Court File No. CV-23-00701377-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	FRIDAY, THE 30TH
	)	
JUSTICE KOEHNEN	)	DAY OF JUNE, 2023

B E T W E E N:

(Court Seal)

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
SWARMIO MEDIA HOLDINGS INC., SWARMIO INC., AND SWARMIO MEDIA INC.,
Applicants

SALE AND INVESTMENT SOLICITATION PROCESS ORDER

THIS MOTION, made by Swarmio Media Holdings Inc., Swarmio Inc., and Swarmio Media Inc. (collectively, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order (i) approving the sale and investment solicitation process (the "**SISP**") attached hereto as **Schedule** "**A**"; and (ii) authorizing and directing the Monitor to conduct the SISP was heard this day by Zoom video conference.

ON READING the affidavit of Vijai Karthigesu sworn June 20, 2023 and the Exhibits thereto, the affidavit of Vijai Karthigesu sworn June 26, 2023, the Amended and Restated Initial Order of Justice Koehnen dated June 30, 2023 (the "**Initial Order**"), the First Report of the Grant

Thornton Limited ("**GT**") in its capacity as the Monitor (the "**Monitor**"), and the Affidavit of Service, filed,

DEFINED TERMS

1. **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.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.

APPROVAL OF SALE AND INVESTMENT SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the SISP is hereby approved.

4. **THIS COURT ORDERS** that the Monitor is authorized and directed to take such steps as it deems necessary or advisable to carry out and perform its obligations under the SISP.

5. **THIS COURT ORDERS** that the Monitor and its respective affiliates, partners, employees, representatives and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Monitor in performing its obligations under the SISP as determined by this Court.

6. **THIS COURT ORDERS** that the Monitor and the Applicants and their respective counsel be and are hereby authorized but not obligated, to serve or distribute this SISP Order, any other materials, orders, communication, correspondence or other information as may be necessary or desirable in connection with the SISP to any Person (as defined in the Initial Order, as amended or restated from time to time) or interested party that the Monitor or the Applicants consider appropriate. For greater certainty, any such distribution, communication or correspondence shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Monitor and the Applicants are hereby authorized and permitted to disclose and transfer to each potential bidder (the "**Bidders**") and to their advisors, if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Applicants' records pertaining to its past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale of the Property ("**Sale**") or investment in the Business ("**Investment**"). Each Bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale or Investment, and if it does not complete a Sale or Investment, shall return all such information to the Monitor and the Applicants, or in the alternative destroy all such information. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Bid(s), shall be entitled to use the

personal information provided to it that is related to the Property of Business acquired pursuant to the Sale or invested in pursuant to the Investment in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Monitor and the Applicants, or ensure that all other personal information is destroyed.

8. **THIS COURT ORDERS** that the Monitor is hereby authorized to disclose any information or documentation contained in the Applicants' records (including, without limitation, confidential information or documentation) regarding the Applicants' assets, undertakings and properties, including the Applicant's business and operations (collectively, the "**Property and Business Information**") to Potential Bidders who have signed an NDA, provided that the Monitor will only disclose Property and Business Information that the Monitor determines is reasonably necessary to permit a Qualified Bidder to conduct due diligence regarding a potential Transaction or that is otherwise necessary to implement the SISP or a potential Transaction.

9. **THIS COURT ORDERS** that each Recipient to whom Property and Business Information is disclosed under the SISP will maintain and protect the confidentiality of such Property and Business Information and limit the use of such Property and Business Information to its evaluation of the Opportunity in accordance with the terms of the SISP and the applicable NDA and, if the Opportunity is no longer being considered by the Recipient, if the Recipient does not complete a Transaction under the SISP or otherwise at the request of the Monitor, such Recipient will return all such Property and Business Information to the Monitor or alternatively destroy such Property and Business Information and provide confirmation of its destruction of so requested by the Monitor. The Successful Bidder(s) will maintain and protect the confidentiality of the Property

and Business Information and, upon the closing of any Transaction(s), will be entitled to use the Property and Business Information provided to them that is related to the Property or the Business subject to the Transaction(s) in a matter that is in all material respects identical to the prior use of such Property and Business Information by the Applicants and the Monitor, and will return all other Property and Business Information to the Monitor or alternatively destroy such Property and Business Information and provide confirmation of its destruction if so requested by the Monitor.

GENERAL

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

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist the Applicants, 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that each of the Applicants 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.

13. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

Schedule “A”

Sale and Investment Solicitation Process
Swarmio Media Holdings Inc., Swarmio Inc., Swarmio Media Holdings

Introduction

1. On June 21, 2023, Swarmio Media Holdings Inc. and its subsidiaries, Swarmio Inc. and Swarmio Media Inc. (collectively, the “**Applicants**”) were granted an initial order (as amended or amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**” and the “**CCAA Proceedings**”) by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).

2. On June 30, 2023, the Court issued an order (the “**SISP Approval Order**”) approving, and authorizing the Applicants to commence a sale and investment solicitation process (“**SISP**”) in accordance with the terms of these bidding procedures.

3. According to the SISP Approval Order, Grant Thornton Limited, in its capacity as the Court-appointed Monitor of the Applicants (in such capacity, the “**Monitor**”) will conduct the SISP with the assistance of the Applicants. The SISP is intended to solicit interest in a sale of the assets and/or business of the Applicants by way of a share purchase, asset purchase, merger, reorganization, recapitalization, or other similar transaction. The Applicants intend to provide all qualified interested parties with an opportunity to participate in the SISP.

Opportunity

4. The SISP is intended to solicit interest in, and opportunities for, a sale of, or investment in, all or part of the Applicants’ assets and business operations (the “**Opportunity**”). The Opportunity may include one or more of a restructuring, recapitalization or other form or reorganization of the business and affairs of the Applicants as a going concern or a sale of all, substantially all or one or more components of the Applicants’ assets (the “**Property**”) and business operations (the “**Business**”) as a going concern or otherwise. The SISP will solicit bids for the Property and Business, with the highest and/or best bid being the “**Successful Bid**”, as determined in accordance with the terms and conditions contained herein.

5. Except to the extent otherwise set forth in a definitive sale or investment agreement with the party submitting the Successful Bid (the “**Successful Bidder**”), any sale of the Property or investment in the Business will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Applicants, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.

Timeline

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

Milestone	Deadline
Deadline to Publish Notice of SISP and deliver Teaser Letter and NDA to Known Potential Bidders	As soon as practicable following the issuance of the SISP Order
Phase 1 Due Diligence Period	July 3 to July 24
Phase 1 Bid Deadline	July 25, 2023
Phase 2 Due Diligence Period	July 26, 2023 to August 13, 2023
Phase 2 Bid Deadline	August 14, 2023
Auction Date	August 18, 2023
Sale Approval Motion	No later than August 28, 2023, subject to the availability of the Court
Closing	September 7, 2023

7. Subject to any order of the Court, the dates set out in the SISP may be extended by the Monitor with the consent and approval of the Applicants.

Solicitation of Interest: Notice of the SISP

8. As soon as reasonably practicable, but in any event by no later than July 3, 2023:

(a) the Monitor, in consultation with the Applicants, will prepare a list of potential bidders, including: (i) parties that have previously expressed an interest in the Opportunity; (ii) parties that have approached the Applicants or the Monitor indicating an interest in the Opportunity; and (iii) local and international strategic and financial parties who the Applicants, in consultation with the Monitor, believe may be interested in purchasing all or part of the Business and Property or investing in the Applicants pursuant to the SISP, in each case whether or not such party has submitted a letter of intent or similar document (collectively, "**Known Potential Bidders**");

(b) the Monitor will arrange for a notice of the SISP (and such other relevant information which the Monitor, in consultation with the Applicants, considers appropriate) (the "**Notice**") to be published in The Globe and Mail (National Edition), and any other newspaper or journal as the Applicants, in consultation with the Monitor, consider appropriate, if any; and

(c) the Monitor, in consultation with the Applicants, will prepare: (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement ("**NDA**") in form and substance satisfactory to the Applicants and the Monitor, and their respective counsel.

9. The Monitor will send the Teaser Letter and NDA to each Known Potential Bidder by no later than July 7, 2023 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Applicants or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Potential Bidders and Due Diligence Materials

10. Any party who wishes to participate in the SISP (a "**Potential Bidder**") must provide to the Applicants and the Monitor an NDA executed by it, and which shall inure to the benefit of any purchaser of the Business or Property, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.

11. The Monitor, in consultation with the Applicants, shall in their reasonable business judgment and subject to competitive and other business considerations, afford each Potential Bidder who has signed and delivered an NDA to the Monitor and provided information as to their financial wherewithal to close a transaction such access to due diligence material and information relating to the Property and Business as the Applicants or the Monitor deem appropriate. Due diligence shall include access to a confidential electronic data room (the "**Data Room**") containing information about the Applicants and the Business. The Data Room shall be made available as soon as practicable and may include standard financial information, management presentations and material contracts, together with other materials which a Potential Bidder may reasonably request and as to which the Applicants, in their reasonable business judgment and after consulting with the Monitor, may agree. Following the completion of Phase 1 of the SISP, additional information may be added to the Data Room to enable Phase 1 Qualified Bidders (as defined herein) to complete any confirmatory due diligence required in connection with submitting a Phase 2 Bid (as defined herein). The Monitor, in consultation with the Applicants, may establish or cause the Applicants to establish separate Data Rooms if the Applicants reasonably determine that doing so would further the Applicants' and any Potential Bidders' compliance with applicable laws, or would prevent significant harm to the Business, including the distribution of commercially sensitive competitive information to competitors. The Monitor may also, in consultation with the Applicants, limit the access of any Potential Bidder to any confidential information in the Data Room where the Monitor, in consultation with the Applicants, reasonably determines that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Business or its value. Without limiting the generality of the foregoing, the Monitor and the Applicants intend to limit access to especially sensitive proprietary information, including source code, by providing supervised access to physical documents in Phase 2 of the SISP.

12. The Monitor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Applicants nor the Monitor will be obligated to furnish any information relating to the Property or Business to any person other than to Potential Bidders. Furthermore, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders if the Applicants, in consultation with and with the approval of the Monitor, determine such information to represent proprietary or sensitive competitive information.

Neither the Applicants nor the Monitor is responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Property or the Business.

13. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Applicants.

Phase 1: Conditional Offers

14. Potential Bidders that wish to make a formal offer to purchase or make an investment in the Applicants or their Property or Business (each a "**Phase 1 Bidder**") shall submit a binding offer (a "**Phase 1 Bid**") to the Monitor at the address specified in Schedule "1" hereto (including by e-mail), so as to be received by them not later than **5:00 PM (Eastern Time) on July 25, 2023** or as may be modified by the Monitor in accordance with this SISP (the "**Phase 1 Bid Deadline**").

15. A Phase 1 Bid shall be deemed to be a "**Phase 1 Qualified Bid**" if it satisfies the following criteria, as determined by the Monitor in accordance with the terms of this SISP:

(a) the Phase 1 Bid must be either a binding offer to:

(i) acquire all, substantially all or a portion of the Property (a "**Sale Proposal**"); and/or

(ii) make an investment in, restructure, reorganize or refinance the Business or the Applicants (an "**Investment Proposal**");

(b) the Phase 1 Bid shall be: (a) in the case of a Sale Proposal, in the form of the template agreement of purchase and sale provided in the Data Room, along with a marked version showing edits to the original form of the template provided; or (b) in the case of an Investment Proposal, a plan or restructuring support agreement in form and substance satisfactory to the Monitor, in consultation with the Applicants;

(c) the Phase 1 Bid shall be binding, but may be conditional upon further due diligence to be conducted during Phase 2 of the SISP and, for certainty, the Phase 1 Bid may be amended following the completion of such diligence;

(d) the Phase 1 Bid (either individually or in combination with other bids that make up one bid) shall be an offer to purchase or make an investment in some or all of the Applicants or their Property or Business and shall be consistent with any necessary terms and conditions established by the Applicants and the Monitor and communicated to Potential Bidders;

(e) the Phase 1 Bid shall include duly authorized and executed transaction agreements, including the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto;

(f) the Phase 1 Bid shall fully disclose the identity of each entity that will be entering into the transaction or the financing, or that is otherwise participating or benefiting from such Phase 1 Bid;

(g) the Phase 1 Bid shall be accompanied by a deposit equal to at least 15% of the Purchase Price offered by the Phase 1 Bidder, in the case of a Sale Proposal, or at least 15% of the total new investment contemplated in the bid, in the case of an Investment Proposal (the "**Deposit**"), along with acknowledgements that: (i) the Deposit will be retained by the Monitor and deposited in a non-interest bearing trust account; (ii) the Deposit is non-refundable, subject to approval of the Successful Bid by the Court, and if the Phase 1 Bidder is not selected as the Successful Bidder, the Deposit will be refunded as soon as practicable following the closing of the transaction contemplated by the Successful Bid; (iii) if the Phase 1 Bidder is selected as the Successful Bidder, the Deposit will be applied to the Purchase Price at the closing of the transaction contemplated by the Successful Bid;

(h) for a Sale Proposal, the Phase 1 Bid shall include:

(i) the Purchase Price in Canadian dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Phase 1 Bidder and key assumptions supporting the valuation;

(ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;

(iii) a specific indication of the financial capability of the Phase 1 Bidder and the expected structure and financing of the transaction, including a whether the Phase 1 Bidder anticipates using a "reverse vesting" structure;

(iv) a description of the conditions and approvals required to complete the closing of the transaction, including any remaining diligence to be completed;

(v) a description of those liabilities and obligations (including operating liabilities) which the Phase 1 Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and

(vi) any other terms or conditions of the Sale Proposal that the Phase 1 Bidder believes are material to the transaction;

(i) for an Investment Proposal, the Phase 1 Bid shall include:

(i) a description of how the Phase 1 Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;

(ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in Canadian dollars;

(iii) the underlying assumptions regarding the pro forma capital structure;

(iv) a specific indication of the sources of capital for the Phase 1 Bidder and the structure and financing of the transaction;

(v) a description of the conditions and approvals required to complete the closing of the transaction, including any remaining diligence to be completed;

(vi) a description of those liabilities and obligations (including operating liabilities) which the Phase 1 Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and

(vii) any other terms or conditions of the Investment Proposal;

(j) the Phase 1 Bid shall be received by no later than the Phase 1 Bid Deadline.

16. Following the Phase 1 Bid Deadline, the Applicants and the Monitor will assess the Phase 1 Bids received and seek clarification with respect to any of the terms or conditions of such Phase 1 Bids and/or request and negotiate one or more amendments to such Phase 1 Bids prior to determining whether a Phase 1 Bid constitutes a Phase 1 Qualified Bid. The Monitor, in consultation with the Applicants and with the approval of the Applicants, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Phase 1 Bids to be a Phase 1 Qualified Bid.

17. Following such process, the Monitor, in consultation with the Applicants, and with the approval of the Applicants, shall confirm which Phase 1 Bids constitute Phase 1 Qualified Bids. No Phase 1 Bid received shall be deemed not to be a Phase 1 Qualified Bid without the approval of the Monitor. Only Phase 1 Bidders whose Phase 1 Bids have been designated as Phase 1 Qualified Bids ("**Phase 1 Qualified Bidders**") are eligible to participate in Phase 2 of the SISP. The Monitor shall notify each Phase 1 Bidder in writing as to whether its Phase 1 Bid constitutes a Phase 1 Qualified Bid within two (2) business days of the Phase 1 Bid Deadline, or at such later time as the Monitor deems appropriate.

18. The Monitor may, in consultation with the Applicants and with the approval of the Applicants, aggregate separate Phase 1 Bids from unaffiliated Phase 1 Bidders to create one Phase 1 Qualified Bid.

19. If the Monitor, in consultation with the Applicants, are not satisfied with the number or terms of the Phase 1 Qualified Bids, or if no Phase 1 Qualified Bids are received, the Monitor may, in consultation with the Applicants and with the approval of the Applicants, extend the Phase 1 Bid Deadline, or the Monitor may seek Court approval of an amendment to the SISP.

20. If the Monitor, in consultation with the Applicants, determines that only one Phase 1 Bid constitutes a Phase 1 Qualified Bid, the Monitor may dispense with Phase 2 of the SISP, designate the party that submitted the Phase 1 Qualified Bid as the Successful Bidder in the SISP, and work exclusively with such Successful Bidder to complete any required diligence, satisfy any conditions, and obtain Court approval of the Successful Bid.

Phase 2: Formal Offers and Removal of Conditions

21. Any Phase 1 Qualified Bidder that wishes to participate in Phase 2 of the SISP (each a "**Phase 2 Bidder**") must submit a binding offer with respect to its Sale Proposal or Investment Proposal (a "**Phase 2 Bid**") to the Monitor at the address specified in Schedule "1" hereto (including by e-mail), so as to be received by them not later than **5:00 PM (Eastern Time) on August 14, 2023** or as may be modified by the Monitor in accordance with this SISP (the "**Phase 2 Bid Deadline**").

22. A Phase 2 Bid shall be deemed to be a "**Phase 2 Qualified Bid**" if it satisfies all of the criteria of a Phase 1 Qualified Bid, together with the following additional criteria, as determined by the Monitor in accordance with the terms of this SISP:

(a) the Phase 2 Bid shall be a binding Sale Proposal or Investment Proposal, accompanied by a letter confirming that the Phase 2 Bid: (i) may be accepted by the Applicants by countersigning the Phase 2 Bid; and (ii) is irrevocable and capable of acceptance until the earlier of: (A) two business days after the date of closing of the Successful Bid; and (B) the September 15, 2023;

(b) the Phase 2 Bid shall be not subject to any financing condition;

(c) the Phase 2 Bid shall be unconditional, other than a condition requiring the issuance of an order of the Court approving the Phase 2 Bid in form and substance satisfactory to the Phase 2 Bidder (the "**Approval Order**");

(d) the Phase 2 Bid shall contain or identify the key terms and provisions to be included in any Approval Order, including whether such order will be a "reverse vesting order";

(e) the Phase 2 Bid shall not provide for any break or termination fee, expense reimbursement or similar type of payment, it being understood and agreed that no bidder will be entitled to any bid protections;

(f) for a Sale Proposal, the Phase 2 Bid shall include:

(i) the Purchase Price in Canadian dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Phase 2 Bidder and key assumptions supporting the valuation, and including any contemplated Purchase Price adjustments;

(ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;

(iii) a specific indication of the financial capability of the Phase 2 Bidder and the expected structure and financing of the transaction;

(iv) confirmation that there are no conditions or approvals required to complete the closing of the transaction, except the issuance of the Approval Order;

(v) a description of those liabilities and obligations (including operating liabilities) which the Phase 2 Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and

(vi) any other terms or conditions of the Sale Proposal that the Phase 2 Bidder believes are material to the transaction;

(g) for an Investment Proposal, the Phase 2 Bid shall include:

(i) a description of how the Phase 2 Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;

(ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in Canadian dollars;

(iii) the underlying assumptions regarding the pro forma capital structure;

(iv) a specific indication of the sources of capital for the Phase 2 Bidder and the structure and financing of the transaction;

(v) a description of the conditions and approvals required to complete the closing of the transaction, including any remaining diligence to be completed;

(vi) a description of those liabilities and obligations (including operating liabilities) which the Phase 2 Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and

(vii) any other terms or conditions of the Investment Proposal;

(h) the Phase 2 Bid includes acknowledgments and representations of the Phase 2 Bidder that the Phase 2 Bidder:

(i) has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Applicants prior to making its offer;

(ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and

(iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Applicants or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Applicants;

(i) the Phase 2 Bid shall contemplate and reasonably demonstrate a capacity to consummate a closing of the transaction set out therein on or before September 7, 2023, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing and in any event no later than September 15, 2023; and

(j) the Phase 2 Bid shall have been received by the Phase 2 Bid Deadline.

Evaluation of Competing Bids; Selection of Successful Bid

23. Following the Phase 2 Bid Deadline, the Applicants and the Monitor will assess the Phase 2 Bids received and seek clarification with respect to any of the terms or conditions of such Phase 2 Bids and/or request and negotiate one or more amendments to such Phase 2 Bids prior to determining whether a Phase 2 Bid should be considered a Phase 2 Qualified Bid. The Monitor, in consultation with the Applicants and with the approval of the Applicants, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Phase 2 Bid to be a Phase 2 Qualified Bid.

24. The Applicants and the Monitor will: (a) review and evaluate each Phase 2 Qualified Bid; (b) identify and designate the highest or otherwise best as the Successful Bid; and (c) identify the next highest or otherwise second best bid (the "**Back-Up Bid**", and the Phase 2 Bidder making such Back-Up Bid, the "**Back-Up Bidder**"), in each case pursuant to the paragraphs below. Any

Successful Bid and Back-Up Bid will be subject to approval by the Court. Phase 2 Qualified Bids will be evaluated based upon several factors including, without limitation: (i) the Purchase Price and the net value provided by such bid, (ii) the identity, circumstances and ability of the bidder to successfully complete such transactions, (iii) the proposed transaction documents, (iv) factors affecting the speed, certainty and value of the transaction, (v) the assets included or excluded from the bid, (vi) any related restructuring costs, and (vii) the likelihood and timing of consummating such transaction, each as determined by the Applicants and the Monitor.

25. In the event that only one Phase 2 Qualified Bid is received, such Phase 2 Qualified Bid shall constitute the Successful Bid and the Applicants will promptly seek Court approval of such Successful Bid. In the event there is more than one Phase 2 Qualified Bid received, the Monitor, in consultation with the Applicants, may determine the Successful Bid or may determine that the Successful Bid will be identified through an Auction in accordance with the terms of this SISP (the "**Auction**"). Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.

26. Only parties that provided a Phase 2 Qualified Bid by the Phase 2 Bid Deadline, as confirmed by the Monitor (collectively, the "**Qualified Parties**"), shall be eligible to participate in the Auction. No later than 5:00 p.m. Toronto Time on the day prior to the Auction, each Qualified Party must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction.

Auction Procedure

27. The Auction shall be governed by the following procedures:

(a) **Participation at the Auction.** Only the Applicants, the Qualified Parties, the Monitor and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction. The Monitor shall provide all Qualified Bidders with the details of the lead bid by 5:00 PM (Eastern Time) two (2) business days after the Bid Deadline;

(b) **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid;

(c) **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Monitor, in consultation with the Applicants (the "**Initial Bid**"), and any bid made at the Auction by a Qualified Party subsequent to the Monitor's announcement of the Initial Bid (each, an "**Overbid**"), must proceed in minimum additional cash increments of $100,000;

(d) **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that the Monitor, in its discretion, may establish separate video conference rooms to permit interim discussions between the Monitor, the Applicants, and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;

(e) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s);

(f) **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded; and

(g) **Auction Procedures.** The Monitor shall be at liberty to set additional procedural rules as the Auction as it sees fit.

Selection of Successful Bid

28. Before the conclusion of the Auction, the Monitor, in consultation with the Applicants, will:

(a) review each bid, considering, among others things:

(i) the amount of consideration being offered, and, if applicable, the proposed form, composition and allocation of same;

(ii) the value of any assumption of liabilities or waiver of liabilities;

(iii) the likelihood of the Qualified Party's ability to close a transaction expeditiously, after completion of the Auction and timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments and required governmental or other approvals); the likelihood of the Court's approval of the Successful Bid; the net benefit to the Applicants; and

(iv) any other factors the Applicants may, consistent with its fiduciary duties, reasonably deem relevant; and

(b) identify the highest or otherwise best bid received at the Auction as the Successful Bid.

29. The Successful Bidder shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by the Monitor, in consultation with and approval from the Applicants, subject to the milestones set forth herein.

Sale Approval Motion Hearing

30. At the hearing of the motion to approve any transaction with a Successful Bidder (the "**Sale Approval Motion**"), the Monitor or the Applicants shall seek, among other things, approval from the Court to consummate any Successful Bid. All the Qualified Bids other than the Successful Bid,

if any, shall be deemed to be rejected by the Monitor and the Applicants on and as of the date of approval of the Successful Bid by the Court.

Confidentiality and Access to Information

31. All discussions regarding a Sale Proposal, Investment Proposal, or Bid should be directed through the Monitor. Under no circumstances should the management of the Applicants be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP.

32. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of bidders, the details of any bids submitted or the details of any confidential discussions or correspondence between the Applicants, the Monitor and such other bidders or Potential Bidders in connection with the SISP, except to the extent the Applicants, with the approval of the Monitor and consent of the applicable participants, are seeking to combine separate bids from Potential Bidders.

Supervision of the SISP

33. The Monitor shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in this SISP, the SISP Order, the Initial Order and any other orders of the Court. The Monitor is entitled to receive all information in relation to the SISP.

34. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between the Applicants or the Monitor and any Potential Bidder, any bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Applicants.

35. Without limiting the preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, bidder, the Successful Bidder, the Applicants or any other creditor or other stakeholder of the Applicants, for any act or omission related to the process contemplated by this SISP, except to the extent such act or omission is the result from gross negligence or wilful misconduct of the Monitor. By submitting a bid, each Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever, except to the extent that such claim is the result of gross negligence or wilful misconduct of the Monitor.

36. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, the Auction and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

37. The Monitor shall have the right to modify the SISP with the prior written approval of the Applicants if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in these CCAA Proceedings shall be advised of any substantive modification to the procedures set forth herein.

Schedule "1"

Address of Monitor

To the Monitor:

Grant Thornton Limited
11th Floor, 200 King Street West
Toronto, ON M5H 3T4

Attention: Dan Wootton and David Collins
Email: dan.wootton@ca.gt.com, david.collins@ca.gt.com

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

Applicants

Court File No.: CV-23-00701377-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

SISP ORDER

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