, please see the "Summary" and "Explanation of changes and other important information" sections of this notice.

Please keep this notice of assessment for your records.



SUSTAINABLE FISH FARMING  
(CANADA) LIMITED

## Notice details

Business number	86169 6896 RT0001
Period covered	Mar 1, 2024 - Mar 31, 2024
Date issued	May 1, 2024

## Summary

Reporting Period: Mar 1, 2024 - Mar 31, 2024

Reference Number: 24117000372370831

## Sales and other revenue

Line	Description	\$ Amount	CR
101	Sales and other revenue	0.00	

## Balance calculation

Line	Description	\$ Amount	CR
105	Total GST/HST and adjustments	0.00	
108	Total ITCs and adjustments	88,662.00	CR
109	Net tax assessed	88,662.00	CR
	Result of assessment	88,662.00	CR

## Explanation of changes and other important information

You have to put an amount on line 101 "Sales and other revenue" and round it off to the nearest dollar. Line 101 should be zero only if you had no business activity during the reporting period.

We processed your GST/HST return for the period ending **March 31, 2024**.

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## More information

If you need more information, go to **canada.ca/taxes**.

To see your latest account information, including payment transactions, go to **canada.ca/my-cra-business-account**.

For information regarding options for adjusting your return, go to **canada.ca/taxes-business-online** and select "GST/HST return and/or rebate" under "Change", or see Guide RC4022, General Information for GST/HST Registrants. For faster service, submit your request electronically.

If you disagree with this assessment, go to **canada.ca/cra-complaints-disputes** and select the topic "Goods and services tax/harmonized sales tax (GST/HST)" for your objection options. You have 90 days from the date of this notice to register your dispute.

## Definitions

**CR** (credit) is the amount we owe you.

## Help for persons with visual impairments

You can get this notice in braille, large print, or audio format. For more information about other formats, go to **canada.ca/cra-multiple-formats**.

## Direct deposit

Direct deposit is a faster, more convenient, reliable, and secure way to get all amounts deposited into one account or to have refunds and rebates from different programs deposited into different accounts. For more information, go to **canada.ca/cra-direct-deposit**.

## Get your mail online

You can choose to receive your mail online. When you register for this new service, we will no longer print and mail most correspondence to you. Instead, we will notify you by email when you have mail to view in your secure online account. For more information, go to **canada.ca/my-cra-business-account**.

## **APPENDIX G**

May 13, 2024

VIA EMAIL [karine.lebreton@justice.gc.ca](mailto:karine.lebreton@justice.gc.ca)

**Atlantic Canada Opportunities Agency**

ACOA Legal Services

644 Main Street

P.O. Box 6051

Moncton, NB E1C 9J8

Dear Karine Le Breton :

**Re: Sustainable Fish Farming (Canada) Limited et al.  
Our File No.: 50069315-00001**

We are counsel to Deloitte Restructuring Inc. in its capacity as Court appointed receiver and manager of TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc and TCAS IP Inc. (the “**Receiver**”) as appointed by order of the Supreme Court of Nova Scotia in Bankruptcy and Insolvency on April 4, 2024 (the “**Appointment Order**”).

The Receiver has been provided with four letters from ACOA each dated April 3, 2024 in respect of a variety of projects. There are two demand letters noting Sustainable Fish Farming (Canada) Limited in default and demanding repayment by no later than April 17, 2024, and two letters asserting a right of set-off against any amounts payable by the Minister of National Revenue. Canada Revenue Agency has withheld the May 1, 2024 HST refund in the amount of \$88,662 and directed it to ACOA.

This action by ACOA breaches the stay of proceedings included in the Appointment Order being an action against the property of the respondent companies after April 4, 2024. The Receiver requires that ACOA withdraw its request to the Minister of National Revenue and forthwith pay over \$88,662 to the Receiver. Please confirm that the withdrawal and arrangements for payment have been made to the undersigned on or before May 24, 2024.

If this matter cannot be resolved in a consensual manner, the Receiver will be forced to seek direction of the Court. The Receiver is planning on bringing this set-off to the Court’s attention in its Second Report, which will be issued later today.

**Gavin D.F. MacDonald | Partner**

*Direct* 902 491 4464 *Main* 902 421-6262 *Fax* 902 421-3130 *Email* [gmacdonald@coxandpalmer.com](mailto:gmacdonald@coxandpalmer.com)

Nova Centre | South Tower, Suite 1500, 1625 Grafton Street, Halifax, NS B3J 0E8

*Correspondence* PO Box 2380 Central Halifax NS B3J 3E5

May 13, 2024  
Page 2

Yours very truly,

A handwritten signature in blue ink, appearing to read 'Gavin D.F. MacDonald', followed by a large, stylized flourish or 'G'.

Gavin D.F. MacDonald  
GDFM/GDFM

## **APPENDIX H**



Department of Justice  
Canada

Ministère de la Justice  
Canada

Legal Services  
P.O. Box 6051  
Moncton, N.B.  
Canada E1C 9J8

Services Juridiques  
B.P. 6051  
Moncton (N.-B.)  
Canada E1C 9J8

*Tel:* (506) 875-9355  
*Fax:* (506) 851-3304  
*E-mail:* [Karine.Lebreton@justice.gc.ca](mailto:Karine.Lebreton@justice.gc.ca)

## WITHOUT PREJUDICE

Friday, May 24, 2024

**VIA EMAIL:** [gmacdonald@coxandpalmer.com](mailto:gmacdonald@coxandpalmer.com)

Cox & Palmer  
1500-1625 Grafton Street  
P.O. Box 2380 Central  
Halifax, N.S. B3J 3E5

**Attention: Gavin D.F. MacDonald**

Mr. MacDonald:

**RE: Receivership of Sustainable Fish Farming (Canada) Limited (“SFF”) et al.**  
**Court file number: HFX 531915**

We represent the Atlantic Canada Opportunities Agency (“ACOA”) and understand that you represent Deloitte Restructuring Inc. in its capacity as Court appointed receiver and manager of Sustainable Fish Farming (Canada) Limited et al. (the “Receiver”) as appointed by order of the Supreme Court of Nova Scotia in Bankruptcy and Insolvency on April 4, 2024 (the “Appointment Order”).

We confirm receipt of your correspondence dated May 13, 2024, in which it is alleged that ACOA breached the stay of proceedings included in the Appointment Order by netting HST credits in the amount of \$88,662.00 and that this constitutes “an action against the property of the respondent companies after April 4, 2024”. It is also requested that “ACOA withdraw its request to the Minister of National Revenue and forthwith pay over \$88,662.00 to the Receiver”.

We were very surprised by the allegation that the Crown breached a court order and take such allegation very seriously. Our duty as representatives of the Crown is to uphold the rule of law and ensure that legal obligations on behalf of the Government of Canada are respected. The Crown must hold itself to the highest standards.

The Crown disagrees with the Receiver’s position for the reasons outlined below. We assert that ACOA did not breach the Appointment Order, nor did it act against the “property of the respondent companies” by exercising its set-off rights.

The contribution agreements between ACOA and SFF, general rules of common law and paragraph 155(1)(a) of the *Financial Administration Act* respectively provide the Crown with contractual, common law and statutory rights to set-offs.

In the context of a Receivership, it is well established in case law that set-off rights can generally be exercised in relation to amounts mutually owed before the coming into effect of the Appointment Order.

In the case at hand, SFF's debt to ACOA (\$1,628,820.40, see Demand Letters) existed before the coming into effect of the Appointment Order on April 4, 2024. ACOA sent Demand Letters to SFF before the coming into effect of the Appointment Order. ACOA registered its set-off request with the Canada Revenue Agency on April 3, 2024, which is again prior to the coming into effect of the Appointment Order. The HST credits against which set-off was exercised (\$88,662.00) were for the period of March 1-31, 2024. As both amounts were mutually due before the coming into effect of the Appointment Order on April 4, 2024, we assert that ACOA lawfully exercised its set-off rights in relation to amounts that were mutually owed before the coming into effect of the Appointment Order.

With respect to allegations that ACOA's action was "an action against the property of the respondent companies", we draw your attention to subsection 164(2) of the *Income Tax Act* and subsection 155(1) of the *Financial Administration Act* which provide legislative authority to apply a tax refund or credit to a debt due to His Majesty in right of Canada.

With respect to the request that "ACOA withdraw its request to the Minister of National Revenue and forthwith pay over \$88,662 to the Receiver", we assert, as explained above, that ACOA lawfully exercised its set-off rights in relation to amounts that were mutually owed before the coming into effect of the Appointment Order.

The Crown will continue to conduct itself in accordance with applicable law, remaining mindful of recent case law, such as [\*Carillion Canada Inc.\*](#), 2022 ONSC 4617, which clearly outlines creditors' entitlement to set-off rights concerning "pre-pre-set-offs" and the potential application of a stay of proceedings pursuant to court orders.

Should you have any questions, please contact the undersigned at the numbers and addresses indicated above.

Yours truly,

Karine Le Breton  
Legal Counsel  
ACOA Legal Services  
Department of Justice  
Government of Canada

c.c. Pierrette LeBlanc, Special Accounts Officer, ACOA, Pierrette.LeBlanc@acoa-apeca.gc.ca, 506-961-4835



## **APPENDIX I**

**Sustainable Group of Companies**  
**Consolidated statement of cash flow (the "Forecast")**  
**For the weeks ending May 27 to August 25, 2024**  
**Prepared by Deloitte Restructuring Inc. ("Deloitte") - Court Appointed Receiver and Manager**  
**Prepared on May 27, 2024**

	Notes	Week 1 2-Jun	Week 2 9-Jun	Week 3 16-Jun	Week 4 23-Jun	Week 5 30-Jun	Week 6 7-Jul	Week 7 14-Jul	Week 8 21-Jul	Week 9 28-Jul	Week 10 4-Aug	Week 11 11-Aug	Week 12 18-Aug	Week 13 25-Aug	TOTAL
<b>Opening cash</b>	<b>1</b>	1,032,128	1,135,738	345,035	663,767	749,530	659,312	446,947	192,510	724,729	534,228	451,194	176,007	172,122	<b>1,032,128</b>
<b>Receipts</b>															
Receiver's borrowings	<b>2/3</b>	1,000,000		500,000			750,000		500,000		500,000		-		<b>3,250,000</b>
HST refunds	<b>4</b>	39,439			218,300		-		116,997		-		172,723		<b>547,459</b>
Collection of sales	<b>5</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	<b>-</b>
<b>Subtotal - Receipts</b>		<b>1,039,439</b>	<b>-</b>	<b>500,000</b>	<b>218,300</b>	<b>-</b>	<b>750,000</b>	<b>-</b>	<b>616,997</b>	<b>-</b>	<b>500,000</b>	<b>-</b>	<b>172,723</b>	<b>-</b>	<b>3,797,459</b>
<b>Disbursements</b>															
Compensation	<b>6</b>	55,000	30,000	55,000	30,000	55,000	30,000	55,000	30,000	55,000	30,000	55,000	30,000	55,000	<b>565,000</b>
Feed	<b>7</b>	-	81,000	91,000	52,000	-	172,000	-	-	91,000	133,000	-	91,000	-	<b>711,000</b>
Purchase of eggs / juveniles	<b>8</b>	-	22,000	-	-	11,000	-	-	11,000	-	-	11,000	-	-	<b>55,000</b>
Repairs and maintenance	<b>9</b>	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	<b>195,000</b>
Utilities	<b>10</b>	122,000	175,000	-	-	-	175,000	-	-	-	192,500	-	-	-	<b>664,500</b>
Emergency Diesel Fuel	<b>10</b>	-	26,000	-	-	-	26,000	-	-	-	26,000	-	-	-	<b>78,000</b>
Operating supplies	<b>11</b>	-	36,000	-	18,000	-	48,000	-	18,000	-	36,000	-	18,000	-	<b>174,000</b>
Insurance	<b>12</b>	25,000	-	-	-	-	25,000	-	-	-	25,000	-	-	-	<b>75,000</b>
Communications	<b>13</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	<b>-</b>
Vehicle	<b>14</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	<b>-</b>
Rent	<b>15</b>	-	1,500	-	-	-	1,500	-	-	-	1,500	-	-	-	<b>4,500</b>
Interest and bank charges	<b>16</b>	500	500	500	500	500	500	500	500	500	500	500	500	500	<b>6,500</b>
Capital projects	<b>17</b>	485,026	88,478	-	-	-	351,109	-	-	-	65,026	-	-	-	<b>989,639</b>
Sales and marketing	<b>18</b>	4,688	4,688	4,688	4,688	4,688	4,688	4,688	4,688	4,688	4,688	4,688	4,688	4,688	<b>60,938</b>
HST paid on disbursements	<b>19</b>	28,616	85,537	15,080	12,350	4,030	113,569	29,250	5,590	24,313	53,820	39,000	17,420	4,030	<b>432,606</b>
<b>Subtotal - Disbursements</b>		<b>735,829</b>	<b>565,703</b>	<b>181,268</b>	<b>132,538</b>	<b>90,218</b>	<b>962,365</b>	<b>104,438</b>	<b>84,778</b>	<b>190,501</b>	<b>583,034</b>	<b>125,188</b>	<b>176,608</b>	<b>79,218</b>	<b>4,011,682</b>
<b>Professional fees</b>															
Deloitte Restructuring Inc.	<b>20</b>	150,000	150,000	-	-	-	-	100,000	-	-	-	100,000	-	-	<b>500,000</b>
Cox and Palmer	<b>20</b>	50,000	75,000	-	-	-	-	50,000	-	-	-	50,000	-	-	<b>225,000</b>
<b>Subtotal - Professional fees</b>		<b>200,000</b>	<b>225,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>150,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>150,000</b>	<b>-</b>	<b>-</b>	<b>725,000</b>
<b>Period cash flow</b>		<b>103,610</b>	<b>(790,703)</b>	<b>318,733</b>	<b>85,763</b>	<b>(90,218)</b>	<b>(212,365)</b>	<b>(254,438)</b>	<b>532,220</b>	<b>(190,501)</b>	<b>(83,034)</b>	<b>(275,188)</b>	<b>(3,885)</b>	<b>(79,218)</b>	<b>(939,224)</b>
<b>Ending cash</b>		<b>1,135,738</b>	<b>345,035</b>	<b>663,767</b>	<b>749,530</b>	<b>659,312</b>	<b>446,947</b>	<b>192,510</b>	<b>724,729</b>	<b>534,228</b>	<b>451,194</b>	<b>176,007</b>	<b>172,122</b>	<b>92,904</b>	<b>92,905</b>

**Notes and assumptions:**

- Opening cash is as contained within the Interim R&D contained within the Second Report of the Receiver dated May 14, 2024.
- Per paragraph xx of the Amended Borrowing Order, the Receiver's borrowing capacity is \$2,500,000 and 100% has been advanced to date.
- The Receiver has a motion before the Court requesting the Borrowing Charge be increased to \$6,000,000.
- HST receipts relate to anticipated recovery of ITC's paid since the date of the Receivership Order along with anticipated ITC's based on the Forecast.
- Sales timing based on growth projections and production forecast information with collection of AR to take place 30 days after sales based on historical data.
- Compensation expense (including remittances to the Canada Revenue Agency) are based on current and planned headcount for the period covered by the Forecast.
- Feed expense is based on forecasted amounts and factors in anticipated biomass at the farm along with the lead time required to have the product delivered to Nova Scotia.
- Purchase of biomass relates to the import of eggs from Icelandic supplier and the amounts above and based on the forecasted program to return the farm to full biomass.
- Repairs and maintenance are forecasted based on historical averages.
- Utilities cover amounts owing to Nova Scotia Power and an estimate for diesel consumption for use in redundancy generators to protect the biomass in the event of weather concerns.
- Operating expenses cover freshwater deliveries, oxygen and water conditioning used in the growth of the biomass and is based on historical averages factoring in anticipated biomass at the farm.
- Insurance expense relates to premiums due on the policy the Receiver has retained.
- Communications expense relate to the costs of phone, internet and the corporate cell phone policy.
- Vehicle expenses are estimates to cover fuel costs and maintenance on company vehicles and equipment.
- Rent expense relates to the monthly cost of renting a staff house in close proximity to the farm.
- Interest and bank charges are estimated based on forecasted expenses on the Receiver's trust account, the majority of which relate to wire transfer fees.
- Capital projects relate to residual amounts owing from the biomass project along with other critical path projects.
- Sales and marketing expense to prepare for product re-launch including marketing / branding work, customer visits and promotional materials.
- HST paid on disbursements are forecasted based on input tax credits contained within the Forecast period.
- Professional fees relate to those of the Receiver and its legal counsel and are based on the anticipated fees based on previous experience with similar sized mandates.

## **APPENDIX J**

Sustainable Blue  
Investment Opportunity

May 2024


Summary

- An opportunity exists to acquire the assets (the “**Assets**”) and/or the business (the “**Business**”) of TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited (“**SFFC**”), Sustainable Blue Inc, and TCAS IP Inc. (collectively the “**Sustainable Group**”).
- On April 4, 2024 the Supreme Court of Nova Scotia in Bankruptcy and Insolvency (the “**Court**”) issued an Order regarding the assets, undertakings and property of the Sustainable Group. Deloitte Restructuring Inc. (“**Deloitte**”) was appointed receiver (the “**Receiver**”) of the Sustainable Group.
- Pursuant to a Court order issued on May 1, 2024, the Receiver has been authorized to carry out a “stalking horse” marketing and sales process (the “**Sales Process**”) for the Sustainable Group’s Assets or Business of the Sustainable Group. This document (the “**Teaser**”) has been distributed to parties identified as having a potential interest in acquiring the Assets or Business. Any parties interested in obtaining further information on this opportunity are invited to execute and return the accompanying Non-Disclosure Agreement to the Receiver at the contact information listed below.

Business Overview

- The Sustainable Group owns and operates a land-based marine aquaculture facility in Hants County, Nova Scotia (the “**Facility**”), where it grows Atlantic salmon. The Facility is designed to mimic the traditional life-cycle of wild Atlantic salmon.
- The Sustainable Group’s system is fully self-contained and its salmon are free of parasites and other fish diseases and require zero antibiotics.

Asset Details

Facility	<ul style="list-style-type: none"><li>• Seven buildings totaling ~ 111,000 sq/ft house the Facility’s operations.</li><li>• Leased residential property for staff accommodations</li></ul>	
Capacity	<ul style="list-style-type: none"><li>• The Facility has the capacity to produce up to 1,000 metric tonnes (1 million kilograms) of whole round salmon annually (i.e., approximately 250,000 fish at four kilograms each).</li></ul>	

Operations at the Facility are based upon, in part, a proprietary water filtration technology owned by TCAS IP Inc. and licensed to SFFC. The Facility is the world’s first closed-loop land-based saltwater fishery that re-uses 100% of its water, with zero wastewater emissions.

A snapshot of the Facility’s interior is presented below:



## Selective Investment Highlights

### Compelling Growth Opportunities

- By 2030, demand for Atlantic salmon in the US is expected to increase ~2.2x driven by increasing awareness of the health benefits to eating fish regularly.
- An inefficient global supply chain has also created a shortage for premium Atlantic salmon.

### Responsible and Sustainable Atlantic Salmon Fishery

- The Facility is designed to mirror the ocean ecosystem on land, protecting wild salmon populations from diseases.
- The Facility does not discharge waste back to the ocean; the solid waste from the fishery is used to generate electricity.

### Disruptive Proprietary Land-Based RAS Technology

- The Facility's saltwater filtration technology filters out 100% of effluent and contaminants without the need for an ocean discharge so that its Atlantic salmon are raised in crystal clear running saltwater, thereby eliminating pollution from the usual criticisms associated with salmon aquaculture.
- Other benefits include lower mortality, geographic flexibility, zero fish escapes and higher growth rates reducing time to market.

### Diversify Premium Product Offerings & Achieve Commercial Scale

- Technology provides flexibility to configure facilities to produce a variety of high-margin, high-growth products such as shrimp, seabass and seabream.
- Multiple species can be grown on the same site with sites located any distance from the sea.

The Receiver has received an offer (the "**Offer**") for all the Assets from 4595756 Nova Scotia Limited (the "**Stalking Horse**"). The purchase price is approximately \$30 million (as defined in the Offer). Prospective purchasers should review the terms of the Offer and the sale and investment solicitation procedures ("**SISP**") to determine whether they are prepared to submit an offer superior to that of the Stalking Horse in accordance with the Court approved SISP. These documents are available on the Receiver's website at [www.insolvencies.deloitte.ca/en-ca/pages/Sustainable-Group.aspx](http://www.insolvencies.deloitte.ca/en-ca/pages/Sustainable-Group.aspx)

The Receiver has approached a select group of qualified parties. Upon execution and receipt of a non-disclosure agreement ("**NDA**"), the Receiver will grant access to a Virtual Data Room. All inquiries, expressions of interest or offers should be directed to the team listed below.

***The bid deadline, for the delivery of non-binding expressions of interest shall close at 5:00 p.m. EST on June 21, 2024.***

Bidders are required to submit their offers in accordance with the terms of the SISP.

The Receiver reserves the right to cease or amend this offering at any time, reserve the right to reject any offer, and is not required to accept any offer even if it is a superior offer, and reserves the right to deal with individual prospective purchasers as they may see fit in their discretion.

All communications relating to this opportunity should be directed to:

#### Naomi McGregor

Deloitte Restructuring Inc.

Direct: +1 403 503 1423

Email: [naomcgregor@deloitte.ca](mailto:naomcgregor@deloitte.ca)

#### Todd Ambachtsheer

Deloitte Restructuring Inc.

Direct: +1 416 607 0781

Email: [tambachtsheer@deloitte.ca](mailto:tambachtsheer@deloitte.ca)

### Disclaimer

The preparation of this Teaser is based on information provided by the management of Sustainable Blue and is furnished to potential acquirers on the basis that none of Deloitte Restructuring Inc. (the "Receiver"), Sustainable Blue or their respective officers, partners, employees, agents, representatives or advisers, make any representation or warranty as to the accuracy or completeness of the material contained herein.

By receiving this Teaser, the recipient (the "Recipient") acknowledges and agrees that no representation or warranty is made (or will necessarily be made in any sale agreement) as to the accuracy, reliability or completeness of any information contained or referred to in this Teaser or provided either orally or in writing to the Recipient in the course of its evaluation, by the Receiver or any person who may be involved in the preparation of this Teaser or the Sales and Investment Solicitation Process generally. To the extent permitted by law, no responsibility for any statement, opinion, information or matter (whether express or implied) arising out of or contained in, or derived from, or for errors in, or omissions from (arising out of negligence or otherwise) this Teaser or any written or oral communications transmitted to the Recipient in the course of its evaluation of the Assets, is accepted by the Receiver.

The Recipient acknowledges that nothing in this Teaser (or elsewhere) creates any personal liability on the part of the Receiver or its employees or agents. While all reasonable efforts have been made to ensure the information contained in this Teaser is accurate and correct at the effective date, no responsibility for any errors in, or omissions from, this Teaser, whether arising out of negligence or otherwise, is accepted by the Receiver.

Any person contemplating a purchase of the Assets should make their own decision as to the sufficiency and relevance for their purposes of the information contained in this Teaser and their own independent investigation of the Assets, after taking all appropriate advice from qualified professional persons. By receiving this Teaser, the Recipient acknowledges and agrees that it will rely entirely upon its own due diligence and professional advice in considering a purchase of the Assets.

## **APPENDIX K**

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”), dated as of May 27, 2024, is entered into between:

**DELOITTE RESTRUCTURING INC.**, in its capacity as court-appointed receiver and manager of TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc., and TCAS IP Inc., and not in its personal or corporate capacity

(the “**Vendor**”)

– and –

**4595756 NOVA SCOTIA LIMITED**, a company existing under the laws of the Province of Nova Scotia

(the “**Purchaser**”)

**WHEREAS** the Sustainable Group is engaged in the business of a land-based marine aquaculture facility in Hants County, Nova Scotia and the sale of Atlantic salmon (the “**Business**”);

**AND WHEREAS**, pursuant to an order of the Supreme Court of Nova Scotia in Bankruptcy and Insolvency (the “**Court**”) dated April 4, 2004 (the “**Receivership Order**”), the Vendor was appointed as the receiver and manager without security, of all of the assets, undertakings and properties of the Sustainable Group acquired for, or used in relation to the Business;

**AND WHEREAS** the Receivership Order, *inter alia*, grants to the Vendor the power and authority to market the assets, undertakings, and properties of the Sustainable Group and sell, convey, transfer, lease, or assign such property out of the ordinary course of business, subject to the approval of the Court;

**AND WHEREAS** the Vendor will bring a motion for the SISP Order to conduct a sales process with respect to the Purchased Assets;

**AND WHEREAS**, subject to the granting of the SISP Order, the designation of the Transaction as the Successful Bid pursuant to the SISP, the granting of the Approval and Vesting Order and the other conditions set forth herein, the Vendor has agreed to sell, convey, transfer and deliver to the Purchaser, and the Purchaser has agreed to purchase, acquire, assume and accept from the Vendor the Purchased Assets, and certain specified liabilities, of the Business, on the terms and subject to the conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:



## ARTICLE 1 INTERPRETATION

### 1.1 Definitions.

The following terms have the meanings specified or referred to in this Article 1:

- (a) **“Accounts Receivable”** has the meaning set forth in Section 2.1(b). **“Action”** means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of assessment, notice of reassessment, proceeding, litigation, summons, subpoena or investigation of any nature, civil, criminal, administrative, investigative, regulatory or otherwise, whether at law or in equity.
- (c) **“Affiliate”** when used to indicate a relationship with a specified Person, means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person and a Person shall be deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management and policies of that Person directly or indirectly, whether through ownership of securities, by trust, by contract or otherwise; and the term “controlled” has a corresponding meaning; provided that, in any event, any Person that owns directly, indirectly or beneficially 50% or more of the securities having voting power for the election of directors or other governing body of a corporation or 50% or more of the partnership interests or other ownership interests of any other Person will be deemed to control that Person.
- (d) **“Agreement”** has the meaning set forth in the preamble.
- (e) **“Approval and Vesting Order”** means an order by the Court, in form and substance satisfactory to the Purchaser, acting reasonably, among other things, approving and authorizing the Transaction and vesting, upon the delivery of a Receiver’s Certificate to the Purchaser, all right, title and interest of the Sustainable Group to the Purchased Assets in the Purchaser, free and clear of all claims and Encumbrances (other than Permitted Encumbrances) pursuant to the terms and conditions of this Agreement.
- (f) **“Assumed Liabilities”** has the meaning set forth in Section 2.3.
- (g) **“Benefit Plan”** means all employee benefit plans, agreements, programs, policies, practices, material undertakings and arrangements (whether oral or written, formal or informal, funded or unfunded) maintained for, available to or otherwise relating to any employees or former employees of the Sustainable Group in the Business, or any spouses, dependents or survivors of any employee or former employee of the Sustainable Group in the Business, or in respect of which the Sustainable Group is a party to or bound by or is obligated to contribute or in any way liable, whether or not insured or whether or not subject to any Law, including bonus, deferred compensation, incentive compensation, share purchase, share appreciation, share option, severance and termination pay, hospitalization, health and other medical benefits including medical or dental treatment or expenses, life and other insurance including accident insurance, vision, legal, long-term and



short-term disability, salary continuation, vacation, supplemental unemployment benefits, education assistance, equity or equity-based compensation, change of control benefits, profit-sharing, mortgage assistance, employee loan, employee assistance and pension, retirement and supplemental retirement plans (including any defined benefit or defined contribution Pension Plan and any group registered retirement savings plan), and supplemental pension, except that the term "Benefit Plan" shall not include any statutory plans with which the Sustainable Group is required to comply, including the Canada Pension Plan and plans administered under applicable provincial health tax, workers' compensation, workplace health and safety and employment insurance legislation.

- (h) **"Books and Records"** has the meaning set forth in Section 2.1(m).
- (i) **"Business"** has the meaning set forth in the recitals.
- (j) **"Business Day"** means any day except Saturday, Sunday or any other day on which banks located in Halifax, Nova Scotia are authorized or required by Law to be closed for business.
- (k) **"Closing"** has the meaning set forth in Section 3.1.
- (l) **"Closing Date"** has the meaning set forth in Section 3.1.
- (m) **"Closing Time"** means 12:01 a.m. (Halifax time) on the Closing Date or such other time on the Closing Date as the parties agree in writing that the Closing shall take place.
- (n) **"Contracts"** means all contracts, leases, deeds, mortgages, licences, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.
- (o) **"Court"** has the meaning set forth in the recitals
- (p) **"Cure Costs"** the amount of all monetary defaults, if any, existing in respect of any Contracts assumed by the Purchaser that are required to be paid in order to obtain the consent necessary to permit the assignment of such Contract(s) to the Purchaser.
- (q) **"Discharge Date"** means the date on which the Vendor is discharged as receiver of the Sustainable Group pursuant to Court order.
- (r) **"Disposal"** means any disposal by any means, including dumping, incineration, spraying, pumping, injecting, depositing or burying.
- (s) **"Dollars"** or "\$" means the lawful currency of Canada.
- (t) **"Encumbrance"** means any encumbrance or restriction of any kind or nature whatsoever and howsoever arising (whether registered or unregistered) and includes a security interest, mortgage, easement, adverse ownership interest, defect on title, condition, right of first refusal, right of first offer, right-of-way, encroachment, building or use restriction, conditional sale agreement, lien, hypothec, pledge, deposit by way of security, hypothecation, assignment, charge,

security under section 426 or section 427 of the *Bank Act* (Canada), trust or deemed trust, voting trust or pooling agreement with respect to securities, any adverse claim, grant of any exclusive license or sole license, or any other right, option or claim of others of any kind whatsoever, and includes any agreement to give any of the foregoing in the future, and any subsequent sale or other title retention agreement or lease in the nature thereof, affecting the Purchased Assets.

- (u) **“Environment”** means the air, surface water, ground water, body of water, any land (including surface land and sub-surface strata), soil or underground space, all living organisms and the interacting natural systems that include components of the air, land, water, and inorganic matters and living organisms, and the environment or natural environment as defined in any Environmental Law, and “Environmental” shall have a corresponding meaning.
- (v) **“Environmental Claim”** means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, release of, or exposure to, any Hazardous Substance; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.
- (w) **“Environmental Law”** means all Laws relating to the protection of the Environment including those relating to the storage, generation, use, handling, manufacture, processing, transportation, import, export, treatment, Release or Disposal of any Hazardous Substance.
- (x) **“Environmental Permit”** means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made under any Environmental Law.
- (y) **“ETA”** means the *Excise Tax Act* (Canada);
- (z) **“Excluded Assets”** has the meaning set forth in Section 2.2.
- (aa) **“Excluded Liabilities”** has the meaning set forth in Section 2.4.
- (bb) **“Expense Reimbursement Fee”** has the meaning set forth in Section 5.2(c).
- (cc) **“GAAP”** means generally accepted accounting principles as set forth in the CPA Canada Handbook – Accounting for an entity that prepares its financial statements in accordance with Accounting Standards for Private Enterprises, at the relevant time, applied on a consistent basis.
- (dd) **“Governmental Authority”** means: (a) any court, tribunal, judicial body or arbitral body or arbitrator; (b) any domestic or foreign government or supranational body or authority whether multinational, national, federal, provincial, territorial, state, municipal or local and any governmental agency, governmental authority, governmental body, governmental bureau, governmental department, governmental tribunal or governmental commission of any kind whatsoever; (c)

any subdivision or authority of any of the foregoing; (d) any quasi-governmental or private body or public body exercising any regulatory, administrative, expropriation or taxing authority under or for the account of the foregoing; and (e) any public utility authority.

- (ee) **“Governmental Order”** means any order, writ, judgment, injunction, decree, stipulation, determination, award, decision, sanction or ruling entered by or with any Governmental Authority.
- (ff) **“Hazardous Substance”** means, collectively, petroleum, any petroleum product, any radioactive material (including radon gas), explosive or flammable materials, asbestos in any form, urea-formaldehyde foam insulation, and polychlorinated biphenyls, any pollutant, contaminant, waste, hazardous material, hazardous waste, toxic substance, dangerous substance, dangerous good, restricted hazardous waste, toxic substance or a source of contamination, as defined or identified in any Environmental Law.
- (gg) **“HST”** means all taxes levied under Part IX of the *Excise Tax Act*.
- (hh) **“Intellectual Property”** means all intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, under the Laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (a) trade-marks, service marks, brand names, logos, trade dress, design rights and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications and renewals for, any of the foregoing; (b) all business names, corporate names, telephone numbers and other communication addresses owned or used by the Sustainable Group in the Business; (c) internet domain names, whether or not trade-marks, registered in any top-level domain by any authorized private registrar or Governmental Authority, web addresses, web pages, websites and related content, accounts with X®, Facebook® and other social media companies and the content found thereon and related thereto, and URLs; (d) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights, author, performer and moral rights, and all registrations, applications for registration and renewals of such copyrights; (e) all industrial designs and applications for registration of industrial designs and industrial design rights, design patents and industrial design registrations owned or used by the Sustainable Group in the Business; (f) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections and other confidential and proprietary information and all rights therein; (g) patents (including all patent registrations, reissues, divisional applications or analogous rights, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other Governmental Authority issued indicia of invention ownership (including inventor’s certificates and patent utility models); (h) software; (i) integrated circuit topographies and mask works; (j) royalties, fees, income, payments and other proceeds now or hereafter due or payable with respect to any and all of the foregoing; and (k) all rights to any Actions of any nature available to or being pursued by the Sustainable Group to the extent related to the foregoing, whether accruing before, on or after the date hereof, including all rights to and claims for damages, accounting, restitution and

injunctive relief for infringement, dilution, misappropriation, violation, misuse, breach or default, with the right but no obligation to sue for such legal and equitable relief, and to collect, or otherwise recover, any such damages and accounting.

- (ii) **"Interim Period"** means the period of time from and including the date of this Agreement to the Closing Time.
- (jj) **"Law"** means any statute, law, ordinance, regulation, rule, instrument, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of law of any Governmental Authority.
- (kk) **"Liabilities"** means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, or otherwise.
- (ll) **"Material Adverse Effect"** means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Business, (b) the value of the Purchased Assets, or (c) the ability of the Vendor to consummate the transactions contemplated hereby on a timely basis, except for an event, occurrence, fact, condition or change to the extent resulting from any change in general economic, business, regulatory, political, financial, capital or credit market conditions in Canada.
- (mm) **"Notice"** has the meaning set forth in Section 8.2.
- (nn) **"Occupational Health and Safety Acts"** means the *Occupational Health and Safety Act*, 1996 (Nova Scotia) and all other legislation of any applicable jurisdiction dealing with any of the subject matter of that Act or with respect to any aspect of the occupational health and safety of employees.
- (oo) **"Ordinary Course"** when used in relation to the conduct of the Business, means any transaction that constitutes an ordinary day-to-day business activity of the Business conducted in a manner consistent with the Sustainable Group's past practice.
- (pp) **"Outside Date"** means November 15, 2024.
- (qq) **"Pension Plan"** means a "registered pension plan" as that term is defined in section 248(1) of the Tax Act.
- (rr) **"Permits"** means all permits, licences, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.
- (ss) **"Permitted Encumbrances"** means: (a) statutory Encumbrances for current Taxes, special assessments or other governmental charges not yet due and payable and for which appropriate accruals have been established in the Financial Statements in accordance with GAAP; (b) statutory liens and deposits or pledges made in connection with, or to secure payment of, workplace safety and insurance, worker's compensation, employment insurance, Canada Pension Plan programs mandated under Law and for which appropriate accruals have been established in

accordance with GAAP; (c) the rights of counterparties under the Contracts; (d) any subsisting reservations or exceptions contained in the original grants from the Crown of any land or interest therein; (e) all encroachments, overlaps, overhangs, unrecorded servitudes and easements, variations in area or measurement, rights of parties in possession, lack of access or any other matters not of record which would be disclosed by an accurate survey or physical inspection of the Real Property and which do not materially interfere with or affect the value or operation of the Business as currently carried on at such Real Property; (f) minor discrepancies in the legal description of the Real Property or any adjoining real property which would be disclosed in a current survey and which do not materially interfere with or affect the value or operation of the Business as currently carried on at such Real Property; (g) all servitudes and easements (including conservation easements and public trust easements, rights-of-way, road use agreements, covenants, conditions, restrictions, reservations, licenses, agreements and other matters of record) and zoning by-laws, ordinances and other restrictions as to the use of real property; provided that they are not of such a nature as to have a Material Adverse Effect on the value or use of the Real Property subject thereto or the operation of the Business as currently carried on at such Real Property; (h) overriding interests as that term is defined in the *Land Registration Act* (Nova Scotia); and (i) Encumbrances listed in Schedule 1.1(ss).

- (tt) **"Person"** means an individual, corporation, company, limited liability company, body corporate, partnership, joint venture, Governmental Authority, unincorporated organization, trust, association or other entity.
- (uu) **"Priority Claims"** means any liabilities, obligations or claims, other than the Receiver's Advances and other priority charges created pursuant to the Receivership Order, that rank in priority to the Senior Secured Obligations pursuant to Law.
- (vv) **"Purchased Assets"** has the meaning set forth in Section 2.1.
- (ww) **"Purchase Price"** has the meaning set forth in Section 2.5.
- (xx) **"Purchaser"** has the meaning set forth in the preamble.
- (yy) **"Real Property"** means, collectively, the owned real property and the leased real property of the Sustainable Group.
- (zz) **"Receiver's Advances"** means any and all outstanding amounts advanced by the Purchaser to the Vendor prior to the Closing Date and subject of a Receiver's Certificate (as defined in the Receivership Order) including, without limitation, all accrued and unpaid interest to the Closing Date.
- (aaa) **"Receivership Order"** has the meaning set forth in the recitals.
- (bbb) **"Release"** means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate of any Hazardous Substance into or through the Environment or as defined in any Environmental Law.

- (ccc) **“Representative”** means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.
- (ddd) **“SISP”** means the procedures for the conduct of a sale and investment solicitation process in respect of the Business and assets of the Sustainable Group to be approved by the Court pursuant to the SISP Order, which procedures shall be in substantially the form attached hereto as Schedule 1.1(ddd) or otherwise in form and substance acceptable to the Vendor and the Purchaser.
- (eee) **“SISP Order”** means an order of the Court approving the execution of this Agreement as a "stalking horse" asset purchase agreement, the transactions contemplated herein, and the SISP, in form and substance acceptable to the Purchaser and the Vendor.
- (fff) **“Senior Secured Credit Documents”** means all those loan documents, security documents, agreements, and other instruments assigned to the Purchaser pursuant to that assignment of debt and security dated March 8, 2024 between the Purchaser and The Bank of Nova Scotia.
- (ggg) **“Senior Secured Obligations”** means:
- (i) any and all of the indebtedness and obligations owing by the Sustainable Group to the Purchaser arising under or in connection with the Senior Secured Credit Documents including, without limitation, all accrued and unpaid interest to the Closing Date; and
  - (ii) any and all protective disbursements and other amounts advanced by the Purchaser to the Sustainable Group or paid by the Purchaser to any Person for and on behalf of the Sustainable Group prior to the date of the issuance of the Receivership Order including, without limitation, all accrued and unpaid interest thereon to the Closing Date.
- For indicative purposes, the Senior Secured Obligations are in the approximate amount of \$23,550,777 (exclusive of costs and fees) as of May 15, 2024.
- (hhh) **“SFFC”** means Sustainable Fish Farming (Canada) Limited.
- (iii) **“Sustainable Blue”** means Sustainable Blue Inc.
- (jjj) **“Sustainable Group”** means, collectively, SFFC, Sustainable Blue, TCAS Holdings and TCAS IP.
- (kkk) **“Tangible Personal Property”** has the meaning set forth in Section 2.1(f).
- (lll) **“Tax Act”** means the *Income Tax Act* (Canada).
- (mmm) **“Tax”** or **“Taxes”** means all taxes, surtaxes, duties, levies, imposts, fees, assessments, reassessments, withholdings, dues and other charges of any nature, imposed or collected by any Governmental Authority, whether disputed or not, including federal, provincial, territorial, state, municipal and local, foreign and other income, franchise, capital, real property, personal property, withholding, payroll, health, transfer, value added, alternative, or add on minimum tax including



HST, sales, use, consumption, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, workers' compensation, education, business, school, local improvement, development and occupation taxes, duties, levies, imposts, fees, assessments and withholdings and Canada Pension Plan contributions, employment insurance premiums and all other taxes and similar governmental charges, levies or assessments of any kind whatsoever imposed by any Governmental Authority including any installment payments, interest, penalties or other additions associated therewith, whether or not disputed.

- (nnn) **"TCAS Holdings"** means TCAS Holdings Limited.
- (ooo) **"TCAS IP"** means TCAS IP Inc.
- (ppp) **"Transaction"** means all of the transactions contemplated by this Agreement
- (qqq) **"Transaction Documents"** means this Agreement and the other agreements, instruments and documents required to be delivered at the Closing.
- (rrr) **"Transferring Employees"** has the meaning set forth in Section 5.4(d).
- (sss) **"Vendor"** has the meaning set forth in the preamble.

## 1.2 Interpretation

For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, and Schedules mean the Articles and Sections of, and Schedules attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

## 1.3 Schedules and Amendments to Schedules

- (a) The Schedules referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.
- (b) The Purchaser and Vendor acknowledge that as of the date hereof, the Schedules are not complete. Such Schedules are for the benefit of the Purchaser and may be amended or completed by the Purchaser, in its sole and absolute discretion in accordance with Section 2.14 (and for greater certainty, the Purchaser acknowledges that any change to the Schedules shall not result in a change to the Purchase Price).

## 1.4 Headings

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

## ARTICLE 2 PURCHASE AND SALE

### 2.1 Purchase and Sale of Assets

Subject to the terms and conditions set forth herein, at the Closing, the Vendor shall sell, assign, transfer, convey and deliver to Purchaser, and the Purchaser shall purchase from the Vendor, free and clear of any Encumbrances other than Permitted Encumbrances, all of the Vendor's and Sustainable Group's right, title and interest in, to and under all of the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired (other than the Excluded Assets), which relate to, or are used or held for use in connection with, the Business (collectively, the "**Purchased Assets**"), including the following:

- (a) cash and cash equivalents, excluding amounts held in the Vendor's trust account;
- (b) all accounts or notes receivable held by the Sustainable Group (or the Vendor in respect of the Sustainable Group), and any security, claim, remedy or other right related to any of the foregoing (collectively, the "**Accounts Receivable**");
- (c) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories;
- (d) all Contracts;
- (e) all Intellectual Property;
- (f) all furniture, fixtures, equipment, machinery, tools, vehicles, office equipment, supplies, computers, telephones and other tangible personal property (collectively, the "**Tangible Personal Property**");
- (g) all Real Property;
- (h) all Permits, including Environmental Permits, which are held by the Sustainable Group and required for the conduct of the Business as currently conducted or for the ownership and use of the Purchased Assets;
- (i) all rights to any Action of any nature available to or being pursued by the Sustainable Group (or the Vendor in respect of the Sustainable Group) to the extent related to the Business, the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise;
- (j) all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums and fees (including any such item relating to the payment of Taxes);
- (k) all of the Sustainable Group's (or the Vendor in respect of the Sustainable Group) rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;
- (l) all insurance benefits, including rights and proceeds, arising from or relating to the Business, the Purchased Assets or the Assumed Liabilities including, without



limitation, the pending claim(s) made by the Sustainable Group to its insurers in respect of the losses suffered on November 4, 2023;

- (m) originals, or where not available, copies, of all books and records, including books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Authority), sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material and research and files relating to the Intellectual Property and related licenses (collectively, the “**Books and Records**”); and
- (n) all goodwill and the going concern value of the Business.

## 2.2 Excluded Assets

Notwithstanding Section 2.1, the Purchased Assets shall not include the assets, properties and rights set out in Schedule 2.2 (collectively, the “**Excluded Assets**”).

## 2.3 Assumed Liabilities

Subject to the terms and conditions set forth herein, the Purchaser shall assume and agree to pay, perform and discharge only the following Liabilities of the Sustainable Group (collectively, the “**Assumed Liabilities**”), and no other Liabilities:

- (a) all obligations and liabilities related to the operation of the Purchased Assets on or after the Closing Date;
- (b) all Liabilities in respect of the Contracts but only to the extent that such Liabilities thereunder are first arising and required to be performed after the Closing Date, were incurred in the Ordinary Course and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Vendor on or before the Closing;
- (c) all Liabilities of Vendor in respect of the Transferring Employees to the extent that such Liabilities are based on facts, circumstances or events that arise after the Closing on the Closing Date;
- (d) any Priority Claims assumed by the Purchaser; and
- (e) those Liabilities of the Sustainable Group which are attributable to the period prior to Closing specifically set forth in Schedule 2.3(e) (the “**Assumed Pre-Closing Liabilities**”), to the extent such Liabilities are not assumed Priority Claims.

## 2.4 Excluded Liabilities

Notwithstanding any provision in this Agreement to the contrary, the Purchaser shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of the Sustainable Group (or the Vendor in respect of the Sustainable Group) or any of their Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (collectively,

the “**Excluded Liabilities**”). Without limiting the generality of the foregoing, the Excluded Liabilities shall include the following:

- (a) any Liabilities for Taxes payable by Vendor;
- (b) any Liabilities relating to or arising out of the Excluded Assets;
- (c) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets to the extent such Action relates to such operation on or before the Closing Date;
- (d) any Liabilities of the Sustainable Group (or the Vendor in respect of the Sustainable Group) in respect of any employees or former employees of the Sustainable Group including all severance payments, damages for wrongful dismissal and all related costs in respect of the termination by the Sustainable Group (or the Vendor in respect of the Sustainable Group) who does not accept the Purchaser’s offer of employment referred to in Section 5.4(a);
- (e) any Environmental Claims, or Liabilities under Environmental Laws, to the extent arising out of or relating to facts, circumstances or conditions existing on or before the Closing on the Closing Date or otherwise to the extent arising out of any actions or omissions of Vendor;
- (f) any (i) intercorporate payables owing to the Sustainable Group or their Affiliates, or (ii) Liabilities to shareholders of the Sustainable Group;
- (g) the Senior Secured Obligations;
- (h) any Liabilities of the Business relating or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders that (i) do not constitute part of the Purchased Assets issued by the Business’ customers to Vendor on or before the Closing; (ii) did not arise in the Ordinary Course; or (iii) are not validly and effectively assigned to Purchaser under this Agreement;
- (i) any Liabilities to indemnify, reimburse or advance amounts to any present or former officer, director, employee or agent of the Sustainable Group;
- (j) any Liabilities under any other Contracts, (i) which are not validly and effectively assigned to Purchaser under this Agreement; or (ii) to the extent such Liabilities arise out of or relate to a breach by the Sustainable Group Vendor of such Contracts before Closing; and
- (k) any Liabilities arising out of, in respect of or in connection with the failure by the Sustainable Group or any of its Affiliates to comply with any Law or Governmental Order.

## 2.5 **Consent Required Agreements**

In the event that there are any Contracts or Permits that are not assignable in whole or in part to the Purchaser without the consent, approval or waiver of any counterparty to such Contracts or issuer of such Permit (each, a “**Consent Required Agreement**”):

- (a) the Purchaser and Vendor shall, at the direction of the Purchaser, use commercially reasonable efforts to obtain any such consent, approval or waiver in respect of a Consent Required Agreement;
- (b) if any consent, approval or waiver is not obtained for any Consent Required Agreement, the Vendor, if requested by the Purchaser in its sole discretion on or prior to September 30, 2024, shall as soon as reasonably practicable bring a motion before the Court seeking the issuance of an Assignment Order with respect to each such Consent Required;
- (c) the determination as to whether to pay Cure Costs in order to obtain any required consent, approval or waiver, and the determination as to whether to seek an Assignment Order in respect of a Consent Required Agreement that, if granted, will necessitate the payment of Cure Costs, shall be made by the Purchaser in its sole discretion;
- (d) the payment of any Cure Costs payable to obtain the consent, approval or waiver of any counterparty to a Contract or as a condition to obtaining an Assignment Order in respect of any Consent Required Agreement shall be the responsibility of the Purchaser; and
- (e) where any required consent, approval or waiver in respect of a Consent Required Agreement or, in the alternative, an Assignment Order in respect of such Consent Required Agreement, has not been obtained as of the Closing Time, nothing in this Agreement shall be construed as an assignment of such Consent Required Agreement, the Purchaser shall have no responsibility whatsoever in respect of such Consent Required Agreement, and such Consent Required Agreement shall, subject to Section 2.6, constitute an Excluded Asset for purposes of this Agreement.

## 2.6 **Non-Transferable and Non-Assignable Purchased Assets**

To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the “**Rights**”), is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any Law unless the approval, consent or waiver of such third Person is obtained, then, except as expressly otherwise provided in this Agreement and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an agreement to transfer such Rights unless and until such approval, consent or waiver has been obtained. After the Closing and for a period of sixty (60) days following the Closing, or such later date as the parties may agree, the Vendor shall:

- (a) hold the Rights in trust for the Purchaser;
- (b) comply with the terms and provisions of the Rights as agent for the Purchaser at the Purchaser’s cost and for the Purchaser’s benefit;
- (c) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Rights to the Purchaser at the Purchaser’s cost; and

- (d) enforce, at the reasonable request of the Purchaser and at the expense and for the account of the Purchaser, any rights of the Vendor arising from such Rights against any third Person, including the right to elect to terminate any such rights in accordance with the terms of such rights upon the written direction of the Purchaser.

## 2.7 **Purchase Price**

The aggregate purchase price for the Purchased Assets shall be equal to the sum of the following amounts (collectively, the **"Purchase Price"**):

- (a) the Cure Costs, if any;
- (b) the Priority Claims, if any;
- (c) a credit bid of the Senior Secured Obligations, which shall upon Closing cause the repayment and release of the Senior Secured Obligations;
- (d) a credit bid of the Receiver's Advances, which shall upon Closing cause the repayment and release of the Receiver's Advances;
- (e) the Assumed Pre-Closing Liabilities, if any (without double-counting of assumed Priority Claims); and
- (f) the amount of \$135,000, estimated by the Vendor to be the aggregate fees, disbursements and expenses of the Vendor for the period from the Closing Time to the Discharge Date (the **"Estimated Fees"**).

## 2.8 **Payment of Purchase Price**

The Purchaser shall pay and satisfy the Purchase Price on the Closing Date as follows:

- (a) the Purchaser shall pay all Cure Costs, if any;
- (b) the Purchaser shall pay or assume the Priority Claims, if any;
- (c) the Purchaser shall release and discharge the Senior Secured Obligations;
- (d) the Purchaser shall release and discharge the Receiver's Advances;
- (e) the Purchaser shall assume the Assumed Pre-Closing Liabilities, if any; and
- (f) the Purchaser shall pay the Estimated Fees to the Vendor, on account of the fees and costs incurred by the Vendor in its capacity as receiver and manager of the Sustainable Group.

## 2.9 **Adjustment for Estimated Fees**

If the aggregate of the actual fees, disbursements and expenses incurred by the Vendor during the period from the Closing Time to the Discharge Date is (a) less than the Estimated Fees, any surplus shall be paid by the Vendor to the Purchaser within three (3) Business Days of the Discharge Date, or (b) greater than the Estimated Fees, any

deficiency shall be paid by the Purchaser to the Vendor within three (3) Business Days of the Discharge Date.

## **2.10 Allocation of Purchase Price**

The Vendor and the Purchaser agree that the Purchase Price and the Assumed Liabilities (plus other relevant items) shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) in a manner to be agreed to by the Purchaser and Vendor, acting reasonably. The Purchaser and the Vendor agree that the values so attributed to the Purchased Assets are the respective fair market values thereof, and the Purchaser shall file all Tax returns (including amended returns and claims for refund) and elections required or desirable under the Tax Act in a manner consistent with such allocation. To the extent reasonably required, the Vendor shall assist the Purchaser in any Tax filings at the sole cost and expense of the Purchaser.

## **2.11 HST**

- (a) The Purchaser and the Vendor acknowledge that the Purchase Price does not include any HST or any Tax imposed under any provision of any applicable provincial legislation imposing a similar value-added or multi-staged Tax.
- (b) The Purchaser and the Vendor acknowledge and agree that the Purchaser is acquiring ownership, possession and use of substantially all of assets reasonably necessary for the Purchaser to carry on the Business and that the purchase and sale of the Purchased Assets shall be completed on the basis that no HST (and no Tax imposed under any provision of any applicable provincial legislation imposing a similar value-added or multi-staged Tax) will be payable by the Purchaser in respect of the purchase and sale of the Purchased Assets.
- (c) Purchaser and Vendor shall jointly make the election provided for under section 167(1.1) of the ETA and under any provision of any applicable legislation imposing a similar value-added or multi-staged Tax so that no HST will be payable in respect of the transactions contemplated by this Agreement.
- (d) The Purchaser agrees and undertakes to file the election described in paragraph (c) above in accordance with the requirements of the ETA and to provide the Vendor with evidence of filing as soon as practicable thereafter.
- (e) If, however, any HST or any tax imposed under any provision of any applicable provincial legislation imposing a similar value-added or multi-staged Tax is payable in respect of the purchase and sale of the Purchased Assets, the Purchaser shall pay to the Vendor, immediately upon demand, such amounts and Vendor shall remit on a timely basis such payment to the Canada Revenue Agency (and to any applicable provincial taxation authority) and provide to Purchaser evidence in writing of such remittance.

## **2.12 Land Transfer Taxes**

The Purchaser shall prepare and file any affidavits or returns required under any applicable land transfer Tax legislation regarding the transfer of Real Property at its cost and expense and pay to the prescribed Governmental Authority any Tax exigible thereunder.

### 2.13 **Income Tax Act Election**

The Vendor and the Purchaser shall, as soon as possible after the Closing Date, jointly execute an election under section 22 of the Tax Act with respect to the sale of the Accounts Receivable and shall designate therein the portion of the Purchase Price allocated to the Accounts Receivable under Section 2.10 as consideration paid by the Purchaser for the Accounts Receivable. The Vendor and the Purchaser shall each file such elections forthwith after the execution thereof (and, in any event, with their respective Tax returns for the taxation year in which Closing Date occurs). If requested by the Purchaser, the Vendor and the Purchaser shall elect jointly in the prescribed form to have the rules in subsection 20(24) of the Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the payment of consideration to the Purchaser for the Purchaser's assumption of any future obligations to supply goods or perform services for which the Vendor has included amounts in its taxable income under paragraph 12(1)(a) of the Tax Act.

### 2.14 **Additions to Purchased Assets, Excluded Assets and Excluded Liabilities**

Notwithstanding anything to the contrary herein, the Purchaser shall have the right, at any time prior to the Closing Time, by notice in writing to the Vendor and without any adjustment to the Purchase Price, to deem:

- (a) (i) any asset or agreement of the Sustainable Group (including any asset or agreement that is otherwise identified herein as a Purchased Asset) to be an Excluded Asset, and (ii) any liability or obligation of the Sustainable Group (including any liability or obligation that is otherwise identified herein as an Assumed Liability) to be an Excluded Liability, in each case for all purposes of this Agreement, in which case such Excluded Asset or Excluded Liability, as the case may be, shall not be assigned or transferred to or assumed by, and shall not vest in, the Purchaser at Closing; and
- (b) any asset or Contract of the Sustainable Group (including any asset or agreement that is otherwise identified herein as an Excluded Asset) to be a Purchased Asset for all purposes of this Agreement.

The Schedules to this Agreement may be updated by the Purchaser at any time prior to the Closing Time to reflect any actions taken by the Purchaser pursuant to this Section 2.14. There shall be no adjustment to the Purchase Price as a result of any designation or modification of Purchased Assets, Excluded Assets, Assumed Liabilities, Excluded Liabilities, or Schedules pursuant to this Section 2.14.

## **ARTICLE 3 CLOSING**

### 3.1 **Closing**

Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the "**Closing**") shall take place at the offices of Stewart McKelvey, Queen's Marque, Suite 600, 1741 Lower Water Street, Halifax, Nova Scotia, on the third Business Day after all of the conditions to Closing set forth in Article 6 are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date) or at such other time, date or place as Vendor and

Purchaser may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the “**Closing Date**”.

### 3.2 **Closing Deliverables**

- (a) At the Closing, the Vendor shall deliver to the Purchaser the following, each in a form and substance satisfactory to the Purchaser:
  - (i) all deeds, bills of sales, transfers, assignments, assumptions, and such other agreements, documents, and instruments as may be reasonably requested by the Purchaser in order to transfer and assign the Purchased Assets and Assumed Liabilities, each duly executed by the Vendor;
  - (ii) the Tax elections required by Section 2.11(c) duly executed by Vendor;
  - (iii) the closing certificate in accordance with Section 6.2(e); and
  - (iv) such other customary instruments of transfer, assumption, filings or documents, as may be required to give effect to this Agreement.
- (b) At the Closing, the Purchaser shall deliver to the Vendor the following:
  - (i) the Purchase Price in accordance with Section 2.8;
  - (ii) all deeds, bills of sales, transfers, assignments, assumptions, and such other agreements, documents, and instruments as may be reasonably requested by the Vendor in order to transfer and assign the Purchased Assets and Assumed Liabilities, each duly executed by the Vendor;
  - (iii) the Tax elections required by Section 2.11(c) duly executed by Purchaser;
  - (iv) the closing certificate in accordance with Section 6.3(d); and
  - (v) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to the Vendor, as may be required to give effect to this Agreement.

### 3.3 **Risk**

The Purchased Assets are and shall remain at the Vendor’s risk until Closing. In the event that the Purchased Assets shall be damaged prior to Closing, then the Vendor shall advise the Purchaser in writing within twenty-four (24) hours of the Vendor learning of same. In the event that the Purchased Assets shall be materially damaged prior to Closing then the Purchaser shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement by notice, in writing, to the Vendor and in such event the parties hereto shall be released from all obligations and liabilities hereunder. If the Purchaser does not elect to terminate this Agreement as set out above, then the Transaction shall be completed in accordance with the terms and conditions hereof and the Purchaser shall be entitled to all proceeds of insurance payable in respect thereof, if any.



## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES; AS-IS WHERE IS**

### **4.1 Representations and Warranties of the Vendor**

The Vendor represents and warrants to the Purchaser that the statements contained in this Section 4.1 are true and correct as of the date hereof:

- (a) *Authority of Vendor.* The Vendor has been duly appointed as receiver and manager of the Sustainable Group by the Receivership Order and, subject to obtaining the Approval and Vesting Order prior to Closing, on Closing the Vendor shall have the power and authority to sell the Purchased Assets, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order.
- (b) *Residency.* Neither the Vendor nor the members of the Sustainable Group is a non-resident of Canada within the meaning of section 116 of the Tax Act.
- (c) *HST Registration.* Each of the Vendor and SFFC is registered for purposes of the ETA.

### **4.2 Representations and Warranties of the Purchaser**

The Purchaser represents and warrants to the Vendor that the statements contained in this Section 4.2 are true and correct as of the date hereof:

- (a) *Corporate Status of Purchaser.* The Purchaser is a company incorporated and validly existing under the Laws of the Province of Nova Scotia and has not been discontinued or dissolved under such Laws. No steps or proceedings have been taken to authorize or require such discontinuance or dissolution.
- (b) *Authority of Purchaser.*
  - (i) The Purchaser has the corporate power and capacity to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by the Purchaser of this Agreement, the performance by Purchaser of its obligations hereunder and the consummation by the Purchaser of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Purchaser.
  - (ii) This Agreement has been duly executed and delivered by the Purchaser, and (assuming due authorization, execution and delivery by the Vendor) this Agreement constitutes a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms.
- (c) *No Conflicts; Consents.*
  - (i) The execution, delivery and performance by the Purchaser of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the memorandum and articles of association of the Purchaser; (b) conflict with or result in a violation or



breach of any provision of any Law or Governmental Order applicable to the Purchaser; or (c) require the consent, notice or other action by any Person under any Contract to which the Purchaser is a party.

- (ii) No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Purchaser in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.
- (d) *HST Registration.*
  - (i) On the Closing Date, the Purchaser will be duly registered for purposes of the ETA.
  - (ii) Purchaser is acquiring under this Agreement all or substantially all the property that can reasonably be regarded as being necessary for it to carry on the Business as a business.

#### **4.3 As-is, Where-is**

The Purchaser acknowledges, agrees and confirms that, at the Closing Time, the Purchased Assets shall be sold and delivered to the Purchaser on an as-is, where-is basis, subject only to the representations and warranties contained herein. Other than those representations and warranties contained herein, no representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition or quality or in respect of any other matter or thing whatsoever.

#### **4.4 Survival**

Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is 12 months from the Closing Date. All covenants and agreements of the parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims for indemnification hereunder asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party before the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved or the expiry of the limitation period under applicable Law, whichever is sooner.

### **ARTICLE 5 COVENANTS**

#### **5.1 Conduct of Business Before the Closing**

During the Interim Period, except as otherwise provided in this Agreement or consented to in writing by Purchaser (which consent shall not be unreasonably withheld or delayed), the Vendor shall (x) conduct the Business in the Ordinary Course consistent with past practice; and (y) use its best efforts, and subject to having the required liquidity, to maintain and preserve intact the current Business organization, operations and franchises and to preserve the rights, franchises, goodwill and relationships of its or the Sustainable Group's employees, customers, lenders, suppliers, regulators and others having relationships with

the Business, subject in all cases to the Receivership Order and any other Court orders granted in the receivership proceedings in respect of the Sustainable Group. Without limiting the foregoing, from the date hereof until the Closing Date, the Vendor shall:

- (a) preserve and maintain all Permits required for the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets;
- (b) pay the necessary post-receivership debts, Taxes and other obligations of the Business when due;
- (c) to the extent applicable, continue to collect Accounts Receivable in a manner consistent with past practice, without discounting such Accounts Receivable;
- (d) maintain the properties and assets included in the Purchased Assets in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;
- (e) continue in full force and effect without modification all insurance policies of the Sustainable Group, except as required by applicable Law;
- (f) defend and protect the properties and assets included in the Purchased Assets from infringement or usurpation;
- (g) perform all of its obligations under all Contracts, provided that there shall be no need to perform pre-receivership obligations;
- (h) maintain the Books and Records in accordance with past practice; and
- (i) comply in all material respects with all Laws applicable to the conduct of the Business or the ownership and use of the Purchased Assets.

## 5.2 **SISP**

- (a) The Vendor shall conduct the sale process in respect of the business and assets of the Sustainable Group in accordance with the SISP and SISP Order and shall not seek any amendment or modification to the Sales Procedures or Sales Procedure Order except as may be permitted under the Sales Procedure Order or without the prior consent of the Purchaser or further order of the Court.
- (b) If the Transaction is designated as the Successful Bid (as defined in the Sales Procedures) pursuant to the SISP, the Vendor shall as soon as reasonably practicable serve and file a motion, on notice to the service list in the receivership proceedings and any other Person reasonably requested by the Purchaser, seeking the Approval and Vesting Order.
- (c) In consideration for the Purchaser's expenditure of time and money and agreement to act as the initial bidder through the SISP, and the preparation of this Agreement, and subject to Court approval, the Purchaser shall be entitled to a an expense reimbursement fee in the amount of a maximum of \$100,000 (exclusive of HST, if any) (the "**Expense Reimbursement Fee**") payable by the Vendor to the Purchaser only in the event that a successful bid other than the Stalking Horse Bid (as defined in the SISP) is accepted by the Vendor, approved by the Court and completed. The payment of the foregoing amounts shall be approved in the Sales

Procedure Order and payable to the Purchaser out of the sale proceeds derived from and upon completion of the winning bid. The Purchaser and Vendor acknowledge and agree that the foregoing amounts represent a fair and reasonable estimate of the expenses that will be incurred by the Purchaser as a result of preparing for and entering into this Agreement, and is not intended to be punitive in nature nor to discourage competitive bidding for the Purchased Assets. For certainty, the Expense Reimbursement Fee does not form part of the Purchase Price.

### 5.3 Access to Information

During the Interim Period, the Vendor shall (a) afford the Purchaser and its Representatives full and free access to and the right to inspect all of the properties, assets, premises, Books and Records, Contracts and other documents and data related to the Business; (b) furnish the Purchaser and its Representatives with such financial, operating and other data and information related to the Business as the Purchaser or any of its Representatives may reasonably request; and (c) instruct the Representatives of the Vendor and the Sustainable Group to cooperate with Purchaser in its investigation of the Business.

### 5.4 Employees and Employee Benefits

- (a) Commencing on the Closing Date, the Vendor shall terminate all former employees of the Business whose services have been engaged by the Vendor and who are actively at work on the Closing Date and the Purchaser shall offer employment, conditional on completion of the transactions contemplated by this Agreement, to each Transferring Employee on terms and conditions that are, in the aggregate, no less favourable than the terms and conditions on which these employees are employed immediately before the Closing Date.
- (b) The Vendor shall be solely responsible, and the Purchaser shall have no obligations whatsoever, for any compensation or other amounts payable to any current or former employee, officer, director, independent contractor or consultant of the Business, including hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with Vendor at any time on or before the Closing Date, and the Vendor shall pay all such amounts to all entitled Persons on or before the Closing Date.
- (c) The Vendor shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health, accident or disability benefits brought by or in respect of current or former employees, officers, directors, independent contractors or consultants of the Business or the spouses, dependents or beneficiaries thereof, which claims relate to events occurring on or before the Closing Date. The Vendor also shall remain solely responsible for all claims under the *Workers' Compensation Act, 1994-95, (Nova Scotia)* of any current or former employees, officers, directors, independent contractors or consultants of the Business that relate to events occurring on or before the Closing Date. The Vendor shall pay, or cause to be paid, all such amounts to the appropriate persons as and when due.
- (d) Any employees who accept offers of employment by the Purchaser and who begin active employment with the Purchaser as of the Closing Date (the “**Transferring**

**Employees**") shall cease to participate in all Benefit Plans and shall be entitled to participate in Purchaser's benefit plans, programs, policies and arrangements (the "**Purchaser's Plans**"). Periods of employment with the Vendor, to the extent recognized under the Benefit Plans immediately before the Closing Date, shall be taken into account for purposes of determining, as applicable, eligibility for participation, eligibility for early retirement and subsidy, distributions, vestings and benefit accrual of any Transferring Employee under the applicable Purchaser's Plans.

- (e) Without limiting the generality of this Section 5.4, each employee of the Business who becomes employed by Purchaser in connection with the transaction shall be given service credit for his or her period of service with Sustainable Group before the Closing Date (including periods of employment with any other employer, to the extent recognized under the Benefit Plans) for the purposes of determining, as applicable, eligibility for participation, eligibility for early retirement and subsidies, distributions and vesting of any employees employed by the Purchaser, retirement plans, pay practices, vacations and any other arrangement providing benefits based on seniority.

#### 5.5 Further Assurances

Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

### ARTICLE 6 CONDITIONS TO CLOSING

#### 6.1 Conditions to Obligations of All Parties

The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or before the Closing, of each of the following conditions:

- (a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.
- (b) The Transaction shall have been designated as the Successful Bid pursuant to the SISP.
- (c) The Court shall have issued the Sales Procedure Order in form and substance acceptable to the Vendor and the Purchaser, and such Sales Procedure Order shall have become final and shall not have been appealed, vacated, stayed, varied or amended without the consent of the Purchaser.
- (d) The Court shall have issued the Approval and Vesting Order in form and substance acceptable to the Vendor and the Purchaser, and such Approval and Vesting Order

shall have become final and shall not have been appealed, vacated, stayed, varied or amended without the consent of the Purchaser.

- (e) No Action shall have been commenced against the Purchaser or the Vendor, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

## **6.2 Conditions to Obligations of the Purchaser**

The obligations of the Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or the Purchaser's waiver, at or before the Closing, of each of the following conditions:

- (a) The representations and warranties of the Vendor set out in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.
- (b) The Vendor shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it before or on the Closing Date.
- (c) If requested by the Purchaser, the Court shall have issued an Assignment Order in respect of Consent Required Agreement(s), such Assignment Order shall be in form and substance acceptable to the Purchaser in its sole discretion, and such Assignment Order shall have become final and shall not have been appealed, vacated, stayed, varied or amended without the consent of the Purchaser.
- (d) The Vendor shall have delivered to Purchaser duly executed counterparts of the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.2(a).
- (e) The Purchaser shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Vendor, that each of the conditions set forth in Sections 6.2(a) and 6.2(b) have been satisfied.
- (f) The Vendor shall have delivered to the Purchaser such other documents or instruments as Purchaser reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

## **6.3 Conditions to Obligations of the Vendor**

The obligations of the Vendor to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or the Vendor's waiver, at or before the Closing, of each of the following conditions:

- (a) The representations and warranties of Purchaser set out in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects on and as of the date

hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

- (b) The Purchaser shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it on or before the Closing Date.
- (c) The Purchaser shall have delivered to Vendor duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.2(b).
- (d) The Vendor shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Purchaser, that each of the conditions set forth in Sections 6.3(a) and 6.3(b) has been satisfied.
- (e) The Purchaser shall have delivered to Vendor such other documents or instruments as Vendor reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

## **ARTICLE 7 TERMINATION**

### **7.1 Termination**

This Agreement may be terminated at any time before the Closing:

- (a) by the mutual written consent of the Vendor and the Purchaser;
- (b) by the Purchaser by written notice to the Vendor if:
  - (i) the Purchaser is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by the Vendor under this Agreement that would give rise to the failure of any of the conditions specified in Article 6 and such breach, inaccuracy or failure has not been cured by the Vendor within 10 days of the Vendor's receipt of written notice of such breach from the Purchaser; or
  - (ii) any of the conditions set forth in Section 6.1 or Section 6.2 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Date, unless such failure shall be due to the failure of the Purchaser to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it before the Closing.
- (c) by the Vendor by written notice to the Purchaser if:
  - (i) the Transaction is not selected as a Successful Bid pursuant to the Sales Procedure;
  - (ii) the Vendor is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any

representation, warranty, covenant or agreement made by the Purchaser under this Agreement that would give rise to the failure of any of the conditions specified in Article 6 and such breach, inaccuracy or failure has not been cured by Purchaser within 10 days of the Purchaser's receipt of written notice of such breach from Vendor; or

- (iii) any of the conditions set forth in Section 6.1 or Section 6.2 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Date, unless such failure shall be due to the failure of the Vendor to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it before the Closing.

## 7.2 Effect of Termination

In the event of the termination of this Agreement in accordance with this Article 7, this Agreement shall forthwith become terminated and of no further force and effect and there shall be no liability on the part of any party hereto except:

- (a) as set forth in this Article 7, Section 5.2, and Article 8; and
- (b) that nothing herein shall relieve any party hereto from liability for any wilful breach of any provision hereof.

## ARTICLE 8 MISCELLANEOUS

### 8.1 Expenses

Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby, and including any Taxes, shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

### 8.2 Notices

Any notice, waiver, determination or other communication required or permitted to be given under this Agreement (a "**Notice**") must be in writing and sent in one of the following ways to the applicable address set out below:

- (a) delivered personally to the applicable party at the address set out below (a personally delivered Notice will be deemed to be received by the addressee when actually delivered);
- (b) by facsimile or electronic transmission to the address for the applicable party set out below (any Notice so given will be deemed to have been received on the day of transmission if it is a business day and the Notice was transmitted prior to 5:00 p.m. (local time in place of receipt) on such day. Otherwise, such Notice will be deemed to have been given and received on the following business day);
- (c) delivered by a prepaid courier service at the address set out below (such a Notice will be deemed to be received by the addressee when actually delivered); or



- (d) sent by registered mail, postage prepaid, to the applicable party (Notices so sent will be deemed to have been received by the addressee on the third business day following the date of mailing), except that in the event of an actual or threatened postal strike or other labour disruption that may affect the mail service of the parties. Notices will not be mailed.

Notices must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this section):

If to the Vendor: Deloitte Restructuring Inc.  
8 Adelaide Street West, Suite 200  
Toronto, ON, Canada, M5H 0A9  
Email: [tambachtsheer@deloitte.ca](mailto:tambachtsheer@deloitte.ca)  
[naomcgregor@deloitte.ca](mailto:naomcgregor@deloitte.ca)  
Attention: Todd Ambachtsheer and Naomi McGregor

with a copy to Cox & Palmer  
(which shall not constitute Suite 300, TD Tower  
notice): 77 Westmorland Street  
Fredericton, NB E3B 6Z3  
Email: [jmcelman@coxandpalmer.com](mailto:jmcelman@coxandpalmer.com)  
Attention: Josh McElman

If to Purchaser: 4595756 Nova Scotia Limited  
20 Macdonald Avenue  
Dartmouth, NS B3B 1C5  
Email: [tls@stevensgroup.ca](mailto:tls@stevensgroup.ca)  
[jimlawley@scotiafuels.com](mailto:jimlawley@scotiafuels.com)  
Attention: Thane Stevens and Jim Lawley

with a copy to Stewart McKelvey  
(which shall not constitute 1741 Lower Water Street  
notice): Suite 600  
Halifax NS B3J 0J2  
Email: [mchiasson@stewartmckelvey.com](mailto:mchiasson@stewartmckelvey.com)  
Attention: Maurice P. Chiasson, K.C.

### 8.3 Severability

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.



#### **8.4 Time of Essence**

Time shall be of the essence in respect of the obligations of the parties arising prior to Closing under this Agreement.

#### **8.5 Entire Agreement**

This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Schedules (other than an exception expressly set forth as such in the Schedules), the statements in the body of this Agreement will control.

#### **8.6 Successors and Assigns**

This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; *provided that*, before the Closing Date, Purchaser may, without the prior written consent of the Vendor, assign all or any portion of its rights under this Agreement to one or more of its Affiliates. No assignment shall relieve the assigning party of any of its obligations hereunder.

#### **8.7 No Third-Party Beneficiaries**

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

#### **8.8 Amendment and Modification; Waiver**

This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

#### **8.9 Governing Law; Forum Selection**

- (a) This Agreement shall be governed by and construed in accordance with the Laws of the Province of Nova Scotia of and the federal laws of Canada applicable therein.
- (b) Any action or proceeding arising out of or based upon this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby may

be brought in the courts of the Province of Nova Scotia, and each party irrevocably submits and agrees to attorn to the exclusive jurisdiction of such courts in any such action or proceeding. The parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

**8.10 Specific Performance**

The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**8.11 Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**8.12 Receiver Liability**

The Purchaser hereby expressly acknowledges and agrees that the Vendor is acting only in its representative capacity as Court-appointed receiver and manager of the Purchased Assets and shall have no personal or corporate liability under or as a result of entering into or carrying out the transaction which is the subject of this Agreement.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**DELOITTE RESTRUCTURING INC.,**

in its capacity as court-appointed receiver and manager of TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc., and TCAS IP Inc., and not in its personal or corporate capacity

By:



Name: Todd Ambachtsheer

Title: Senior Vice-President

**4595756 NOVA SCOTIA LIMITED**

By:

---

Name:

Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**DELOITTE RESTRUCTURING INC.,**

in its capacity as court-appointed receiver and manager of TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable Blue Inc., and TCAS IP Inc., and not in its personal or corporate capacity


By: \_\_\_\_\_

Name:

Title:

**4595756 NOVA SCOTIA LIMITED**

By: \_\_\_\_\_



Name: THANE STEVENS

Title: PRESIDENT

### **Schedule 1.1(ss) – Permitted Encumbrances**

1. [To be completed]

## **Schedule 1.1(ddd) – SISP**

See attached.

## **Schedule 2.2 – Excluded Assets**

The following the assets, properties and rights:

1. the corporate seals, organizational documents, minute books, share certificate books, corporate tax returns, books of account or other records having to do with the corporate organization of Sustainable Group;
2. all Benefit Plans and assets attributable thereto;
3. the rights which accrue or will accrue to Vendor under the Transaction Documents;
4. all shares held by the Sustainable Group in other members of the Sustainable Group;
5. all inter-company debt and receivables amongst the Sustainable Group; and
6. [To be completed]

### **Schedule 2.3(E) – Assumed Pre-Closing Liabilities**

1. [To be completed]