

COURT FILE NUMBER Q.B.G. 1337 of 2020  
COURT COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
JUDICIAL CENTRE SASKATOON  
PLAINTIFF/APPLICANTS **BANK OF MONTREAL**  
DEFENDANTS/RESPONDENTS **TYLER SMITH, PAMELA SMITH, SMITH  
NOTHERN RANCHING, AND 101197829  
SASKATCHEWAN LTD.**  
DOCUMENT **SECOND REPORT OF DELOITTE  
RESTRUCTURING INC., IN ITS CAPACITY AS  
COURT APPOINTED RECEIVER OF TYLER  
SMITH, PAMELA SMITH, SMITH NOTHERN  
RANCHING, AND 101197829 SASKATCHEWAN  
LTD.**

February 1, 2021

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**RECEIVER**

Deloitte Restructuring Inc.  
Suite 2300, 360 Main Street  
Winnipeg, MB R3C 3Z3  
Brent Warga  
Telephone: (204) 942-0051  
Fax: (204) 947-2689  
E-mail: [bwarga@deloitte.ca](mailto:bwarga@deloitte.ca)

**COUNSEL TO THE RECEIVER**

MLT Aikins LLP  
Suite 1201, 409 – 3<sup>rd</sup> Avenue South  
Saskatoon, SK S7K 5R5  
Jeff Lee, Q.C. / Paul Olfert  
Telephone: (306) 975-7136 / (306) 956-6970  
Fax: (306) 975-7145  
E-mail: [jmlee@mltaikins.com](mailto:jmlee@mltaikins.com) / [polfert@mltaikins.com](mailto:polfert@mltaikins.com)

## **TABLE OF CONTENTS**

INTRODUCTION .....	1
TERMS OF REFERENCE .....	1
CANOLA CONTRACTS .....	2
POWERS OF THE RECEIVER.....	7
CONCLUSIONS.....	8

## **APPENDICES**

Appendix A – Richardson Pioneer Canola Contracts	
Appendix B – January 20, 2021 Correspondence from MLT Aikins LLP	
Appendix C – January 26, 2021 Correspondence from MLT Aikins LLP	
Appendix D – January 27, 2021 Correspondence from Duchin, Bayda & Kroczyński Law	
Appendix E – January 28, 2021 Correspondence from MLT Aikins LLP (Initial Letter Agreement)	
Appendix F – January 29, 2021 Correspondence from Duchin, Bayda & Kroczyński Law	
Appendix G – January 29, 2021 Correspondence from MLT Aikins LLP (Revised Letter Agreement)	
Appendix H – February 1, 2021 Correspondence from Duchin, Bayda & Kroczyński Law	
Appendix I – February 1, 2021 E-mail Correspondence	

## INTRODUCTION

1. On November 19, 2020, Bank of Montreal (“**BMO**” or the “**Plaintiff**”) made an application to the Court of Queen’s Bench for Saskatchewan (the “**Court**”) seeking an order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (the “**BIA**”), section 65(1) of *The Queen’s Bench Act*, 1998, SS 1998, c Q-1.01, and section 64(8) of the *Personal Property Security Act*, 1993, SS 1993, c P-6.2, to appoint Deloitte Restructuring Inc. (“**Deloitte**”) as receiver (the “**Receiver**”), without security, of all assets, undertakings and properties of Tyler Smith, Pamela Smith, Smith Northern Ranching, and 101197829 Saskatchewan Ltd. (collectively the “**Debtors**” or “**Smith Northern Ranching**”) acquired for or used in relation to the business carried on by the Debtors (the “**Property**”), specifically excluding any real property of the Debtors (the “**Lands**”). On December 1, 2020 (the “**Date of Receivership**”), the Honourable Justice R. S. Smith granted an order (the “**Receivership Order**”) appointing Deloitte as Receiver in respect of the Property. A copy of the Receivership Order and other information regarding the receivership proceedings can be accessed on the Receiver’s website at [www.insolvencies.deloitte.ca/en-ca/smithnorthernranching](http://www.insolvencies.deloitte.ca/en-ca/smithnorthernranching) (the “**Receiver’s Website**”).
2. This report constitutes the second report of the Receiver (the “**Second Report**”). The Second Report is being filed in support of the Receiver’s application to this Honourable Court on February 4, 2021, seeking the approval of the Receiver’s recommendation to disclaim certain Extant Canola Contracts (as defined below) entered into between Tyler Smith (“**Mr. Smith**”) and Richardson Pioneer Limited (“**Richardson Pioneer**”) prior to the Date of Receivership.

## TERMS OF REFERENCE

3. In preparing this Second Report, the Receiver has relied upon unaudited financial information, the books and records of the Debtors, and discussions with Mr. Smith, Pamela Smith and their financial advisors, interested parties, and the stakeholders of the Debtors.

4. The financial information of the Debtors has not been audited, reviewed or otherwise verified by the Receiver as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally accepted accounting principles and the reader is cautioned that this Second Report may not disclose all significant matters about the Debtors or their financial position. Additionally, none of the Receiver's procedures were intended to disclose defalcations or other irregularities. If the Receiver were to perform additional procedures or to undertake an audit examination of the financial statements in accordance with generally accepted auditing standards, additional matters may have come to the Receiver's attention. Accordingly, the Receiver does not express an opinion nor does it provide any other form of assurance on the financial or other information presented herein. The Receiver may refine or alter its observations as further information is obtained or brought to its attention after the date of this Second Report.
5. The Receiver assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this Second Report. Any use which any party makes of this Second Report, or any reliance or decision to be made based on this Second Report, is the sole responsibility of such party.
6. Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.
7. Capitalized terms used in this Second Report but not defined herein are as defined in the Receivership Order and the first report of the Receiver dated January 8, 2021 (the "**First Report**").

## **CANOLA CONTRACTS**

8. As detailed in the First Report, on July 24, 2020, Richardson Pioneer and Mr. Smith entered into three (3) contracts for the delivery of approximately 165,345 bushels (3,750 metric tonnes) of canola, as summarized below:
  - (a) Contract #763048140 ("**Contract 140**") - Beginning November 1, 2020 to November 30, 2020, Mr. Smith was to deliver 55,115 bushels (1,250 metric

tonnes) to the Richardson Pioneer Carlton Crossing Elevator (the “**Carlton Elevator**”) at a price of \$10.30 per bushel (\$454.15 per metric tonne);

- (b) Contract #763048141 (“**Contract 141**”) - Beginning December 1, 2020 to December 31, 2020, Mr. Smith was to deliver 55,115 bushels (1,250 metric tonnes) to the Carlton Elevator at a price of \$10.35 per bushel (\$456.35 per metric tonne); and
- (c) Contract #763048142 (“**Contract 142**”) - Beginning January 1, 2021 to January 31, 2021, Mr. Smith was to deliver 55,115 bushels (1,250 metric tonnes) to the Carlton Elevator at a price of \$10.45 per bushel (\$460.76 per metric tonne) (collectively the “**Canola Contracts**”).

The Canola Contracts are attached hereto as Appendix A, along with the terms and conditions (the “**Terms and Conditions**”) referenced therein.

- 9. As at the Date of Receivership, approximately 100,500 bushels (2,280 metric tonnes) remained to be delivered by Mr. Smith under the Canola Contracts (as Contract #1 had been fully performed).
- 10. Subsequent to the Date of Receivership, as the price of canola materially increased from the price included in the Canola Contracts (the “**July Contracted Price**”), at the January 14, 2021 Court hearing in these proceedings, the Receiver sought and received approval from the Court to sell the remaining canola, which the Receiver has subsequently confirmed with Mr. Smith approximates 96,000 bushels (2,177.27 metric tonnes) (the “**Residual Canola**”), at or above the July Contracted Price.
- 11. On January 20, 2021, the Receiver’s legal counsel, MLT Aikins LLP (“**MLT Aikins**”), sent correspondence (the “**January 20, 2021 Correspondence**”) to Duchin, Bayda & Kroczyński Law (“**DBK Law**”), legal counsel representing Richardson Pioneer, advising as follows:
  - (a) Owing to the significant increase in the market price of canola since entry into the Canola Contracts in July 2020, the Receiver has determined that it is necessary,

desirable, and in the best interest of the receivership estate for the Receiver to disclaim the Canola Contracts and sell the canola for its current fair market value;

- (b) The February/March 2021 fair market value of canola is approximately \$14.70 per bushel (\$648.15 per metric tonne), which based on the Residual Canola in the possession of the Receiver, would equate to a valuation of approximately \$1,411,200;
- (c) Were the Receiver to complete the delivery at the average price per bushel under Contract #2 and Contract #3 (the “**Extant Canola Contracts**”) of \$10.40 per bushel, the receivership estate would only realize approximately \$998,400 for the Residual Canola, approximately \$412,800 less than delivering same at the prevailing market price; and
- (d) Recognizing that Richardson Pioneer required the delivery of the Residual Canola to satisfy its obligations to third parties, and in an attempt to avoid the time and costs involved in protracted litigation, the Receiver offered to deliver the Remaining Canola to Richardson Pioneer at a discounted price of \$14.45 per bushel (\$634.92 per metric tonne) (the “**Discounted Price**”), which would generate sale proceeds of approximately \$1,387,200.

Given the time sensitivities involved, the January 20, 2021 Correspondence provided DBK Law a deadline of January 21, 2021 at 12:00PM (CST) to respond. Attached hereto as Appendix B is the January 20, 2021 Correspondence.

- 12. On January 21, 2021, DBK Law advised MLT Aikins by e-mail that Richardson Pioneer was unable to agree to the terms proposed by the Receiver.
- 13. On January 22, 2021, MLT Aikins and DBK Law verbally discussed a further proposal suggested by the Receiver which would have Richardson Pioneer pay the Discounted Price for the Residual Canola, the Receiver would undertake to deliver the Residual Canola to the Carlton Elevator in the ordinary course (with delivery schedules to be agreed upon by the Receiver and Richardson Pioneer), and the Receiver would hold the net sale proceeds in trust, pending a further Court application with respect to disclaiming

the Extant Canola Contracts. On January 26, 2021, DBK Law confirmed by e-mail that this proposal was also not acceptable to Richardson Pioneer.

14. In order to formalize the Receiver's proposal, on January 26, 2021, MLT Aikins provided DBK Law with further correspondence (the "**January 26, 2021 Correspondence**"), setting out the Receiver's proposal and providing a deadline of January 28, 2021 at 5:00PM (CST) for Richardson Pioneer to respond. The January 26, 2021 Correspondence is attached hereto as Appendix C.
15. On January 27, 2021, DBK Law provided correspondence (the "**January 27, 2021 Correspondence**") which stated the following (the "**DBK Proposal**"):
  - (a) Richardson Pioneer would be prepared to accept delivery of the Residual Canola without any payment to the Receiver at this time, in exchange for the issuance of an elevator receipt;
  - (b) If the Court allows the Receiver's disclaimer of the Extant Canola Contracts, the price can be determined at the date of delivery and payment made accordingly; and
  - (c) If the Court decides not to approve the disclaimer of the Extant Canola Contracts, Richardson Pioneer will pay the July Contracted Price.

The January 27, 2021 Correspondence is attached hereto as Appendix D.

16. As the Receiver was prepared to move forward with the DBK Proposal, MLT Aikins prepared a draft letter agreement in order to document the terms of the same. An initial form of letter agreement was provided to DBK Law on January 28, 2021 (the "**Initial Letter Agreement**"), attached hereto as Appendix E.
17. On January 29, 2021, DBK Law, in a letter to MLT Aikins (the "**January 29, 2021 DBK Correspondence**"), advised that Richardson Pioneer was not prepared to accept the terms of the Initial Letter Agreement, expressing concerns regarding scheduling the deliveries of the Residual Canola. The January 29, 2021 DBK Correspondence is attached hereto as Appendix F.

18. In an effort to address the concerns expressed in the January 29, 2021 DBK Correspondence, on January 29, 2021, MLT Aikins provided a revised letter agreement (the “**Revised Letter Agreement**”) to DBK Law, attached hereto as Appendix G. The Revised Letter Agreement provided as follows:
- (a) Richardson Pioneer will call for the delivery of all of the Residual Canola on a reasonable ordinary-course basis and on a delivery schedule which can reasonably be achieved by the Receiver, such that all canola deliveries are received by Richardson Pioneer on or before February 28, 2021;
  - (b) Richardson Pioneer will issue to the Receiver elevator receipt(s) at the time of each delivery;
  - (c) Each delivery will initially be priced in accordance with the opening spot market price per bushel on the date of delivery;
  - (d) The Receiver will, within a reasonable time and in any event no later than February 28, 2021, apply to the Court for leave to disclaim the Extract Canola Contracts between Mr. Smith and Richardson Pioneer;
  - (e) If the Court determines that the Receiver is prohibited from disclaiming the Extant Canola Contracts, the price to be paid by Richardson Pioneer for the Residual Canola shall be the price(s) set out in the Extant Canola Contracts; and
  - (f) If the Court determines that the Receiver is not prohibited from disclaiming the Extant Canola Contracts, the price to be paid by Richardson Pioneer for the Residual Canola shall be fixed at the greater of:
    - (i) the opening spot market price per bushel as at the date of the delivery of the canola in question; and
    - (ii) the price(s) set out in the Extant Canola Contracts.
19. On February 1, 2021, DBK Law, in a letter to MLT Aikins (the “**February 1, 2021 DBK Correspondence**”), advised that Richardson Pioneer was prepared to accept the terms of



the Revised Letter Agreement conditional upon immediate delivery of the grain and on the understanding that Richardson Pioneer has not waived or consented to the breach under the Terms and Conditions of the Extant Canola Contracts. The February 1, 2021 DBK Correspondence further stated that the price to be paid for the canola shall not be less than the July Contracted Price. The February 1, 2021 DBK Correspondence is attached hereto as Appendix H.

20. As Richardson Pioneer did not execute the Revised Letter Agreement, on February 1, 2021, MLT Aikins corresponded with DBK Law by e-mail to confirm the arrangements between the Receiver and Richardson Pioneer (the “**February 1, 2021 E-mail Correspondence**”). As detailed therein, a further condition of Richardson Pioneer’s acceptance of the Revised Letter Agreement was that a Court hearing be held on February 4, 2021 to address the Receiver’s intention to disclaim the Extant Canola Contracts. The February 1, 2021 E-mail Correspondence is attached hereto as Appendix I.
21. Further, based on the Receiver’s discussions with Mr. Smith, it is imperative that the Residual Canola be moved during the month of February 2021 to mitigate the risk of spoilage while in the storage bins, and to ensure that the Residual Canola is delivered prior to the rural road restrictions coming into effect in early to mid-March 2021.

## **POWERS OF THE RECEIVER**

22. The Receiver’s powers are detailed in paragraph 3 of the Receivership Order. The power of the Receiver to disclaim any contract of the Debtors is explicitly stated in paragraph 3(c) thereof, as detailed below:

*“to manage, operate and carry on the business of the Debtors, including powers to enter into any agreements, incur 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 Debtors**” (emphasis added).*

## CONCLUSIONS

23. As the power to disclaim the Canola Contracts has been expressly provided to the Receiver in the Receivership Order, and as there is a net benefit to the receivership estate of approximately \$413,000 by disclaiming the Extant Canola Contracts, the Receiver respectfully recommends that this Honourable Court approve the Receiver's recommendation to disclaim the Extant Canola Contracts, and authorize the Receiver to sell the Residual Canola at the prevailing market price to Richardson Pioneer, or any other purchaser.

All of which is respectfully submitted at Winnipeg, Manitoba, this 1<sup>st</sup> day of February 2021.

### **DELOITTE RESTRUCTURING INC.**

In its capacity as Receiver of  
Tyler Smith, Pamela Smith, Smith Northern Ranching,  
and 101197829 Saskatchewan Ltd.,  
and not in its personal capacity.



Per: Brent Warga, CPA, CA, CIRP, LIT  
Senior Vice-President

**Appendix A – Richardson Pioneer Canola Contracts**

# Purchase Contract

Purchase Contract No.: 763048140

**SELLER:** SMITH, TYLER (140668)  
BOX 983  
DUCK LAKE, SK S0K1J0

**BUYER:** Richardson Pioneer Limited

Phone No.: (306) 467-2354  
Fax No.: (306) 467-2357  
Email: 7SSMITH@SASKTEL.NET

**LOCATION:** CARLTON CROSSING (694607)  
COMP 308 SITE 403 RR4  
SASKATOON, SK S7K3J7  
Phone No.: (306) 933-1750  
Fax No.: (306) 933-1770

This Contract is made 24-Jul-2020 between the Buyer and the Seller for:

**GRAIN:** CANOLA (NON-BOARD)  
**GRADE:** 1 CANADA  
**QUANTITY:** 1250.000 total Net METRIC TONNES (55115.000 Bushels)  
**DELIVERY POINT:** TRACK VANCOUVER - CARLTON CROSSING  
**DELIVERY PERIOD:** Beginning 01-Nov-2020 to 30-Nov-2020.  
**FUTURES MONTH:** Nov -2020 WINNIPEG COMMODITY EXCHANGE  
**FUTURES PRICE:** \$487.70 CDN per Net METRIC TONNES (\$11.0610 per Bushel)  
**BASIS:** \$-33.55 CDN per Net METRIC TONNES (\$-0.7608 per Bushel)  
 FIXED PRICE  BASIS  NO BASIS  
To be priced as per s. 4 on page 1 of Terms and Conditions.  
**PRICE:** \$454.15 CDN per Net METRIC TONNES (\$10.3002 per Bushel)

**THIS IS NOT A FUTURES CONTRACT. THIS IS A DELIVERY CONTRACT FOR GRAIN. SELLER IS NOT ENTITLED TO PURCHASE BACK THE CONTRACT WITHOUT DELIVERY. FUTURES PRICES MAY BE VOLATILE, AND THE BUYER IS NOT RESPONSIBLE FOR ADVISING THE SELLER ON FUTURES PRICES OR NOTIFYING THE SELLER OF HIGHER PRICES.**

This Contract is subject to and incorporates the terms and conditions of the 2019-2020 Purchase Contract signed by you on 10/03/2019 (the "Terms and Conditions"). The Seller acknowledges, when signing this Contract, that the Seller has read, understands and accepts the Contract and the Terms and Conditions. The Term "Contract" refers to this Contract and any other Contract entered into between the Buyer and the Seller and subject to the same Terms and Conditions. An Additional copy of the Terms and Conditions will be made available to you upon your request.

**BUYER:**

**SELLER:**

Per: D. Lup

Date: Jul 30/20

Per: Ty L Smith

Date: 7/27/20

# Purchase Contract

Purchase Contract No.: 763048141

**SELLER:** SMITH, TYLER (140668)  
BOX 983  
DUCK LAKE, SK S0K1J0

**BUYER:** Richardson Pioneer Limited

Phone No.: (306) 467-2354  
Fax No.: (306) 467-2357  
Email: 7SSMITH@SASKTEL.NET

**LOCATION:** CARLTON CROSSING (694607)  
COMP 308 SITE 403 RR4  
SASKATOON, SK S7K3J7  
Phone No.: (306) 933-1750  
Fax No.: (306) 933-1770

This Contract is made 24-Jul-2020 between the Buyer and the Seller for:

**GRAIN:** CANOLA (NON-BOARD)  
**GRADE:** 1 CANADA  
**QUANTITY:** 1250.000 total Net METRIC TONNES (55115.000 Bushels)  
**DELIVERY POINT:** TRACK VANCOUVER - CARLTON CROSSING  
**DELIVERY PERIOD:** Beginning 01-Dec-2020 to 31-Dec-2020.  
**FUTURES MONTH:** Jan -2021 WINNIPEG COMMODITY EXCHANGE  
**FUTURES PRICE:** \$494.40 CDN per Net METRIC TONNES (\$11.2129 per Bushel)  
**BASIS:** \$-38.05 CDN per Net METRIC TONNES (\$-0.8629 per Bushel)  
 FIXED PRICE  BASIS  NO BASIS  
To be priced as per s. 4 on page 1 of Terms and Conditions.  
**PRICE:** \$456.35 CDN per Net METRIC TONNES (\$10.3500 per Bushel)

**THIS IS NOT A FUTURES CONTRACT. THIS IS A DELIVERY CONTRACT FOR GRAIN. SELLER IS NOT ENTITLED TO PURCHASE BACK THE CONTRACT WITHOUT DELIVERY. FUTURES PRICES MAY BE VOLATILE, AND THE BUYER IS NOT RESPONSIBLE FOR ADVISING THE SELLER ON FUTURES PRICES OR NOTIFYING THE SELLER OF HIGHER PRICES.**

This Contract is subject to and incorporates the terms and conditions of the 2019-2020 Purchase Contract signed by you on 10/03/2019 (the "Terms and Conditions"). The Seller acknowledges, when signing this Contract, that the Seller has read, understands and accepts the Contract and the Terms and Conditions. The Term "Contract" refers to this Contract and any other Contract entered into between the Buyer and the Seller and subject to the same Terms and Conditions. An Additional copy of the Terms and Conditions will be made available to you upon your request.

**BUYER:**

**SELLER:**

Per: D Up Date: July 30/20 Per: Tyler Smith Date: 7/27/20

# Purchase Contract

Purchase Contract No.: 763048142

**SELLER:** SMITH, TYLER (140668)  
BOX 983  
DUCK LAKE, SK S0K1J0

**BUYER:** Richardson Pioneer Limited

Phone No.: (306) 467-2354  
Fax No.: (306) 467-2357  
Email: 7SSMITH@SASKTEL.NET

**LOCATION:** CARLTON CROSSING (694607)  
COMP 308 SITE 403 RR4  
SASKATOON, SK S7K3J7  
Phone No.: (306) 933-1750  
Fax No.: (306) 933-1770

This Contract is made 24-Jul-2020 between the Buyer and the Seller for:

**GRAIN:** CANOLA (NON-BOARD)  
**GRADE:** 1 CANADA  
**QUANTITY:** 1250,000 total Net METRIC TONNES (55115,000 Bushels)  
**DELIVERY POINT:** TRACK VANCOUVER - CARLTON CROSSING  
**DELIVERY PERIOD:** Beginning 01-Jan-2021 to 31-Jan-2021.  
**FUTURES MONTH:** Jan -2021 WINNIPEG COMMODITY EXCHANGE  
**FUTURES PRICE:** \$494.40 CDN per Net METRIC TONNES (\$11.2129 per Bushel)  
**BASIS:** \$-33.64 CDN per Net METRIC TONNES (\$-0.7629 per Bushel)  
[ X ] FIXED PRICE [ ] BASIS [ ] NO BASIS  
To be priced as per s. 4 on page 1 of Terms and Conditions.  
**PRICE:** \$460.76 CDN per Net METRIC TONNES (\$10.4500 per Bushel)

**THIS IS NOT A FUTURES CONTRACT. THIS IS A DELIVERY CONTRACT FOR GRAIN. SELLER IS NOT ENTITLED TO PURCHASE BACK THE CONTRACT WITHOUT DELIVERY. FUTURES PRICES MAY BE VOLATILE, AND THE BUYER IS NOT RESPONSIBLE FOR ADVISING THE SELLER ON FUTURES PRICES OR NOTIFYING THE SELLER OF HIGHER PRICES.**

This Contract is subject to and incorporates the terms and conditions of the 2019-2020 Purchase Contract signed by you on 10/03/2019 (the "Terms and Conditions"). The Seller acknowledges, when signing this Contract, that the Seller has read, understands and accepts the Contract and the Terms and Conditions. The Term "Contract" refers to this Contract and any other Contract entered into between the Buyer and the Seller and subject to the same Terms and Conditions. An Additional copy of the Terms and Conditions will be made available to you upon your request.

**BUYER:**

Per: D Kip

Date: July 30/20

**SELLER:**

Per: Tyler Smith

Date: 7/27/20

## TERMS AND CONDITIONS

These Terms and Conditions will be applicable to all Contracts between Seller and Buyer until amended (and agreed to by both parties) or until July 31, 2020, whichever is earlier.

1. **BUY AND SELL:** The Seller agrees to sell and the Buyer agrees to buy the Quantity of the Grade of the Grain as specified in the Contract in accordance with these terms and conditions.
2. **OBLIGATIONS AND LIABILITY OF SELLER:** The Seller is absolutely and unconditionally required to sell and deliver the Grain of the Grade and Specifications as specified in the Contract to the Buyer, whether or not the Grain is grown. The Seller shall notify the Buyer immediately if the Seller knows or believes that the Seller will be unable to deliver all or part of the Grain. The Seller shall be fully liable for any failure to deliver the Grain or any other default or failure to perform its obligations under a Contract due to any cause whatsoever, whether beyond the Seller's control or not.
3. **OBLIGATIONS AND LIABILITY OF BUYER:** The Buyer shall apply each delivery of the Grain against the oldest open contract between the Buyer and the Seller. The Buyer may, at its option, buy other grades of the Grain from the Seller, subject to grade discounts in effect on the day when the Grain is delivered to the Buyer ("Delivery Date"). The Buyer shall in no event be liable for any special or consequential damages under a Contract.
4. **PRICING:**
  - (a) if the Contract specifies a Fixed Price, the Price shall be the Fixed Price;
  - (b) if the Contract specifies a Minimum Price
    - (i) the Price shall be the higher price that is notified by the Seller to the Buyer before the Expiry Date from the prices reported by the Buyer for grain of the same variety and Grade for the Delivery Period and Delivery Point; or
    - (ii) if there is no higher price or if the Seller fails to notify the Buyer of the higher price before the Expiry Date, the Price shall be the Minimum Price;
  - (c) if the Contract specifies a Basis, the Price shall be the Futures Price, plus or minus the Basis and Freight, as applicable, provided that:
    - (i) the Seller shall price all of the Grain or may, at the Seller's option, price part of the Grain in minimum lots of 20 net metric tonnes for canola, barley, durum, corn, soybeans or wheat or 72 net metric tonnes for oats. Pricing requests submitted outside of regular office hours shall not be entered until the following business day, and market prices at market open on such day will apply;
    - (ii) if the Seller elects to price any or all of the Grain ("Priced Lot") on any business day on or before the 15th day of the month immediately before the Futures Month ("Pricing Date"), the Seller shall notify the Buyer on the Pricing Date and the Futures Price for the Priced Lot shall be the Futures Price recorded by the Exchange as of the closing of the Exchange on the Pricing Date;
    - (iii) if the Seller does not elect to price all of the Grain ("Unpriced Lot") on or before the 15th day of the month immediately before the Futures Month, the Contract shall be automatically rolled to the next Futures Month and the Basis shall be adjusted accordingly;

"Exchange" if not otherwise identified in this Contract means an exchange for the trading of commodities which include the Grain specified in the Contract, which reflects a market price for the Grain based on a reasonable number of buyers and sellers in the market, as determined by the Buyer, in its sole discretion. "Exchange" may include, without limitation, the Intercontinental Exchange in Canada (ICE Futures Canada), the Chicago Board of Trade, the Minneapolis Grain Exchange or the Kansas City Board of Trade and "Futures Price" means the futures price recorded by the Exchange (as reported by the Buyer) for grain of the same variety and Grade for the Futures Month specified in the Contract. The Buyer shall adjust the Price in each case by applicable fees, shrinkage and dockage allowances, grade price adjustments, protein price adjustments and other specification adjustments, and other adjustments customary in the industry or permitted by a Contract. If the Contract is a Guaranteed Quality Contract, the Price shall not be adjusted for grade price adjustments or protein price adjustments beyond the grade and protein specifications contracted for delivery. Subject to s. 8, the Buyer shall pay the net Price to the Seller as soon as reasonably practicable after the Grain is delivered to and accepted by the Buyer, whether such payment is in the form of a grain receipt, cash purchase ticket, cash advance or otherwise.
5. **DELIVERY:** The Seller shall, at its expense or as may otherwise be agreed by the parties, deliver the Grain to the Buyer at the Delivery Point within the Delivery Period, subject to the following:
  - (a) the Buyer may call for all of the Grain under a Contract to be delivered on one Delivery Date, or any part of the Grain to be delivered on different Delivery Dates, in the Delivery Period;
  - (b) if the Buyer gives at least 24 hours notice to the Seller, the Buyer may change the Delivery Point and shall then be liable for any resulting increases in applicable delivery charges based on prevailing commercial hauling rates;
  - (c) if the Buyer gives at least 24 hours notice to the Seller, the Buyer may, at its expense, arrange for pick-up of the Grain on the Seller's land or at the place where it is stored;
  - (d) if the Buyer does not call for any or all of the Grain in the Delivery Period, the Delivery Period shall be extended for 60 days (the "Extended Delivery Period"), and the Seller shall deliver the Grain when called for delivery within the Extended Delivery Period. When the Grain is delivered in the Extended Delivery Period, then in accordance with Part 4.1 of the Canada Grain Regulations, the Buyer shall pay the Seller, Storage Rates for the Grain delivered, together with interest calculated at the Interest Rate on the Price. The "Storage Rates" shall be the storage rates of the Buyer calculated in accordance with the Canadian Grain Commission Licensed Primary Elevator Tariffs.
  - (e) if the Seller fails to deliver any or all of the Grain, if the Grade, Protein or other Specifications of the Grain is outside the requirements specified in this Contract, if the Seller gives notice to the Buyer under s. 2, or if the Buyer acting reasonably determines that the Seller is unable or unwilling to deliver any or all of the Grain, the Buyer may:
    - (i) at the Seller's expense, arrange for pick-up of the undelivered Grain on the Seller's land or at the place where it is stored;
    - (ii) extend the Delivery Period by 60 days without additional Storage Rates or interest accruing and, at any time during such period, declare the Seller to be in default;
    - (iii) at its sole and exclusive option, offer to accept the Grain having a Grade, Protein or other Specification outside the requirements specified in this Contract at a price determined by the Buyer in its sole discretion; or
    - (iv) declare the Seller to be in default;
  - (f) if the Buyer fails to accept the Grain in the Delivery Period and in the Extended Delivery Period, then:
    - (i) Seller may, by notice in writing to the Buyer, extend the Extended Delivery Period by a further period for a maximum of 60 days beyond the termination of the Extended Delivery Period, with Storage Rates and interest calculated at the Interest Rate on the Price payable from the commencement of such period until the Grain is delivered, in accordance with Part 4.1 of the Canada Grain Regulations, following which either party may terminate this Contract on notice in writing to the other; or
    - (ii) Seller may declare the Buyer to be in default.
6. **ACCESS TO LAND:** The Seller authorizes the Buyer and its representatives to enter the land or place where the Grain is planted or stored at any reasonable times for the purpose of inspecting any seed or the Grain, taking samples of the Grain and picking up the Grain.
7. **DEFAULT:** If the Seller is declared to be in default or otherwise fails to perform its obligations in accordance with a Contract, or if Buyer is declared to be in default under s. 5(f) ("Default", and the party in default the "Defaulting Party"):
  - (a) the party which is not the Defaulting Party may cancel the Contract;
  - (b) where the Seller is the Defaulting Party, the Buyer may cancel any other contract between the Buyer (or its affiliates) and the Seller;
  - (c) the party which is not the Defaulting Party may, at any time in the period starting on the date of the Default and ending 30 days thereafter (i) buy or sell its hedged position for the undelivered Grain on the Exchange; (ii) buy grain similar to the undelivered Grain or sell the Grain in the market place; or (iii) value the undelivered Grain at the bid price as reported by the Buyer; and
  - (d) the Defaulting Party shall pay to the other party without delay:
    - (i) liquidated damages (which damages are agreed to be a genuine pre-estimate of actual damages and not a penalty) equal to the excess or loss of cost or value under s. 7(c) compared to the Price for the undelivered Grain;

- (ii) legal fees incurred as a result of the Default;
- (iii) where the Seller is the Defaulting Party, an administration fee equal to \$15.00 per net metric tonne of undelivered Grain; and
- (iv) simple interest on all amounts calculated at a rate of 3% (the "Interest Rate") from the date of the Default to the date of payment unless otherwise agreed between the parties.
8. **SECURITY AND SET-OFF:** As general and continuing security for all present and future indebtedness of the Seller to the Buyer, whether under a Contract or for credit extended by the Buyer or otherwise, the Seller:
- grants to the Buyer a security interest in the Grain, all proceeds from dealings with the Grain and all proceeds that indemnify or compensate for loss, damage or destruction of the Grain; and
  - assigns to the Buyer all amounts that may become due to the Buyer from any production contracts, grain settlements, cash purchase tickets, cash advances, revenue, crop or livestock feed insurance proceeds, government payment programs or other sources arising in respect of the Grain.
- The Seller grants to Buyer the right to make inquiries and conduct credit investigations at any time, and to take or require additional security where the Buyer deems it reasonably necessary to do so. The Buyer may enforce its rights by any legal method, including by set-off. The Seller authorizes the Buyer to set-off and deduct from any amounts payable by the Buyer to the Seller under any Contract (in the form of a grain receipt, cash purchase ticket, cash advance or otherwise) any amounts payable by the Seller to the Buyer or its affiliated companies, whether under a Contract or otherwise (including liquidated damages and other amounts payable for failure to submit samples or deliver grain, outstanding credit for crop inputs and services, carrying charges, legal fees and other expenses). The Seller acknowledges receiving a copy of the Contract and these Terms and Conditions and waives the right to receive any financing, verification or change statement. The Seller authorizes the payer under s. 8(b) to make payment directly to the Buyer without proof of default.
9. **DETERMINATION OF GRADE, ETC.:** The Buyer shall determine the grade, weight, moisture and / or dockage of the Grain when it is delivered to the Buyer in accordance with the Official Grading Guide of the Canadian Grain Commission. If the Seller disagrees, the Buyer shall submit a representative sample to the Chief Inspector, Canadian Grain Commission, whose decision shall be final and binding.
10. **GOOD GRAIN:** The Seller represents and warrants that:
- the Grain is good, dry, merchantable and free from contaminants;
  - the Seller is authorized to sell the Grain to the Buyer and has not committed any or all of the Grain to any other person, corporation or entity;
  - the Seller has not misrepresented the Grain, nor the delivery of the Grain to the Buyer in any way, the Seller has not added moisture or other contaminants, and the Seller has not distributed Grain on delivery in such a way as to make a sampling of the Grain non-representative;
  - the Grain is the variety specified herein, grown and harvested in the country of origin, and is at least 95% pure, or such greater or lesser degree of purity as may be specified as part of the Remarks or Specifications to this Contract. The Seller shall deliver to the Buyer a Declaration and Indemnity as to the Variety, in the form specified by the Buyer, together with such other documents or analyses as are specified in the Remarks or Specifications to this Contract;
  - the Seller owns and has clear title to the Grain free from all liens, charges, claims, security interests and other encumbrances and the Buyer shall own all screenings and foreign materials removed from the Grain.
11. **RISK AND TITLE:** The Seller shall be responsible for the Grain and all risks (including leakage and contamination) associated with the transport of the Grain until it is delivered to and accepted by the Buyer. The Buyer shall have clear title to and be responsible for the Grain when it is delivered to and accepted by the Buyer.
12. **GENERAL PROVISIONS:**
- If the Seller is more than one person, the obligations and liabilities of those persons under each Contract shall be joint and several. A Contract or any interest in this Contract may not be assigned by the Seller unless the Buyer agrees in writing. The Contract shall be binding on the parties and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.
  - Any notice given under a Contract shall be in writing and may be given by personal delivery, prepaid registered mail, facsimile transmission or electronic communication to the addresses shown on the Purchase Contract. Any call for the Grain may, at the Buyer's option, be given by telephone. The Terms and Conditions and any Contract may be executed and delivered in counterparts and/or by facsimile transmission or e-mail transmission of Adobe Acrobat files, all of which counterparts, taken together, shall constitute one and the same instrument. If Seller has been granted authorization by Buyer to access, view and sign Contracts and other documents electronically on the Buyer's website with secure account credentials, then the Terms and Conditions and any Contract may be executed by Seller's electronic signature in the manner provided on Buyer's website. Seller's access and use of Buyer's website for this or any other purpose shall be subject to the terms and conditions of such access and use as set out on Buyer's website, which are deemed incorporated in and shall form part of these Terms and Conditions.
  - If the Buyer waives any provision of a particular Contract, the Buyer shall do so in writing and shall not be required to waive that provision or any other provision in any other case or for any other Contract. If the Buyer exercises any right or remedy under a Contract, the Buyer shall not be prevented from claiming any other remedy for the same default or for a default under any other Contract.
  - If any provision of a Contract is deemed to be illegal, invalid or unenforceable, that provision shall be severed from such Contract and the remainder of the Contract and all other Contracts between the Buyer and Seller shall continue with full force and effect. If there is any conflict between any portion of the Terms and Conditions of this Contract and the Purchase Contract, then the Purchase Contract shall be paramount for purposes of interpretation.
  - The obligations of the Seller under a Contract shall survive the cancellation or expiry of the Contract.
  - Time is of the essence of each Contract.
  - Each Contract, including these Terms and Conditions, is the entire agreement between the Buyer and the Seller for the delivery of Grain specified in the Contract, and replaces all prior discussions, representations, agreements and understandings. A Contract may not be amended unless the parties agree in writing.
  - The Contract shall be interpreted, performed and governed in accordance with the laws of the Province of the Location of the Buyer.

**BUYER:**

Location: CARLTON CROSSING

Per: 

Date: Oct 31/19

**SELLER:**

Customer Name: TYLER SMITH

Customer Number: 140668

Per: 

Date: Oct 31/19



## TERMS AND CONDITIONS

These Terms and Conditions will be applicable to all Contracts between Seller and Buyer until amended (and agreed to by both parties) or until July 31, 2021, whichever is earlier.

1. **BUY AND SELL:** The Seller agrees to sell and the Buyer agrees to buy the Quantity of the Grade of the Grain as specified in the Contract in accordance with these terms and conditions.
2. **OBLIGATIONS AND LIABILITY OF SELLER:** The Seller is absolutely and unconditionally required to sell and deliver the Grain of the Grade and Specifications as specified in the Contract to the Buyer, whether or not the Grain is grown. The Seller shall notify the Buyer immediately if the Seller knows or believes that the Seller will be unable to deliver all or part of the Grain. The Seller shall be fully liable for any failure to deliver the Grain or any other default or failure to perform its obligations under a Contract due to any cause whatsoever, whether beyond the Seller's control or not.
3. **OBLIGATIONS AND LIABILITY OF BUYER:** The Buyer shall apply each delivery of the Grain against the oldest open contract between the Buyer and the Seller. The Buyer may, at its option, buy other grades of the Grain from the Seller, subject to grade discounts in effect on the day when the Grain is delivered to the Buyer ("Delivery Date"). The Buyer shall in no event be liable for any special or consequential damages under a Contract.

4. **PRICING:**

- (a) if the Contract specifies a Fixed Price, the Price shall be the Fixed Price;
- (b) if the Contract specifies a Minimum Price:
  - (i) the Price shall be the higher price that is notified by the Seller to the Buyer before the Expiry Date from the prices reported by the Buyer for grain of the same variety and Grade for the Delivery Period and Delivery Point; or
  - (ii) if there is no higher price or if the Seller fails to notify the Buyer of the higher price before the Expiry Date, the Price shall be the Minimum Price;
- (c) if the Contract specifies a Basis, the Price shall be the Futures Price, plus or minus the Basis and Freight (being the Bid plus freight posted at the Location), as applicable, provided that:
  - (i) the Seller shall price all of the Grain or may, at the Seller's option, price part of the Grain in minimum lots of 20 net metric tonnes for canola, barley, durum, corn, soybeans or wheat or 72 net metric tonnes for oats. Pricing requests submitted outside of regular office hours shall not be entered until the following business day, and Futures prices at market open on such day will apply or posted bid at the location shall apply for pricing of Basis;
  - (ii) if the Seller elects to price any or all of the Grain ("Priced Lot") on any business day on or before the 15th day of the month immediately before the Futures Month ("Pricing Date"), the Seller shall notify the Buyer on the Pricing Date. The Futures Price for the Priced Lot shall be the Futures Price recorded by the Exchange as of the closing of the Exchange on the Pricing Date. The Basis Price for the Priced Lot shall be the posted bid at the location on the Pricing Date;
  - (iii) if the Seller does not elect to price all of the Grain ("Unpriced Lot") on or before the 15th day of the month immediately before the Futures Month, the Contract shall, if a Futures Contract, be automatically rolled to the next Futures Month, Buyer shall apply an administration charge of \$1.00 per tonne and the Basis shall be adjusted accordingly. All grain Futures Pricing must be priced by or before the last trading day prior to July 31, 2022, and all grain Basis Pricing must be priced on or before the 15th day of the month immediately before the Futures Month, and any Unpriced Lot shall be deemed to be priced as of such date;

"Exchange" means an exchange for the trading of commodities which include the Grain specified in the Contract, which reflects a market price for the Grain, as determined by the Buyer, in its sole discretion. "Exchange" may include the Intercontinental Exchange in Canada (ICE Futures Canada), the Chicago Board of Trade, the Minneapolis Grain Exchange or the Kansas City Board of Trade. "Futures Price" means the futures price recorded by the Exchange (as reported by the Buyer) for grain of the same variety and Grade for the Futures Month specified in the Contract.

The Buyer shall adjust the Price in each case by applicable fees, shrinkage and dockage allowances, grade price adjustments, protein price adjustments and other specification adjustments, and other adjustments customary in the industry or permitted by a Contract. If the Contract is a Guaranteed Quality Contract, the Price shall not be adjusted for grade price adjustments or protein price adjustments beyond the grade and protein specifications contracted for delivery. Subject to s. 8, the Buyer shall pay the net Price to the Seller as soon as reasonably practicable after the Grain is delivered to and accepted by the Buyer.

5. **DELIVERY:** The Seller shall, at its expense or as may otherwise be agreed by the parties, deliver the Grain to the Buyer at the Delivery Point within the Delivery Period, subject to the following:
  - (a) the Buyer may call for all of the Grain under a Contract to be delivered on one Delivery Date, or any part of the Grain to be delivered on different Delivery Dates, in the Delivery Period;
  - (b) if the Buyer gives at least 24 hours notice to the Seller, the Buyer may change the Delivery Point and shall then be liable for any resulting increases in applicable delivery charges based on prevailing commercial hauling rates;
  - (c) if the Buyer gives at least 24 hours notice to the Seller, the Buyer may, at its expense, arrange for pick-up of the Grain on the Seller's land or at the place where it is stored;
  - (d) if the Buyer does not call for any or all of the Grain in the Delivery Period, the Delivery Period shall be extended for 60 days (the "Extended Delivery Period"), and the Seller shall deliver the Grain when called for delivery within the Extended Delivery Period. When the Grain is delivered in the Extended Delivery Period, then in accordance with Part 4.1 of the Canada Grain Regulations, the Buyer shall pay the Seller, Storage Rates for the Grain delivered, together with interest calculated at the Interest Rate on the Price. The "Storage Rates" shall be the storage rates of the Buyer calculated in accordance with the Canadian Grain Commission Licensed Primary Elevator Tariffs.
  - (e) if the Seller fails to deliver any or all of the Grain, if the Grade, Protein or other Specifications of the Grain is outside the requirements specified in this Contract, if the Seller gives notice to the Buyer under s. 2, or if the Buyer acting reasonably determines that the Seller is unable or unwilling to deliver any or all of the Grain, the Buyer may:
    - (i) at the Seller's expense, arrange for pick-up of the undelivered Grain on the Seller's land or at the place where it is stored;
    - (ii) extend the Delivery Period by 60 days without additional Storage Rates or interest accruing and, at any time during such period, declare the Seller to be in default;
    - (iii) at its sole and exclusive option, offer to accept the Grain having a Grade, Protein or other Specification outside the requirements specified in this Contract at a price determined by the Buyer in its sole discretion; or
    - (iv) declare the Seller to be in default;
  - (f) if the Buyer fails to accept the Grain in the Delivery Period and in the Extended Delivery Period, then:
    - (i) Seller may, by notice in writing to the Buyer, extend the Extended Delivery Period by a further period for a maximum of 60 days beyond the termination of the Extended Delivery Period, with Storage Rates and interest calculated at the Interest Rate on the Price payable from the commencement of such period until the Grain is delivered, in accordance with Part 4.1 of the Canada Grain Regulations, following which either party may terminate this Contract on notice in writing to the other; or
    - (ii) Seller may declare the Buyer to be in default.
6. **ACCESS TO LAND:** The Seller authorizes the Buyer and its representatives to enter the land or place where the Grain is planted or stored at any reasonable times for the purpose of inspecting any seed or the Grain, taking samples of the Grain and picking up the Grain.
7. **DEFAULT:** If the Seller is declared to be in default or otherwise fails to perform its obligations in accordance with a Contract, or if Buyer is declared to be in default under s. 5(f) ("Default", and the party in default the "Defaulting Party"):
  - (a) the party which is not the Defaulting Party may cancel the Contract;
  - (b) where the Seller is the Defaulting Party, the Buyer may cancel any other contract between the Buyer (or its affiliates) and the Seller;

- (c) the party which is not the Defaulting Party may, at any time in the period starting on the date of the Default and ending 30 days thereafter (i) buy or sell its hedged position for the undelivered Grain on the Exchange; (ii) buy grain similar to the undelivered Grain or sell the Grain in the market place; or (iii) value the undelivered Grain at the bid price as reported by the Buyer. Such reported bid price shall not include any premiums offered for Grain in a particular delivery window or of a particular quality; and
- (d) the Defaulting Party shall pay to the other party without delay:
- liquidated damages (which damages are agreed to be a genuine pre-estimate of actual damages and not a penalty) equal to the excess or loss of cost or value under s. 7(c) compared to the Price for the undelivered Grain;
  - legal fees incurred as a result of the Default;
  - where the Seller is the Defaulting Party, an administration fee equal to \$15.00 per net metric tonne of undelivered Grain; and
  - simple interest on all amounts calculated at a rate of 3% (the "Interest Rate") from the date of the Default to the date of payment unless otherwise agreed between the parties.
8. **SECURITY AND SET-OFF:** As general and continuing security for all present and future indebtedness of the Seller to the Buyer, whether under a Contract or for credit extended by the Buyer or otherwise, the Seller:
- grants to the Buyer a security interest in the Grain, all proceeds from dealings with the Grain and all proceeds that indemnify or compensate for loss, damage or destruction of the Grain; and
  - assigns to the Buyer all amounts that may become due to the Buyer from any production contracts, grain settlements, cash purchase tickets, cash advances, revenue, crop or livestock feed insurance proceeds, government payment programs or other sources arising in respect of the Grain.
- The Seller grants to Buyer the right to make inquiries and conduct credit investigations at any time, and to take or require additional security where the Buyer deems it reasonably necessary to do so. The Buyer may enforce its rights by any legal method, including by set-off. The Seller authorizes the Buyer to set-off and deduct from any amounts payable by the Buyer to the Seller under any Contract (in the form of a grain receipt, cash purchase ticket, cash advance or otherwise) any amounts payable by the Seller to the Buyer or its affiliated companies, whether under a Contract or otherwise (including liquidated damages and other amounts payable for failure to submit samples or deliver grain, outstanding credit for crop inputs, carrying charges, legal fees and other expenses). The Seller acknowledges receiving a copy of the Contract and these Terms and Conditions and waives the right to receive any financing, verification or change statement. The Seller authorizes the payer under s. 8(b) to make payment directly to the Buyer without proof of default.
9. **DETERMINATION OF GRADE, ETC.:** The Buyer shall determine the grade, weight, moisture and / or dockage of the Grain when it is delivered to the Buyer in accordance with the Official Grading Guide of the Canadian Grain Commission. If the Seller disagrees, the Buyer shall submit a representative sample to the Chief Inspector, Canadian Grain Commission, whose decision shall be final and binding.
10. **GOOD GRAIN:** The Seller represents and warrants that:
- the Grain is good, dry, merchantable and free from contaminants;
  - the Seller is authorized to sell the Grain to the Buyer and has not committed any or all of the Grain to any other person, corporation or entity;
  - the Seller has not misrepresented the Grain, nor the delivery of the Grain to the Buyer in any way, the Seller has not added moisture or other contaminants, and the Seller has not distributed Grain on delivery in such a way as to make a sampling of the Grain non-representative;
  - the Grain is the variety specified herein, grown and harvested in the country of origin, and is at least 95% pure, or such other degree of purity as may be specified as part of the Remarks or Specifications to this Contract. The Seller shall deliver to the Buyer a Declaration and Indemnity as to the Variety and the application of any fertilizers, or chemicals, in the form specified by the Buyer, together with such other documents or analyses as are specified in the Remarks or Specifications to this Contract;
  - the Seller owns and has clear title to the Grain free from all liens, charges, claims, security interests and other encumbrances and is selling as principal, not agent, and the Buyer shall own all screenings and foreign materials removed from the Grain.
11. **RISK AND TITLE:** The Seller shall be responsible for the Grain and all risks (including leakage and contamination) associated with the transport of the Grain until it is delivered to and accepted by the Buyer. The Buyer shall have clear title to and be responsible for the Grain when it is delivered to and accepted by the Buyer.
12. **GENERAL PROVISIONS:**
- If the Seller is more than one person, the obligations and liabilities of those persons under each Contract shall be joint and several. A Contract or part thereof may not be assigned by the Seller unless the Buyer agrees in writing. The Contract shall be binding on the parties and their executors, administrators, successors and permitted assigns. The obligations of the Seller under a Contract shall survive the cancellation or expiry of the Contract.
  - Any notice shall be in writing and may be given by personal delivery, registered mail, or electronic communication to the addresses shown on the Purchase Contract. Any call for the Grain may, at the Buyer's option, be given by telephone. The Terms and Conditions and any Contract may be executed and delivered in counterparts and/or by e-mail transmission, all of which counterparts, taken together, shall constitute one instrument. If Seller has been granted authorization by Buyer to view and sign documents electronically on the Buyer's website, then the Terms and Conditions and any Contract may be executed by Seller's electronic signature in the manner provided on the website. Seller's access and use of Buyer's website shall be subject to the terms and conditions of such access and use as set out on Buyer's website, which are deemed incorporated in and shall form part of these Terms and Conditions.
  - If the Buyer waives any provision or exercises any remedy or right under a particular Contract, the Buyer shall do so in writing and shall not be required to waive that provision or any other provision in any other case nor to claim such remedy or right or for any other Contract.
  - If any provision of a Contract is deemed to be illegal, invalid or unenforceable, that provision shall be severed from such Contract and the remainder of the Contract and all other Contracts between the Buyer and Seller shall continue with full force and effect. If there is any conflict between any portion of the Terms and Conditions of this Contract and the Purchase Contract, then the Purchase Contract shall be paramount for purposes of interpretation.
  - Time is of the essence of each Contract.
  - Each Contract, including these Terms and Conditions, is the entire agreement between the Buyer and the Seller for the delivery of Grain specified in the Contract, and replaces all prior discussions, representations, agreements and understandings. A Contract may not be amended unless the parties agree in writing. The Contract shall be interpreted, performed and governed in accordance with the laws of the Province of the Location of the Buyer.

**BUYER:**

Location: CARLTON CROSSING

Per: Date: Spt 20/20**SELLER:**

Customer Name: TYLER SMITH

Customer Number: 140668

Per: Date: Spt 20/20

**Appendix B – January 20, 2021 Correspondence from MLT Aikins LLP**

January 20, 2021

**WITH PREJUDICE**

**Via E-Mail: jim.kroczyński@dbklaw.com**

Duchin, Bayda & Kroczyński  
Barristers & Solicitors  
2515 Victoria Avenue  
Regina, SK S4P 0T2

**Attention: Mr. Jim Kroczyński**

Dear Sir:

**Re: In the Matter of the Receivership of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd. (QBG No. 1337 of 2020, Judicial Centre of Saskatoon)**

We are counsel to Deloitte Restructuring Inc., the Court-appointed receiver (the “**Receiver**”) of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd. (collectively, the “**Debtors**”).

We write to you in your capacity as counsel to Richardson Pioneer Limited (“**Richardson Pioneer**”).

We are informed that the Debtors and Richardson Pioneer are parties to two (2) contracts dated July 24, 2020 (collectively, the “**Contracts**”).

Pursuant to the Contracts, the Debtors contracted to deliver to Richardson Pioneer a quantity of 110,230 bushels of canola at an average purchase price of \$10.40 per bushel. The Debtors currently have an inventory of approximately 96,000 bushels of canola.

Since the entry into the Contracts by the Debtors, the market price of canola has increased substantially to the point where, if sold in February or March of 2021, the Receiver anticipates being able to sell the canola for a fair market value of approximately \$14.70 per bushel.

Paragraph 3(c) of the December 1, 2020 Receivership Order granted by the Honourable Mr. Justice R.S. Smith (the “**Receivership Order**”) provided that the Receiver is empowered and authorized to do any of the following where the Receiver considers it necessary or advisable, namely:

(c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur 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 Debtors. [Emphasis added]

The right of a court-appointed receiver to disclaim contracts under Saskatchewan law is well recognized. The law of Saskatchewan in this regard was summarized by Mr. Justice Meschishnick in paragraphs 8-10 of his July 19, 2016 Fiat in the matter of the receivership of *Phenomenome Discoveries Inc. and Phenomenome Laboratory Services Inc.* (QBG No. 1639 of 2015, Judicial Centre of Saskatoon) (copy attached):

8. It is not disputed that a receiver is not bound by a debtor's contracts nor is it personally liable for the performance of them. *Royal Bank v. Melvax Properties Inc.*, 2011 ABQB 167 at para 7; *Alberta Health Services v. Network Health Inc.*, 2010 ABQB 373 at para 49, 28 Alta LR (5<sup>th</sup>) 118. This general principle has a limitation. A receiver cannot disclaim a contract that has granted a property right. Frank Bennett, *Bennett on Receiverships* (Toronto: Carswell, 1999) at 341.

9. The authority of the Receiver to disclaim a contract subject to the limitation noted above is also found in the Order granted by this Court February 25, 2016, appointing FTI Consulting Canada Inc. as receiver of PDI's assets. Section 6(c) of that Order describes that authority as empowering the Receiver where it "considers it necessary or desirable" to "cease to perform any contracts of the Debtor".

10. Nor is it disputed that a receiver, when considering to disclaim or cease to perform a contract will be required to act in a fair and equitable manner having regard to the interests of all parties not preferring one party over another. Houlden and Morawetz, the *2016 Annotated Bankruptcy and Insolvency Act* (Toronto: Thomson Reuters, 2016) at L-18 "Duties and Powers of Receivers". At the same time, it is recognized that, when so acting, it does not mean that all stakeholders must be equally satisfied with the course of conduct chosen by the receiver. And, if a receiver's decision is within the broad bounds of reasonableness, and if it proceeds fairly, having considered the interests of all stakeholders, the Court will support the receiver's decision. *Ravelston Corp., Re: (2005)*, 24 CBR (5<sup>th</sup>) 256 at para 40.

In this case, owing to the significant increase in the market price of canola since the entry into the Contracts by the Debtors and Richardson Pioneer, the Receiver has determined that it is necessary, desirable and in the best interests of the receivership estate for the Receiver to disclaim the Contracts and to sell the canola for its current fair market value.

As described above, the February/March 2021 fair market value of the canola is approximately \$14.70 per bushel. The quantity of canola at issue (approximately 96,000 bushels) would yield

sale proceeds of \$1,411,200. Were the Receiver to elect to perform the Debtors' obligations under the Contracts, the Receiver would be required to do so at the average price under the Contracts of \$10.40 per bushel and would therefore receive only \$998,400. Were it to elect to perform the Debtors' obligations under the Contracts, in the net result, the Receiver would be foregoing approximately \$412,800 worth of value.

The Receiver is mindful of the concerns of Richardson Pioneer expressed by you at the January 14, 2021 hearing to the effect that Richardson Pioneer requires the canola promptly. Mindful of the costs of litigating this matter, and in recognition of the concerns expressed by Richardson Pioneer, the Receiver is prepared to offer to Richardson Pioneer a discount off the February/March 2021 market price of \$14.70 per bushel of \$0.25 per bushel (for a price of \$14.45 per bushel).

If Richardson Pioneer is prepared to purchase the approximately 96,000 bushels of canola from the Receiver for this discounted price of \$14.45 per bushel, the resulting purchase price to be paid by Richardson Pioneer to the Receiver for the approximately 96,000 bushels of canola would be \$1,387,200.

Please let us know if Richardson Pioneer is prepared to purchase the approximately 96,000 bushels of canola from the Receiver for the discounted price of \$14.45 per bushel.

As the price of canola is subject to change, would you please inform us of Richardson Pioneer's position as soon as possible (and, in any event, prior to **Thursday, January 21, 2021 at 12:00 p.m. noon (Saskatchewan time)**).

This letter is delivered on a "With Prejudice" basis and the Receiver intends to place this letter in evidence if court proceedings regarding this matter are required. The Receiver sincerely hopes that does not become necessary.

We look forward to hearing from you as soon as possible.

Yours truly,

MLT AIKINS LLP

Per:   
Jeffrey M. Lee, Q.C.

JML:crb

cc: Deloitte Restructuring Inc.  
Attn: Brent Warga/John Fritz



WESTERN CANADA'S LAW FIRM

cc: Abrametz Eggum  
Attn: Peter V. Abrametz

**Appendix C – January 26, 2021 Correspondence from MLT Aikins LLP**



January 26, 2021

**WITH PREJUDICE**

**Via E-Mail: [jim.kroczyński@dbklaw.com](mailto:jim.kroczyński@dbklaw.com)**

Duchin, Bayda & Kroczyński  
Barristers & Solicitors  
2515 Victoria Avenue  
Regina, SK S4P 0T2

**Attention: Mr. Jim Kroczyński**

Dear Sir:

**Re: In the Matter of the Receivership of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd. (QBG No. 1337 of 2020, Judicial Centre of Saskatoon)**

We are counsel to Deloitte Restructuring Inc., the Court-appointed receiver (the “**Receiver**”) of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd. (collectively, the “**Debtors**”).

We write to you in your capacity as counsel to Richardson Pioneer Limited (“**Richardson Pioneer**”), further to our prior correspondence on January 20, 2021, our conversation on January 22, 2021, and our recent e-mail correspondence.

In our letter of January 20, 2021, we proposed that Richardson Pioneer purchase the Debtors’ canola pursuant to two (2) contracts dated July 24, 2020 (collectively, the “**Contracts**”) at a discounted price of \$14.45 per bushel. This proposal was rejected by Richardson Pioneer.

In our conversation on January 22, 2021, we put forward the following alternative proposal:

1. We would seek and obtain a date from the Court of Queen’s Bench for Saskatchewan for a hearing regarding the legal ability of the Receiver to disclaim the Contracts.
2. In the interim, Richardson Pioneer would pay to the Receiver the full sale proceeds for the canola, calculated at the price of \$14.45 per bushel, as set out in our letter of January 20, 2021.

3. We would then proceed to Court to argue the Receiver's application for leave to disclaim the Contracts.
4. If the Court holds that the Receiver may not disclaim the Contracts, the Receiver will refund to Richardson Pioneer the difference between the contracted price and the price of \$14.45 per bushel.
5. If the Court holds that the Receiver may disclaim the Contracts, the Receiver will then retain the entirety of the amounts paid by Richardson Pioneer.

We understand from subsequent e-mail correspondence that Richardson Pioneer has rejected the above proposal as well.

The above proposal will remain open for acceptance by Richardson Pioneer until **5:00 p.m. CST on Thursday, January 28, 2021**, failing which it will be null, void, and of no further force or effect.

If it is not accepted, the Receiver will apply to Court in short order for leave to disclaim the Contracts. Paragraph 35 of the Receivership Order granted by the Court of Queen's Bench on December 1, 2020 provides that applications may be brought on three (3) days' notice. Further to our e-mail correspondence, we are seeking dates from the Court during the week of February 8-12, and look forward to your indication of your availability during that week. However, the Court has currently indicated a preference to have the matter heard on Thursday, February 4, 2021. In the absence of an interim agreement such as the one set out above, there is some urgency to having the matter proceed, and we may be forced to proceed on February 4, 2021.

This letter is delivered on a "With Prejudice" basis and the Receiver intends to place this letter in evidence if court proceedings regarding this matter are required. The Receiver sincerely hopes that does not become necessary.

We look forward to hearing from you as soon as possible.

Yours truly,

**MLT AIKINS LLP**

Per: 

Jeffrey M. Lee, Q.C.

cc: Deloitte Restructuring Inc.  
Attn: Brent Warga/John Fritz

cc: Abrametz Eggum  
Attn: Peter V. Abrametz

**Appendix D – January 27, 2021 Correspondence from Duchin, Bayda & Kroczyński Law**

# DUCHIN, BAYDA & KROCZYNSKI

---

January 27, 2021

Via Fax: (306) 975-7145  
and email [jmlee@mltaikins.com](mailto:jmlee@mltaikins.com)

MLT Aikins LLP  
Suite 1201-409 3<sup>rd</sup> Avenue S  
Saskatoon, SK  
S7K 5R5

Attention: Jeffrey M. Lee, Q.C.

Dear Sir:

**Re: In the Matter of Receivership of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd.  
O.B.G. No.1337 of 2020- Judicial Centre of Saskatoon**

---

In response to your letter of January 26, 2021, and as you are no doubt aware, the price of canola is extremely volatile at this time, and it would seem quite unreasonable for my client to put up cash for a maximum market price when they have Contracts for delivery at a much lesser price.

There is a solution however, akin to that which is engaged in for producers who have unpriced contracts. For those contracts, my client accepts delivery and issues an elevator receipt and the producer can price at such time as they deem appropriate within the scope of the contract. My client then makes payment when the producer prices the grain.

As such, and in the present circumstances, my client would be agreeable to accept delivery of canola without payment at this time, in exchange for issuance of an elevator receipt. If the Court should permit the Receiver's disclaimer of the current delivery Contracts, the price can be determined at the date of delivery and payment made accordingly. If the Court decides not to approve the disclaimer of the delivery Contracts, my client will pay the Contract price.

Please confirm that the Receiver is prepared to proceed as above noted. In the meantime, this will confirm my availability for hearing of this matter in Court on February 4, 2021. Thank you.

Yours truly,

**Duchin, Bayda & Kroczyński**

Per:

  
Jim Kroczyński

JK/

---

Telephone: (306) 359-3131

Barristers and Solicitors  
2515 Victoria Avenue  
Regina, SK  
S4P 0T2

Fax: (306) 359-3372

**Appendix E – January 28, 2021 Correspondence from MLT Aikins LLP (Initial Letter Agreement)**

January 28, 2021

**Via E-Mail: [jim.kroczyński@dbklaw.com](mailto:jim.kroczyński@dbklaw.com)**

Duchin, Bayda & Kroczyński  
Barristers & Solicitors  
2515 Victoria Avenue  
Regina, SK S4P 0T2

**Attention: Mr. Jim Kroczyński**

Dear Sir:

**Re: In the Matter of the Receivership of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd. (QBG No. 1337 of 2020, Judicial Centre of Saskatoon)**

We are counsel to Deloitte Restructuring Inc., the Court-appointed receiver (the “**Receiver**”) of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd. (collectively, the “**Debtors**”).

In our capacity as solicitors and agents of the Receiver, we propose the following:

1. Richardson Pioneer Limited (“**Richardson Pioneer**”) will accept deliveries of all of the Debtors’ canola inventory (estimated at approximately 96,000 bushels) at such time(s) and place(s) as the Receiver and Richardson may agree, provided that such deliveries must occur no later than **February 28, 2021**.
2. Richardson Pioneer will issue to the Receiver elevator receipt(s) at the time of each delivery.
3. Each canola delivery will initially be priced in accordance with the opening spot market price per bushel on the date of delivery.
4. The Receiver will, within a reasonable time and in any event no later than February 28, 2021, apply to the Court of Queen’s Bench for Saskatchewan for leave to disclaim the contracts between the Debtors and Richardson Pioneer dated July 24, 2020 (the “**Contracts**”).

5. If the Court determines that the Receiver is prohibited from disclaiming the Contracts, the price to be paid by Richardson Pioneer for the Debtors' canola shall be the price(s) set out in the Contracts.
6. If the Court determines that the Receiver is not prohibited from disclaiming the Contracts, the price to be paid by Richardson Pioneer for the Debtors' canola shall be fixed at the greater of:
  - a. the opening spot market price per bushel as at the date of the delivery of the canola in question; and
  - b. the price(s) set out in the Contracts.

If the foregoing proposal is acceptable to Richardson Pioneer, please endorse this letter with your signature where indicated below, and return the same to us by e-mail or fax at your earliest convenience. This proposal will remain open until **5:00 p.m. CST on Friday, January 29, 2021**, after which it will be of no further force or effect.

We look forward to hearing from you as soon as possible.

Yours truly,

**MLT AIKINS LLP**

**in its capacity as Solicitors and Authorized Agents for Deloitte Restructuring Inc., in its capacity as Court-appointed Receiver of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd.**

Per:

  
for: Jeffrey M. Lee, Q.C.

The terms and conditions set forth above are agreed to this \_\_\_\_ day of January, 2021.

**DUCHIN BAYDA & KROCZYNSKI**

**in its capacity as Solicitors and Authorized Agents for Richardson Pioneer Limited**

Per:

Jim Kroczyński

**Appendix F – January 29, 2021 Correspondence from Duchin, Bayda & Kroczyński Law**



# DUCHIN, BAYDA & KROCYNSKI

---

---

January 29, 2021

Via Fax: (306) 975-7145  
and email [jmlee@mltaikins.com](mailto:jmlee@mltaikins.com)

MLT Aikins LLP  
Suite 1201-409 3<sup>rd</sup> Avenue S  
Saskatoon, SK  
S7K 5R5

**Attention: Jeffrey M. Lee, Q.C.**

Dear Sir:

**Re: In the Matter of Receivership of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd.  
Q.B.G. No.1337 of 2020- Judicial Centre of Saskatoon**

---

Thank you for your letter of January 28, 2021. In response, my client is not agreeable to the proposed manner of approach, which highlights the type of risk which Mr. Smith sought to mitigate by locking in his contract price last July.

Please appreciate that the Contract with Mr. Smith (as with all of these types of contracts with other producers) were buyer's option to call. The producer can lock in a price at any time, but when delivery occurs it is at our client's option because it needs to be.

For example, in order to move 2000 metric tonnes of grain, our client needs to have a train ready to load. Richardson can certainly schedule that, but if they ordered other producers deliveries to fill a train and then the Receiver chose to deliver, our client's terminal would be plugged and they would be forced to be in breach of the delivery contract.

To be more specific, should the Receiver wait until February 28, 2021 to schedule a delivery on that date, if our client is unable to accommodate such delivery then, by the terms of the contract, the Receiver would have the right to deem the contract breached and at an end because our client did not take delivery within the 60 days of the end of the delivery period. This would then allow the Receiver to sell the grain at market price to anyone else. This is not acceptable.

Please also appreciate that our client has already demanded delivery of the grain in accordance with the delivery Contracts, and they currently have the right to call for delivery of the grain.

# DUCHIN, BAYDA & KROCZYNSKI

---

I therefore reiterate my client's position and proposal as contained in my letter to you of January 27, 2021. May I have your most immediate response, and in any event by no later than February 1, 2021.

Yours truly,

**Duchin, Bayda & Kroczyński**

Per:

  
Jim Kroczyński

JK/

**Appendix G – January 29, 2021 Correspondence from MLT Aikins LLP (Revised Letter Agreement)**

January 29, 2021

**Via E-Mail: [jim.kroczyński@dbkllaw.com](mailto:jim.kroczyński@dbkllaw.com)**

Duchin, Bayda & Kroczyński  
Barristers & Solicitors  
2515 Victoria Avenue  
Regina, SK S4P 0T2

**Attention: Mr. Jim Kroczyński**

Dear Sir:

**Re: In the Matter of the Receivership of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd. (QBG No. 1337 of 2020, Judicial Centre of Saskatoon)**

We are counsel to Deloitte Restructuring Inc., the Court-appointed receiver (the “**Receiver**”) of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd. (collectively, the “**Debtors**”).

In our capacity as solicitors and agents of the Receiver, we propose the following:

1. Richardson Pioneer Limited (“**Richardson Pioneer**”) will call for the delivery of all of the Debtors’ canola inventory (estimated at approximately 96,000 bushels), on a reasonable ordinary-course basis and on a delivery schedule which can reasonably be achieved by the Receiver, such that all canola deliveries are received by Richardson Pioneer on or before February 28, 2021.
2. Richardson Pioneer will issue to the Receiver elevator receipt(s) at the time of each delivery.
3. Each canola delivery will initially be priced in accordance with the opening spot market price per bushel on the date of delivery.
4. The Receiver will, within a reasonable time and in any event no later than February 28, 2021, apply to the Court of Queen’s Bench for Saskatchewan for leave to disclaim the contracts between the Debtors and Richardson Pioneer dated July 24, 2020 (the “**Contracts**”).

5. If the Court determines that the Receiver is prohibited from disclaiming the Contracts, the price to be paid by Richardson Pioneer for the Debtors' canola shall be the price(s) set out in the Contracts.
6. If the Court determines that the Receiver is not prohibited from disclaiming the Contracts, the price to be paid by Richardson Pioneer for the Debtors' canola shall be fixed at the greater of:
  - a. the opening spot market price per bushel as at the date of the delivery of the canola in question; and
  - b. the price(s) set out in the Contracts.

If the foregoing proposal is acceptable to Richardson Pioneer, please endorse this letter with your signature where indicated below, and return the same to us by e-mail or fax at your earliest convenience. This proposal will remain open until **5:00 p.m. CST on Friday, January 29, 2021**, after which it will be of no further force or effect.

We look forward to hearing from you as soon as possible.

Yours truly,

**MLT AIKINS LLP**

**in its capacity as Solicitors and Authorized Agents for Deloitte Restructuring Inc., in its capacity as Court-appointed Receiver of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd.**

Per:

  
for: Jeffrey M. Lee, Q.C.

The terms and conditions set forth above are agreed to this \_\_\_\_ day of January, 2021.

**DUCHIN BAYDA & KROCZYNSKI**

**in its capacity as Solicitors and Authorized Agents for Richardson Pioneer Limited**

Per:

Jim Kroczyński

**Appendix H – February 1, 2021 Correspondence from Duchin, Bayda & Kroczyński Law**

# DUCHIN, BAYDA & KROCZYNSKI

---

February 1, 2021

Via Fax: (306) 975-7145  
and email [jmlee@mltaikins.com](mailto:jmlee@mltaikins.com)

MLT Aikins LLP  
Suite 1201-409 3<sup>rd</sup> Avenue S  
Saskatoon, SK  
S7K 5R5

**Attention: Jeffrey M. Lee, Q.C.**

Dear Sir:

**Re: In the Matter of Receivership of Tyler Smith, Pamela Smith, Smith Northern Ranching and 101197829 Saskatchewan Ltd.  
Q.B.G. No.1337 of 2020- Judicial Centre of Saskatoon**

---

Thank you for your letter of January 29, 2021, constituting the Receiver's revised proposal. In response, it must be appreciated that the Receiver is already in default under the Contracts in question. My client has called for delivery, but there has been no compliance.

Notwithstanding the above, my client will agree to the terms as stated in your said letter conditional upon immediate delivery of the grain and on the very clear understanding that my client has not waived or consented to the breach under the terms and conditions of the existing Contracts. It shall be a further condition that the price paid for canola shall not be less than the Contract price.

Please confirm the Receiver's agreement without delay, upon which the Receiver may contact Mr. Ed Petit at the Carlton Crossing to facilitate the delivery. In the meantime, this will confirm my understanding that we will be proceeding with the Court hearing on February 4, 2021. Thank you.

Yours truly,

**Duchin, Bayda & Kroczynski**

Per:

Jim Kroczynski

JK/

**Appendix I – February 1, 2021 E-mail Correspondence**



**From:** [Jim Kroczyński](#)  
**To:** [Paul Olfert](#)  
**Subject:** RE: In the Matter of Receivership of Tyler Smith, et al  
**Date:** Monday, February 1, 2021 12:08:03 PM  
**Attachments:** [image001.jpg](#)

---

Hi Paul,

Immediate would be today, if possible. As mentioned in my earlier correspondence, please have the Receiver contact Mr. Ed Petit at my client's Carlton Crossing facility to facilitate the process. Thank you.

---

**From:** Paul Olfert <[polfert@mltaikins.com](mailto:polfert@mltaikins.com)>  
**Sent:** February 1, 2021 11:32 AM  
**To:** Jim Kroczyński <[jim.kroczyński@dbklaw.com](mailto:jim.kroczyński@dbklaw.com)>  
**Subject:** RE: In the Matter of Receivership of Tyler Smith, et al

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello, Jim.

Thank you for this clarification.

We had hoped to avoid the need for a Court application on such short notice by way of an interim solution, but it sounds like your agreement to the interim solution would be conditional on a hearing occurring on February 4. As such, it looks like the hearing on the 4<sup>th</sup> is going ahead either way. We will serve our materials as soon as we can today, but it may not be by 12:00 noon.

Regarding the other point of departure (the need for immediate delivery), I am not sure that I understand. The Receiver, too, wants to move the canola as soon as physically possible, but is not in a position to agree to move the canola "immediately" as it is not clear what, precisely, that would entail.

Regards,

**Paul Olfert**  
**Partner**  
**P:** +1 (306) 956-6970 | **E:** [polfert@mltaikins.com](mailto:polfert@mltaikins.com)

---

**From:** Jim Kroczyński <[jim.kroczyński@dbklaw.com](mailto:jim.kroczyński@dbklaw.com)>  
**Sent:** Monday, February 1, 2021 11:26 AM  
**To:** Paul Olfert <[polfert@mltaikins.com](mailto:polfert@mltaikins.com)>  
**Subject:** RE: In the Matter of Receivership of Tyler Smith, et al

Hi Paul,

The letter speaks for itself, with conditions as stated. I believe the key points of departure from Mr. Lee's letter of January 29, 2021 are that delivery has already been requested and is sought immediately, and that the Court hearing is to take place on February 4, 2021. Please confirm, and

provide me with your application materials, if possible before 12:00 noon. Thank you.

---

**From:** Paul Olfert <[polfert@mltaikins.com](mailto:polfert@mltaikins.com)>  
**Sent:** February 1, 2021 10:51 AM  
**To:** Jim Kroczyński <[jim.kroczyński@dbklaw.com](mailto:jim.kroczyński@dbklaw.com)>  
**Cc:** Jeff Lee <[jmlee@mltaikins.com](mailto:jmlee@mltaikins.com)>  
**Subject:** RE: In the Matter of Receivership of Tyler Smith, et al

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello, Jim.

Thank you for your letter.

I am interpreting this letter as an acceptance of the terms set out in our letter of January 29. Am I correct in this interpretation? Please confirm so that the Receiver may arrange to begin deliveries.

Thanks and best regards,

**Paul Olfert**  
**Partner**  
**P:** +1 (306) 956-6970 | **E:** [polfert@mltaikins.com](mailto:polfert@mltaikins.com)

Visit our [COVID-19 Resource Centre](#) for help navigating the changing business and legal environment.

**MLT Aikins LLP**  
Suite 1201 - 409 3rd Avenue S  
Saskatoon, SK S7K 5R5


[BIO](#) | [VCARD](#)



**NOTICE:** This email including attachments is confidential and legally privileged. If you are not the intended recipient, any redistribution or copying of this message is prohibited. If you have received this email in error, please notify us immediately by return email and delete this email. If you no longer wish to receive commercial electronic messages from MLT Aikins LLP, email [casl@mltaikins.com](mailto:casl@mltaikins.com). We may still send messages for which we do not require consent.

---

**From:** Jim Kroczyński <[jim.kroczyński@dbklaw.com](mailto:jim.kroczyński@dbklaw.com)>  
**Sent:** Monday, February 1, 2021 10:36 AM  
**To:** Jeff Lee <[jmlee@mltaikins.com](mailto:jmlee@mltaikins.com)>  
**Cc:** Paul Olfert <[polfert@mltaikins.com](mailto:polfert@mltaikins.com)>  
**Subject:** In the Matter of Receivership of Tyler Smith, et al

 External Sender

Good morning,

Please refer to the attached letter. Thank you.

From the desk of ...  
**Jim Kroczyński**  
Barristers and Solicitors

**Duchin, Bayda & Kroczyński**  
2515 Victoria Avenue  
Regina, SK S4P 0T2  
Tel: (306) 359-3131  
Fax: (306) 359-3372  
[jim.kroczyński@dbklaw.com](mailto:jim.kroczyński@dbklaw.com)

---

*This email (including attachments) is confidential, may be legally privileged or may contain information that is otherwise exempt from disclosure under applicable law. No waiver of confidentiality or privilege nor consent to disclosure may be inferred from the electronic nature or transmission of this communication. If you are not the intended recipient, your use, dissemination, copying or retention of this email is strictly prohibited. If you have received this email in error or are not a named recipient, please immediately notify the sender, by return email, and destroy all copies of this email in your possession.*