

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC.

**MOTION RECORD  
(returnable March 29, 2023)**

March 27, 2023

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# Tab 1

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

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC.**

**NOTICE OF MOTION  
(returnable March 29, 2023)**

Tehama Inc. (the “**Company**”) will make a motion before the Honourable Madam Justice Kimmel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on March 29, 2023, at 12:00 p.m., or as soon thereafter as the motion can be heard.

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

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

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



**THE MOTION IS FOR:**

1. An order (the “**Approval and Vesting Order**”), substantially in the form attached at **Tab 3** of the Motion Record, among other things:
  - (a) approving the sale transaction (the “**Sale Transaction**”) contemplated by the stalking horse purchase agreement dated February 7, 2023 (the “**Stalking Horse APA**”) between the Company and 14667913 Canada Inc. (the “**Stalking Horse Bidder**”), and vesting in the Stalking Horse Bidder all of the Company’s right, title and interest in and to the Purchased Assets (as defined in the Stalking Horse APA).
  
2. An order (the “**Ancillary Order**”), substantially in the form attached at **Tab 5** of the Motion Record:
  - (a) extending the Stay Period (as defined herein) up to and including April 21, 2023;
  - (b) approving the first report of Deloitte Restructuring Inc., in its capacity as monitor (in such capacity, the “**Monitor**”) dated January 26, 2023 (the “**First Report**”), the second report of the Monitor dated February 8, 2023 (the “**Second Report**”), and the third report of the Monitor dated March 27, 2023 (the “**Third Report**”, and together with the First Report and Second Report, the “**Monitor’s Reports**”), as well as the activities described in the Monitor’s Reports; and
  - (c) approving the fees and disbursements of the Monitor and its counsel as set out in the Third Report and the Fee Affidavits (as defined in the Third Report).
  
3. Such further and other relief as counsel may request and this Court deems just.

4. Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Order of Justice Kimmel, dated February 9, 2023, and accompanying sale and investment solicitation process (“**SISP Approval Order**”).

**THE GROUNDS FOR THE MOTION ARE:**

**Overview**

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

6. Following months of liquidity challenges, the Company recently faced a severe liquidity crisis, had limited cash on hand, and was generally unable to meet its obligations as they became due. After exploring various strategic alternatives, the Company’s board of directors determined to seek urgent relief under the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “**CCAA**”).

*Initial Order*

7. On January 20, 2023, the Company sought and obtained an initial order under the CCAA, among other things:

- (a) appointing Deloitte Restructuring Inc. as Monitor in these proceedings (the “**CCAA Proceedings**”);

- (b) granting an administration charge in the amount of \$200,000 (the “**Administration Charge**”), in favour of counsel to the Company, the Monitor and the Monitor’s counsel;
- (c) granting a charge in favour of the DIP Lender in the amount of \$300,000 (the “**DIP Lender’s Charge**”);
- (d) granting a directors’ charge in favour of the Company’s directors and officers in the amount of \$225,000; and
- (e) granting an initial stay of proceedings to January 30, 2023 (the “**Stay Period**”).

*Amended and Restated Initial Order*

8. On January 30, 2023, the Company sought and obtained and amended and restated Initial Order (“**ARIO**”), which, among other things:

- (a) extended the Stay Period to and including March 31, 2023;
- (b) increased the Administration Charge from \$200,000 to \$300,000; and
- (c) increased the DIP Lender’s Charge from \$300,000 to \$500,000.

**Approval of the SISP**

*The Sale and Investment Solicitation Process*

9. On February 9, 2023, the Company sought and obtained the SISP Approval Order, among other things:

- (a) approving the SISP;

- (b) authorizing and empowering the Company to enter into the Stalking Horse APA between the Company and the Stalking Horse Bidder, *nunc pro tunc*, and such minor amendments as may be acceptable to each of the parties thereto, with the approval of the Monitor; and
- (c) confirming that the Stalking Horse APA represents the “Stalking Horse Bid” as defined in, and for the purposes of, the SISP.

10. The SISP was undertaken in two stages: (a) the delivery of a Participation Letter was required to be submitted by Potential Bidders on or before March 2, 2023 (“**Stage 1**”); and (b) all Qualified Bids were required to be submitted on or before March 16, 2023. In summary, the following were the key SISP dates (subject to certain extensions noted below):

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

Step	Date	Details
<b>Auction Date</b>	March 20, 2023	Date of the Auction (if any) (subject to 1 week extension in the event Bid Deadline is extended)
<b>Approval Motion Date</b>	No later than seven (7) calendar days following either the conclusion of the Auction, or the date on which a determination is made by the Company, with the consent of the Monitor, not to proceed with an Auction in accordance with paragraph 22 of the SISP	Hearing of the Approval Motion
<b>Outside Date</b>	March 31, 2023, or such later date as may be agreed to by the Company and the Successful Bidder, with the consent of the Monitor	Deadline for completion of the transaction represented by the Successful Bid

11. As detailed in the Third Report and the affidavit of Michael Aiello (the “**Independent Director**”) dated March 27, 2023 (“**Aiello Affidavit**”), in consultation with the Independent Director and with the assistance of the Company, the Monitor undertook all reasonable and necessary steps to advance the SISP, expose the Property to the market and solicit interest from Potential Bidders. In total, the Monitor distributed the Solicitation Notice to 76 Potential Bidders and also sent a notice of the SISP to all 18 of the Company’s creditors, including its landlord.

12. The Monitor, in consultation with the Independent Director, also agreed to provide an extension of the Participation Deadline from March 2 to March 3, 2023, and an extension of the Bid Deadline from March 16 to March 20, 2023.

13. No Potential Bidder or other interested party submitted a Participation Letter or Qualified Bid in accordance with the terms of the SISP.

14. Paragraph 22 of the SISP provides that, in the event that no Participation Letters are received by the Participation Deadline (as extended), or that no Qualified Bid other than the Stalking Horse Bid is received by the Bid Deadline, then:

- (a) there will be no Auction;
- (b) the Stalking Horse Bid will be deemed to be the Successful Bid, and
- (c) the Company would seek approval of, and authority and direction for the Company to consummate the Stalking Horse APA and the transactions provided for therein at the Approval Motion.

15. In accordance with the Court-approved SISP, and in consultation with the Independent Director and with the assistance of the Company, the Monitor completed a thorough canvassing of the market with the objective of identifying a transaction that was superior to the Stalking Horse APA and which maximized value for the benefit of the Company's stakeholders. The SISP was conducted in a manner consistent with a fair and transparent sale process and provided a reasonable opportunity for all interested parties to submit a Participation Letter or Qualified Bid.

16. The Stalking Horse APA represents the best transaction available to the Company.

*The Stalking Horse APA*

17. The Stalking Horse APA contains a purchase price based on a credit bid of the amount of the secured debt owing by the Company to CIBC, which was acquired by the Stalking Horse

Bidder. The credit bid amount is \$2,812,833.33. No break fee or other fees are payable pursuant to the Stalking Horse APA.

18. The Stalking Horse APA provides significant benefits to the Company. Among other things:

- (a) the transaction terms represent the best bid and preserve the asset value for the benefit of the Company's stakeholders;
- (b) maintains relationships with critical suppliers and ensures the uninterrupted supply of services to the Company's customers (which includes hospitals); and
- (c) preserves the ongoing employment of the existing employees.

19. The Monitor supports the approval of the Sale Transaction, in accordance with the terms of the Stalking Horse APA.

### **Stay Extension and Approvals**

20. The Company requests that the Stay Period be extended to April 21, 2023. The extension to the Stay Period is necessary and appropriate in the circumstances in order to maintain the *status quo* and allow a reasonable period of time to permit the Company to close the Sale Transaction and address any other ancillary matters that may arise post-closing.

21. The Company, with the assistance of the Monitor, has prepared a revised cash flow forecast for the period ending April 21, 2023 that demonstrates that the Company will have sufficient cash to support its ordinary course business operations during the proposed extension to the Stay Period.

22. With the Stay Period extended, the Company has and will continue to act with due diligence and in good faith with respect to the CCAA Proceedings, its business and operations.

23. The Company further understands that the Monitor is seeking approval of its activities, as detailed in the Monitor's Reports, together with approval of the fees and disbursements of the Monitor and its counsel, as detailed in the Third Report and the Fee Affidavits. The Company has reviewed these fees and disbursements and supports the approval of same.

### **Other Grounds**

24. The Company further relies on:

- (a) the provisions of the CCAA, including sections 11 and 36, and the inherent and equitable jurisdiction of this Honourable Court;
- (b) Rules 1.04, 1.05, 2.03, 3.02, 14.05(2), 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended; and
- (c) Such further and other grounds as counsel may advise and this Court may permit.

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

25. The Affidavit of Michael Aiello dated March 27, 2023, and the appendices thereto.

26. Such further and other material as counsel may advise and this Honourable Court may permit.



March 27, 2023

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC.**

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

PROCEEDINGS COMMENCED AT TORONTO

**NOTICE OF MOTION**  
(returnable March 29, 2023)

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# Tab 2

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

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

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC.

**AFFIDAVIT OF MICHAEL AIELLO  
(sworn March 27, 2023)**

I, **MICHAEL AIELLO**, of the City of Ottawa, in the Province of Ontario, **MAKE OATH  
AND SAY:**

1. I am a director of Tehama Inc. (the "**Company**"). As such, I have personal knowledge of the matters deposed to in this affidavit, including the business and financial affairs of the Company. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true.

2. I was appointed by the Company's board of directors on February 7, 2023 to be the independent voice of the Company and its board in connection with the sale and investment solicitation process ("**SISP**") and stalking horse purchase agreement dated February 7, 2023 (the "**Stalking Horse APA**") between the Company and 14667913 Canada Inc. (the "**Stalking Horse Bidder**"). Both the SISP and the Stalking Horse APA (as a stalking horse bid) were approved by this Honourable Court pursuant to an Order granted February 9, 2023 (the "**SISP Approval Order**").

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3. Capitalized terms used but not otherwise defined herein have the meanings given to them, as applicable, in the affidavits of Rob White sworn:

- (a) January 20, 2023 (the “**First White Affidavit**”) in support of the Company’s application for an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “**CCAA**”);
- (b) January 26, 2023 (the “**Second White Affidavit**”) in support of the Company’s motion for an amended and restated initial order (“**ARIO**”); and
- (c) February 7, 2023 (the “**Third White Affidavit**”) in support of the Company’s motion for the SISP Approval Order.

4. Copies of the First White Affidavit, Second White Affidavit and Third White Affidavit (each without exhibits) are attached hereto as Exhibits “A”, “B” and “C”, respectively.

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

- (a) an order (the “**Approval and Vesting Order**”), among other things, approving the sale transaction (the “**Sale Transaction**”) contemplated by the Stalking Horse APA and vesting in the Stalking Horse Bidder all of the Company’s right, title and interest in and to the Purchased Assets (as defined in the Stalking Horse APA); and
- (b) an order (the “**Ancillary Order**”):
  - (i) extending the Stay Period up to and including April 21, 2023;
  - (ii) approving the first report of Deloitte Restructuring Inc., in its capacity as monitor (in such capacity, the “**Monitor**”) dated January 26, 2023 (the

“**First Report**”), the second report of the Monitor dated February 8, 2023 (the “**Second Report**”), and the third report of the Monitor dated March 27, 2023 (the “**Third Report**”, and together with the First Report and Second Report, the “**Monitor’s Reports**”), as well as the activities described in the Monitor’s Reports; and

- (iii) approving the fees and disbursements of the Monitor and its counsel, as set out in the Third Report and the Fee Affidavits (as defined in the Third Report).

6. All references to monetary amounts in this affidavit are in Canadian dollars, unless otherwise noted.

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

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

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

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

**A. Initial Order**

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

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

11. Copies of the Initial Order and Endorsement of Justice Kimmel, each dated January 20, 2023, are attached hereto as **Exhibits “D”** and **“E”**, respectively.

**B. ARIO**

12. On January 30, 2023, the Company sought and obtained the ARIO which, among other things:

- (a) extended the Stay Period up to and including March 31, 2023;
- (b) increased the Administration Charge from \$200,000 to \$300,000; and

- 5 -

(c) increased the DIP Lender's Charge from \$300,000 to \$500,000.

13. Copies of the ARIO and Endorsement of Justice Kimmel, each dated January 30, 2023, are attached hereto as **Exhibits "F" and "G"**, respectively.

### **C. SISP APPROVAL ORDER**

14. On February 9, 2023, the Company sought and obtained the SISP Approval Order which, among other things:

(a) approved the SISP;

(b) authorized and empowered the Company to enter into the Stalking Horse APA between the Company and the Stalking Horse Bidder, *nunc pro tunc*, and such minor amendments as may be acceptable to each of the parties thereto, with the approval of the Monitor; and

(c) confirmed that the Stalking Horse APA represents the "Stalking Horse Bid" as defined in, and for the purposes of implementing and conducting, the SISP.

15. Copies of the SISP Approval Order and Endorsement of Justice Kimmel, each dated February 9, 2023, are attached hereto as **Exhibits "H" and "I"**, respectively.

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

(a) stabilize and continue the Company's business and ordinary course operations;



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- (b) communicate with key stakeholders regarding the CCAA Proceedings and the SISP;
- (c) submit advance requests to the DIP Lender to borrow under the DIP Facility in accordance with the DIP Commitment;
- (d) assist the Monitor with the implementation of the SISP and in particular: (i) the development of a list of potential bidders that may have an interest in a transaction involving the business or assets of the Company, (ii) the preparation of the Solicitation Notice and form of NDA, (iii) the negotiation of NDAs, and (iv) responding to general requests for information regarding the SISP;
- (e) begin taking steps to be in a position to consummate a transaction in accordance with the terms of the SISP; and
- (f) prepare the materials in support of this motion for the Approval and Vesting Order and Ancillary Order.

## **II. CONDUCT AND OUTCOME OF THE SISP<sup>1</sup>**

17. The SISP is described in detail in the Third White Affidavit. As noted in the Third White Affidavit, the SISP was developed as the best viable going concern strategy for the Company to exit from these CCAA Proceedings. In light of the related-party status of the Stalking Horse Bidder and the Company, the SISP was to be run by the Monitor in consultation with me, as the Independent Director. The SISP provided a fair and reasonable process to canvass the market to

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<sup>1</sup> Capitalized terms used but not otherwise defined in this section have the meaning given to them in the SISP.

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confirm whether the Stalking Horse APA delivered the best possible transaction for the benefit of all stakeholders.

18. Since the granting of the SISP Approval Order, in consultation with me and with the assistance of the Company, the Monitor has taken steps to implement and advance the SISP. The SISP was designed with two submission deadlines: (a) the delivery of a Participation Letter, which was required to be submitted by Potential Bidders on or before March 2, 2023 (“**Stage 1**”); and (b) all Qualified Bids required to be submitted on or before March 16, 2023.

19. Originally, the key dates for the SISP were set as follows (extensions to the Participation Deadline and Bid Deadline occurred on consent of the Monitor and the Independent Director, as discussed below):

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

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

20. In accordance with the SISP, the following efforts were made to solicit interest in the Property:

- (a) the Company and the Monitor prepared a list of Potential Bidders who were identified as potentially having an interest in a transaction involving the business or assets of the Company, and established a data room containing diligence information the purposes of the SISP;
- (b) on February 9, 2023, the Monitor posted a copy of the SISP Approval Order and SISP on the Monitor's Website;
- (c) on February 10, 2023, the Monitor distributed the Solicitation Notice to Potential Bidders that described the opportunity and invited Potential Bidders to participate in the SISP; and

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- (d) on February 10, 2023, the Monitor distributed a letter describing the SISP to all of the Company's creditors with a claim exceeding \$1,000, notifying them of the SISP Approval Order and SISP; and
- (e) as further described below as well as in the Third Report, on March 11, 2023, after consultation with the Company and the Independent Director, the Monitor caused a notice of the SISP (the "**Newspaper Advertisement**") to be published in *The Globe and Mail (National Edition)* ("**The Globe**").

21. In total, the Monitor distributed the Solicitation Notice to 76 Potential Bidders and also sent a notice of the SISP to all 18 of the Company's creditors, including its landlord.

22. During Stage 1, the Company and the Monitor negotiated and entered into two (2) non-disclosure agreements with Potential Bidders (the "**NDA Parties**"). The Solicitation Notice invited parties that executed and delivered an NDA, to also submit a Participation Letter on or before the Participation Deadline. On March 2, 2023, one of the NDA Parties requested a short extension to the Participation Deadline. The Monitor and the Company agreed to provide a short extension to the Participation Deadline and, as a result, the Monitor informed the NDA Parties in writing that the Participation Deadline would be extended to March 3, 2023 at 12:00 p.m. (Toronto time) (the "**Extended Participation Deadline**"). Of note, the NDA Parties were the only parties that expressed an interest in participating in the SISP at the time of the Participation Deadline.

23. As stipulated by the SISP, all interested parties who wished to participate in the SISP were required to submit a Participation Letter prior to the Extended Participation Deadline. Prior to the expiry of the Extended Participation Deadline, the NDA Parties informed the Monitor that they were declining to move forward in the SISP and indicated that they would not be submitting a

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Participation Letter. Additionally, despite the efforts of the Monitor and the Company to solicit interest in the opportunity, the Monitor did not receive a Participation Letter from any other Potential Bidder or third party prior to the expiry of the Extended Participation Deadline.

24. As noted above, the Monitor was to post the Newspaper Advertisement in *The Globe* as soon as reasonably practicable following the granting of the SISP Approval Order. Inadvertently, the Newspaper Advertisement was not posted in *The Globe* at the outset of the SISP. Immediately upon realizing this issue, the Monitor contacted me and, based on the discretion provided to the Monitor (in consultation with me as Independent Director) to make changes to the SISP deadlines, we agreed to place the ad as soon as possible and to extend the Bid Deadline for everyone. Accordingly, the Newspaper Advertisement was published in *The Globe* on March 11, 2023 and the Bid Deadline was extended to March 20, 2023 (the “**Extended Bid Deadline**”) to ensure that all potential interested parties were given an opportunity to express their interest in participating in the SISP, in order to maintain the efficacy and fairness of the process, and also to continue the Monitor’s thorough canvassing of the market. The Monitor’s efforts to notify all parties and keep the process open are detailed in the Third Report.

25. Notwithstanding the Monitor’s notices to and communications with the Potential Bidders, and all other parties that had previously expressed an interest in the SISP, regarding the Extended Bid Deadline, once again, the Monitor did not receive a Participation Letter or Qualified Bid prior to the expiry of the Extended Bid Deadline.

26. Paragraph 22 of the SISP provides that, in the event that no Participation Letters are received by the Extended Participation Deadline, or that no Qualified Bid other than the Stalking Horse Bid is received by the Extended Bid Deadline, then:

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- (a) there will be no Auction;
- (b) the Stalking Horse Bid will be deemed to be the Successful Bid; and
- (c) the Company would seek approval of, and authority and direction for the Company to consummate, the Stalking Horse APA and the transactions provided for therein at the Approval Motion.

27. In accordance with the Court-approved SISP, in consultation with me as Independent Director and with the assistance of the Company, the Monitor completed a thorough canvassing of the market with the objective of identifying a transaction that was superior to the Stalking Horse APA and which maximized value for the benefit of the Company's stakeholders. The SISP was conducted in a manner consistent with fairness, integrity and transparency, and further provided a reasonable opportunity for all interested parties to submit a Participation Letter or Qualified Bid.

28. As noted above, no Participation Letter or Qualified Bid was submitted to the Monitor by the required deadlines. Accordingly, the Stalking Horse APA represents the best executable transaction available to the Company.

### **III. THE SALE TRANSACTION<sup>2</sup>**

29. The Stalking Horse APA is described in detail in the Third White Affidavit.

30. In summary, the purchase price for the Purchased Assets is based on a credit bid of the amount of the secured debt owing by the Company to CIBC which was acquired by the Stalking

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<sup>2</sup> Capitalized terms used but not otherwise defined in this section have the meaning given to them in the Stalking Horse APA.

Horse Bidder. The credit bid amount is \$2,812,833.33. No break fee or other fees are payable pursuant to the Stalking Horse APA. A copy of the Stalking Horse APA is attached hereto as **Exhibit “J”**.

31. Of note, the Stalking Horse Bidder has not credit bid the current or future DIP obligations of the Company as the DIP amounts advanced by the Stalking Horse Bidder are currently and will be set off against a promissory note in the principal amount of \$1,000,333.33 owing by the Stalking Horse Bidder to the Company (as described in the Second Report) (the “**Promissory Note**”). I understand that, as at March 17, 2023, the amount of \$296,630 had been advanced under the DIP facility. The Revised Cash Flow Forecast (as defined and set out in the Third Report) projects cumulative DIP advances of \$469,428 through to April 21, 2023, and the anticipated conclusion of these CCAA Proceedings. Notably, following the aforementioned and projected DIP advances, the Promissory Note will have been satisfied in full.

32. The other key terms and provisions of the Stalking Horse APA are summarized as follows:

<b>TERM</b>	<b>SUMMARY</b>	<b>SECTION REFERENCE</b>
<b>Parties</b>	<ul style="list-style-type: none"> <li>The Company, as vendor.</li> <li>The Stalking Horse Bidder, as purchaser.</li> </ul>	Recitals
<b>Purchased Assets</b>	<p>The Company’s right, title, benefit and interest in the following assets:</p> <ul style="list-style-type: none"> <li>all equipment and machinery (including computer hardware, software and telecommunications equipment), chattels, improvements, furniture, furnishings, peripheral equipment, supplies and accessories, and other tangible property owned or held by the Company and related to the Business;</li> <li>all inventory and supplies of any nature or kind, including inventory manufactured by the Company or purchased from third party vendors;</li> </ul>	Section 2.01

TERM	SUMMARY	SECTION REFERENCE
	<ul style="list-style-type: none"> <li>• all accounts receivable relating to the Business or otherwise;</li> <li>• all cash on hand, cash equivalents, bank deposits, cash floats and petty cash of the Company;</li> <li>• all Contracts, and to the extent not otherwise included in Section 2.1 of the Stalking Horse APA, the Assigned Contracts;</li> <li>• all Intellectual Property owned by the Company that is used in connection with the Purchased Assets;</li> <li>• the goodwill of the Business, together with the exclusive right of the Stalking Horse Bidder to represent itself as carrying on the Business in continuation of and in succession to the Company, including all choses in action where the Company is the plaintiff or moving party and other intangibles relating to the Business that do not form part of the Intellectual Property;</li> <li>• all authorizations owned, held or used by the Company in connection with the Business to the extent they are transferable;</li> <li>• all rights of the Company to tax refunds, credits, rebates or similar benefits relating to the Purchased Assets for the period prior to the Closing Date;</li> <li>• all funds or deposits held by suppliers, customers or any other Person in trust for or on behalf of the Company (if any) including any pre-paid expenses;</li> <li>• any Claim of the Company to reimbursement under any insurance policy applicable to the Company for the period prior to the Closing Date;</li> <li>• the issued and outstanding shares of Tehama USA, Inc.; and</li> <li>• the Books and Records.</li> </ul>	
<b>Excluded Assets</b>	<p>The Company will retain its right, title, benefit and interest in and to the following assets:</p> <ul style="list-style-type: none"> <li>• the Excluded Contracts;</li> <li>• shares and other interests or capital in the Company;</li> <li>• the tax records and insurance policies of the Company, save and except for those tax records that are required with respect to any Purchased Assets;</li> </ul>	Section 2.02



<b>TERM</b>	<b>SUMMARY</b>	<b>SECTION REFERENCE</b>
	<ul style="list-style-type: none"> <li>Books and Records not pertaining primarily to the Purchased Assets; and</li> <li>any other assets listed in Schedule E to the Stalking Horse APA.</li> </ul>	
<b>Purchase Price</b>	<ul style="list-style-type: none"> <li>The amount of \$2,812,833.33, plus the amount of the Assumed Liabilities.</li> </ul>	Section 2.03
<b>Payment of Purchase Price</b>	<p>The Purchase Price will be satisfied by the Stalking Horse Bidder as follows:</p> <ul style="list-style-type: none"> <li>payment of the amount of \$2,812,833.33 shall happen by the credit bid of the Secured Indebtedness (as of the Closing Time including any accrued and unpaid interest, expenses, fees and other amounts), which shall cause the release thereof at Closing in favour of the Company; and</li> <li>by the Purchaser assuming the Assumed Liabilities.</li> </ul>	Section 2.09
<b>Closing Date</b>	<ul style="list-style-type: none"> <li>Five (5) Business Days following the date of the Approval and Vesting Order, or such other date as may be agreed in writing between the parties hereto, but not later than March 31, 2023.</li> </ul>	Section 1.01
<b>Transfer Taxes</b>	<ul style="list-style-type: none"> <li>Transfer Taxes are payable by the Stalking Horse Bidder.</li> </ul>	Section 2.06
<b>Assumed Liabilities</b>	<p>The Stalking Horse Bidder will assume:</p> <ul style="list-style-type: none"> <li>all Liabilities relating to Employees as set out in section 5.03 of the Stalking Horse APA;</li> <li>all Liabilities arising from or in connection with the Assigned Contracts, including any Cure Costs; and</li> <li>all Liabilities arising from or in connection with any tax, levy, penalty, interest or costs for which the Stalking Horse Bidder is responsible pursuant section 2.06 of the Stalking Horse APA and any Permitted Encumbrances.</li> </ul>	Section 2.07
<b>Representations and Warranties of the Company (Selected)</b>	<ul style="list-style-type: none"> <li>Subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated in the Stalking Horse APA, the Company has the power, authority and right to enter into and deliver the Stalking Horse APA and to carry out its obligations thereunder.</li> <li>Subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated the Stalking Horse APA, the Stalking Horse APA constitutes a valid and legally binding</li> </ul>	Section 4.01

TERM	SUMMARY	SECTION REFERENCE
	obligation of the Company, enforceable against the Company in accordance with its terms.	
<b>Representations and Warranties of the Stalking Horse Bidder (Selected)</b>	<ul style="list-style-type: none"> <li>• No authorizations, consents or approvals of, or filing with or notice to, any Governmental Authority is required in connection with the execution, delivery or performance of the Stalking Horse APA.</li> <li>• Except for the Approval and Vesting Order, no consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Stalking Horse Bidder of the Stalking Horse APA.</li> </ul>	Section 4.02
<b>“As is, Where is”</b>	<ul style="list-style-type: none"> <li>• The Purchased Assets are being sold on an “as is, where is” basis. Apart from what is set out in Section 4.01 of the Stalking Horse APA, the Company makes no representation, warranty or condition regarding the Purchased Assets.</li> <li>• The Stalking Horse Bidder has conducted its own due diligence prior to executing the Stalking Horse APA.</li> </ul>	Section 4.03
<b>Covenants of the Company (Selected)</b>	<ul style="list-style-type: none"> <li>• The Company shall file with the Court, as soon as practicable after its execution and delivery of Stalking Horse APA, a motion seeking the Court’s issuance of the Approval and Vesting Order.</li> </ul>	Section 5.01
<b>Covenants of the Stalking Horse Bidder (Selected)</b>	<ul style="list-style-type: none"> <li>• The Stalking Horse Bidder will provide the Company with all information within its possession or control that the Company may reasonably request to assist the Company in obtaining the Approval and Vesting Order.</li> </ul>	Section 5.02
<b>Conditions for the Benefit of the Stalking Horse Bidder (Selected)</b>	<ul style="list-style-type: none"> <li>• The Court shall have issued and entered the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated.</li> </ul>	Section 6.01
<b>Conditions for the Benefit of the Company (Selected)</b>	<ul style="list-style-type: none"> <li>• The Court shall have issued and entered the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated.</li> </ul>	Section 6.02
<b>Governing Law</b>	<ul style="list-style-type: none"> <li>• Ontario</li> </ul>	Section 9.12

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33. As noted above, Potential Bidders and any other interested parties have been provided with a sufficient period of time to review and consider the opportunity set forth in the SISP. The Company and the Monitor have made good faith efforts to solicit interest in the Property and notwithstanding these efforts, the Sale Transaction remains the only executable offer submitted pursuant to the CCAA Court-approved SISP.

34. The Stalking Horse APA provides significant benefits to the stakeholders of the Company. Among other things:

- (a) the transaction terms represent the best bid and preserves the asset value for the benefit of the Company's stakeholders;
- (b) maintains relationships with critical suppliers and ensures the uninterrupted supply of services to the Company's customers (which includes hospitals); and
- (c) preserves the ongoing employment of the existing employees.

35. I understand that the Monitor views the Sale Transaction as fair and reasonable in the circumstances and therefore supports the Sale Transaction in accordance with the terms of the Stalking Horse APA.

#### **IV. STAY EXTENSION & APPROVALS**

36. The Company is requesting that the Stay Period be extended to April 21, 2023. I believe the extension to the Stay Period is necessary and appropriate in the circumstances in order to maintain the status quo and allow a reasonable period of time to permit the Company to close the Sale Transaction and address any other ancillary matters that may arise post-closing.

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37. The Company, with the assistance of the Monitor, has prepared a revised cash flow forecast for the period ending April 21, 2023 that demonstrates the Company will have sufficient cash to support its ordinary course business operations during the proposed extension to the Stay Period.

38. With the Stay Period extended, the Company has and will continue to act with due diligence and in good faith with respect to the CCAA Proceedings, its business and operations.

39. I understand that the Monitor will be filing the Third Report in connection the approval of the Sale Transaction and seeking approval of the activities detailed in the Monitor's Reports. This Court has not previously approved any of the Monitor's activities. The Company supports the approval of the Monitor's activities as described in the Monitor's Reports.

40. The Company further understands that the Monitor and the Monitor's legal counsel are seeking approval of their fees and disbursements as detailed in the Third Report and Fee Affidavits. The Company has reviewed these fees and disbursements and support the approval of same.


## **V. CONCLUSION**

41. Since the granting of the SISP Approval Order, the Company has acted in good faith and with due diligence to, among other things, advance its restructuring efforts, including the implementation of the SISP.

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

43. I swear this affidavit in support of the Company's motion for the Approval and Vesting Order and Ancillary Order, and for no other or improper purpose.

**SWORN** by Michael Aiello of the City of Ottawa in the Province of Ontario, before me at the City of Toronto in the Province of Ontario on March 27, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  
  
02452ECC61C54F6...


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



DocuSigned by:  
**MICHAEL AIELLO**  
A49FB2B6F7EF4B5...

\_\_\_\_\_  
MICHAEL AIELLO

THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL AIELLO SWORN  
BEFORE ME THIS 27th DAY OF MARCH, 2023.

DocuSigned by:  
  
02452ECC61C54F6...

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A Commissioner for Taking Affidavits, etc.

Court File No.

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC. (the "**Applicant**")

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

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

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

**A. RELIEF SOUGHT**

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

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

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



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

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

(a) extend the Stay Period;

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

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

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

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

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

## **A. OVERVIEW**

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

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

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

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

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

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

## B. CORPORATE STRUCTURE

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

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

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

## C. ASSETS AND LIABILITIES

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

- (i) **Assets**

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

**(ii) Liabilities**

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

**D. THE STAKEHOLDERS**

**(i) Secured Creditors**

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

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

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

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

#### *Cash Management System*

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

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

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

#### *PPSA Registrations*

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

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

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

##### *Convertible Promissory Notes*

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

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

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

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

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

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

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

- 10 -

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

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

**(iii) Suppliers**

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

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



**(iv) Employees**

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

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

**(v) Litigation Claimants**

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

**(vi) Landlord and Lease Obligations**

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

- 12 -

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

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

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

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

**(vii) Government and Tax Obligations**

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

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

**E. STRATEGIC INITIATIVES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 16 -

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

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

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

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

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

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

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

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

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

**(ii) Access to Contribution Agreement**

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

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

**(iii) Loss of Customer Contracts**

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

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

**(iv) Go Forward Plan**

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

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

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

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

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

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

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



**(ii) Stay of Proceedings**

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

**(ii) DIP Financing**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(iv) Administration Charge**

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

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

**(v) Directors' Charge**

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

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

**(vi) Cash Flow Forecast**

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

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

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

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

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

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

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

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

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

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

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

**(ii) Increase Amount of Charges**

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

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

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

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

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

**(v) Approval of KERP**

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

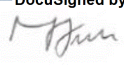
102. An employee can only be selected for the KERP retention bonus if it is determined by the Company with input from the board and approval from the Monitor and the DIP Lender that the employee is essential to ensure the stability of the business, to enhance the effectiveness of the SISP and to facilitate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

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

**H. CONCLUSION**

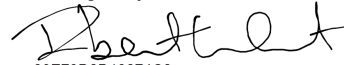
104. I am confident that granting the draft Initial Order sought by the Company is in the best interests of the Company and its stakeholders. The Company is currently in a very challenging financial position and without the relief requested, including the stay of proceedings and approval of the DIP Commitment,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

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

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A Commissioner for taking affidavits.



DocuSigned by:  
  
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ROB WHITE



Court File No.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC

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

Proceedings commenced at Toronto, Ontario

**AFFIDAVIT OF ROB WHITE**

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


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Tel: 416-863-4456  
[mark.freake@dentons.com](mailto:mark.freake@dentons.com)

*Lawyers for the Applicant*

THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL AIELLO SWORN  
BEFORE ME THIS 27th DAY OF MARCH, 2023.

DocuSigned by:  
  
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A Commissioner for Taking Affidavits, etc.

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

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

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC.

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

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

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

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

## **I. RELIEF SOUGHT**

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

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

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

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

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

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

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

**A. Initial Order**

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

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

- 4 -

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

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

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

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

### **III. THE ARIO**

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

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

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

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

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

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

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

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

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

**B. Increasing the Administration Charge**

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

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

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



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

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

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

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

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

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

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

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

#### **IV. CONCLUSION**

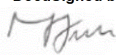
30. Since the granting of the Initial Order, the Company has acted in good faith and with due diligence to, among other things, stabilize the Business, apprise its stakeholders of these CCAA proceedings, advance its restructuring efforts, including the development of the SISP and the negotiation of the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

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

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

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


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

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A Commissioner for taking affidavits.



DocuSigned by:  
  
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ROB WHITE

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC.

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

Proceedings commenced at Toronto, Ontario

**AFFIDAVIT OF ROB WHITE**

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*Lawyers for the Applicant*

THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL AIELLO SWORN  
BEFORE ME THIS 27th DAY OF MARCH, 2023.

DocuSigned by:  
  
02452ECC61C54F6...

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A Commissioner for Taking Affidavits, etc.

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

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC.

**AFFIDAVIT OF ROB WHITE**  
**(sworn February 7, 2023)**

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

1. I am the Chief Financial Officer of Tehama Inc. (the "**Company**"). As such, I have personal knowledge of the matters deposed to in this affidavit, including the business and financial affairs of the Company. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true.

2. As CFO of the Company, my responsibilities include managing the Company's overall operations and resources, making strategic decisions and acting as the main point of contact between the Company's board of directors and the senior management team.

3. All references to monetary amounts in this affidavit are in Canadian dollars, unless otherwise noted.

4. Capitalized terms used but not otherwise defined herein have the meanings given to them in my affidavit sworn January 20, 2023 (the "**First White Affidavit**") in support of the Company's

application for an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “**CCAA**”), and my affidavit sworn January 26, 2023 (the “**Second White Affidavit**”) in support of the Company’s motion for an amended and restated initial order (“**ARIO**”). Copies of the First White Affidavit (without exhibits) and Second White Affidavit (without exhibits) are attached hereto as **Exhibits “A”** and **“B”**, respectively.

## **I. RELIEF SOUGHT**

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

- (a) an order (the “**SISP Approval Order**”) substantially in the form attached at Tab 3 of the Motion Record:
  - (i) approving a sale and investment solicitation process (“**SISP**”);
  - (ii) authorizing and empowering the Company to enter into the stalking horse purchase agreement dated February 7, 2023 (the “**Stalking Horse APA**”) between the Company and 14667913 Canada Inc. (“**Newco**” or the “**Stalking Horse Bidder**”), *nunc pro tunc*, and such minor amendments as may be acceptable to each of the parties thereto, with the approval of the Monitor; and
  - (iii) confirming that the Stalking Horse APA represents the “Stalking Horse Bid” as defined in, and for the purposes of, the SISP; and
- (b) such further and other relief as counsel may request and this Court deems just.

## II. BACKGROUND OF THESE CCAA PROCEEDINGS

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

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

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

### A. Initial Order

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

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



- 4 -

- (d) granting the Directors' Charge in favour of the Company's directors and officers in the amount of \$225,000; and
- (e) granting the Stay Period up to and including January 30, 2023.

10. Copies of the Initial Order and Endorsement of Justice Kimmel, each dated January 20, 2023, are attached hereto as Exhibits "C" and "D", respectively.

**B. ARIO**

11. On January 30, 2023, the Company sought and obtained the ARIO, which, among other things:

- (a) extended the Stay of Proceedings to and including March 31, 2023;
- (b) increased the Administration Charge from \$200,000 to \$300,000; and
- (c) increased the DIP Lender's Charge from \$300,000 to \$500,000.

12. Copies of the ARIO and Endorsement of Justice Kimmel, each dated January 30, 2023, are attached hereto as Exhibits "E" and "F", respectively.

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

- (a) stabilize and continue the Company's business and ordinary course operations;
- (b) communicate with key stakeholders regarding the CCAA proceedings and the granting of the ARIO;

- 5 -

- (c) assist the Monitor in preparing notices to creditors and other stakeholders as required under the ARIIO;
- (d) submit advance requests to the DIP Lender to borrow under the DIP Facility in accordance with the DIP Commitment;
- (e) conserve costs, including through certain employee terminations;
- (f) disclaim certain agreements, with the Monitor's approval, including the sublease for its office premises in Ottawa;
- (g) together with the Monitor, develop the SISP;
- (h) negotiate the Stalking Horse APA; and
- (i) prepare the materials in support of this motion for an order approving the SISP and Stalking Horse APA.

14. The Company now seeks additional relief intended to advance the purposes of these CCAA proceedings and facilitate the Company's restructuring efforts, most notably the implementation of the SISP.

### **III. THE SISP**

15. The SISP was developed in consultation with the Monitor and sets out the terms and procedures for a fair and efficient sale process so as to: (a) obtain the highest and best offer for the Company's business operations and activities (the "**Business**"), including all of its assets, rights, undertakings and properties (collectively, the "**Property**"); and (b) ensure certainty for the growth

and the long-term continuation of the Business, all in the best interests of the Company's stakeholders, including its employees, creditors, suppliers and other contracting parties.

16. A copy of the proposed SISP is attached hereto as **Exhibit "G"**. Capitalized terms used but not otherwise defined in this section of my affidavit have the meanings given to them under the SISP.

17. The SISP describes, among other things: (a) the Property available for sale and the opportunity for an investment in the Business; (b) the manner in which prospective bidders may gain access to due diligence materials concerning the Property and the Business; (c) the manner in which bidders and bids become Qualified Bidders, Qualified Bids, and Auction Bidders, as applicable; (d) the evaluation of bids received; (e) the guidelines for the ultimate selection of the Successful Bid and/or the Back-Up Bid; and (f) the process for obtaining such approvals (including the approval of the CCAA Court) as may be necessary or appropriate in respect of a Successful Bid.

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

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

<b>Step</b>	<b>Date</b>	<b>Details</b>
<b>Auction Date</b>	March 20, 2023	Date of the Auction (if any) (subject to 1 week extension in the event Bid Deadline is extended)
<b>Approval Motion Date</b>	No later than seven (7) calendar days following either the conclusion of the Auction, or the date on which a determination is made by the Company, with the consent of the Monitor, not to proceed with an Auction in accordance with paragraph 22 of the SISP	Hearing of the Approval Motion
<b>Outside Date</b>	March 31, 2023, or such later date as may be agreed to by the Company and the Successful Bidder, with the consent of the Monitor	Deadline for completion of the transaction represented by the Successful Bid

19. The SISP was developed in consultation with the Monitor, taking into account the financial circumstances of the Company, the amount of financing available under the DIP Facility, and the fact that the principals of the Stalking Horse Bidder are also principals of the Company. The SISP will be administered by the Monitor in consultation with the Independent Director (as defined below). In addition, the Monitor will have certain consent rights in connection with material decisions related to the SISP (for example, extending timelines, dispensing with Bid requirements, and terminating the SISP).

20. I believe that the SISP will provide a flexible, efficient, fair and equitable process for canvassing the market for potential buyers of the Property or investors in the Business and maximizing recovery for the Company's stakeholders. The Company has been working closely with the Monitor to develop a list of potential bidders, which builds off of the Company's prior

efforts, beginning in 2021 and running through to late-2022, to seek investment in the Business. During that period, the Company spoke with over five dozen firms regarding potential investment, including traditional venture capital firms, corporate venture capital firms and strategic investors.

21. As I noted at paragraph 47 of the First White Affidavit, the Company's discussions and negotiations with one such investor reached an advanced stage between July 2022 and October 2022, but unfortunately did not materialize into a final agreement.

22. One of the primary challenges the Company faced in its pre-CCAA efforts to seek investment is its deep capital structure, notably its high levels of debt. In my view, the SISP provides an opportunity for interested parties, particularly strategic buyers, to make an offer structured to address such concerns and build on the core value of the Business.

23. Accordingly, I believe that the SISP's approval and implementation is in the best interests of the Company and its stakeholders.

24. Further, the Monitor has advised that it is supportive of the proposed SISP and believes that the SISP is the best option available to the Company at this time.

#### **IV. THE STALKING HORSE APA**

25. To enhance the efficacy of the SISP and establish an appropriate, valuable and competitive floor for bids submitted in accordance therewith, on February 7, 2023, the Company entered into the Stalking Horse APA with the Stalking Horse Bidder, a copy of which is attached hereto as **Exhibit "H"**. Capitalized terms used but not otherwise defined in this section of my affidavit have the meanings given to them in the Stalking Horse APA.

26. The Stalking Horse APA will provide comfort in the market place that there is a sale agreement in place and the Business will continue following the completion of the SISP, because a transaction will close for certain. I believe the existence of the Stalking Horse APA is critical to the SISP process and the stability of the Business.

27. As noted in the First White Affidavit, a group of investors in the Company, including myself, incorporated Newco for the purposes of completing an assignment of debt and security between Newco and the Canadian Imperial Bank of Commerce (“**CIBC**”). CIBC was the sole secured creditor of the Company.

28. Newco is the DIP Lender and now the proposed Stalking Horse Bidder. In order to: (a) maintain Newco’s independence in relation to the SISP, as the proposed Stalking Horse Bidder; and (b) to maintain the integrity and fairness in relation to the implementation of the SISP, the Company has designated an independent director, Michael Aiello (the “**Independent Director**”), to assist, guide, evaluate and consult with the Monitor regarding the SISP on behalf of the Company. Mr. Aiello is not affiliated with Newco. Mr. Aiello has been fully briefed in relation to these CCAA proceedings, the proposed Stalking Horse APA and SISP, and I understand that Mr. Aiello is fully supportive of the Stalking Horse APA and SISP on behalf of Tehama.

29. The purchase price for the Purchased Assets is based on a credit bid of the amount of the secured debt owing by the Company which was acquired by Newco from CIBC. The credit bid amount is \$2,812,833.33. No break fee or other fees are payable pursuant to the Stalking Horse APA.

30. The other key terms and provisions of the Stalking Horse APA are summarized as follows:

TERM	SUMMARY	SECTION REFERENCE
<b>Parties</b>	<ul style="list-style-type: none"> <li>• The Company, as vendor.</li> <li>• The Stalking Horse Bidder, as purchaser.</li> </ul>	Recitals
<b>Purchased Assets</b>	<p>The Company's right, title, benefit and interest in the following assets:</p> <ul style="list-style-type: none"> <li>• all equipment and machinery (including computer hardware, software and telecommunications equipment), chattels, improvements, furniture, furnishings, peripheral equipment, supplies and accessories, and other tangible property owned or held by the Company and related to the Business;</li> <li>• all inventory and supplies of any nature or kind, including inventory manufactured by the Company or purchased from third party vendors;</li> <li>• all accounts receivable relating to the Business or otherwise;</li> <li>• all cash on hand, cash equivalents, bank deposits, cash floats and petty cash of the Company;</li> <li>• all Contracts, and to the extent not otherwise included in Section 2.1 of the Stalking Horse APA, the Assigned Contracts;</li> <li>• all Intellectual Property owned by the Company that is used in connection with the Purchased Assets;</li> <li>• the goodwill of the Business, together with the exclusive right of the Stalking Horse Bidder to represent itself as carrying on the Business in continuation of and in succession to the Company, including all choses in action where the Company is the plaintiff or moving party and other intangibles relating to the Business that do not form part of the Intellectual Property;</li> <li>• all authorizations owned, held or used by the Company in connection with the Business to the extent they are transferable;</li> <li>• all rights of the Company to tax refunds, credits, rebates or similar benefits relating to the Purchased Assets for the period prior to the Closing Date;</li> <li>• all funds or deposits held by suppliers, customers or any other Person in trust for or on behalf of the Company (if any) including any pre-paid expenses;</li> </ul>	Section 2.01

TERM	SUMMARY	SECTION REFERENCE
	<ul style="list-style-type: none"> <li>• any Claim of the Company to reimbursement under any insurance policy applicable to the Company for the period prior to the Closing Date;</li> <li>• the issued and outstanding shares of Tehama USA, Inc.; and</li> <li>• the Books and Records.</li> </ul>	
<b>Excluded Assets</b>	<p>The Company will retain its right, title, benefit and interest in and to the following assets:</p> <ul style="list-style-type: none"> <li>• the Excluded Contracts;</li> <li>• shares and other interests or capital in the Company;</li> <li>• the tax records and insurance policies of the Company, save and except for those tax records that are required with respect to any Purchased Assets;</li> <li>• Books and Records not pertaining primarily to the Purchased Assets; and</li> <li>• any other assets listed in Schedule E to the Stalking Horse APA.</li> </ul>	Section 2.02
<b>Purchase Price</b>	<ul style="list-style-type: none"> <li>• The amount of \$2,812,833.33, plus the amount of the Assumed Liabilities.</li> </ul>	Section 2.03
<b>Payment of Purchase Price</b>	<p>The Purchase Price will be satisfied by the Stalking Horse Bidder as follows:</p> <ul style="list-style-type: none"> <li>• payment of the amount of \$2,812,833.33 shall happen by the credit bid of the Secured Indebtedness (as of the Closing Time including any accrued and unpaid interest, expenses, fees and other amounts), which shall cause the release thereof at Closing in favour of the Company; and</li> <li>• by the Purchaser assuming the Assumed Liabilities.</li> </ul>	Section 2.09
<b>Closing Date</b>	<ul style="list-style-type: none"> <li>• Five (5) Business Days following the date of the Approval and Vesting Order, or such other date as may be agreed in writing between the parties hereto, but not later than March 31, 2023.</li> </ul>	Section 1.01
<b>Transfer Taxes</b>	<ul style="list-style-type: none"> <li>• Transfer Taxes are payable by the Stalking Horse Bidder.</li> </ul>	Section 2.06
<b>Assumed Liabilities</b>	<p>The Stalking Horse Bidder will assume:</p> <ul style="list-style-type: none"> <li>• all Liabilities relating to Employees as set out in section 5.03 of the Stalking Horse APA;</li> <li>• all Liabilities arising from or in connection with the Assigned Contracts, including any Cure Costs; and</li> </ul>	Section 2.07



TERM	SUMMARY	SECTION REFERENCE
	<ul style="list-style-type: none"> <li>all Liabilities arising from or in connection with any tax, levy, penalty, interest or costs for which the Stalking Horse Bidder is responsible pursuant section 2.06 of the Stalking Horse APA and any Permitted Encumbrances.</li> </ul>	
<b>Representations and Warranties of the Company (Selected)</b>	<ul style="list-style-type: none"> <li>Subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated in the Stalking Horse APA, the Company has the power, authority and right to enter into and deliver the Stalking Horse APA and to carry out its obligations thereunder.</li> <li>Subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated the Stalking Horse APA, the Stalking Horse APA constitutes a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms.</li> </ul>	Section 4.01
<b>Representations and Warranties of the Stalking Horse Bidder (Selected)</b>	<ul style="list-style-type: none"> <li>No authorizations, consents or approvals of, or filing with or notice to, any Governmental Authority is required in connection with the execution, delivery or performance of the Stalking Horse APA.</li> <li>Except for the Approval and Vesting Order, no consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Stalking Horse Bidder of the Stalking Horse APA.</li> </ul>	Section 4.02
<b>“As is, Where is”</b>	<ul style="list-style-type: none"> <li>The Purchased Assets are being sold on an “as is, where is” basis. Apart from what is set out in Section 4.01 of the Stalking Horse APA, the Company makes no representation, warranty or condition regarding the Purchased Assets.</li> <li>The Stalking Horse Bidder has conducted its own due diligence prior to executing the Stalking Horse APA.</li> </ul>	Section 4.03
<b>Covenants of the Company (Selected)</b>	<ul style="list-style-type: none"> <li>The Company shall file with the Court, as soon as practicable after its execution and delivery of Stalking Horse APA, a motion seeking the Court’s issuance of the Approval and Vesting Order.</li> </ul>	Section 5.01
<b>Covenants of the Stalking Horse Bidder (Selected)</b>	<ul style="list-style-type: none"> <li>The Stalking Horse Bidder will provide the Company with all information within its possession or control that the Company may reasonably request to assist the Company in obtaining the Approval and Vesting Order.</li> </ul>	Section 5.02

TERM	SUMMARY	SECTION REFERENCE
<b>Conditions for the Benefit of the Stalking Horse Bidder (Selected)</b>	<ul style="list-style-type: none"> <li>The Court shall have issued and entered the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated.</li> </ul>	Section 6.01
<b>Conditions for the Benefit of the Company (Selected)</b>	<ul style="list-style-type: none"> <li>The Court shall have issued and entered the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated.</li> </ul>	Section 6.02
<b>Governing Law</b>	<ul style="list-style-type: none"> <li>Ontario.</li> </ul>	Section 9.12

31. At this time, approval of the Stalking Horse APA is being sought solely for the purposes of approving it as the Stalking Horse Bid in the SISP. If the proposed SISP Approval Order is granted and the Stalking Horse APA is approved for this narrow purpose, it will be subject to higher and otherwise superior bids received by the Company in the SISP. To the extent the Stalking Horse Bid is the Successful Bid in the SISP, the Company will seek approval of the transaction contemplated by the Stalking Horse APA at an Approval and Vesting Order Motion.

32. Given the relationship between Newco, as Stalking Horse Bidder, and the Company, as vendor, I understand the Monitor, in its second report to the Court (the “**Second Report**”), will provide further commentary and analysis regarding the fairness and reasonableness of the SISP, and terms and conditions associated with the Stalking Horse Bid.

33. I understand that, in the Second Report, the Monitor will support the approval of the Stalking Horse APA.

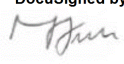
**IV. CONCLUSION**

34. Since the granting of the ARIО, the Company has acted in good faith and with due diligence to, among other things, advance its restructuring efforts, including the development of the SISP and negotiation of the Stalking Horse APA. In that time, the Company has maintained its ordinary course operations. With the benefit the SISP Approval Order, and with the assistance of the Monitor, the Independent Director, the Company will be able to continue its ordinary course operations and pursue its restructuring objectives for the benefit of its stakeholders.

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

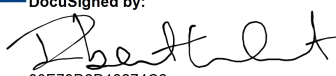
36. I swear this affidavit in support of the Company’s motion for the SISP Approval Order, and for no other or improper purpose.

**SWORN** by Rob White of the City of Ottawa in the Province of Ontario, before me at the City of Toronto in the Province of Ontario on February 7, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  
  
02452ECC61C54E6

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



DocuSigned by:  
  
80E79D2D13274C2...

\_\_\_\_\_  
ROB WHITE

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC.

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

Proceedings commenced at Toronto, Ontario

**AFFIDAVIT OF ROB WHITE**

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

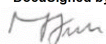
**Robert Kennedy** (LSO # 474070)  
Tel: 416-367-6756  
Fax: 416-863-4592  
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**Chase Irwin** (LSO # 60743F)  
Tel: 1-613-783-9642  
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**Mark A. Freake** (LSO # 63656H)  
Tel: 416-863-4456  
[mark.freake@dentons.com](mailto:mark.freake@dentons.com)

*Lawyers for the Applicant*

THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL AIELLO SWORN  
BEFORE ME THIS 27th DAY OF MARCH, 2023.

DocuSigned by:  
  
02452ECC61C54F6...

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A Commissioner for Taking Affidavits, etc.



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) FRIDAY, THE 20<sup>th</sup>  
JUSTICE KIMMEL )  
DAY OF JANUARY, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC. (the "**Applicant**")

**INITIAL ORDER**

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

**ON READING** the affidavit of Rob White sworn January 20, 2023 and the Exhibits thereto (the "**White Affidavit**"), and the Pre-Filing Report of Deloitte Restructuring Inc. ("**Deloitte**") as the proposed monitor dated January 20, 2023, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for Deloitte, and such other counsel that were present, no one appearing for any other party although duly served as appears from the affidavit of service of Amanda Campbell sworn January 20, 2023 and on reading the consent of Deloitte to act as the monitor (in such capacity, the "**Monitor**"),

## SERVICE

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

## APPLICATION

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

## POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place, as described in the White Affidavit, or replace it with another substantially similar central cash management system (the “**Cash Management System**”), and that any present or future bank providing the Cash Management System shall: (i) not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System; (ii) be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the

Cash Management System; and (iii) be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

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

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

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant on or following the date of this Order.



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

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in the amounts set out in the applicable lease. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

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

## **RESTRUCTURING**

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

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business.

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

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

### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

13. **THIS COURT ORDERS** that until and including January 30, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**", and collectively, "**Proceedings**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH RIGHTS**

15. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication, cloud and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business of the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with the normal payment practices of such Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

17. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

18. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by Subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

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

19. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as a director or officer of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

20. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$225,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 37 and 39 herein.

21. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (ii) the Applicant directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 19 of this Order.

## APPOINTMENT OF MONITOR

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

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

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender (as defined herein) and its counsel, from time to time, of financial and other information as agreed to between the Applicant and the DIP Lender, which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

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

26. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant, including, without limitation, the DIP Lender, with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the

Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

27. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees and representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor's appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

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

29. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37 and 39 hereof.

## **DIP FINANCING**

31. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from 14667913 Canada Inc. (the "**DIP Lender**") in



order to finance the Applicant's working capital requirements, the cost of these proceedings and other general corporate purposes and capital expenditures, provided that the principal borrowings under such credit facility shall not exceed \$300,000, plus accrued and unpaid interest, fees and reimbursable expenses, unless permitted by further Order of this Court.

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

33. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 37 and 39 hereof.

35. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon seven (7) days' notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant

- or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

36. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), with respect to any advances made under the Definitive Documents.

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

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

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

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

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

38. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the

Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

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

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

41. **THIS COURT ORDERS** that the Charges, the Commitment Letter and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (o) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which such Applicant is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

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

### **SERVICE AND NOTICE**

44. **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish in the *Globe and Mail* a notice containing the information prescribed under the CCAA; and (ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly

available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

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

46. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicant’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

47. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.


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

49. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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

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

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

 Digitally signed by  
Jessica Kimmel  
Date: 2023.01.20  
14:22:01 -05'00'

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC

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

Proceedings commenced at Toronto, Ontario

**INITIAL ORDER**

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


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

THIS IS EXHIBIT "E" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL AIELLO SWORN  
BEFORE ME THIS 27th DAY OF MARCH, 2023.

DocuSigned by:  
  
02452ECC61C54F6...

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A Commissioner for Taking Affidavits, etc.





## SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00693280-00CL DATE: JANUARY 20, 2023

1  
NO. ON LIST: 9:15 AM

TITLE OF PROCEEDING:

**AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF TEHAMA INC.**

BEFORE JUSTICE: **KIMMEL****PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
JOSEPH LATHAM & ERIK AXELL	Counsel for Proposed Monitor – Deloitte	<a href="mailto:jlatham@goodmans.ca">jlatham@goodmans.ca</a> / <a href="mailto:eaxell@goodmans.ca">eaxell@goodmans.ca</a>
PHIL REYNOLDS	Proposed Monitor - Deloitte	
ROB WHITE	CFO for Tehama Inc.	
ROBERT KENNEDY & MARK FRAKE	Counsel for Tehama Inc.	<a href="mailto:robert.kennedy@dentons.com">robert.kennedy@dentons.com</a> / <a href="mailto:mark.freake@dentons.com">mark.freake@dentons.com</a>

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info


**ENDORSEMENT OF JUSTICE KIMMEL:**

1. This matter came on before me for an urgent hearing today.

2. Tehama Inc. (the “Company”) has made an application to the court for protection from its creditors pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “CCAA”).
3. Today, the Company is seeking an order (the “Initial Order”) for the following relief:
  - a. declaring that the Company is a party to which the CCAA applies;
  - b. appointing Deloitte Restructuring Inc., as monitor of the Company in these proceedings (the “Monitor”), subject to the permissions of the Court as required under section 11.7(2) of the CCAA;
  - c. granting an administration charge in the amount of \$200,000 (the “Administration Charge”), in favour of counsel to the Company, the Monitor and its counsel, and counsel to the DIP Lender (as defined in the Initial Order);
  - d. approving the DIP Facility (as defined in the Initial Order), authorizing borrowings under the DIP Commitment in an amount up to \$300,000, and granting a charge in favour of the DIP Lender (the “DIP Lender’s Charge”);
  - e. granting a directors’ charge in favour of the Company’s directors and officers in the amount of \$225,000 (the “Directors’ Charge”, and together with the Administration Charge and DIP Lender’s Charge, the “Priority Charges”); and
  - f. granting an initial stay of proceedings to January 30, 2023 (the “Stay Period”).
4. A further hearing at which the Company intends to seek additional relief and protection under the CCAA (the “Comeback Hearing”) has been scheduled for Monday January 30, 2023 at 12:30 p.m.
5. For reasons to be provided in an endorsement to follow, the Initial Order in the revised form signed by me today is granted.

A handwritten signature in black ink, appearing to read "Kinmel J.", is located below the text of the fifth list item.

THIS IS EXHIBIT "F" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL AIELLO SWORN  
BEFORE ME THIS 27th DAY OF MARCH, 2023.

DocuSigned by:  
  
02452ECC61C54F6...

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A Commissioner for Taking Affidavits, etc.



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC.

**AMENDED AND RESTATED INITIAL ORDER**

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

**ON READING** the affidavit of Rob White sworn January 20, 2023 and the Exhibits thereto (the "**First White Affidavit**"), the affidavit of Rob White sworn January 26, 2023, and the Pre-Filing Report of Deloitte Restructuring Inc. ("**Deloitte**") as the proposed monitor dated January 20, 2023 (the "**Monitor**"), and the First Report of the Monitor dated January 26, 2023 (the "**First Report**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for Deloitte, and such other counsel that were present, no one appearing for any other party although duly served as appears from the affidavit of service of Amanda Campbell sworn January 26, 2023,

## SERVICE

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

## APPLICATION

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

## PLAN OF ARRANGEMENT

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

## POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place, as described in the First White Affidavit, or replace it with another substantially similar central cash management system (the “**Cash Management System**”), and that any present or future bank providing the Cash Management System shall: (i) not be under any obligation whatsoever to inquire into the propriety, validity or

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

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

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

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and

- (b) payment for goods or services actually supplied to the Applicant on or following the date of this Order.

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

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in the amounts set out in the

applicable lease. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

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

### **RESTRUCTURING**

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

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any



applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, the Applicant shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

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

#### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including March 31, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**", and collectively, "**Proceedings**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the

foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication, cloud and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business of the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with the normal payment practices of such Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by Subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

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

20. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as a director or officer of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$225,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (ii) the Applicant directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

#### **APPOINTMENT OF MONITOR**

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

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

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender (as defined herein) and its counsel, from time to time, of financial and other information as agreed to between the Applicant and the DIP Lender, which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant, including, without limitation, the DIP Lender, with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees and representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor’s appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

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

30. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$300,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

### **DIP FINANCING**

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

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

34. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 38 and 40 hereof.
36. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:
- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
  - (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon seven (7) days’ notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender’s Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
  - (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.
37. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), with respect to any advances made under the Definitive Documents.



## VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

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

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

39. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

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

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

42. **THIS COURT ORDERS** that the Charges, the Commitment Letter and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (o) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such

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

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which such Applicant is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

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

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

## **SERVICE AND NOTICE**

45. **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish in the *Globe and Mail* a notice containing the information prescribed under the CCAA; and (ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

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

47. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery, facsimile or other electronic

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

## GENERAL

48. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

50. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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

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

 Digitally signed by  
Jessica Kimmel  
Date: 2023.01.30  
18:44:54 -05'00'

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC.

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

Proceedings commenced at Toronto, Ontario

**AMENDED AND RESTATED INITIAL ORDER**

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

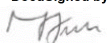
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[mark.freake@dentons.com](mailto:mark.freake@dentons.com)

*Lawyers for the Applicant*

THIS IS EXHIBIT "G" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL AIELLO SWORN  
BEFORE ME THIS 27th DAY OF MARCH, 2023.

DocuSigned by:  
  
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A Commissioner for Taking Affidavits, etc.



## SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00693280-00CL HEARING DATE: 30 JANUARY 2023

NO. ON LIST: 6

TITLE OF PROCEEDING: TEHAMA INC.  
BEFORE JUSTICE: MADAM JUSTICE KIMMEL

**PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
ROBERT KENNEDY ( <i>counsel</i> )	Tehama Inc.	<a href="mailto:Robert.kennedy@dentons.com">Robert.kennedy@dentons.com</a>
MARK FREAKE ( <i>counsel</i> )		<a href="mailto:Mark.freake@dentons.com">Mark.freake@dentons.com</a>

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
JOE LATHAM ( <i>counsel</i> )	Deloitte Restructuring Inc. (Monitor)	<a href="mailto:jlatham@goodmans.ca">jlatham@goodmans.ca</a>
ERIK AXELL ( <i>counsel</i> )		<a href="mailto:eaxwell@goodmans.ca">eaxwell@goodmans.ca</a>

**ENDORSEMENT OF JUSTICE KIMMEL:**

1. I granted an initial order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "CCAA") in this matter on January 20, 2023 (the "Initial Order") that was limited to what the applicant Company (Tehama Inc.) reasonably required during the initial 10-day stay period. It provided for a come-back hearing on January 30, 2023. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Initial Order and/or the First Report of the Monitor dated January 26, 2023.
2. In advance of the expiry of the Initial Stay Period, the Company is requesting certain extended and additional relief to advance its restructuring efforts. Accordingly, the Company seeks by this motion an amended and restated Initial Order ("ARIO"), among other things:
  - a. extending the Initial Stay Period to and including March 31, 2023 (as extended, the "Stay Period");
  - b. increasing the Administration Charge to \$300,000; and
  - c. increasing the DIP Lender's Charge to \$500,000.
3. The Monitor arranged for notices to be sent on January 26, 2023 to all known creditors of the Applicant with claims exceeding \$1,000 and arranged for the publication of a notice of the CCAA Proceedings in the *Globe and Mail* (National Edition) in accordance with the Initial Order and statutory requirements. Advertisements will be published once per week for two weeks in accordance with the Initial Order. Creditors or other stakeholders may contact the Company or the Monitor and ask to be placed on the service list. In the meantime, a service list was developed by the Company and the Monitor and all persons on the service list were served with the Initial Order, the court's endorsement, the material filed in support of that order as well as the material for this come-back motion. No one appeared or indicated to the Monitor or the Company that they had any objections to or concerns about the relief sought.
4. Since the Initial Order, among other things, the Company has been working with the Monitor to develop a sale and investment solicitation process ("SISP"), which includes a proposed stalking horse purchase agreement (the "Stalking Horse APA"). It is anticipated that the interested parties will be before the court on February 6, 2023 at which time the Company will seek the court's approval of these further restructuring steps.
5. The contemplated outside date for a transaction under the SISP is March 31, 2023. That is the reason for the request now for an extension of the Stay Period until then. The Stay of Proceedings is currently set to expire on January 30, 2023. Subsection 11.02(2) of the CCAA expressly authorizes the Court to grant an extension of the Stay of Proceedings for "any period the court considers necessary."
6. The extension of the Stay of Proceedings will preserve the *status quo* and afford the Company the breathing room and stability that it needs to advance its restructuring efforts, including the finalization and implementation of the SISP. These are good reasons to grant an extension of the Stay Period. See *Target Canada Co*, 2015 ONSC 303 at para. 8; and *Re Timminco Limited*, 2012 ONSC 2515 at para. 15.
7. Further, the Company has demonstrated, based on the materials filed by the Company and the Monitor, that it has acted, and is acting, in good faith and with due diligence in the pursuit of its restructuring efforts. See *Laurentian University of Sudbury*, 2021 ONSC 1098 at para. 56.
8. I am satisfied that circumstances exist that make the order requested for an extension of the Stay Period to March 31, 2023 appropriate and that it is in the best interests of its stakeholders to grant this extension.
9. The Company has prepared a Cash Flow Forecast for the extended Stay Period (the "Cash Flow Forecast") that the Monitor has reviewed. It demonstrates that the Company will have sufficient cash to support its ordinary course business operations and the costs of these CCAA proceedings throughout the proposed extension to the Stay Period, provided the ARIO is granted. The Monitor has appropriately identified that this Cash Flow Forecast is dependent upon certain anticipated receipts from the Federal Government (SRED Credits and HST rebates) expected during the extended Stay Period which, if not received, could lead to a need for additional funding. At this time, management has indicated to the




Monitor that they are confident that these funds will be received and that they will continue to work hard to obtain these anticipated funds. The DIP Lender and other significant stakeholders are aware that these funds are not guaranteed to be received within the Stay Period. The court appreciates the Monitor highlighting this potential uncertainty in the Cash Flow Forecast and is content for it to be addressed if and when it materialized since no concern has been raised about it at this time.

10. The quantum of the requested increase in the Administration Charge (from \$200,000 to \$300,000) is reasonably necessary at this time to secure the fees and disbursements of the professionals who continue to contribute to these CCAA proceedings and assist the Company with its restructuring efforts and in the continuation of its business in the ordinary course. The court has the discretion to increase the Administration Charge under s. 11.52 of the CCAA. The increase is justified on the same grounds as justified the granting of the Administration Charge in the Initial Order (detailed in my earlier endorsement), and based on the fee projections over the extended Stay Period for the professionals who continue to assist the Company in the restructuring process.
11. Having regard to the Cash Flow Forecast and the Company's funding requirements during the extended Stay Period, the Company proposes to increase the amount of the DIP Lender's Charge to \$500,000, which is commensurate with the maximum borrowings available under the DIP Facility and the Company's needs during the extended Stay Period. The court has the discretion under s.11.2 of the CCA to approve the proposed increase in the DIP Lender's Charge.
12. Absent the proposed increase to the DIP Lender's Charge, the Company anticipates that it will be forced to cease its ongoing operations. I am satisfied that the the DIP Lender's Charge should be increased to correspond to what has been identified in the Cash Flow Forecast to be reasonably necessary for the Company's continued operations in the ordinary course of business during the Initial Stay Period. The requirements under s. 11.2(1) and the considerations in s. 11.2(4) have been met, on the same grounds as they were found to be at the time the Initial Order was granted, supplemented by the Cash Flow Forecast and continued support of the Monitor and the DIP Lender (and only secured creditor).
13. The ARIO also includes some provisions from the Commercial List model order relating to restructuring steps that were not included in the Initial Order but that will now be available to the Company and the Monitor to consider as part of its ongoing restructuring efforts during the extended Stay Period. These include the ability to file a plan of compromise and arrangement and takes steps in furtherance thereof and to pursue restructuring efforts such as downsizing its work force and refinancing).
14. I am satisfied that the amendments to the Initial Order reflected in the proposed ARIO are appropriate in the circumstances. The Amended and Restated Initial Order shall issue in the form signed by me and effective today.



KIMMEL J.  
January 30, 2023

THIS IS EXHIBIT "H" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL AIELLO SWORN  
BEFORE ME THIS 27th DAY OF MARCH, 2023.

DocuSigned by:  
  
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A Commissioner for Taking Affidavits, etc.



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

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

THE HONOURABLE ) THURSDAY, THE 9<sup>th</sup>  
 )  
JUSTICE KIMMEL ) DAY OF FEBRUARY, 2023  
 )

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC.

**SISP APPROVAL ORDER**

**THIS MOTION**, made by the Tehama Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things, approving a sale and investment solicitation process (the "**SISP**") and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario, by judicial video conference via Zoom.

**ON READING** the Notice of Motion of the Applicant, the affidavit of Rob White sworn February 7, 2023, and the Exhibits thereto, the Second Report of Deloitte Restructuring Inc., in its capacity as Monitor (the "**Monitor**") dated February 8, 2023, filed, and on hearing the submissions of counsel for the Applicant, the Monitor and no one else appearing although fully served as appears from the Affidavits of Service of Amanda Campbell sworn February 7 & 8, 2023, filed:

## SERVICE AND DEFINED TERMS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them under the SISP attached hereto as **Schedule “A”**.

## APPROVAL OF STALKING HORSE APA

3. **THIS COURT ORDERS** that the execution by the Applicant of the Stalking Horse Agreement dated as of February 7, 2023 (with such amendments as may be acceptable to each of the parties, with the approval of the Monitor) attached hereto as **Schedule “B”** (the “**Stalking Horse APA**”), is hereby approved.
4. **THIS COURT AUTHORIZES** the Applicant to use the Stalking Horse APA as the “stalking horse bid” in the SISP (the “**Stalking Horse Bid**”). For greater certainty, nothing herein approves the transaction contemplated in the Stalking Horse Bid, and the approval of any transaction contemplated by the SISP shall be determined on a subsequent motion to be made to this Court.
5. **THIS COURT ORDERS** that the Stalking Horse APA shall not be rendered invalid or unenforceable and the rights and remedies of the Staking Horse Bidder thereunder shall not otherwise be limited or impaired in any way by: (a) the Applicant’s CCAA proceedings and the declarations of insolvency made in connection therewith; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of security interests, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, contained in any existing loan

documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the execution, delivery or performance of the Stalking Horse APA shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party; and
- (b) the Staking Horse Bidder shall not have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Stalking Horse APA.

### **APPROVAL OF SISP**

6. **THIS COURT ORDERS** that the SISP (subject to such non-material amendments as may be agreed to by the Monitor, the Independent Director, and the Stalking Horse Bidder, including all schedules thereto) is hereby approved and the Monitor and the Applicant are hereby authorized and directed to take such steps as they deem necessary or advisable (subject to the terms of SISP) to carry out the SISP, subject to prior approval of this Court being obtained before completion of any transaction(s) under the SISP.


7. **THIS COURT ORDERS** that the Monitor, the Applicant and their respective affiliates, partners, directors, employees, advisors, agents and controlling persons, including the Independent Director, shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature of kind to any person in connection with or as a result of performing their duties under the SISP, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or wilful misconduct of the Monitor, the Applicant, or the Independent Director, as applicable, as determined by the Court.

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor and the Applicant are hereby authorized and permitted to disclose and transfer to each potential bidder (the “**Bidders**”) (including, without limitation, the Stalking Horse Bidder) and to their representatives, if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the records pertaining to the

Applicant's past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale of the assets contemplated by the Stalking Horse APA (a "Sale"). Each Bidder or representative 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 for the purpose of effecting a Sale, and if it does not complete a Sale, shall return all such information to the Monitor, or in the alternative destroy all such information and provide confirmation of its destruction if required by the Monitor. The Successful Bidder shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Bid, shall be entitled to use the personal information provided to it that is related to the Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Monitor or ensure that all other personal information to the Monitor or ensure that all other personal information is destroyed and provide confirmation of its destruction if required by the Monitor.

9. **THIS COURT ORDERS** that at any time during the SISP the Monitor, the Applicant, or the Stalking Horse Bidder may apply to the Court or directions in connection with the SISP.

10. **THIS COURT ORDERS** that this order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this order.



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Jessica Kimmel  
Date: 2023.02.09  
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**Schedule "A"**  
**Sale and Investment Solicitation Process**

## SALE AND INVESTMENT SOLICITATION PROCESS

### Introduction

- A. On January 20, 2023 (the “**Filing Date**”), Tehama Inc. (“**Tehama**” or the “**Company**”) obtained an initial order (as amended, supplemented or amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and the proceedings commenced thereby, the “**CCAA Proceedings**”) from the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”).
- B. Pursuant to the Initial Order, Deloitte Restructuring Inc. was appointed as monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”).
- C. On January 30, 2023, the CCAA Court granted the Amended and Restated Initial Order (the “**ARIO**”).
- D. Prior to the Filing Date, Tehama engaged in certain limited activities to solicit further equity and debt investments, in an attempt to assist in the further development of the Tehama business (the “**Preliminary Process**”).
- E. On February 9, 2023, the CCAA Court granted an Order (the “**SISP Approval Order**”), among other things, approving the sale and investment solicitation process (“**SISP**”) described herein and the Asset Purchase Agreement dated as of February 7, 2023 (the “**Stalking Horse APA**”) entered into by Tehama, as seller, and 14667913 Canada Inc. (the “**Stalking Horse Bidder**”), as buyer, pursuant to which the Stalking Horse Bidder has agreed to purchase substantially all of the assets of the Company (the “**Stalking Horse Transaction**”).
- F. The purpose of this SISP is to set out terms and procedures for a fair and efficient sale process so as to (i) obtain the highest and best offer for Tehama’s business operations and activities (the “**Business**”), including all of their assets, rights, undertakings and properties (collectively, the “**Property**”), and (ii) ensure certainty for the growth and the long-term continuation of the Business, the whole in the best interests of the Tehama’s stakeholders, including their employees, their creditors, their suppliers and contracting parties.
- G. Accordingly, this SISP describes, among other things: (a) the Property available for sale and the opportunity for an investment in the Business, (b) the manner in which prospective bidders may gain access to due diligence materials concerning the Property and the Business, (c) the manner in which bidders and bids may become Qualified Bidders, Qualified Bids, and Auction Bidders, as applicable, (d) the evaluation of bids received, (e) the guidelines for the ultimate selection of the Successful Bid and/or the Back-Up Bid, and (f) the process for obtaining such approvals (including the approval of the CCAA Court) as may be necessary or appropriate in respect of a Successful Bid.
- H. Capitalized terms used in this SISP and not otherwise defined have the meanings given to them in paragraph 1 below.



## Defined Terms

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

- (a) “**Approval Motion**” is defined in paragraph 26.
- (b) “**Approval Motion Date**” is defined in paragraph 2.
- (c) “**ARIO**” is defined in paragraph C.
- (d) “**Auction**” is defined in paragraph 23.
- (e) “**Auction Bidders**” is defined in paragraph 24.
- (f) “**Auction Date**” is defined in paragraph 2.
- (g) “**Back-Up Bid**” is defined in paragraph 25(i).
- (h) “**Back-Up Bidder**” is defined in paragraph 25(i).
- (i) “**Bid**” is defined in paragraph 17.
- (j) “**Bid Deadline**” is defined in paragraph 2.
- (k) “**Business**” is defined in paragraph F of the introduction.
- (l) “**Business Day**” means a day (other than Saturday or Sunday) on which banks are generally open for business in Montreal, Quebec and New York, New York.
- (m) “**CCAA**” is defined in paragraph A of the introduction.
- (n) “**CCAA Court**” is defined in paragraph A of the introduction.
- (o) “**CCAA Proceedings**” is defined in paragraph A of the introduction.
- (p) “**Closing**” means the completion of the transaction contemplated by the Successful Bid.
- (q) “**Data Room**” is defined in paragraph 10.
- (r) “**Deposit**” is defined in paragraph 17(c)(xiv).
- (s) “**Filing Date**” is defined in paragraph A of the introduction.
- (t) “**Independent Director**” means Michael Aeillo, designated as independent director on behalf of Tehama.
- (u) “**Initial Order**” is defined in paragraph A of the introduction.

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- (v) **“Monitor”** is defined in paragraph B of the introduction.
- (w) **“Monitor’s Website”** means [www.insolvencies.deloitte.ca/en-ca/Tehama](http://www.insolvencies.deloitte.ca/en-ca/Tehama)
- (x) **“NDA”** means a non-disclosure agreement in form and substance satisfactory to Tehama and the Monitor, which will inure to the benefit of any Successful Bidder at Closing.
- (y) **“Opening Bid”** is defined in paragraph 25(b).
- (z) **“Outside Date”** is defined in paragraph 2.
- (aa) **“Overbid”** is defined in paragraph 25(e).
- (bb) **“Participation Deadline”** is defined in paragraph 2.
- (cc) **“Participation Letter”** is defined in paragraph 7(a).
- (dd) **“Potential Bidder”** is defined in paragraph 4.
- (ee) **“Preliminary Process”** is defined in paragraph D of the introduction.
- (ff) **“Property”** is defined in paragraph F of the introduction.
- (gg) **“Qualified Bid”** is defined in paragraph 17.
- (hh) **“Qualified Bidder”** is defined in paragraph 8.
- (ii) **“SISP”** is defined in paragraph E of the introduction.
- (jj) **“SISP Approval Order”** is defined in paragraph E of the introduction.
- (kk) **“Solicitation Materials Distribution Date”** is defined in paragraph 2.
- (ll) **“Solicitation Notice”** is defined in paragraph 6.
- (mm) **“Stalking Horse APA”** is defined in paragraph E of the introduction.
- (nn) **“Stalking Horse Bid”** is defined in paragraph 18.
- (oo) **“Stalking Horse Bidder”** is defined in paragraph E of the introduction.
- (pp) **“Stalking Horse Transaction”** is defined in paragraph E of the introduction.
- (qq) **“Successful Bid”** is defined in paragraph 25(i).
- (rr) **“Successful Bidder”** is defined in paragraph 25(i).
- (ss) **“Superior Offer”** mean a credible and fully financed offer made by a Qualified Bidder which (i) provides for consideration in excess of the aggregate purchase

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price contemplated by the Stalking Horse Transaction, which shall include cash consideration not less than \$2,812,833.33 plus \$100,000, and (ii) the Monitor, in consultation with the Independent Director, considers to be better than the Stalking Horse Transaction.

### Key Dates

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

By no later than February 10, 2023 at 5:00 p.m. (prevailing Eastern Time) or such later date as may be agreed to by Tehama with the consent of the Monitor <b>(“Solicitation Materials Distribution Date”)</b>	Distribution of the Solicitation Notice, form of NDA and the Participation Letter to the Potential Bidders
March 2, 2023 at 5:00 p.m. (prevailing Eastern Time) <b>(“Participation Deadline”)</b>	Due date for delivery by Potential Bidders of a Participation Letter and an executed NDA
March 16, 2023 at 5:00 p.m. (prevailing Eastern Time) <b>(“Bid Deadline”)</b>	Due date for Bids and Deposits (subject to extension of up to 1 week if the Monitor believes same to be appropriate)
March 20, 2023 <b>(“Auction Date”)</b>	Date of the Auction (if any) (subject to being 1 week later if Bid Deadline is moved back 1 week)
No later than seven (7) calendar days following either the conclusion of the Auction, or the date on which a determination is made by the Monitor not to proceed with an Auction in accordance with paragraph 22 <b>(“Approval Motion Date”)</b>	Hearing of the Approval Motion
March 31, 2023, or such later date as may be agreed to by Tehama and the Successful Bidder, with the consent of the Monitor <b>(“Outside Date”)</b>	Deadline for completion of the transaction represented by the Successful Bid

### Supervision of the SISP

3. The Monitor shall conduct the SISP as outlined herein, with such input and advice from the Independent Director as the Monitor may consider appropriate from time to time, and Tehama shall conclude any sale or investment transactions resulting herefrom. In the event that there is disagreement, or if a clarification is required, as to the interpretation or

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application of this SISP or the responsibilities of the Monitor and Tehama, the CCAA Court will have jurisdiction to hear such matter and provide advice and directions, upon application of the Monitor, Tehama or any other party on not less than five (5) Business Days' notice.

### **Solicitation of Interest**

4. For all purposes of this SISP, any party identified as a potential bidder by any of the Monitor, the Independent Director or Tehama shall be considered a potential bidder (each, a "**Potential Bidder**").
5. As soon as reasonably practicable after the granting of the SISP Approval Order:
  - (a) the Monitor will post the SISP Approval Order and the SISP on the Monitor's Website; and
  - (b) the Monitor will cause a notice of the SISP (and such other relevant information which Tehama, in consultation with the Monitor, considers appropriate) to be published in The Globe and Mail (National Edition); and
6. By no later than the Solicitation Materials Distribution Date, the Monitor shall distribute to each Potential Bidder a solicitation notice describing the opportunity and inviting Potential Bidders to submit a bid pursuant to these SISP procedures (the "**Solicitation Notice**"), and containing the form of NDA.

### **Participation Requirements**

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

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9. Notwithstanding paragraphs 7 and 8, the Stalking Horse Bidder shall be deemed to be a Qualified Bidder for all purposes under, and at all times in connection with, this SISP.

### Access to Data Room

10. Contemporaneously with the determination that a Potential Bidder is a Qualified Bidder, the Monitor shall provide such Qualified Bidder with access to a secure online electronic data room (the “**Data Room**”) containing due diligence information regarding:
- (a) the Property and the Business; and
  - (b) the debt of, and equity interests in, Tehama.
11. The Monitor shall coordinate all reasonable requests from Qualified Bidders for additional information and due diligence access; provided Tehama may decline to provide (or elect to withdraw access to) due diligence information to any Qualified Bidder who, at such time and in the reasonable business judgment of the Monitor, after consultation with the Independent Director, has not established (or there is otherwise a reasonable basis to doubt), that such Qualified Bidder intends in good faith to, or has the capacity to, consummate a transaction.
12. The Monitor, in consultation with the Independent Director, reserves the right to withhold any diligence materials that the Monitor determines are sensitive or otherwise not appropriate for disclosure to a Qualified Bidder that the Monitor determines is a competitor or is otherwise an entity to which the disclosure of sensitive or competitive information, in the Monitor’s exercise of their reasonable business judgment (in consultation with the Independent Director), may risk unduly placing Tehama at a competitive disadvantage.
13. All due diligence and information requests must be directed to the Monitor at the email address specified in Schedule A hereto.
14. Tehama (including the Independent Director), the Monitor and their respective employees, officers, directors, agents, advisors and other representatives make no promise, representation, warranty, condition or guarantee of any kind, nature or description as to the information (a) contained in the Data Room, or (b) otherwise made available in connection with this SISP, except, in the case of Tehama only, to the extent expressly contemplated in any executed definitive sale or investment agreement with a Successful Bidder.
15. Without limiting the generality of any term or condition of any NDA between Tehama and any Potential Bidder or Qualified Bidder, unless otherwise agreed by Tehama and the Monitor or ordered by the CCAA Court, no Potential Bidder or Qualified Bidder (other than the Stalking Horse Bidder) shall be permitted to have any discussions with (a) any counterparty to any contract with any of Tehama, any current or former director, manager, shareholder, officer, member or employee of Tehama, other than in the normal course of business and wholly unrelated to Tehama, the potential transaction, the Confidential Information (as defined in the NDA), the SISP or the CCAA Proceedings, and (b) any other Potential Bidder or Qualified Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto. In the case of the Stalking Horse Bidder, it

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shall not be permitted to have any communications (verbal and in written form) with any other Potential Bidder or Qualified Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto, unless the Monitor and Tehama's counsel are parties to any and all such communications.

### Qualified Bids

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

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

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



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- (xiv) **Deposit:** Each Bid must be accompanied by a refundable deposit (the “**Deposit**”) in the form of a wire transfer to the account specified on Schedule B hereto (or such other form acceptable to the Monitor), payable to the order of the Monitor, on behalf of Tehama, in trust, in an amount equal to fifteen percent (15%) of the total consideration contemplated by the Bid, to be held and dealt with in accordance with the terms of this SISP;
- (xv) **Terms of Court Order(s):** Each Bid must describe the key terms and provisions to be included in any order of the CCAA Court approving the contemplated transaction, including, in the case of an asset sale, whether the transaction requires that all of the rights, title and interests of Tehama in and to the subject Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (except to the extent otherwise set forth in the definitive sale or investment agreement); and
- (xvi) **Other Information:** Each Bid must contain such other information as may be reasonably requested by Tehama or the Monitor in writing from time to time.
18. Notwithstanding anything herein to the contrary, the offer represented by the Stalking Horse APA (the “**Stalking Horse Bid**”) shall be deemed to be a Qualified Bid for all purposes under, and at all times in connection with, this SISP.
19. Notwithstanding anything herein to the contrary, the Monitor, in consultation with the Independent Director, will review and assess each Bid to determine whether such Bid is a Qualified Bid. In performing such review and assessment, the Monitor and the Independent Director shall evaluate the following as primary considerations: (a) the purchase price and net value (including assumed liabilities and other obligations to be performed by the bidder); (b) the firm, irrevocable commitment for financing of the transaction; (c) the closing conditions and other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction); and (d) the terms of transaction documents, including, if applicable, the proposed revisions to the Stalking Horse APA. In addition, they may consider the following non-exhaustive list of considerations: (i) the claims likely to be created by such Bid in relation to other Bids; (ii) the counterparties to the transaction; (iii) planned treatment of stakeholders; (iv) the assets included or excluded from the Bid; (v) any transition services required from Tehama post-closing and any related restructuring costs; (vi) the likelihood and timing of consummating the transaction; (vii) whether there is sufficient capital post-closing for the wind-down of Tehama (if contemplated); and (viii) proposed treatment of the employees.
20. The Monitor, in consultation with the Independent Director, may reject any Bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements pursuant to these SISP procedures; (iii) contrary to the best interest of Tehama; or (iv) not a Qualified Bid.

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

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

**Auction; Successful Bid**

22. In the event that no Participation Letters are received by the Participation Deadline, or that no Qualified Bid other than the Stalking Horse Bid is received by the Bid Deadline, then (a) there will be no auction, (b) the Stalking Horse Bid will be deemed to be the Successful Bid, and (c) Tehama shall seek approval of, and authority and direction for Tehama to consummate, the Stalking Horse APA and the transactions provided for therein at the Approval Motion.
23. If one or more Qualified Bids other than the Stalking Horse Bid are received, then the Monitor, in consultation with the Independent Director, shall conduct an auction to determine the highest and best Qualified Bid (the "**Auction**").
24. If the Auction is to take place, then as soon as practicable and no later than 10:00 am (Eastern Standard Time) (3) Business Days prior to the Auction, the Monitor shall provide the Stalking Horse Bidder and all Qualified Bidders having submitted a Qualified Bid (collectively, the "**Auction Bidders**") with a copy of the Opening Bid for the Auction together with a copy of the mark-up of the Stalking Horse APA.
25. The Auction shall commence on the Auction Date by videoconference and shall be conducted according to the following procedures:
- (a) **Participation:** The Monitor shall direct and preside over the Auction. Only Auction Bidders are eligible to participate in the Auction. Each Auction Bidder must have present or available the individual or individuals with the necessary decision-making authority to submit Overbids and to make such necessary and ancillary decisions as may be required during the Auction. Only the authorized representatives, including counsel and other advisors, of Tehama, the Monitor and each of the Auction Bidders shall be permitted to attend the Auction.
- (b) **Rounds.** Bidding at the Auction shall be conducted in rounds. The Qualified Bid that is the highest and best bid shall constitute the "**Opening Bid**" for the first round of bidding. The highest and best Overbid at the end of each round shall constitute the "**Opening Bid**" for the following round. The Monitor, in consultation with the Independent Director, shall determine what constitutes the Opening Bid for each round in accordance with the assessment criteria set out in paragraph 25(d) below. In each round, an Auction Bidder may submit no more than one Overbid. The Monitor may impose such time limits for the submission of Overbids as it deems reasonable.

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- (c) **Failure to Submit an Overbid.** If, at the end of any round of bidding, an Auction Bidder fails to submit an Overbid, then such Auction Bidder may not participate in the next or any subsequent round of bidding at the Auction. Any Auction Bidder that submits an Overbid during a round (including the Auction Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
- (d) **Bid Assessment Criteria.** The Monitor, in consultation with the Independent Director, shall determine which Qualified Bid constitutes the Opening Bid for the first round of bidding and the determination of which Overbid constitutes the Opening Bid for each subsequent round of bidding, taking into account all factors that the Monitor, with the assistance of the Independent Director, reasonably deems relevant to the value of such bid, including, among other things, those considerations listed in paragraph 19, above.
- (e) **Overbids.** All Bids made during the Auction must be Overbids and shall be submitted in a form to be determined by the Monitor, which form shall be provided to all Auction Bidders no later than two (2) Business Days prior to the start of the Auction. The identity of each Auction Bidder and all material terms of each Overbid must be fully disclosed by the Monitor to all other Auction Bidders participating in the Auction. The Monitor shall maintain a transcript of the Opening Bid and all Overbids made and announced at the Auction, including the Successful Bid (as defined below) and the Back-Up Bid. To be considered an “**Overbid**”, a Bid made during the Auction must satisfy the following criteria:
- (i) **Minimum Consideration.** The overall amount of consideration of any Overbid shall not be less than the value of the Opening Bid of the applicable round of bidding, plus a minimum amount of \$100,000 (which, in the case of the Stalking Horse Bidder, may be by way of credit bid) or such higher amount as the Monitor, in consultation with the Independent Director, may determine in advance of such round of bidding in order to facilitate the Auction; and
- (ii) **Remaining terms are the same as for Qualified Bids.** Except as modified herein, an Overbid must comply with the conditions for a Bid set forth in paragraph 17 above (provided, for greater certainty, that the Bid Deadline shall not apply and Overbids need not be accompanied by additional cash deposits (subject to subsection (h) hereof)). To the extent not previously provided (which shall be determined by the Monitor), an Auction Bidder submitting an Overbid must submit, as part of its Overbid, evidence acceptable to Tehama and the Monitor demonstrating such Auction Bidder’s ability (including financial ability) to close the transaction contemplated by its Overbid;
- (f) **Overbid Alterations:** An applicable Overbid may contain alterations, modifications, additions, or deletions of any terms of the prior Overbid so long as, after giving effect to the same, the terms of the new Overbid are no less favorable

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than any prior Overbid of such Auction Bidder, as determined by the Monitor, in consultation with the Independent Director.

- (g) **Announcing Highest Overbids.** At the end of each round of bidding, the Monitor, in consultation with the Independent Director, shall (i) immediately review each Overbid made in such round; (ii) identify the highest and best Overbid; and (iii) announce the terms of such highest and best Overbid to all Auction Bidders entitled to participate in the next round of bidding. Such highest and best Overbid shall be the Opening Bid for the next round of the Auction.
- (h) **Adjournments.** The Monitor may, in its reasonable business judgment, make one or more adjournments in the Auction (other than for adjournments at the end of an Auction day to the next morning, such adjournments not to exceed two (2) Business Days in the aggregate) to, among other things: (i) facilitate discussions with individual Auction Bidders, including any discussion, negotiation or clarification of any Overbid; (ii) allow individual Auction Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and best Overbid at any given time during the Auction; (iv) give Auction Bidders the opportunity to provide such additional evidence as the Monitor may require, in their reasonable business judgment, that the Auction Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the Overbid amount; and (v) subject to such rules and guidelines as the Monitor may consider appropriate, facilitate any appropriate consultation by Auction Bidders with third party stakeholders.
- (i) **Closing the Auction.** If, in any round of bidding, no Overbid is made, the Auction shall be closed and the Monitor shall: (i) declare the last Opening Bid as the successful Bid (the “**Successful Bid**” and the party submitting such Successful Bid, the “**Successful Bidder**”); (ii) immediately review the other Overbids made in the previous round (or the Qualified Bid(s) if no Overbids were made at the Auction) and identify and record the next highest and best Overbid (or Qualified Bid) (the “**Back-Up Bid**” and the party or parties submitting such Back-Up Bid, the “**Back-Up Bidder**”); and (iii) advise the Successful Bidder and the Back-Up Bidder of such determinations and all other Auction Bidders that they are not a Successful Bidder or a Back-Up Bidder. If a Back-Up Bid is identified in accordance with this SISF, then such Back-Up Bid shall remain open until the earlier of (i) the consummation of the transaction contemplated by the Successful Bid, and (ii) ten (10) days after the Outside Date.
- (j) **Executed Documentation:** The Successful Bidder and the Back-Up Bidder (if any) shall, within two (2) Business Days after the conclusion of the Auction, or such longer delay acceptable to Tehama and the Monitor, submit to Tehama and the Monitor executed revised documentation memorializing the terms of the Successful Bid and the Back-Up Bid (if any). Subject to the terms of the Successful Bid documentation, the Successful Bid and the Back-Up Bid may not be assigned to any party without the consent of Tehama and the Monitor.

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(k) **Reservation of Rights.**

Subject to the maximum length of adjournments contemplated by Section 25(h), the Monitor, in consultation with the Independent Director, reserve their rights to modify the conduct of the Auction at any time, acting reasonably, in any manner that would best promote the goals of the Auction process, including to select the Successful Bid and/or Back-Up Bid prior to the completion of the Auction.

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

**Approval Motion**

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

**Closing the Successful Bid**

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

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

### **General**

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

**SCHEDULE A**

**CONTACT INFORMATION**

**SCHEDULE B**

**WIRE INSTRUCTIONS**

7340553



**Schedule "B"**  
**Stalking Horse Agreement**

**STALKING HORSE PURCHASE AGREEMENT**

**BETWEEN**

**TEHAMA INC.**

**AND**

**14667913 CANADA INC.**

**MADE AS OF**

**February 7, 2023**

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**STALKING HORSE PURCHASE AGREEMENT**

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

BETWEEN

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

- and -

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

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

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

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

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

**ARTICLE 1 – INTERPRETATION**

**1.01 Definitions**

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

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

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

“**Applicable Law**” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

## 1.02 Headings

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

## 1.03 Extended Meanings

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

## 1.04 Statutory References

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

## 1.05 Currency

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

## 1.06 Schedules

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

**Schedule A** - Form of Approval and Vesting Order

**Schedule B** - Assigned Contracts and Permits

**Schedule C** - Form of Assignment and Assumption Agreement

**Schedule D** - Permitted Encumbrances

**Schedule E** - Other Excluded Assets

**Schedule F** - Allocation of Purchase Price

**Schedule G** - SISP

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

## ARTICLE 2 – SALE AND PURCHASE

### **2.01 Assets to be Sold and Purchased**

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

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

- (m) the Books and Records;

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

## 2.02 Excluded Assets

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

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

## 2.03 Purchase Price

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

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

## 2.04 Allocation of Purchase Price

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

## 2.05 Elections

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

## 2.06 Transfer Taxes

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

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

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

## 2.07 Assumption of Liabilities

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

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

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

## 2.08 Assigned Contracts

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

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

## 2.09 Payment of Purchase Price

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

## 2.10 Delivery of Purchased Assets

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

## ARTICLE 3 – SISP BIDDING PROCEDURE

### 3.01 SISP

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

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

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

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

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

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

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

#### 4.02 Purchaser's Representations and Warranties

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



#### 4.03 “As Is, Where Is”

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

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

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

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



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

## **ARTICLE 5 - COVENANTS**

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

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

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

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

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

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

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

### **5.03 Employee Matters**

(1) The Purchaser:

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

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

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

### **6.01 Mutual Conditions**

- (1) The obligation of the Parties to complete the Transaction is subject to the following joint conditions being satisfied, fulfilled or performed on or prior to the Closing Date:
  - (a) the Court shall have issued and entered the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated;
  - (b) no Applicable Law and no judgment, injunction, order or decree shall have been issued by a Governmental Authority or otherwise in effect that restrains or prohibits the completion of the Transaction; and
  - (c) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (2) The foregoing conditions are for the mutual benefit of the Parties. If any condition set out in this section 6.01 is not satisfied, performed or mutually waived on or prior to the Outside Date, any Party may elect on written notice to the other Party to terminate this Agreement.

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

- (1) The sale by the Vendor and the purchase by the Purchaser of the Purchased Assets is subject to the following conditions, which are for the exclusive benefit of the Purchaser and which are to be performed or complied with at or prior to the Time of Closing:
  - (a) the representations and warranties of the Vendor set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;
  - (b) the Vendor will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Vendor at or prior to the Time of Closing; and

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

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

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

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

### **6.04 Waiver of Condition**

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

### **6.05 Termination**

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

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

## **6.06 Effect of Termination**

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

## **ARTICLE 7 – CLOSING ARRANGEMENTS**

### **7.01 Closing**

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

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

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

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

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

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

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

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

#### **7.04 Confidentiality**

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

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

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

### **ARTICLE 8 – SURVIVAL**

#### **8.01 Survival**

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

## **ARTICLE 9 – GENERAL**

### **9.01 Further Assurances**

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

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

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

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

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

### **9.04 Public Announcements**

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

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

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

### **9.06 Entire Agreement**

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



### **9.07 Amendments and Waivers**

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

### **9.08 Assignment**

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

### **9.09 Notices**

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

to the Vendor:

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

with a copy to:

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

and with a copy to:

Deloitte Restructuring Inc.



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

With a copy to:

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

to the Purchaser:

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

With a copy to:

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

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

## **9.10 Remedies Cumulative**

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

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

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

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

### **9.12 Governing Law**

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

### **9.13 Attornment**

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

### **9.14 Severability**

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

### **9.15 Counterparts**

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

### **9.16 Electronic Execution**

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

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

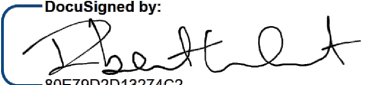
**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first above written.

**TEHAMA INC.**

DocuSigned by:  
**MICHAEL AIELLO**  
Per: A49EB2B6F7EEF4B5  
Name: MICHAEL AIELLO  
Title: Independent Director

*I have authority to bind the Corporation.*

**14667913 CANADA INC.**

DocuSigned by:  
  
Per: 80E79D2D13274C2  
Name: Rob White  
Title: CFO

*I have authority to bind the Corporation.*

**SCHEDULE A**

**FORM OF APPROVAL AND VESTING ORDER**

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

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

THE HONOURABLE MADAM ) \_\_\_\_\_DAY, THE \_\_\_\_  
 )  
JUSTICE KIMMEL ) DAY OF MARCH, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC. (the "**Applicant**")

**APPROVAL AND VESTING ORDER**

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

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

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

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

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

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

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

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

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Vendor and its agents in carrying out the terms of this Order.

All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Vendor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Vendor and its agents in carrying out the terms of this Order.

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

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## Schedule A – Form of Monitor’s Certificate

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

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC. (the “**Applicant**”)

### MONITOR’S CERTIFICATE

#### RECITALS

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

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

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



**THE MONITOR CERTIFIES** the following:

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

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

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

Name:

Title:

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC

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

Proceedings commenced at Toronto, Ontario

**MONITOR'S CERTIFICATE**

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

**Robert Kennedy** (LSO # 474070)  
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**Mark A. Freake** (LSO # 63656H)  
Tel: 416-863-4456  
[mark.freake@dentons.com](mailto:mark.freake@dentons.com)

*Lawyers for the Applicant*

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

**Schedule C – Permitted Encumbrances**

**(unaffected by the Vesting Order)**

None.

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC

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

Proceedings commenced at Toronto, Ontario

**APPROVAL AND VESTING ORDER**

**DENTONS CANADA LLP**  
77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto, ON M5K 0A1  
**Robert Kennedy** (LSO # 474070)  
Tel: 416-367-6756  
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Tel: 416-863-4456  
[mark.freake@dentons.com](mailto:mark.freake@dentons.com)

*Lawyers for the Applicant*

**SCHEDULE B****ASSIGNED CONTRACTS AND PERMITS**

The existing contracts between the Vendor and the following parties:

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

**SCHEDULE C**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

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

**BETWEEN**

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

-and-

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

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

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

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

**ARTICLE 1 - INTERPRETATION**

**1.01 Definitions**

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

**1.02 Headings**

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

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

### **1.03 Extended Meanings**

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

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

### **2.01 Assignment by Vendor**

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

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

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

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

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

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

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



## **ARTICLE 3 - GENERAL**

### **3.01 Further Assurances**

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

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

Time is of the essence of this Agreement.

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

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

### **3.04 Amendments and Waivers**

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

### **3.05 Assignment**

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

### **3.06 Notices**

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

### **3.07 Governing Law**

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

### **3.08 Attornment**

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

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

### **3.09 Counterparts**

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

### **3.10 Electronic Execution**

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

### **3.11 Severability**

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

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

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

**14667913 CANADA INC.**

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

Name:

Title:

*I have authority to bind the Corporation.*

**TEHAMA INC.**

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

Name:

Title:

*I have authority to bind the Corporation.*

**SCHEDULE D**

**PERMITTED ENCUMBRANCES**

None.

**SCHEDULE E**

**OTHER EXCLUDED ASSETS**

None.

**SCHEDULE F**

**ALLOCATION OF PURCHASE PRICE**

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

## SCHEDULE G

### SALE AND INVESTMENT SOLICITATION PROCESS

#### **Introduction**

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

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

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

### Defined Terms

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

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



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

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

### Key Dates

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

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

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

### Supervision of the SISP

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

### Solicitation of Interest

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

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

### **Participation Requirements**

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

### **Access to Data Room**

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

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

### **Qualified Bids**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Approval Motion**

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

### **Closing the Successful Bid**

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

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

### **General**

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

**SCHEDULE "A"**

**CONTACT INFORMATION**



**SCHEDULE "B"**

**WIRE INSTRUCTIONS**

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC.

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

Proceedings commenced at Toronto, Ontario

**SISP APPROVAL ORDER**

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*Lawyers for the Applicant*

THIS IS EXHIBIT "I" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL AIELLO SWORN  
BEFORE ME THIS 27th DAY OF MARCH, 2023.

DocuSigned by:  
  
02452ECC61C54F6...

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A Commissioner for Taking Affidavits, etc.



## SUPERIOR COURT OF JUSTICE

COMMERCIAL ENDORSEMENT

COURT FILE NO.: CV-13-00010241-00CL

DATE: February 9<sup>th</sup> 2023

NO. ON LIST: 6

TITLE OF PROCEEDING:

TEHAMA INC.

BEFORE JUSTICE: KIMMEL

**PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
FREAKE, MARK	TEHAMA INC.	mark.freake@dentons.com
KENNEDY, ROBERT	TEHAMA INC.	Robert.kennedy@dentons.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
REYNOLDS, PHIL	The Monitor	philreynolds@deloitte.ca
AXWELL, ERIK	The Monitor	eaxell@goodmans.ca
LATHAM, JOSEPH	The Monitor	jlatham@goodmans.ca

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info

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**ENDORSEMENT OF JUSTICE KIMMEL:**


1. The court granted and initial order and amended and restated initial order in respect of Tehama Inc. (the "Company") on January 20 and 30, 2023, respectively.
2. Capitalized terms in this endorsement not otherwise defined shall have the meanings ascribed to them in the applicant's factum and the Second Report of the Monitor dated February 8, 2023.
3. The Company now moves for an order (the "SISP Approval Order"):
  - a. approving a sale and investment solicitation process ("SISP");
  - b. authorizing and empowering the Company to enter into the stalking horse purchase agreement dated February 7, 2023 (the "Stalking Horse APA") between the Company and 14667913 Canada Inc. ("Newco" or the "Stalking Horse Bidder"), *nunc pro tunc*, with such minor amendments as may be acceptable to each of the parties thereto, with the approval of the Monitor; and
  - c. confirming that the Stalking Horse APA represents the "Stalking Horse Bid" as defined in, and for the purposes of, the SISP.
4. The Deloitte Restructuring Inc., the court appointed monitor (the "Monitor") supports the requested relief. Various justifications are set out in its Second Report for this support, as noted below:
  - a. The Monitor was actively involved in the development of the SISP, in consultation with the Applicant. The SISP sets out the terms and procedures to market the assets and undertakings of Tehama, within its current liquidity constraints. The SISP has been designed to:
    - i. obtain the highest and best offer for the Applicant's business operations (the "Business"), including all Property;
    - ii. ensure certainty for the continuation of the Business, which is in the best interest of the Applicant's stakeholders; and
    - iii. allow for a commercially reasonable marketing of the Business of the Applicants given its significant liquidity constraints.
  - b. In order to ensure (ii) above and to establish an appropriate and competitive floor for bids to be considered under the SISP, on February 7, 2023 the Applicant entered into the Stalking Horse APA with the Stalking Horse Bidder. The Monitor has been advised that the Stalking Horse APA was executed with the approval of the Independent Director. The contemplated transaction is not being approved at this time. That will be the subject of a further approval motion if the SISP does not result in a superior transaction for which court approval is later sought.
  - c. Mr. Michael Aiello, an individual unaffiliated with Tehama or the Stalking Horse Bidder, was recently appointed to the board of directors of Tehama to be the independent voice representing Tehama and its board of directors in connection with the SISP. Mr. Aiello is the Chief Technology Officer of Secureworks Corp, a publicly-traded cybersecurity business headquartered in Atlanta, Georgia in the United States. Mr. Aiello is considered knowledgeable in the sector in which Tehama operates and experienced in corporate transactions. The Monitor is confident that he will independently carry out the role of Tehama's independent director in connection with the SISP. Mr. Aiello has familiarized himself with the proposed SISP and the Stalking Horse APA, and has indicated to the Monitor that he is supportive of both.
  - d. The SISP contemplates a potentially multi-phase process to be conducted by the Monitor, in consultation with the Independent Director, over a period of up to nine-weeks, which can be extended under certain circumstances.

- e. The SISP will be conducted by the Monitor, in consultation or with the assistance of the Independent Director. The Monitor will control communications with bidders, the qualifying of prospective bidders and the determination of Qualified Bids and potential Overbids as defined in the Auction process.
5. The timeline under the SISP is relatively short, to complete a transaction by an outside date of March 31, 2023. This timing is a function of the Company's forecasted cash flow and what it can reasonably be expected to support. The Monitor has reviewed approximately 10 Court-approved SISPs relating to CCAA proceedings which involve debtors of varying sizes and sectors and is of the view that the multi-phase approach (including a Participation Deadline of approximately three (3) weeks and a binding bid deadline of approximately five (5) weeks, as well as the provision of an auction is reasonable.
6. The Monitor is ready to proceed and has outlined its plan for advertising, and soliciting, reviewing and assessing bids. The Monitor will notify other creditors with which it has been dealing of the SISP process and invite them to ask to be added to the service list. This will provide some comfort to the court when the parties next come back seeking approval of a transaction, that creditors have had the opportunity to be notified and are aware that this process is underway.
7. The Stalking Horse Bidder is an entity controlled by current and former Tehama shareholders and provides the vast majority of its consideration via a credit bid of the secured debt that it owns of Tehama (which was acquired from CIBC).
8. The Stalking Horse APA has terms and conditions that are reasonable and customary relative to precedents that the Monitor has reviewed of SISPs conducted within a CCAA process, including that it has no significant unusual conditions to closing. The Monitor has been tasked with the oversight of the SISP, together with the Independent Director, because of the relationship between the Stalking Horse Bidder and some of the current shareholders and directors of the Company. The court was assured that it is clear under both the SISP and the Stalking Horse Agreement that there will be no break fee or fee reimbursement associated with the Stalking Horse or any other bids that are considered under the SISP.
9. The CCAA confers jurisdiction on courts to approve a sale process, including a "stalking horse" sale process, in respect of the business or assets of an applicant prior to or in the absence of a plan of compromise and arrangement. CCAA. s. 11; *Nortel Networks Corporation (Re)*, 2009 CanLIT 39492 (ONSC) at paras 47-48 ; *Brainhunter Inc. (Re)*, 2009 CanLII 72333 (ONSC) at para 13; *Sino-Forest Corporation (Re)*, 2012 ONSC 2063 , at paras 40-41; *In the Matter of a Plan of Compromise or Arrangement of Green Growth Brands*, 2020 ONSC 3565 at para 61.
10. I am satisfied, having regard to the requirements and circumstances of this case outlined in paragraphs 24-30 of the applicant's factum that it is appropriate to grant the requested approval of the SISP and the Stalking Horse APA (for the limited purposes indicated in the approval order).
11. Order to go in the form signed by me today with immediate effect and without the necessity of formal issuance and entry.



KIMMEL J.

THIS IS EXHIBIT "J" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL AIELLO SWORN  
BEFORE ME THIS 27th DAY OF MARCH, 2023.

DocuSigned by:  
  
02452ECC61C54F6...

---

A Commissioner for Taking Affidavits, etc.

**STALKING HORSE PURCHASE AGREEMENT**

**BETWEEN**

**TEHAMA INC.**

**AND**

**14667913 CANADA INC.**

**MADE AS OF**

**February 7, 2023**



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## STALKING HORSE PURCHASE AGREEMENT

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

BETWEEN

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

- and -

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

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

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

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

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

### ARTICLE 1 – INTERPRETATION

#### **1.01 Definitions**

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

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

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

“**Applicable Law**” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **1.02 Headings**

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

## **1.03 Extended Meanings**

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

## **1.04 Statutory References**

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

## **1.05 Currency**

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

## **1.06 Schedules**

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

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

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

## ARTICLE 2 – SALE AND PURCHASE

### 2.01 Assets to be Sold and Purchased

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

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



- (m) the Books and Records;

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

## **2.02 Excluded Assets**

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

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

## **2.03 Purchase Price**

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

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

## **2.04 Allocation of Purchase Price**

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

## **2.05 Elections**

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

## 2.06 Transfer Taxes

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

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

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

## 2.07 Assumption of Liabilities

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

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

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

## 2.08 Assigned Contracts

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

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

## **2.09 Payment of Purchase Price**

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

## **2.10 Delivery of Purchased Assets**

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

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

### **3.01 SISP**

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

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

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

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

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

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

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

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

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

#### 4.03 “As Is, Where Is”

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

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

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

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

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

## **ARTICLE 5 - COVENANTS**

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

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

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

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

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

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

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

### **5.03 Employee Matters**

(1) The Purchaser:

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



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

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

### **6.01 Mutual Conditions**

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

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

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

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

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

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



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

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

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

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

### **6.04 Waiver of Condition**

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

### **6.05 Termination**

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

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

### **6.06 Effect of Termination**

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

## **ARTICLE 7 – CLOSING ARRANGEMENTS**

### **7.01 Closing**

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

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

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

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

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

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

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

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

#### **7.04 Confidentiality**

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

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

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

### **ARTICLE 8 – SURVIVAL**

#### **8.01 Survival**

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

## **ARTICLE 9 – GENERAL**

### **9.01 Further Assurances**

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

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

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

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

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

### **9.04 Public Announcements**

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

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

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

### **9.06 Entire Agreement**

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

### **9.07 Amendments and Waivers**

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

### **9.08 Assignment**

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

### **9.09 Notices**

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

to the Vendor:

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

with a copy to:

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

and with a copy to:

Deloitte Restructuring Inc.

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

With a copy to:

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

to the Purchaser:

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

With a copy to:

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

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

## **9.10 Remedies Cumulative**

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

**9.11 No Third Party Beneficiaries**

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

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

**9.12 Governing Law**

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

**9.13 Attornment**

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

**9.14 Severability**

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

**9.15 Counterparts**

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

**9.16 Electronic Execution**

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

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



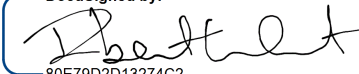
**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first above written.

**TEHAMA INC.**

DocuSigned by:  
**MICHAEL AIELLO**  
Per: A49EB2B6F7EEF4B5  
Name: MICHAEL AIELLO  
Title: Independent Director

*I have authority to bind the Corporation.*

**14667913 CANADA INC.**

DocuSigned by:  
  
Per: 80E79D2D13274C2  
Name: Rob White  
Title: CFO

*I have authority to bind the Corporation.*

**SCHEDULE A**

**FORM OF APPROVAL AND VESTING ORDER**

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

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

THE HONOURABLE MADAM ) \_\_\_\_\_DAY, THE \_\_\_\_  
 )  
JUSTICE KIMMEL ) DAY OF MARCH, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC. (the "**Applicant**")

**APPROVAL AND VESTING ORDER**

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

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

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

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

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

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

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

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

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Vendor and its agents in carrying out the terms of this Order.

All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Vendor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Vendor and its agents in carrying out the terms of this Order.

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)****IN THE MATTER OF THE *COMPANIES’ CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED****AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC. (the “**Applicant**”)****MONITOR’S CERTIFICATE****RECITALS**

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

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

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

**THE MONITOR CERTIFIES** the following:

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

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

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

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC

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

Proceedings commenced at Toronto, Ontario

**MONITOR'S CERTIFICATE**

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



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

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

None.

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC

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

Proceedings commenced at Toronto, Ontario

**APPROVAL AND VESTING ORDER**

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*Lawyers for the Applicant*

## **SCHEDULE B**

### **ASSIGNED CONTRACTS AND PERMITS**

The existing contracts between the Vendor and the following parties:

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

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**SCHEDULE C****ASSIGNMENT AND ASSUMPTION AGREEMENT****ASSIGNMENT AND ASSUMPTION AGREEMENT**

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

**BETWEEN**

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

-and-

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

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

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

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

**ARTICLE 1 - INTERPRETATION****1.01 Definitions**

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

**1.02 Headings**

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

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

### **1.03 Extended Meanings**

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

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

### **2.01 Assignment by Vendor**

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

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

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

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

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

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

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

## **ARTICLE 3 - GENERAL**

### **3.01 Further Assurances**

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

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

Time is of the essence of this Agreement.

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

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

### **3.04 Amendments and Waivers**

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

### **3.05 Assignment**

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

### **3.06 Notices**

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

### **3.07 Governing Law**

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

### **3.08 Attornment**

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

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

### **3.09 Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

### **3.10 Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

### **3.11 Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any of the parties.

*[The balance of this page has been intentionally left blank]*



**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first above written.

**14667913 CANADA INC.**

Per: \_\_\_\_\_

Name:

Title:

*I have authority to bind the Corporation.*

**TEHAMA INC.**

Per: \_\_\_\_\_

Name:

Title:

*I have authority to bind the Corporation.*

**SCHEDULE D**

**PERMITTED ENCUMBRANCES**

None.

**SCHEDULE E**

**OTHER EXCLUDED ASSETS**

None.

**SCHEDULE F**

**ALLOCATION OF PURCHASE PRICE**

**[The Purchase Price allocation will be determined by the Purchaser prior to the Closing Date]**

## SCHEDULE G

### SALE AND INVESTMENT SOLICITATION PROCESS

#### **Introduction**

- A. On January 20, 2023 (the “**Filing Date**”), Tehama Inc. (“**Tehama**” or the “**Company**”) obtained an initial order (as amended, supplemented or amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and the proceedings commenced thereby, the “**CCAA Proceedings**”) from the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”).
- B. Pursuant to the Initial Order, Deloitte Restructuring Inc. was appointed as monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”).
- C. On January 30, 2023, the CCAA Court granted the Amended and Restated Initial Order (the “**ARIO**”).
- D. Prior to the Filing Date, Tehama engaged in certain limited activities to solicit further equity and debt investments, in an attempt to assist in the further development of the Tehama business (the “**Preliminary Process**”).
- E. On February 9, 2023, the CCAA Court granted an Order (the “**SISP Approval Order**”), among other things, approving the sale and investment solicitation process (“**SISP**”) described herein and the Asset Purchase Agreement dated as of February 7, 2023 (the “**Stalking Horse APA**”) entered into by Tehama, as seller, and 14667913 Canada Inc. (the “**Stalking Horse Bidder**”), as buyer, pursuant to which the Stalking Horse Bidder has agreed to purchase substantially all of the assets of the Company (the “**Stalking Horse Transaction**”).
- F. The purpose of this SISP is to set out terms and procedures for a fair and efficient sale process so as to (i) obtain the highest and best offer for Tehama’s business operations and activities (the “**Business**”), including all of their assets, rights, undertakings and properties (collectively, the “**Property**”), and (ii) ensure certainty for the growth and the long-term continuation of the Business, the whole in the best interests of the Tehama’s stakeholders, including their employees, their creditors, their suppliers and contracting parties.
- G. Accordingly, this SISP describes, among other things: (a) the Property available for sale and the opportunity for an investment in the Business, (b) the manner in which prospective bidders may gain access to due diligence materials concerning the Property and the Business, (c) the manner in which bidders and bids may become Qualified Bidders, Qualified Bids, and Auction Bidders, as applicable, (d) the evaluation of bids received, (e) the guidelines for the ultimate selection of the Successful Bid and/or the Back-Up Bid, and

(f) the process for obtaining such approvals (including the approval of the CCAA Court) as may be necessary or appropriate in respect of a Successful Bid.

H. Capitalized terms used in this SISF and not otherwise defined have the meanings given to them in paragraph 1 below.

### **Defined Terms**

1. The following capitalized terms have the following meanings when used in this SISF:

- (a) “**Approval Motion**” is defined in paragraph 26.
- (b) “**Approval Motion Date**” is defined in paragraph 2.
- (c) “**ARIO**” is defined in paragraph C.
- (d) “**Auction**” is defined in paragraph 23.
- (e) “**Auction Bidders**” is defined in paragraph 24.
- (f) “**Auction Date**” is defined in paragraph 2.
- (g) “**Back-Up Bid**” is defined in paragraph 25(i).
- (h) “**Back-Up Bidder**” is defined in paragraph 25(i).
- (i) “**Bid**” is defined in paragraph 17.
- (j) “**Bid Deadline**” is defined in paragraph 2.
- (k) “**Business**” is defined in paragraph F of the introduction.
- (l) “**Business Day**” means a day (other than Saturday or Sunday) on which banks are generally open for business in Montreal, Quebec and New York, New York.
- (m) “**CCAA**” is defined in paragraph A of the introduction.
- (n) “**CCAA Court**” is defined in paragraph A of the introduction.
- (o) “**CCAA Proceedings**” is defined in paragraph A of the introduction.
- (p) “**Closing**” means the completion of the transaction contemplated by the Successful Bid.

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- (q) “**Data Room**” is defined in paragraph 10.
- (r) “**Deposit**” is defined in paragraph 17(c)(xiv).
- (s) “**Filing Date**” is defined in paragraph A of the introduction.
- (t) “**Independent Director**” means Michael Aeillo, designated as independent director on behalf of Tehama.
- (u) “**Initial Order**” is defined in paragraph A of the introduction.
- (v) “**Monitor**” is defined in paragraph B of the introduction.
- (w) “**Monitor’s Website**” means [www.insolvencies.deloitte.ca/en-ca/Tehama](http://www.insolvencies.deloitte.ca/en-ca/Tehama)
- (x) “**NDA**” means a non-disclosure agreement in form and substance satisfactory to Tehama and the Monitor, which will inure to the benefit of any Successful Bidder at Closing.
- (y) “**Opening Bid**” is defined in paragraph 25(b).
- (z) “**Outside Date**” is defined in paragraph 2.
- (aa) “**Overbid**” is defined in paragraph 25(e).
- (bb) “**Participation Deadline**” is defined in paragraph 2.
- (cc) “**Participation Letter**” is defined in paragraph 7(a).
- (dd) “**Potential Bidder**” is defined in paragraph 4.
- (ee) “**Preliminary Process**” is defined in paragraph D of the introduction.
- (ff) “**Property**” is defined in paragraph F of the introduction.
- (gg) “**Qualified Bid**” is defined in paragraph 17.
- (hh) “**Qualified Bidder**” is defined in paragraph 8.
- (ii) “**SISP**” is defined in paragraph E of the introduction.
- (jj) “**SISP Approval Order**” is defined in paragraph E of the introduction.
- (kk) “**Solicitation Materials Distribution Date**” is defined in paragraph 2.
- (ll) “**Solicitation Notice**” is defined in paragraph 6.

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- (mm) “**Stalking Horse APA**” is defined in paragraph E of the introduction.
- (nn) “**Stalking Horse Bid**” is defined in paragraph 18.
- (oo) “**Stalking Horse Bidder**” is defined in paragraph E of the introduction.
- (pp) “**Stalking Horse Transaction**” is defined in paragraph E of the introduction.
- (qq) “**Successful Bid**” is defined in paragraph 25(i).
- (rr) “**Successful Bidder**” is defined in paragraph 25(i).
- (ss) “**Superior Offer**” mean a credible and fully financed offer made by a Qualified Bidder which (i) provides for consideration in excess of the aggregate purchase price contemplated by the Stalking Horse Transaction, which shall include cash consideration not less than \$2,812,833.33 plus \$100,000, and (ii) the Monitor, in consultation with the Independent Director, considers to be better than the Stalking Horse Transaction.

### Key Dates

2. The key dates for the SISP are as follows:

By no later than February 10, 2023 at 5:00 p.m. (prevailing Eastern Time) or such later date as may be agreed to by Tehama with the consent of the Monitor  <b>(“Solicitation Materials Distribution Date”)</b>	Distribution of the Solicitation Notice, form of NDA and the Participation Letter to the Potential Bidders
March 2, 2023, 2023 at 5:00 p.m. (prevailing Eastern Time)  <b>(“Participation Deadline”)</b>	Due date for delivery by Potential Bidders of a Participation Letter and an executed NDA
March 16, 2023 at 5:00 p.m. (prevailing Eastern Time)  <b>(“Bid Deadline”)</b>	Due date for Bids and Deposits (subject to extension of up to 1 week if the Monitor believes same to be appropriate)
March 20, 2023  <b>(“Auction Date”)</b>	Date of the Auction (if any) (subject to being 1 week later if Bid Deadline is moved back 1 week)



<p>No later than seven (7) calendar days following either the conclusion of the Auction, or the date on which a determination is made by the Monitor not to proceed with an Auction in accordance with paragraph 22</p> <p>(“<b>Approval Motion Date</b>”)</p>	<p>Hearing of the Approval Motion</p>
<p>March 31, 2023, or such later date as may be agreed to by Tehama and the Successful Bidder, with the consent of the Monitor</p> <p>(“<b>Outside Date</b>”)</p>	<p>Deadline for completion of the transaction represented by the Successful Bid</p>

### Supervision of the SISP

3. The Monitor shall conduct the SISP as outlined herein, with such input and advice from the Independent Director as the Monitor may consider appropriate from time to time, and Tehama shall conclude any sale or investment transactions resulting herefrom. In the event that there is disagreement, or if a clarification is required, as to the interpretation or application of this SISP or the responsibilities of the Monitor and Tehama, the CCAA Court will have jurisdiction to hear such matter and provide advice and directions, upon application of the Monitor, Tehama or any other party on not less than five (5) Business Days’ notice.

### Solicitation of Interest

4. For all purposes of this SISP, any party identified as a potential bidder by any of the Monitor, the Independent Director or Tehama shall be considered a potential bidder (each, a “**Potential Bidder**”).
5. As soon as reasonably practicable after the granting of the SISP Approval Order:
  - (a) the Monitor will post the SISP Approval Order and the SISP on the Monitor’s Website; and
  - (b) the Monitor will cause a notice of the SISP (and such other relevant information which Tehama, in consultation with the Monitor, considers appropriate) to be published in The Globe and Mail (National Edition)]; and [**NTD: is there a trade magazine or website to post on?**]

6. By no later than the Solicitation Materials Distribution Date, the Monitor shall distribute to each Potential Bidder a solicitation notice describing the opportunity and inviting Potential Bidders to submit a bid pursuant to these SISP procedures (the “**Solicitation Notice**”), and containing the form of NDA.

### **Participation Requirements**

7. In order to participate in the SISP, on or before the Participation Deadline, each Potential Bidder (or other interested party) must deliver the following information and executed documents to the Monitor at the email address specified in 0 hereto:
  - (a) a letter (a “**Participation Letter**”) providing (i) the identity, the type and the jurisdiction of organization of the Potential Bidder, (ii) the contact information for such Potential Bidder, (iii) information sufficient to enable the Monitor to make a reasonable determination that the Potential Bidder has the financial and other capabilities to consummate a transaction pursuant to a Superior Offer, and (iv) an acknowledgement that the Potential Bidder agrees to be bound by the provisions of the SISP Approval Order and this SISP; and
  - (b) an executed NDA.
8. A Potential Bidder that has delivered the necessary documents and information in accordance with paragraph 7, and that the Monitor determines, in consultation with the Independent Director, is likely to be able to consummate a transaction on or before the Outside Date, will be deemed a “Qualified Bidder”, and will be promptly notified of such determination by the Monitor.
9. Notwithstanding paragraphs 7 and 8, the Stalking Horse Bidder shall be deemed to be a Qualified Bidder for all purposes under, and at all times in connection with, this SISP.

### **Access to Data Room**

10. Contemporaneously with the determination that a Potential Bidder is a Qualified Bidder, the Monitor shall provide such Qualified Bidder with access to a secure online electronic data room (the “**Data Room**”) containing due diligence information regarding:
  - (a) the Property and the Business; and
  - (b) the debt of, and equity interests in, Tehama.
11. The Monitor shall coordinate all reasonable requests from Qualified Bidders for additional information and due diligence access; provided Tehama may decline to provide (or elect to withdraw access to) due diligence information to any Qualified Bidder who, at such time

and in the reasonable business judgment of the Monitor, after consultation with the Independent Director, has not established (or there is otherwise a reasonable basis to doubt), that such Qualified Bidder intends in good faith to, or has the capacity to, consummate a transaction.

12. The Monitor, in consultation with the Independent Director, reserves the right to withhold any diligence materials that the Monitor determines are sensitive or otherwise not appropriate for disclosure to a Qualified Bidder that the Monitor determines is a competitor or is otherwise an entity to which the disclosure of sensitive or competitive information, in the Monitor's exercise of their reasonable business judgment (in consultation with the Independent Director), may risk unduly placing Tehama at a competitive disadvantage.
13. All due diligence and information requests must be directed to the Monitor at the email address specified in 0 hereto.
14. Tehama (including the Independent Director), the Monitor and their respective employees, officers, directors, agents, advisors and other representatives make no promise, representation, warranty, condition or guarantee of any kind, nature or description as to the information (a) contained in the Data Room, or (b) otherwise made available in connection with this SISP, except, in the case of Tehama only, to the extent expressly contemplated in any executed definitive sale or investment agreement with a Successful Bidder.
15. Without limiting the generality of any term or condition of any NDA between Tehama and any Potential Bidder or Qualified Bidder, unless otherwise agreed by Tehama and the Monitor or ordered by the CCAA Court, no Potential Bidder or Qualified Bidder (other than the Stalking Horse Bidder) shall be permitted to have any discussions with (a) any counterparty to any contract with any of Tehama, any current or former director, manager, shareholder, officer, member or employee of Tehama, other than in the normal course of business and wholly unrelated to Tehama, the potential transaction, the Confidential Information (as defined in the NDA), the SISP or the CCAA Proceedings, and (b) any other Potential Bidder or Qualified Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto. In the case of the Stalking Horse Bidder, it shall not be permitted to have any communications (verbal and in written form) with any other Potential Bidder or Qualified Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto, unless the Monitor and Tehama's counsel are parties to any and all such communications.

### **Qualified Bids**

16. A Qualified Bidder that wishes to make a bid must deliver its bid to the Monitor at the email address specified in 0 hereto so as to be actually received by them not later than the Bid Deadline.

17. All offers submitted to the Monitor (“**Bids**”) for consideration in accordance with paragraph 16 must comply with all of the following requirements (any such complying Bid, a “**Qualified Bid**”):
- (a) **Asset Sales:** In the case of an offer to purchase some or all of the Property:
    - (i) **Purchase Price:** Each Bid must clearly set forth the purchase price in Canadian dollars, stated on a total enterprise value basis (including the cash and any non-cash components thereof, the sources of such capital, evidence of the availability of such capital and the steps necessary and associated timing to obtain the capital and consummate the proposed transaction and any related contingencies, as applicable);
    - (ii) **Assets:** Each Bid must clearly state the Property to be included in the transaction and any Property to be excluded or divested or disclaimed prior to Closing (including the contracts and leases not to be assumed);
    - (iii) **Assumption of Obligations:** Each Bid must clearly state which liabilities and obligations of Tehama are to be assumed; and
    - (iv) **Mark-up:** Each Bid must include a full mark-up of the Stalking Horse APA to be included in the Data Room, and not only an issues list or comments of a conceptual nature.
  - (b) **Investments:** In the case of an offer to make an investment in the Business:
    - (i) **Amount/Type of Investment:** Each Bid must clearly state the aggregate amount of the equity and/or debt investment in Canadian dollars (including the sources of such capital, evidence of the availability of such capital and the steps necessary and associated timing to obtain the capital and consummate the proposed transaction and any related contingencies, as applicable) to be made; and
    - (ii) **Treatment of Obligations:** Each Bid must include the proposed treatment of the liabilities and obligations of Tehama.
  - (c) **All Bids:** In the case of all offers to purchase some or all of the Property and/or to make an investment in the Business:
    - (i) **Bid Deadline:** Each Bid must be received by the Bid Deadline as set forth herein;
    - (ii) **Superior Offer:** Each Bid must represent a Superior Offer;

- (iii) **Key Terms:** Each Bid must set forth key terms including (A) economic terms, (B) the basis and rationale of the valuation, and (C) any other material terms and conditions required to consummate the transaction;
- (iv) **Irrevocable Offer:** Each Bid must be irrevocable until the earlier of (A) the approval by the CCAA Court of a Successful Bid (and the Back-Up Bid) and (B) 21 days following the Bid Deadline, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer will remain irrevocable until the Closing (or ten (10) days after the Outside Date as set forth herein);
- (v) **Executed Documents:** Each Bid must be accompanied by a duly authorized and executed asset purchase agreement or investment commitment, as applicable, and an electronic copy of such agreement, as well as duly authorized and executed transaction documents necessary to effectuate the transactions contemplated thereby;
- (vi) **Financial Wherewithal:** Each Bid must include written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Monitor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction;
- (vii) **Authorization:** Each Bid must include evidence, in form and substance reasonably satisfactory to the Monitor of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Bid;
- (viii) **No Other Authorization, Diligence, Financing Conditions:** Each Bid must not be conditional upon the following:
  - A. any internal approval(s);
  - B. the outcome of unperformed due diligence by the Qualified Bidder; or
  - C. obtaining financing;
- (ix) **"As Is, Where Is"; Other Acknowledgements:** Each Bid must include an acknowledgement and representation that the Qualified Bidder:

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- A. is making its offer to purchase the Property or make an investment in the Business on an “*as is, where is*” basis and without surviving representations or warranties of any kind, nature, or description by Tehama, the Monitor or any of their respective employees, officers, directors, agents, advisors, other representatives and estates, except to the extent set forth in the definitive sale or investment agreement;
  - B. has had an opportunity to conduct any and all due diligence regarding the Business and the Property prior to making its Bid;
  - C. has relied solely upon its own independent review, investigation and inspection of any documents and the assets to be acquired and liabilities to be assumed in making its Bid; and
  - D. is not relying upon any written or oral statements, representations, promises, warranties, conditions, or guaranties whatsoever, whether express or implied (by operation of law or otherwise), made by any person or party, including Tehama, the Independent Director, the Monitor and their respective employees, officers, directors, agents, advisors and other representatives, regarding the Business, the Property, the assets to be acquired or liabilities to be assumed, the Auction, this SISP, or any information (or the completeness of any information) provided in connection therewith, except as expressly stated in the definitive sale or investment agreement.
- (x) **Disclaimer of Fees:** Each Bid must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation;
  - (xi) **Treatment of Employees:** Each Bid must include full details of the Qualified Bidder’s intention towards offering continued employment to Tehama’s employees and provide details on the terms and conditions of employment that will be offered to any continuing employees. For greater certainty, each Bid must include the proposed approximate number of employees of Tehama who will become employees of the bidder or remain employees of the Business;
  - (xii) **Cure Costs:** To the extent applicable, each Bid must contain full details of the Qualified Bidder’s proposal for the treatment of related cure costs (including the Qualified Bidder’s ability to perform under any assigned

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agreements) and identify with particularity any executory contract or unexpired lease the assumption and assignment of which is a condition to closing;

- (xiii) **Timeline:** Each Bid must provide a timeline to Closing with critical milestones with a closing date not exceeding the Outside Date;
- (xiv) **Deposit:** Each Bid must be accompanied by a refundable deposit (the “**Deposit**”) in the form of a wire transfer to the account specified on **Error! Reference source not found.** hereto (or such other form acceptable to the Monitor), payable to the order of the Monitor, on behalf of Tehama, in trust, in an amount equal to fifteen percent (15%) of the total consideration contemplated by the Bid, to be held and dealt with in accordance with the terms of this SISP;
- (xv) **Terms of Court Order(s):** Each Bid must describe the key terms and provisions to be included in any order of the CCAA Court approving the contemplated transaction, including, in the case of an asset sale, whether the transaction requires that all of the rights, title and interests of Tehama in and to the subject Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (except to the extent otherwise set forth in the definitive sale or investment agreement); and
- (xvi) **Other Information:** Each Bid must contain such other information as may be reasonably requested by Tehama or the Monitor in writing from time to time.

18. Notwithstanding anything herein to the contrary, the offer represented by the Stalking Horse APA (the “**Stalking Horse Bid**”) shall be deemed to be a Qualified Bid for all purposes under, and at all times in connection with, this SISP.
19. Notwithstanding anything herein to the contrary, the Monitor, in consultation with the Independent Director, will review and assess each Bid to determine whether such Bid is a Qualified Bid. In performing such review and assessment, the Monitor and the Independent Director shall evaluate the following as primary considerations: (a) the purchase price and net value (including assumed liabilities and other obligations to be performed by the bidder); (b) the firm, irrevocable commitment for financing of the transaction; (c) the closing conditions and other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction); and (d) the terms of transaction documents, including, if applicable, the proposed revisions to

the Stalking Horse APA. In addition, they may consider the following non-exhaustive list of considerations: (i) the claims likely to be created by such Bid in relation to other Bids; (ii) the counterparties to the transaction; (iii) planned treatment of stakeholders; (iv) the assets included or excluded from the Bid; (v) any transition services required from Tehama post-closing and any related restructuring costs; (vi) the likelihood and timing of consummating the transaction; (vii) whether there is sufficient capital post-closing for the wind-down of Tehama (if contemplated); and (viii) proposed treatment of the employees.

20. The Monitor, in consultation with the Independent Director, may reject any Bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements pursuant to these SISP procedures; (iii) contrary to the best interest of Tehama; or (iv) not a Qualified Bid.

#### **Right of Stalking Horse Bidder to Credit Bid**

21. The Stalking Horse Bidder has the right to credit bid for all of the Property subject to the security granted in favour of the Stalking Horse Bidder (including their agents), up to the full face value amount of the Stalking Horse Bidder's claims, including principal, interest and any other obligations owing to the Stalking Horse Bidder, whether for pre-filing indebtedness or advances under the DIP facility. For the avoidance of doubt, each \$1.00 of credit bid of the Stalking Horse Bidder shall be equal to \$1.00 of cash.

#### **Auction; Successful Bid**

22. In the event that no Participation Letters are received by the Participation Deadline, or that no Qualified Bid other than the Stalking Horse Bid is received by the Bid Deadline, then (a) there will be no auction, (b) the Stalking Horse Bid will be deemed to be the Successful Bid, and (c) Tehama shall seek approval of, and authority and direction for Tehama to consummate, the Stalking Horse APA and the transactions provided for therein at the Approval Motion.
23. If one or more Qualified Bids other than the Stalking Horse Bid are received, then the Monitor, in consultation with the Independent Director, shall conduct an auction to determine the highest and best Qualified Bid (the "**Auction**").
24. If the Auction is to take place, then as soon as practicable and no later than 10:00 am (Eastern Standard Time) (3) Business Days prior to the Auction, the Monitor shall provide the Stalking Horse Bidder and all Qualified Bidders having submitted a Qualified Bid (collectively, the "**Auction Bidders**") with a copy of the Opening Bid for the Auction together with a copy of the mark-up of the Stalking Horse APA.
25. The Auction shall commence on the Auction Date by videoconference and shall be conducted according to the following procedures:



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- (a) **Participation:** The Monitor shall direct and preside over the Auction. Only Auction Bidders are eligible to participate in the Auction. Each Auction Bidder must have present or available the individual or individuals with the necessary decision-making authority to submit Overbids and to make such necessary and ancillary decisions as may be required during the Auction. Only the authorized representatives, including counsel and other advisors, of Tehama, the Monitor and each of the Auction Bidders shall be permitted to attend the Auction.
- (b) **Rounds.** Bidding at the Auction shall be conducted in rounds. The Qualified Bid that is the highest and best bid shall constitute the “**Opening Bid**” for the first round of bidding. The highest and best Overbid at the end of each round shall constitute the “**Opening Bid**” for the following round. The Monitor, in consultation with the Independent Director, shall determine what constitutes the Opening Bid for each round in accordance with the assessment criteria set out in paragraph 25(d) below. In each round, an Auction Bidder may submit no more than one Overbid. The Monitor may impose such time limits for the submission of Overbids as it deems reasonable.
- (c) **Failure to Submit an Overbid.** If, at the end of any round of bidding, an Auction Bidder fails to submit an Overbid, then such Auction Bidder may not participate in the next or any subsequent round of bidding at the Auction. Any Auction Bidder that submits an Overbid during a round (including the Auction Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
- (d) **Bid Assessment Criteria.** The Monitor, in consultation with the Independent Director, shall determine which Qualified Bid constitutes the Opening Bid for the first round of bidding and the determination of which Overbid constitutes the Opening Bid for each subsequent round of bidding, taking into account all factors that the Monitor, with the assistance of the Independent Director, reasonably deems relevant to the value of such bid, including, among other things, those considerations listed in paragraph 19, above.
- (e) **Overbids.** All Bids made during the Auction must be Overbids and shall be submitted in a form to be determined by the Monitor, which form shall be provided to all Auction Bidders no later than two (2) Business Days prior to the start of the Auction. The identity of each Auction Bidder and all material terms of each Overbid must be fully disclosed by the Monitor to all other Auction Bidders participating in the Auction. The Monitor shall maintain a transcript of the Opening Bid and all Overbids made and announced at the Auction, including the Successful Bid (as defined below) and the Back-Up Bid. To be

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considered an “**Overbid**”, a Bid made during the Auction must satisfy the following criteria:

- (i) **Minimum Consideration.** The overall amount of consideration of any Overbid shall not be less than the value of the Opening Bid of the applicable round of bidding, plus a minimum amount of \$100,000 (which, in the case of the Stalking Horse Bidder, may be by way of credit bid) or such higher amount as the Monitor, in consultation with the Independent Director, may determine in advance of such round of bidding in order to facilitate the Auction; and
- (ii) **Remaining terms are the same as for Qualified Bids.** Except as modified herein, an Overbid must comply with the conditions for a Bid set forth in paragraph 17 above (provided, for greater certainty, that the Bid Deadline shall not apply and Overbids need not be accompanied by additional cash deposits (subject to subsection (h) hereof)). To the extent not previously provided (which shall be determined by the Monitor), an Auction Bidder submitting an Overbid must submit, as part of its Overbid, evidence acceptable to Tehama and the Monitor demonstrating such Auction Bidder’s ability (including financial ability) to close the transaction contemplated by its Overbid;
- (f) **Overbid Alterations:** An applicable Overbid may contain alterations, modifications, additions, or deletions of any terms of the prior Overbid so long as, after giving effect to the same, the terms of the new Overbid are no less favorable than any prior Overbid of such Auction Bidder, as determined by the Monitor, in consultation with the Independent Director.
- (g) **Announcing Highest Overbids.** At the end of each round of bidding, the Monitor, in consultation with the Independent Director, shall (i) immediately review each Overbid made in such round; (ii) identify the highest and best Overbid; and (iii) announce the terms of such highest and best Overbid to all Auction Bidders entitled to participate in the next round of bidding. Such highest and best Overbid shall be the Opening Bid for the next round of the Auction.
- (h) **Adjournments.** The Monitor may, in its reasonable business judgment, make one or more adjournments in the Auction (other than for adjournments at the end of an Auction day to the next morning, such adjournments not to exceed two (2) Business Days in the aggregate) to, among other things: (i) facilitate discussions with individual Auction Bidders, including any discussion, negotiation or clarification of any Overbid; (ii) allow individual Auction

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Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and best Overbid at any given time during the Auction; (iv) give Auction Bidders the opportunity to provide such additional evidence as the Monitor may require, in their reasonable business judgment, that the Auction Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the Overbid amount; and (v) subject to such rules and guidelines as the Monitor may consider appropriate, facilitate any appropriate consultation by Auction Bidders with third party stakeholders.

- (i) **Closing the Auction.** If, in any round of bidding, no Overbid is made, the Auction shall be closed and the Monitor shall: (i) declare the last Opening Bid as the successful Bid (the “**Successful Bid**” and the party submitting such Successful Bid, the “**Successful Bidder**”); (ii) immediately review the other Overbids made in the previous round (or the Qualified Bid(s) if no Overbids were made at the Auction) and identify and record the next highest and best Overbid (or Qualified Bid) (the “**Back-Up Bid**” and the party or parties submitting such Back-Up Bid, the “**Back-Up Bidder**”); and (iii) advise the Successful Bidder and the Back-Up Bidder of such determinations and all other Auction Bidders that they are not a Successful Bidder or a Back-Up Bidder. If a Back-Up Bid is identified in accordance with this SISP, then such Back-Up Bid shall remain open until the earlier of (i) the consummation of the transaction contemplated by the Successful Bid, and (ii) ten (10) days after the Outside Date.
- (j) **Executed Documentation:** The Successful Bidder and the Back-Up Bidder (if any) shall, within two (2) Business Days after the conclusion of the Auction, or such longer delay acceptable to Tehama and the Monitor, submit to Tehama and the Monitor executed revised documentation memorializing the terms of the Successful Bid and the Back-Up Bid (if any). Subject to the terms of the Successful Bid documentation, the Successful Bid and the Back-Up Bid may not be assigned to any party without the consent of Tehama and the Monitor.
- (k) **Reservation of Rights.**

Subject to the maximum length of adjournments contemplated by Section 25(h), the Monitor, in consultation with the Independent Director, reserve their rights to modify the conduct of the Auction at any time, acting reasonably, in any manner that would best promote the goals of the Auction process, including to select the

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Successful Bid and/or Back-Up Bid prior to the completion of the Auction.

- (1) **No Collusion.** Each Auction Bidder shall be required to confirm that it has not engaged in any discussions or any other collusive behavior with respect to the submission of Overbids. The Monitor may permit discussions between Auction Bidders at the Auction, subject to such rules and guidelines as the Monitor considers appropriate and on notice to all of the Auction Bidders.

### **Approval Motion**

26. Tehama shall apply to the CCAA Court (the “**Approval Motion**”) for an order approving the Successful Bid and authorizing and directing Tehama to enter into any and all necessary agreements with respect to the Successful Bid and to undertake such other actions as may be necessary or appropriate to give effect to the Successful Bid. Such order shall also approve the Back-Up Bid, if any, should the Successful Bid not close for any reason.
27. The Approval Motion will be heard on the Approval Motion Date. The Approval Motion may be adjourned or rescheduled by Tehama, with the consent of the Monitor and the Successful Bidder, without further notice by an announcement of the adjourned date at the Approval Motion.
28. All Qualified Bids (other than the Successful Bid and the Back-Up Bid) will be deemed rejected on the date of approval of the Successful Bid by the CCAA Court.

### **Closing the Successful Bid**

29. Tehama and the Successful Bidder shall take all reasonable steps to complete the transaction contemplated by the Successful Bid as soon as possible after the Successful Bid is approved by the CCAA Court. Tehama will be deemed to have accepted the Successful Bid only when the Successful Bid has been approved by the CCAA Court, provided that following designation of the Successful Bid by the Monitor, neither Tehama (including its legal advisors) nor the Monitor shall be entitled to solicit any further bids or engage with any bidder (other than the Successful Bidder and, solely with respect to the Back-Up Bid, the Back-Up Bidder) and shall seek approval of the Successful Bid as contemplated hereby. If the transaction contemplated by the Successful Bid has not closed by the Outside Date or the Successful Bid is terminated for any reason prior to the Outside Date, Tehama may elect, with the consent of the Monitor, on not less than two (2) Business Day’s notice to the CCAA Service List, to seek to complete the transaction contemplated by the Back-Up Bid, and will promptly seek to close the transaction contemplated by the Back-Up Bid. In such event, the Back-Up Bid will be deemed to be the Successful Bid and Tehama will be

deemed to have accepted the Back-Up Bid only when Tehama has made such election with the consent of the Monitor.

### **General**

30. All Deposits will be retained by the Monitor and invested in an interest-bearing trust account. If there is a Successful Bid and/or Back-Up Bid, the Deposit (plus accrued interest) paid by the Successful Bidder and/or Back-Up Bidder whose bid is approved at the Approval Motion will be applied to the purchase price to be paid or investment amount to be made by the Successful Bidder and/or Back-Up Bidder, as applicable upon closing of the approved transaction and will be non-refundable. The Deposits (plus applicable interest) of Qualified Bidders and Auction Bidders not selected as the Successful Bidder and/or Back-Up Bidder will be returned to such bidders within five (5) Business Days of the date upon which the Successful Bid is approved by the CCAA Court or any earlier date as may be determined by the Monitor. The Deposit of the Back-Up Bidder shall be returned to such Back-Up Bidder no later than 5 Business Days after Closing.
31. If a Successful Bidder breaches its obligations under the terms of the SISP, or fails to close the Transaction after they are approved by the CCAA court, its Deposit shall be forfeited as liquidated damages and not as a penalty.
32. All bidders (including Auction Bidders and Qualified Bidders) shall be deemed to have consented to the exclusive jurisdiction of the CCAA Court and waived any right to a jury trial in connection with any disputes relating to the SISP, including the qualification of bids, the Auction, if any, the construction and enforcement of the SISP, the transaction documents and the Closing, as applicable.
33. There will be no amendments to this SISP without the consent of the Monitor, the Independent Director, and the Stalking Horse Bidder or, in the absence of consent, the approval of the CCAA Court.
34. This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between any Qualified Bidder or Auction Bidder and either Tehama or the Monitor, or any obligation to enter into any contractual or other legal relationship between any Qualified Bidder or Auction Bidder and either Tehama or the Monitor, other than as specifically set forth in a definitive agreement that may be signed with Tehama.
35. Neither Tehama nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the SISP arising out of any agreement or arrangement entered into by the parties that submitted the Successful Bid and Back-Up Bid.

**SCHEDULE "A"**  
**CONTACT INFORMATION**

**SCHEDULE "B"**  
**WIRE INSTRUCTIONS**

Court File No.: CV-23-00693280-00CL

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDINGS COMMENCED AT TORONTO

**AFFIDAVIT OF MICHAEL AIELLO**

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*Lawyers for the Applicant*



# Tab 3

Court File No. CV-23-00693280-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

THE HONOURABLE MADAM	)	WEDNESDAY, THE 29 <sup>th</sup>
	)	
JUSTICE KIMMEL	)	DAY OF MARCH, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC. (the "**Applicant**")

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by Tehama Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by a stalking horse purchase agreement (the "**Stalking Horse APA**") between the Applicant and 14667913 Canada Inc. (the "**Purchaser**") dated February 7, 2023 and vesting in the Purchaser all of the Applicant's right, title, benefit and interest in and to the assets described in the Stalking Horse APA, was heard this day at 330 University Avenue, Toronto, Ontario, by judicial video conference via Zoom.

**ON READING** the Notice of Motion of the Applicant, the affidavit of Michael Aiello sworn March 27, 2023, and the exhibits thereto (the "**Aiello Affidavit**"), filed, the Third Report of Deloitte Restructuring Inc., in its capacity as Monitor (the "**Monitor**") dated March 27, 2023 (the "**Third Report**"), filed, and on hearing the submissions of counsel for the Applicant and the Monitor, no one else appearing although duly served as appears from the Affidavit of Service of Amanda Campbell sworn March \_\_\_, 2023, filed:

1. **THIS COURT ORDERS** that unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Stalking Horse APA.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the Applicant is hereby authorized and directed to complete the Transaction on the terms of the Stalking Horse APA, with such minor amendments as the parties thereto may deem necessary, with the approval of the Monitor. The Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all of the Applicant's right, title, benefit and interest in and to the Purchased Assets described in the Stalking Horse APA shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order dated January 20, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "C"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in connection with the Transaction.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if

the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicant.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Vendor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Vendor, as an officer of this Court, as may

be necessary or desirable to give effect to this Order or to assist the Vendor and its agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date hereof.

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**Schedule A – Form of Monitor’s Certificate**

Court File No.: CV-23-00693280-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)****IN THE MATTER OF THE *COMPANIES’ CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED****AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC. (the “**Applicant**”)****MONITOR’S CERTIFICATE****RECITALS**

- A.** Pursuant to an Order of the Honourable Madam Justice Kimmel of the Ontario Superior Court of Justice (the “**Court**”) dated January 20, 2023, Deloitte Restructuring Inc. was appointed as monitor (in such capacity, the “**Monitor**”) of Tehama Inc. (the “**Vendor**”);
- B.** Pursuant to an Order of the Court dated March 20, 2023, the Court approved the stalking horse purchase agreement dated February 7, 2023 (the “**Stalking Horse APA**”) between the Vendor and 14667913 Canada Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser all of the Vendor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Applicant and the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets, (ii) that the conditions to closing as set out in the Stalking Horse APA have been satisfied or waived by the Vendor and the Purchaser, and (iii) the Transaction has been completed to the satisfaction of the Monitor.
- C.** Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Stalking Horse APA.

**THE MONITOR CERTIFIES** the following:

1. The Purchaser has delivered the Purchase Price and closing deliveries and the Vendor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Stalking Horse APA;
2. The conditions to closing as set out in the Stalking Horse APA have been satisfied or waived by the Vendor and the Purchaser, respectively;
3. All amounts due and payable on account of fees and disbursements secured pursuant to the Administration Charge, as outlined in the revised cash flow forecast attached as Appendix “B” to the Monitor’s third report dated March 27, 2023, have been paid; and
4. The Transaction has been completed to the satisfaction of the Monitor.

**THIS CERTIFICATE** was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**DELOITTE RESTRUCTURING INC., solely  
in its capacity as Monitor of Tehama Inc., and  
not in any other capacity**

Per: \_\_\_\_\_

Name:

Title:

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at Toronto, Ontario

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**MONITOR'S CERTIFICATE**

---

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*Lawyers for the Applicant*



**Schedule B – Claims to be deleted and expunged**

**Schedule C – Permitted Encumbrances**  
**(unaffected by the Vesting Order)**

None.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC

---

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings commenced at Toronto, Ontario

---

**APPROVAL AND VESTING ORDER**

---

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# Tab 4

Revised: January 21, 2014

Court File No. — CV-23-00693280-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

THE HONOURABLE — MADAM ) ~~WEEKDAY~~WEDNESDAY, THE #29<sup>th</sup>  
 )  
 JUSTICE — KIMMEL ) DAY OF ~~MONTH~~MARCH,  
 ) 20YR2023

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

**BETWEEN:**

**PLAINTIFF**

Plaintiff

—and—

**DEFENDANT**

Defendant

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC. (the "Applicant")

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by ~~[RECEIVER'S NAME]~~ in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ Tehama Inc. (the "Applicant"), pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "~~Debtor~~" "CCAA") for an order, *inter alia*, approving the sale transaction (the "Transaction") contemplated by ~~an~~ stalking horse purchase agreement ~~of purchase and sale~~ (the "~~Sale Agreement~~" "Stalking Horse APA") between the ~~Receiver~~ Applicant and ~~[NAME OF PURCHASER]~~ 14667913 Canada Inc. (the "Purchaser") dated ~~[DATE]~~ and ~~appended to the Report of the Receiver dated [DATE] (the "Report")~~, February 7, 2023 and vesting in the Purchaser all of the ~~Debtor~~ Applicant's right, title, benefit and interest in and to the assets

described in the ~~Sale Agreement (the "Purchased Assets")~~Stalking Horse APA, was heard this day at 330 University Avenue, Toronto, Ontario, by judicial video conference via Zoom.

ON READING the ~~Report~~Notice of Motion of the Applicant, the affidavit of Michael Aiello sworn March 27, 2023, and the exhibits thereto (the "Aiello Affidavit"), filed, the Third Report of Deloitte Restructuring Inc., in its capacity as Monitor (the "Monitor") dated March 27, 2023 (the "Third Report"), filed, and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING]Applicant and the Monitor, no one else appearing ~~for any other person on the service list~~, although ~~properly~~duly served as appears from the ~~affidavit~~Affidavit of ~~[NAME]~~Service of Amanda Campbell sworn ~~[DATE]~~March \_\_\_\_, 2023, filed<sup>1</sup>:

1. THIS COURT ORDERS that unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Stalking Horse APA.

2. ~~1. THIS COURT ORDERS AND DECLARES~~ that the Transaction is hereby approved,<sup>2</sup> and the ~~execution of the Sale Agreement by the Receiver~~<sup>3</sup>Applicant is hereby authorized and ~~approved~~directed to complete the Transaction on the terms of the Stalking Horse APA, with such minor amendments as the ~~Receiver~~parties thereto may deem necessary, with the approval of the Monitor. The ~~Receiver~~Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

<sup>1</sup>~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

<sup>2</sup>~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

<sup>3</sup>~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

3. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver/Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Receiver'Monitor's Certificate"), all of the ~~Debtor~~Applicant's right, title, benefit and interest in and to the Purchased Assets described in the ~~Sale Agreement [and listed on Schedule B hereto]~~<sup>4</sup>Stalking Horse APA shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order ~~of the Honourable Justice [NAME]~~ dated ~~[DATE]~~January 20, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C"B" hereto (all of which are collectively referred to as the "Encumbrances"<sup>6</sup>, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D"C") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

~~3. — THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]~~<sup>6</sup>, the Land Registrar is hereby directed to enter the

<sup>4</sup> To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

<sup>5</sup> The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).

~~Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

4. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in connection with the Transaction.

5. 4-THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the ~~Receiver~~Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

~~5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.~~

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the ~~Receiver~~Applicant is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the ~~Company~~Applicant's records pertaining to the ~~Debtor~~Applicant's past and current employees, ~~including personal information of those employees listed on Schedule "●" to the Sale Agreement~~. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~Applicant.

<sup>7</sup>~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

<sup>8</sup>~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~



7. **THIS COURT ORDERS** that, notwithstanding:
- (a) the pendency of these proceedings;
  - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) ("BIA") in respect of the DebtorApplicant and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made in respect of the DebtorApplicant;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the DebtorApplicant and shall not be void or voidable by creditors of the DebtorApplicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the ~~*Bankruptcy and Insolvency Act (Canada)*~~ BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. — THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act (Ontario)*.~~

8. ~~9.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the ReceiverVendor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ReceiverVendor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the ReceiverVendor and its agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date hereof.



Revised: January 21, 2014

Schedule A — Form of ~~Receiver~~ Monitor's CertificateCourt File No. \_\_\_\_\_: CV-23-00693280-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

~~BETWEEN:~~**PLAINTIFF**

Plaintiff

~~—and—~~**DEFENDANT**

Defendant

**RECEIVER**

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC. (the "Applicant")

**MONITOR'S CERTIFICATE****RECITALS**

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Madam Justice Kimmel of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ January 20, 2023, Deloitte Restructuring Inc. was appointed as ~~the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor").~~ monitor (in such capacity, the "Monitor") of Tehama Inc. (the "Vendor");

B. Pursuant to an Order of the Court dated ~~[DATE]~~ March 20, 2023, the Court approved the stalking horse purchase agreement ~~of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement")~~ dated February 7, 2023 (the "Stalking Horse APA") between the

~~Receiver~~ ~~[Debtor]~~ Vendor and ~~[NAME OF PURCHASER]~~ 14667913 Canada Inc. (the "Purchaser") and provided for the vesting in the Purchaser all of the ~~Debtor~~ Vendor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the ~~Receiver~~ to Monitor to the Applicant and the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to ~~Closing~~ closing as set out in ~~section 4 of the Sale Agreement~~ Stalking Horse APA have been satisfied or waived by the ~~Receiver~~ Vendor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the ~~Receiver~~ Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the ~~Sale Agreement~~ Stalking Horse APA.

**THE ~~RECEIVER~~ MONITOR CERTIFIES** the following:

1. The Purchaser has ~~paid~~ delivered the Purchase Price and closing deliveries and the ~~Receiver~~ Vendor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the ~~Sale Agreement~~ Stalking Horse APA;

2. The conditions to ~~Closing~~ closing as set out in ~~section 4 of the Sale Agreement~~ Stalking Horse APA have been satisfied or waived by the ~~Receiver~~ Vendor and the Purchaser, respectively; ~~and~~

~~3.~~ \_\_\_\_\_

3. All amounts due and payable on account of fees and disbursements secured pursuant to the Administration Charge, as outlined in the revised cash flow forecast attached as Appendix "B" to the Monitor's third report dated March 27, 2023, have been paid; and

4. The Transaction has been completed to the satisfaction of the ~~Receiver~~ Monitor.

~~4.~~ ~~This Certificate~~ THIS CERTIFICATE was delivered by the ~~Receiver~~ Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

~~{NAME OF RECEIVER}~~, DELOITTE  
RESTRUCTURING INC., solely in its  
capacity as ~~Receiver~~ Monitor of ~~the~~  
~~undertaking, property and assets of~~  
~~{DEBTOR}~~ Tehama Inc., and not in ~~its~~  
~~personal~~ any other capacity

Per: \_\_\_\_\_

Name:

Title:

Court File No. CV-23-00693280-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings commenced at Toronto, Ontario

**MONITOR'S CERTIFICATE**

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Lawyers for the Applicant

Schedule B — ~~Purchased Assets~~

**Schedule C** ~~Claims to be deleted and expunged from title to Real Property~~



Schedule ~~D~~ C – Permitted Encumbrances, ~~Easements and Restrictive Covenants~~  
~~related to the Real Property~~

(unaffected by the Vesting Order)

None.

IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings commenced at Toronto, Ontario

**APPROVAL AND VESTING ORDER**

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Document 1 ID	file://C:\Users\campbellam\OneDrive - Dentons\Documents\AB and CL Model Orders\approval-and-vesting-order-EN.doc
Description	approval-and-vesting-order-EN
Document 2 ID	iManage://WORKSITE.CA.DENTONS.COM/NATDOCS/69574741/6
Description	#69574741v6<WORKSITE.CA.DENTONS.COM> - Approval and Vesting Order v.6
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<b>Legend:</b>
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<del>Deletion</del>
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Style change
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Moved cell
Split/Merged cell
Padding cell

<b>Statistics:</b>	
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Deletions	158
Moved from	1
Moved to	1
Style changes	0
Format changes	0
Total changes	343

# Tab 5

Court File No. CV-23-00693280-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE	)	WEDNESDAY THE 29 <sup>TH</sup>
	)	
JUSTICE KIMMEL	)	DAY OF MARCH, 2023

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TEHAMA INC.**

**ANCILLARY ORDER**

**THIS MOTION**, made by Tehama Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day by videoconference.

**ON READING** the Applicant's Notice of Motion dated March 27, 2023, the Affidavit of Michael Aiello dated March 27, 2023 and the exhibits thereto, filed, the Third Report of Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as the monitor of the Applicant (in such capacity, the "**Monitor**") dated March 27, 2023 and the exhibits thereto (the "**Third Report**"), filed, the affidavit of Ryan Adlington sworn March 27, 2023 and the exhibits thereto (the "**Adlington Affidavit**"), filed, and the affidavit of Joseph Latham sworn March 27, 2023 and the exhibits thereto (the "**Latham Affidavit**"), filed, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor and counsel for those other parties appearing as indicated by the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service, filed:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

**DEFINED TERMS**

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Amended and Restated Initial Order of Justice Kimmel dated January 30, 2023 (“**Initial Order**”).

**STAY EXTENSION**

3. **THIS COURT ORDERS** that the Stay Period is hereby extended to and including April 21, 2023.

**MONITOR’S REPORT AND ACTIVITIES APPROVAL**

4. **THIS COURT ORDERS** that the first report of the Monitor dated January 26, 2023, the second report of the Monitor dated February 8, 2023, and the Third Report (collectively, the “**Monitor’s Reports**”), and the activities and conduct of the Monitor described in the Monitor’s Reports are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, as described and set out in the Third Report, the Adlington Affidavit and the Latham Affidavit, are hereby approved.

**GENERAL**

6. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order, and this Order is enforceable without the need for entry and filing.

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at Toronto, Ontario

**ANCILLARY ORDER**

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*Lawyers for the Applicant*

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEHAMA INC.

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at Toronto, Ontario

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**MOTION RECORD  
(returnable March 29, 2023)**

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