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

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

Applicants

MOTION RECORD
(Returnable June 30, 2023)

June 26, 2023

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ONTARIO
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Applicants

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TAB 1

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

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

Applicants

NOTICE OF MOTION

Swarmio Media Holdings Inc., Swarmio Inc., and Swarmio Media Inc. (together, the "**Swarmio Group**", the "**Company**" or the "**Applicants**") will make a Motion to the court on Friday, June 30, 2023 at 9:00 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard by video conference at the following location:

Zoom link to be uploaded on Caselines.

THE MOTION IS FOR

1. The following orders:

   (a) an amended and restated Initial Order (the "**Amended and Restated Initial Order**"), substantially in the form attached at **Tab** "**3**" of the Applicants' motion record, among other things:

      (i) increasing the borrowing limit under the court-approved DIP Term Sheet dated June 20, 2023 (the "**DIP Term Sheet**") between the Company and Triaxcess Ltd. (the "**DIP Lender**"), together with a corresponding increase to the Court-ordered DIP Lender's Charge granted in favour of the DIP Lender, to a maximum amount of $1,500,000 (from $135,000 currently);

      (ii) increasing the Administration Charge (as defined in the Initial Order) from $100,000 to $300,000; and

      (iii) extending the stay of proceedings up to and including September 1, 2023 (the "**Extended Stay Period**"); and

   (b) an Order (the "**SISP Order**"), substantially in the form attached at **Tab** "**5**" of the Applicants' motion record, among other things, approving a sale process ("**SISP**") in respect of the Applicants' business and assets.

   (c) Such further and other Relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

Background on CCAA Proceedings

2. The Swarmio Group is an early stage, pre-revenue technology and media company focused on the gaming sector. The Company is insolvent and unable to raise the capital necessary to fund its development. Prior to the initial application in these proceedings, the Company had exhausted its liquidity and had not made payroll.

3. On June 21, 2023, Madam Justice Steele granted the Initial Order, which, among other things:

(a) granted a stay of proceedings in favour of the Company up to and including July 1, 2023;

(b) appointed Grant Thornton Limited as the monitor of the Company (in such capacity, the "**Monitor**");

(c) granted an administration charge to secure the professional fees and disbursements of the Applicants' counsel, the Monitor and its counsel up to a maximum amount of $100,000 (the "**Administration Charge**"); and

(d) approved the DIP Term Sheet which provided for interim financing (the "**DIP Financing**") to fund the Company's operations during the CCAA proceedings, with a maximum borrowing limit thereunder of up to $135,000 until further order of the Court.

4. The Company initiated these CCAA proceedings after pursuing a number of strategic

alternatives with no success. The purpose of these CCAA proceedings is to obtain the breathing room afforded by the CCAA to design and implement a comprehensive and robust sale process. The purpose of the sale process is to identify a value-maximizing transaction for the sale of the Company's business.

5. The Applicants have acted and continue to act in good faith and with due diligence in these CCAA proceedings.

6. Among other things, since the Initial Order, the Applicants have worked with the Monitor and their advisors to: prepare and implement a communications plan for stakeholders; design and develop the terms of the SISP; and prepare an updated cash flow forecast for the proposed Extended Stay Period.

Sale Process Approval

7. All capitalized terms used in this section and not otherwise defined have the meanings given to them in the SISP. A copy of the SISP is attached as Schedule "A" to the proposed Sale Process Order.

8. The Applicants made significant efforts to market their business prior to these CCAA proceedings.

9. The Applicants have worked with the Monitor to develop the SISP, which is intended to solicit interest in and opportunities for, a sale of, or investment in, all or part of the Applicants' assets and business.

10. The Monitor will administer the SISP in consultation with the Applicants.

11. The SISP is designed to provide transparency and ensure that Potential Bidders are aware of the timelines and requirements for submitting a qualified bid, as well as the assessment criteria that will be used to select the Successful Bid.

12. In consultation with the Monitor, the Applicants considered various structures and timelines for the SISP, with the goal of designing a process that is feasible with the resources available from the Company and will optimize the chances of identifying a value-maximizing transaction.

13. The following table sets out the key milestones in 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, 2023 to July 24, 2023
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

14. Immediately following the issuance of the Initial Order, the Applicants, in consultation with the Monitor, have worked to prepare a strategic list of Known Potential Bidders and the Teaser Letter. The data room including key information was previously prepared as part of the Company's pre-CCAA sale efforts.

15. As a result of the foregoing, the Applicants and Monitor will be prepared to commence the SISP immediately upon issuance of the proposed SISP Order, which allows the Monitor to leverage the entire duration of the SISP to broadly canvass the market.

16. The SISP is fair and reasonable for the following reasons:

(a) the SISP balances the need for a broad canvassing of the market with the Company's available resources (*i.e.*, the DIP financing).

(b) the time frame contemplated by the proposed SISP strikes an appropriate balance between providing sufficient time for interested parties to complete due diligence, while also maintaining a high degree of efficiency. The SISP is intended to be completed prior to the proposed Extended Stay Period.

(c) The SISP is flexible:

(i) it invites bids for a Sale Proposal or an Investment Proposal;

(ii) it provides for a two-phased process whereby Potential Bidders who wish to make a formal offer shall submit a Phase 1 Bid by the Phase 1 Bid Deadline (July 25, 2023), conditional upon confirmatory due diligence to be conducted during Phase 2 of the SISP. Any Phase 1 Qualified Bidder that wishes to participate in Phase 2 must submit a binding offer by the Phase 2 Bid Deadline (August 14, 2023); and

(iii) the SISP permits the Monitor to modify or extend deadlines or dispense with other requirements as the circumstances may require; and

(d) The closing of any sale of or investment in the Applicants' business will be conditional on court approval.

17. The DIP Lender intends to submit a bid in the SISP which will include a credit bid. The DIP Lender had no input in the development of, and shall have no involvement in the implementation of, the SISP.

DIP Financing

18. On June 19, 2023, the Company entered into the DIP Term Sheet with the DIP Lender. The Initial Order approved the DIP Term Sheet, with a borrowing limit of up to $135,000 pending further order of the Court.

19. The Company now seeks approval to increase the borrowing limit under the DIP Term Sheet to the full principal amount of $1,500,000, and an accompanying increase to the DIP Lender's Charge. Access to the additional DIP Financing is necessary to fund the ongoing working capital requirements and the restructuring costs required to implement the proposed SISP. The Company will utilize funds from the DIP Financing in accordance with the updated cash flow forecast.

Administration Charge

20. The Applicants seek to increase the Administration Charge from $100,000 to $300,000 to provide security for the professional fees and disbursements of the Monitor, counsel for the Monitor and counsel for the Applicants (the "**Professional Group**") during the Extended Stay Period.

21. The Administration Charge granted in the Initial Order was limited to the amount that was reasonably necessary during the initial 10-day stay of proceedings. The increase in the quantum is intended to reflect the expected work to be undertaken during these CCAA proceedings and projected monthly professional fees.

22. The Professional Group will play a critical role in assisting the Applicants with the implementation of the SISP and the progression of these CCAA proceedings. Each proposed beneficiary of the Administration Charge performs a distinct function without role duplication.

23. The quantum of the Administration Charge was developed in consultation with the Monitor.

Stay Extension

24. The current stay of proceedings expires on July 1, 2023.

25. The Applicants request an extension of the stay of proceedings up to and including September 1, 2023.

26. The Applicants have and continue to make significant progress during these proceedings. The proposed Extended Stay Period will allow the SISP to be sufficiently completed without

incurring additional professional fees solely for the purpose of extending the stay of proceedings.

27. No party will be prejudiced by the requested stay extension.

28. As reflected in the updated cash flow forecast, if the proposed increase to the borrowing limit under the DIP Term Sheet is approved, the Applicants expect to have sufficient cash to operate in the ordinary course throughout the proposed Extended Stay Period.

29. The Applicants have acted and will continue to act in good faith and with due diligence during these CCAA proceedings.

General

30. The provisions of the CCAA, including section 11, 11.02, 11.2, 11.52, and the statutory, inherent and equitable jurisdiction of this Court;

31. Rules 1.04, 2.03, 3.02, 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

32. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

(a) the Affidavit of Vijai Karthigesu sworn June 20, 2023;

(b) the Affidavit of Vijai Karthigesu sworn June 26, 2023;

(c) the First Report of the Monitor, to be filed; and

(d) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

June 26, 2023

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TO: **THE ATTACHED SERVICE LIST**

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ONTARIO
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Proceeding commenced at TORONTO

NOTICE OF MOTION
(RETURNABLE JUNE 30, 2023)

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TAB 2

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AFFIDAVIT OF VIJAI KARTHIGESU
(Sworn June 26, 2023)

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AFFIDAVIT OF VIJAI KARTHIGESU
(Sworn June 26, 2023)

I, VIJAI KARTHIGESU, of the town of Ajax, in the Regional Municipality of Durham, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

PART I - INTRODUCTION

1. I am the Chief Executive Officer of the applicant, Swarmio Media Holdings Inc. ("**Swarmio Parent**") as well as a member of Swarmio Parent's board of directors (the "**Board**"). I am also the Chief Executive Officer and a member of the Board of Swarmio Parent's wholly-owned subsidiary applicants, Swarmio Inc. ("**Swarmio OpCo**"), and Swarmio Media Inc. ("**Swarmio Media**", and together with Swarmio OpCo and Swarmio Parent, the "**Swarmio Group**", the "**Company**" or the "**Applicants**").

2. I have personal knowledge of the matters to which I depose in this affidavit, except where I have obtained information from others. Where I have obtained information from others, I have stated the source of my information and, in all such cases, believe such information to be true. All references to currency in this Affidavit are references to Canadian dollars, unless otherwise indicated.

3. This affidavit is sworn in support of the Applicants' motion pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), seeking:

   a. an amended and restated Initial Order (the "**Amended and Restated Initial Order**"), substantially in the form attached at **Tab** "**3**" of the Applicants' motion record, among other things:

(i) increasing the borrowing limit under the court-approved DIP Term Sheet dated June 20, 2023 (the "**DIP Term Sheet**") between the Company and Triaxcess Ltd. (the "**DIP Lender**"), together with a corresponding increase to the Court-ordered DIP Lender's Charge granted in favour of the DIP Lender, to a maximum principal amount of $1,500,000 (from $135,000 currently);

(ii) increasing the Administration Charge (as defined in the Initial Order) from $100,000 to $300,000; and

(iii) extending the stay of proceedings up to and including September 1, 2023 (the "**Extended Stay Period**"); and

(b) an Order (the "**SISP Order**"), substantially in the form attached at **Tab** "**4**" of the Applicants' motion record, among other things, approving a sale and investment solicitation process ("**SISP**") in respect of the Applicants' business and assets.

PART II - BACKGROUND

4. I swore my first Affidavit in this proceeding on June 20th, 2023 (the "**First Karthigesu Affidavit**"), in support of the Initial Order. The detailed background giving rise to these proceedings is set out in the First Karthigesu Affidavit. Attached as **Exhibit** "**A**" hereto is a copy of the First Karthigesu Affidavit, without exhibits.

5. This Affidavit should be read in conjunction with the First Karthigesu Affidavit.

6. Attached as **Exhibit** "**B**" hereto is a copy of the Initial Order that the Applicants seek to amend and restate on this motion (the "**Initial Order**"). Attached as **Exhibit** "**C**" hereto is a

copy of the Endorsement of Madam Justice Steele issued in respect of the Initial Order.

7. The Swarmio Group is an early stage, pre-revenue technology and media company focused on the gaming sector. The Company is insolvent and unable to raise the capital necessary to fund its development. Prior to the initial application in these proceedings, the Company had exhausted its liquidity and had not made payroll.

8. On June 21, 2023, Madam Justice Steele granted the Initial Order which, among other things:

(a) granted a stay of proceedings in favour of the Company up to and including July 1, 2023;

(b) appointed Grant Thornton Limited as the monitor of the Company (in such capacity, the "**Monitor**");

(c) granted an administration charge to secure the professional fees and disbursements of the Applicants' counsel, the Monitor and its counsel up to a maximum amount of $100,000 (the "**Administration Charge**");

(d) granted a charge in favour of the current directors and officers of the Company in the amount of $100,000 (the "**Directors' Charge**"); and

(e) approved the DIP Term Sheet which provided for interim financing (the "**DIP Financing**") to fund the Company's operations during the initial 10-day stay of proceedings, with a maximum borrowing limit thereunder of up to $135,000 until further order of the Court.

9. The Company initiated these CCAA proceedings after pursuing a number of strategic

alternatives with no success. The purpose of these CCAA proceedings is to obtain the breathing room afforded by the CCAA to design and implement a comprehensive and robust sale process. The purpose of the SISP is to identify a value-maximizing transaction for the sale of the Company's business.

10. The Applicants have acted and continue to act in good faith and with due diligence in these CCAA proceedings. Among other things, since the Initial Order, the Applicants have worked with the Monitor and their advisors to: prepare and implement a communications plan for stakeholders including employees and shareholders; design and develop the terms of the SISP; and prepare an updated cash flow forecast for the proposed Extended Stay Period.

PART III - RELIEF SOUGHT

A. SISP Approval

a. Pre-Filing Efforts to Market and Sell Business

11. As set out at paragraph 85 the First Karthigesu Affidavit, prior to this CCAA proceeding, the Company made a number of strategic efforts to address its liquidity challenges. These efforts included exploring a number of opportunities for the sale of the business to third parties. Between late 2021 through to early 2023, the Company had discussions with approximately twenty parties, all of whom expressed an interest in acquiring the Swarmio Group's business. The Company established a comprehensive data room the purpose of due diligence. All twenty parties signed non-disclosure agreements and two (2) parties entered into a letter of intent.

12. While these efforts did not result in a sale transaction, the Company is aware of a number of potential buyers who, I believe, will likely be interested in participating in the SISP. All of these parties are strategic, either large global telecommunications companies or technology

companies operating in the gaming industry.

b. Summary of Proposed SISP

13. All capitalized terms used in this section and not otherwise defined have the meanings given to them in the SISP.

14. The Applicants seek the Court's approval of the SISP, a copy of which is attached as **Exhibit** "**D**". The Applicants have worked with the Monitor to develop the SISP, which is intended to solicit interest in, and opportunities for, a sale of, or investment in, all or part of the Applicants' assets and business (the "**Opportunity**").

15. The SISP will be administered by the Monitor in consultation with the Applicants.

16. The SISP is designed to provide transparency and ensure that Potential Bidders are aware of the timelines and requirements for submitting a qualified bid, as well as the assessment criteria that will be used to select the Successful Bid.

17. In consultation with the Monitor, the Applicants considered various structures and timelines for the SISP, with the goal of designing a process that is possible with the resources available from the Company and will optimize the chances of identifying a value-maximizing transaction.

18. The following table sets out the key milestones in 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, 2023 to July 24, 2023
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

19. Immediately following the issuance of the Initial Order, the Applicants, in consultation with the Monitor, have worked to prepare a strategic list of Known Potential Bidders and the Teaser Letter. The data room including key information was previously prepared as part of the Company's pre-CCAA sale efforts. As a result of the foregoing, the Applicants and Monitor will be prepared to commence the SISP immediately upon issuance of the proposed SISP Order, which allows the Monitor to leverage the entire duration of the SISP to broadly canvass the market.

20. I believe the SISP is fair and reasonable for the following reasons:

(a) the time frame contemplated by the proposed SISP strikes an appropriate balance between providing sufficient time for interested parties to complete due diligence, while also maintaining a high degree of efficiency. The SISP is intended to be completed prior to the proposed Extended Stay Period.

(b) The SISP is flexible:

(i) it invites bids for a Sale Proposal or an Investment Proposal;

(ii) it provides for a two-phased process whereby Potential Bidders who wish to make a formal offer shall submit a Phase 1 Bid by the Phase 1 Bid Deadline (July 25, 2023), conditional upon confirmatory due diligence to be conducted during Phase 2 of the SISP. Any Phase 1 Qualified Bidder that wishes to participate in Phase 2 must submit a binding offer by the Phase 2 Bid Deadline (August 14, 2023); and

(iii) the SISP permits the Monitor to modify or extend deadlines or dispense with other requirements as the circumstances may require;

(c) The closing of any sale of or investment in the Applicants' business will be conditional upon court approval;

(d) The SISP balances the need for a broad canvassing of the market with the Company's available resources (*i.e.*, the DIP financing).

21. The following is a high-level summary of the criteria required for a Sale Proposal or Investment Proposal (as applicable) to be considered a Phase 1 Qualified Bid. It must:

(a) be in the form of the template purchase and sale agreement to be provided in the data room, together with a marked version (or, if an Investment Proposal, it must be a plan or restructuring support agreement in form and substance satisfactory to the Monitor, in consultation with the Applicants);

(b) be binding but may be conditional upon further due diligence to be conducted during Phase 2 of the SISP;

(c) include duly authorized and executed transaction agreements, including the purchase price, investment amount, and any other key economic terms expressed in Canadian dollars;

(d) fully disclose the identity of the participants;

(e) accompanied by a deposit equal to at least 15% of the Purchase Price, together with applicable acknowledgments;

(f) describe any non-cash consideration, including any details to be assumed and key assumptions supporting the valuation;

(g) provide describe the property to be subject of the transaction;

(h) indicate the financial capability of the Phase 1 Bidder

(i) indicate the expected structure for the transaction;

(j) describe any required conditions and approvals required to close the transaction; and

(k) include a description of any assumed liabilities and liabilities not intended to be assumed.

22. The SISP provides that the Monitor will evaluate the bids in accordance with the above-noted criteria. Any Phase 1 Qualified Bidders will be eligible to participate in Phase 2 of the SISP and each such bidder will be notified in writing by the Monitor of their eligibility. Such bidders may submit a binding offer with respect to their Sale Proposal or Investment Proposal by

the Phase 2 Bid Deadline.

23. In order for a Sale Proposal or Investment Proposal (as applicable) to be considered a Phase 2 Qualified Bid, among other things, it must:

(a) be unconditional other than a condition requiring court approval;

(b) not include any break fee or termination fee, expense reimbursement, or any other bid protections; and

(c) include: the Purchase Price in Canadian dollars; any non-cash consideration and key assumptions supporting the valuation; a description of the Property; a specific indication of the financial capability of the Phase 2 Bidder; a description of the expected transaction structure; and a description of the liabilities and obligations intended to be assumed and those intended not to be assumed.

24. As mentioned in the First Karthigesu Affidavit, the DIP Lender intends to submit a bid in the SISP which will include a credit bid. The DIP Lender had no input in the development of, and shall have no involvement in the implementation of, the SISP.

B. DIP Financing

25. On June 19, 2023, the Company entered into the DIP Term Sheet with the DIP Lender. The Initial Order approved the DIP Term Sheet, with a borrowing limit of up to $135,000 pending further order of the Court. A copy of the DIP Term Sheet is attached as **Exhibit "E"**.

26. The Company now seeks approval to increase the borrowing limit under the DIP Term Sheet to the full principal amount of $1,500,000, and an accompanying increase to the DIP

Lender's Charge.

27. The Company, with the assistance of the Monitor, prepared an updated cash flow forecast ("**Cash Flow Forecast**") for the week ending September 1, 2023. The Cash Flow Forecast will be appended to the Monitor's First Report, to be filed, and demonstrates that access to the additional DIP Financing is necessary to fund the ongoing working capital requirements and the restructuring costs required to implement the proposed SISP. The Company will utilize funds from the DIP Financing in accordance with the updated Cash Flow Forecast.

28. As set out in paragraph 100 of the First Karthigesu Affidavit, Elie Jeitani (an unsecured creditor and previous director of the Company) is the principal of the DIP Lender. Mr. Jeitani is also the CEO and founder of Westbridge Telecom, a U.S.-based telecommunications company and supplier of the Company. As indicated, the DIP Lender has advised the Company of its intention to bid in the proposed SISP.

C. Administration Charge

29. The Applicants seek to increase the Administration Charge from $100,000 to $300,000 to provide security for the professional fees and disbursements of the Monitor, counsel for the Monitor and counsel for the Applicants (the "**Professional Group**") during the Extended Stay Period.

30. The Administration Charge granted in the Initial Order was limited to the amount that was reasonably necessary during the initial 10-day stay of proceedings. The increase in the quantum is intended to reflect the expected work to be undertaken during these CCAA proceedings and projected monthly professional fees.

31. The Professional Group will play a critical role in assisting the Applicants with the

implementation of the SISP and the progression of these CCAA proceedings. Each proposed beneficiary of the Administration Charge performs a distinct function without role duplication.

32. The quantum of the Administration Charge was developed in consultation with the Monitor. I understand that the Monitor supports the increase to the Administration Charge.

D. Stay Extension

33. The current stay of proceedings expires on July 1, 2023.

34. On this motion, the Applicants request an extension of the stay of proceedings up to and including September 1, 2023.

35. The Applicants have and continue to make progress during these proceedings. The proposed Extended Stay Period allows the SISP to be sufficiently completed without incurring additional professional fees for the purpose of returning to court solely to seek an extension of the stay of proceedings.

36. I do not believe that the requested stay extension will materially prejudice any creditor or other stakeholder.

37. As reflected in the updated Cash Flow Forecast, if the proposed increase to the borrowing limit under the DIP Term Sheet is approved, the Applicants expect to have sufficient cash to operate in the ordinary course throughout the proposed Extended Stay Period.

38. I believe the Applicants have acted and will continue to act in good faith and with due diligence during these CCAA proceedings.

PART IV - CONCLUSION

39. I swear this affidavit in support of the orders sought and appended at **Tabs 3** and **4** of the Applicants' motion record, and for no other purpose.

SWORN by Vijai Karthigesu, of the City of Ajax, in the Regional Municipality of Durham, before me at the City of Mississauga, in the Province of Ontario, on June 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Monica Faheim
A927328446B742A...

Commissioner for Taking Affidavits
(or as may be)

MONICA FAHEIM

DocuSigned by:
89D3513E00154C8...

VIJAI KARTHIGESU

This is Exhibit "A" referred to in the Affidavit of Vijai Karthigesu sworn by Vijai Karthigesu of the Town of Ajax, in the Regional Municipality of Durham, before me at the City of Mississauga, in the Province of Ontario, on June 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Monica Faheim

A927328446B742A...

Commissioner for Taking Affidavits (or as may be)

MONICA FAHEIM

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

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

Applicants

AFFIDAVIT OF VIJAI KARTHIGESU
(Sworn June 20, 2023)

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AFFIDAVIT OF VIJAI KARTHIGESU
(Sworn June 20, 2023)

I, VIJAI KARTHIGESU, of the town of Ajax, in the Regional Municipality of Durham, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

PART I - INTRODUCTION

1. I am the Chief Executive Officer of the applicant, Swarmio Media Holdings Inc. ("**Swarmio Parent**") as well as a member of Swarmio Parent's board of directors (the "**Board**"). I am also the Chief Executive Officer and a member of the Board of Swarmio Parent's wholly-owned subsidiary applicants, Swarmio Inc. ("**Swarmio OpCo**"), and Swarmio Media Inc. ("**Swarmio Media**", and together with Swarmio OpCo and Swarmio Parent, the "**Swarmio Group**", the "**Company**" or the "**Applicants**").

2. I have personal knowledge of the matters to which I depose in this affidavit, except where I have obtained information from others. Where I have obtained information from others, I have stated the source of my information and, in all such cases, believe such information to be true. All references to currency in this Affidavit are references to Canadian dollars, unless otherwise indicated.

PART II - OVERVIEW

3. This affidavit is sworn in support of Swarmio Group's application for an order substantially in the form at Tab 3 of the Application Record (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for the following relief (among other things):

(a) declaring that the Applicants are companies to which the CCAA applies;

(b) granting a stay of proceedings in favour of the Company up to and including July 1st, 2023 (the "**Initial Stay Period**");

(c) appointing Grant Thornton Limited ("**GT**") as the monitor of the Company (the "**Proposed Monitor**" or the "**Monitor**", as applicable);

(d) granting an administration charge to secure the professional fees and disbursements of the Applicants' counsel, the Monitor and its counsel up to a maximum amount of $100,000 (the "**Administration Charge**");

(e) granting a charge in favour of the current directors and officers of the Company in the amount of $100,000 (the "**Directors' Charge**");

(f) approving interim financing in the amount of $135,000 (the "**DIP Financing**") under the terms of the DIP Term Sheet (as defined below) between the Company and the DIP Lender (as defined below) to fund the Company's operations during the Initial Stay Period; and

(g) authorizing Swarmio Parent to incur no further expenses in relation to the Securities Filings (as defined in the Initial Order) and declaring that none of the directors, officers, employees, advisors and other representatives of the Applicants, or the Monitor (and its directors, officers, partners, advisors, employees and representatives) shall have any personal liability for any failure by the Company to make Securities Filings.

4. If the Initial Order is granted, the Applicants intend to return to Court no later than June

30, 2023 (the "**Comeback Hearing**") to seek an order (the "**Amended and Restated Initial Order**") that would, among other things:

(a) approve a sale and investment solicitation process ("**SISP**");

(b) increase the borrowing amount under the DIP Term Sheet and a corresponding increase to the DIP Lender's Charge;

(c) extend the Initial Stay Period for the duration of the SISP; and

(d) increase the Administration Charge;

5. For the reasons set out in this affidavit, I do verily believe that the Applicants are insolvent and are companies to which the CCAA applies.

PART III - URGENT NEED FOR RELIEF

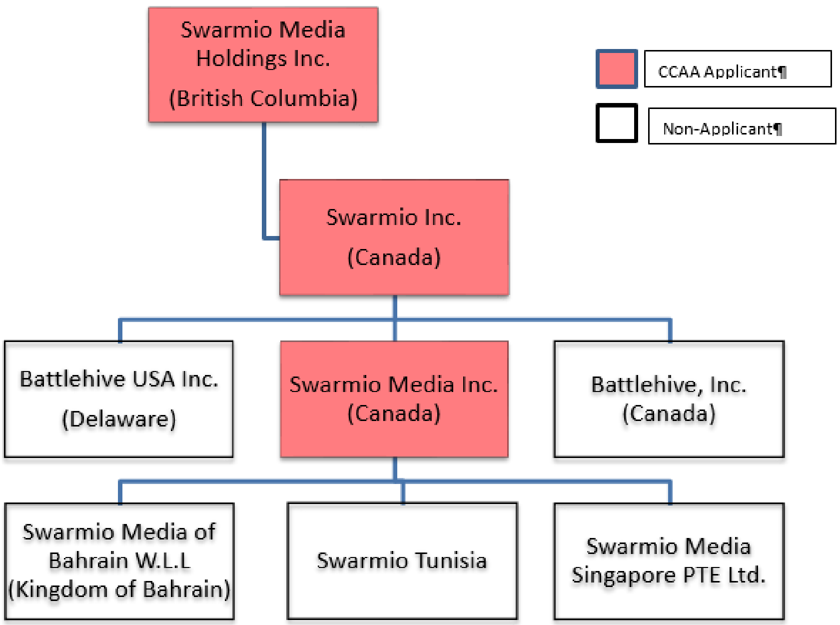
6. The Swarmio Group is an early stage, pre-revenue technology and media company focused on the video gaming sector. The Company is insolvent and unable to raise the capital necessary to fund its development. It has exhausted its liquidity and has not made payroll. It is in urgent need of relief under the CCAA.

7. Before bringing this application under the CCAA, the Company pursued numerous strategic alternatives over the last year and a half with no success. The Company requires the breathing room afforded by the CCAA to obtain interim financing, and design and implement a sale process to identify a value-maximizing transaction for the going-concern sale of the business. The Company expects that the DIP Lender will bid in the sale process.

PART IV - THE APPLICANTS

A. Corporate Structure

8. The Company's organizational chart is set out below.



a. Swarmio Media Holdings Inc. (Swarmio Parent)

9. Swarmio Parent is the publicly-listed parent company of the Swarmio Group. Its shares are listed on the Canadian Securities Exchange ("**CSE**") under the symbol "SWRM" and on the OTC QB under the symbol "SWMIF" and on the Frankfurt Stock Exchange under the symbol "U5U". It holds 100% of the equity of Swarmio Inc. Swarmio Parent was previously known as 1283332 B.C. Ltd.

10. Swarmio Parent is a British Columbia corporation incorporated on January 11, 2021. Its registered head office is located at 1430-800 West Pender Street, Vancouver, British Columbia and its records office is located at 321 Water Street, Suite 501 Vancouver, British Columbia. Swarmio Group's management team, including myself, is located primarily in the Greater

Toronto Area in Ontario. Its other employees, such as developers and software engineers, operate out of leased premises in Nova Scotia.

11. Attached as **Exhibit** "**A**" is a copy of the corporate profile report for Swarmio Parent.

b. Swarmio Inc. (Swarmio OpCo)

12. Swarmio OpCo is a wholly owned subsidiary of Swarmio Parent. It is the operating entity of the Swarmio Group and is a federal corporation under the *Canada Business Corporations Act*.

13. Swarmio OpCo's previous legal name was "UBIQUE Networks Inc.". The name change to "Swarmio Inc." occurred on September 25, 2014. Its head office is located at 1809 Barrington Street, Suite 505, Halifax, Nova Scotia.[1]

14. Swarmio OpCo employs the majority of the Company's employees and owns the majority of the Company's assets, including intellectual property. Employees are located in Ontario and Nova Scotia.

15. Attached as **Exhibit** "**B**" is a copy of the corporate profile report for Swarmio OpCo.

c. Swarmio Media Inc. (Swarmio Media)

16. Swarmio Media is a federal corporation incorporated on May 5, 2020. Its registered head office is located at 102-295 George Street, Sydney, Nova Scotia.

17. Swarmio Media is the signatory to a majority of the Company's material contracts with its key suppliers and partners.

18. Attached as **Exhibit** "**C**" is a copy of the corporate profile report for Swarmio Media.

d. Non-CCAA applicants

19. The following entities in the Company's corporate structure are not applicants in this CCAA proceeding (collectively the "**Non-CCAA applicants**"). They do not have material operations, assets, or liabilities:

(i) Battlehive USA, Inc.

(ii) Battlehive, Inc.

(iii) Swarmio Media of Bahrain W.L.L[2]

(iv) Swarmio Tunisia

(v) Swarmio Media Singapore PTE Ltd.

B. The Business and Operations

20. I co-founded the Company in 2015 as part of a research project affiliated with the University of Ottawa. During the initial two years of operations, with funding from governmental and non-governmental institutions, the Company developed software and technology for "low latency edge computing".

21. "Latency" refers to the amount of time it takes for data to travel from its source to its destination within a computer network or system. It is commonly used to measure the delay or lag experienced in various types of communication, such as network connections, internet browsing and online video gaming. Lower latency means faster transmission time. Low latency is particularly important for games, especially online gaming or "real time" games such as Call of Duty, League of Legends, and sports games such as FIFA. Games need faster data

[1] The Company's corporate records including its registered head office are not up to date.

[2] This entity employs 3 individuals internationally and has employee obligations of approximately $19,000.

transmission across a network to properly function and maximize the gaming experience. “Edge computing” is a sector of network technology that facilitates low latency data transmission across a network. The Company’s technology platform is therefore an attractive solution for gaming.

22. In 2020, at the onset of the Covid-19 pandemic, telecommunications companies experienced a steep increase in network usage because of, among other things, increased demand from gaming. This sparked telecommunications companies’ interest in gaming as an offering for their users. At this time, Swarmio Group focused its efforts on developing technological solutions for telecommunication companies to offer a gaming platform to its users and share in a $200-billion global industry.

23. Typically, in North America, gamers create an account with a game publisher (*e.g.*, Battle.Net, Steam, EA Sports, PlayStation Network) or have their credit card information stored on their Apple or Android device. They can then make “in-game purchases” using their credit card. These “in-game purchases” generally improve gamers’ experience by allowing a user to purchase items, improvements or other enhancements.

24. Outside of North America – especially in parts of the Middle East, Africa, Asia and Latin American regions – gamers do not have the same access to credit cards as North American gamers. But they overwhelmingly have cell phones with large telecommunication companies. Swarmio Group’s technology is the solution for gamers in these underserviced regions who wish to make in-game purchases. It is also the solution for telecommunication companies to insert themselves into the gaming value chain.

25. Swarmio Group’s technology and platform will allow users, without credit cards, to make

in-game purchases through their existing account with their telecommunication provider. The telecommunication provider contracts with Swarmio Group, directly or through its partners, to develop a platform that connects their users with game publishers and facilitates gaming and in game purchases. The Company and telecommunication operators will then earn a portion of the revenue generated from gamers' purchases through revenue sharing agreements.

26. The following is a summary of Swarmio Group's primary product offerings:

(a) Swarmio Hive for Telecommunications Operators: Swarmio Hive is a software-as-a-service (SaaS) solution for telecommunications operators. It provides a turn-key platform that permits telecommunications operators to penetrate the gaming market and monetize the use of gaming platforms by their own customers. Under this service, the Company delivers the platform to the telecommunications operator, and has a revenue sharing agreement with the telecommunications operator.

(b) Swarmio Matrix for Game Developers and Publishers: Swarmio Matrix is an edge computing platform that is meant to provide an enhanced gaming experience to gamers through technology that minimizes network lag or latency. The Company partners with telecommunications operators, global data centers and co-location providers to deploy Swarmio Matrix. These partners provide access to their servers and network, which operates to enhance the quality of experience for gamers using the network. The partner is compensated either based on the utilization of their physical infrastructure, or shares in the revenue it generates from the physical infrastructure.

(c) Swarmio Pay for Game Publishers and Game Content Distributors: Swarmio Pay is an alternate payment aggregation service that combines regional telecommunications DCB (Direct Carrier Billing) and electronic wallet payments solutions. Swarmio Pay provides a seamless and convenient payment experience by integrating various payment methods into a single platform. Swarmio Pay enables game publishers and content distributors to reach and monetize the gamers in regions where the credit card penetration is very low such as South Asia, North Africa and Latin America. Swarmio Pay charges a transaction fee for every transaction.

27. The business subscribes to software and technology infrastructure from large technology companies such as Amazon AWS and Google. This technology infrastructure is critical to our operations. These providers require a credit card on file to pay monthly subscription fees. In the ordinary course, since the Company did not have a corporate credit card, my credit card is saved on file with Amazon and Google. Amazon and Google bill my credit card and the Company reimburses me regularly (the "**Disbursement Procedures**"). The Company intends to continue to operate in the ordinary course including the Disbursement Procedures, with the oversight of the Proposed Monitor.

28. As further described below, the Company has significant contracts with telecommunication companies in Malaysia, Sri Lanka, Philippines, the United Arab Emirates, and Tunisia.

C. Employees

29. Prior to this filing, the Company had 22 full-time employees located in Canada. The Company also contracts with approximately 50 independent consultants to perform a wide-range of functions and services, including software development and project management. Most of the

Company's consultants are located outside of Canada.

30. Employees are paid bi-weekly in arrears. The Company is currently behind on its payroll obligations and owes approximately $1,099,097 to its Canadian employees as of June 10, 2023. One of the Company's Non-CCAA Applicants, Swarmio Media of Bahrain W.L.L, has 4 employees and employee obligations of approximately $19,000.

31. The Company does not have any unionized employees. Nor does it sponsor or administer any registered or unregistered pension plans. The Company provides a standard group benefit plan to its employees that covers extended heath care, dental care, life insurance, and accidental death and dismemberment insurance.

D. Key Customer Relationships

32. The Company's primary target market is telecommunication companies in the Middle East, North Africa Southeast Asia, and South Asia. The Company and its partners have established contractual relationships with several large telecommunication companies to develop, license and distribute Swarmio Group's technology as the gaming platform for their subscribers.

33. These relationships are critical to the Company's intended business model. They provide a large global user-base and distribution channel for the Company's technology. The Company has spent significant time and resources to develop customized solutions in order to foster these partnerships.

34. At present, the Company's key partnerships include some of the largest telecommunication providers in the world, including Etisalat by E& (UAE), Telekom Malaysia Berhad (Malaysia), Globe Telecom Inc. (Philippines) and Ooredoo (Tunisia).

PART V - FINANCIAL CIRCUMSTANCES AND CASH FLOW

35. The Company has a fiscal year-end of March 31. Attached as **Exhibit** “**D**” are the Company’s audited consolidated financial statements for 2022 and 2021 and unaudited interim statements as at December 31, 2022 (the “**Financial Statements**”).

A. Assets

36. As at December 31, 2022, the Company, on a consolidated basis, had assets totalling approximately $1.2 million, including $763,961 of current assets (cash and cash equivalents, accounts receivable, investment tax credit receivables, sales tax receivables, and prepaid expenses). The remaining assets, with a book value of approximately $448,240, are primarily intangible assets including intellectual property. The Company’s primary intellectual property is a Patent registered in the United States and held by Swarmio OpCo.

37. The following shows the breakdown of Swarmio Group’s assets as at December 31, 2022.

Expressed in Canadian dollars)		**As at December 31, 2022**		As at March 31, 2022
Assets				
Current assets				
Cash	$	**40,359**	$	1,628,242
Accounts receivable (Note 6)		**313,297**		7,244
Investment tax credit receivable		**185,748**		859,394
Sales tax receivable		**214,465**		270,811
Prepaid expenses		**10,092**		64,592
Total current assets		**763,961**		2,830,283
Non-current assets				
Right-of-use assets (Note 5)		**1,304**		13,041
Equipment (Note 7)		**15,646**		17,184
Intangible assets		**431,290**		207,934
Total non-current assets		**448,240**		238,159
Total assets	$	**1,212,201**	$	3,068,442

B. Liabilities

38. As at December 31, 2022, the Company, on a consolidated basis, had liabilities totalling $5,575,000, which is set out below in the excerpt from the Financial Statements. Since December 31, 2022, the Company has incurred at least $1.5 million in additional liabilities through secured and unsecured debt (described below) and trade payables. The total liabilities of the Company as at June 10, 2023 amount to approximately $10,266,328.

Liabilities				
Current liabilities				
Accounts payable and accrued liabilities (Note 8)	$	**1,666,344**	$	1,097,780
Lease financial liabilities (Note 5)		**1,904**		17,115
Derivative financial liabilities (Note 9)		**182,519**		-
Loans and borrowings (Note 9)		**1,860,872**		678,700
Total current liabilities		**3,711,639**		1,793,595
Non-current liabilities				
Loans and borrowings (Note 9)		**1,863,361**		1,283,599
Total non-current liabilities		**1,863,361**		1,283,599
Total liabilities		**5,575,000**		3,077,194

PART VI - CREDITORS OF SWARMIO GROUP

A. Government Claims

39. I believe the Company currently has a contingent source deduction obligation based on payroll arrears in the amount of approximately $288,289.00.

40. The Company has no outstanding HST obligations.

B. Secured Creditors

41. Below is a summary of the outstanding registrations against the Applicants under the personal property security legislation in Ontario, British Columbia and Nova Scotia ("**PPSA Registrations**"). Attached as **Exhibit** "**E**" is a copy of a summary of the PPSA Registrations,

together with certified copies of same.

Secured Party	Debtor(s)	Jurisdiction
2184907 Ontario Inc.	Swarmio Parent	British Columbia Nova Scotia Ontario
2873626 Ontario Ltd.	Swarmio Parent	British Columbia Nova Scotia Ontario
2797254 Ontario Inc.	Swarmio Parent	British Columbia Nova Scotia Ontario
Khan, MD Aseef Hannan	Swarmio Parent	British Columbia Nova Scotia Ontario
Joseph, Colin	Swarmio Parent	British Columbia Nova Scotia Ontario
Kolachalam, Arjun	Swarmio Parent	British Columbia Nova Scotia Ontario
Business Development of Canada	UBIQUE Networks Inc., Swarmio Inc.	Nova Scotia
Royal Bank of Canada[3]	UBIQUE Networks Inc., Swarmio Inc.	Ontario

42. Below is an overview of each of the Applicants' secured debt obligations.

a. 2184907 Ontario Inc.

43. Swarmio Parent is indebted to 2184907 Ontario Inc. ("**218**") in the principal amount of $1,000,000 pursuant to a Note Purchase Agreement (the "**218 Note Purchase Agreement**") and an ancillary Secured Promissory Note (the "**218 Promissory Note**"), both dated as of March 10, 2023 (collectively, the "**218 Note**"). Attached at **Exhibit** "**F**" is a copy of the 218 Note.

[3] The registration in favour of Royal Bank of Canada is expired, and no monies are currently owing by the Company to Royal Bank of Canada.

44. As security for the obligations under the 218 Note, Swarmio Parent granted a security interest in all of its present and after-acquired personal property in favour of 218 pursuant to a security agreement dated as of March 10, 2023 (the "**218 Security**"). A copy of the 218 security agreement is attached as **Exhibit** "**G**".

45. Neither of the other Applicants, Swarmio OpCo nor Swarmio Media, are borrowers or guarantors of the 218 Note. Neither Swarmio OpCo nor Swarmio Media granted security in favour of 218.

46. Pursuant to the 218 Note Purchase Agreement, the Company agreed to issue 5,000,000 warrants in favour of 218 for the principal amount of $1,000,000.

b. Business Development Bank of Canada (BDC)

47. Swarmio OpCo (under its former name, UBIQUE Networks Inc.) is party to two loan agreements with the Business Development of Canada (BDC) (together, the "**BDC Loan Agreements**"):

(a) a letter of offer dated April 5, 2017 in respect of a loan in the principal amount of $150,000, as amended by an amending letter dated October 13, 2017; and

(b) a letter of offer dated November 9, 2017 in respect of a loan in the principal amount of $100,000, as amended by an amending agreement dated November 14, 2017.

48. As security for the obligations under the BDC Loan Agreements, pursuant to a General Security Agreement dated April 5, 2017, Swarmio OpCo granted a security interest in all of its present and after-acquired personal property except consumer goods. Pursuant to guarantee

agreements dated as of April 5, 2017 and November 10, 2017, respectively (together the "**Guarantees**"), I personally guaranteed the obligations of Swarmio OpCo under the BDC Loan Agreements. Copies of the BDC Loan Agreements and the Guarantees are attached as **Exhibit** "**H**".

49. The Company has been making monthly payments on account of principal and interest to BDC. The outstanding balance under the BDC Loan Agreements as of May 20, 2023 was $38,100.

C. Subordinated Secured Creditors

50. Swarmio Parent owes the following parties (collectively, the "**Subordinated Secured Creditors**") an aggregate amount of $624,800, comprised of the following:

a. Joseph Colin Krishandan

51. Colin Joseph Krishandan ("**Colin Joseph**") made a loan available to Swarmio Parent in the principal amount of $90,000 pursuant to a secured promissory note issued by Swarmio Parent in favour of Colin Joseph, as extended by an extension agreement dated December 30, 2022 (the "**Colin Joseph Note**"). A copy of the Colin Joseph Note and the extension agreement are attached as **Exhibit** "**I**". There is currently $111,706 outstanding under the Colin Joseph Note.

b. 2873626 Ontario Limited

52. 2873626 Ontario Ltd. ("**287**") made a loan available to Swarmio Parent in the principal amount of $50,000 pursuant to a secured promissory note issued by Swarmio Parent in favour of 287, as extended by an extension agreement dated as of December 30, 2022 (the "**287 Note**"). A copy of the 287 Note and the extension agreement are attached as **Exhibit** "**J**". There is currently $62,296 outstanding under the 287 Note.

c. Mo Aseef Hannan Khan

53. Mohammed Aseef Hannan Khan ("**Khan**") made a loan available to Swarmio Parent in the principal amount of USD $200,000 pursuant to a secured promissory note issued by Swarmio Parent in favour of Khan, as extended by an extension agreement dated as of December 30, 2022 (the "**Khan Note**"). A copy of the Khan Note and the extension agreement are attached as **Exhibit** "**K**". There is currently $312,034 outstanding under the Khan Note.

d. Arjun Kolachalam

54. Arjun Kolachalam ("**Kolachalam**") made a loan available to Swarmio Parent in the principal amount of USD $50,000 pursuant to a secured promissory note issued by Swarmio Parent in favour of Kolachalam, as extended by an extension agreement dated as of December 30, 2022 (the "**Kolachalam Note**"). A copy of the Kolachalam Note and the extension agreement are attached as **Exhibit** "**L**". There is currently $77,016 outstanding under the Kolachalam Note.

e. 2797254 Ontario Inc.

55. 2797254 Ontario Inc. ("**279**") made a loan available to Swarmio Parent in the principal amount of $50,000 pursuant to a secured promissory note issued by Swarmio Parent in favour of 279, as extended by an extension agreement dated as of December 30, 2022 (the "**279 Note**"). A copy of the 279 Note and the extension agreement are attached as **Exhibit** "**M**". There is currently $61,657 outstanding under the 279 Note.

D. Inter-Creditor Arrangements

56. Swarmio Parent, 218 and the Subordinated Secured Creditors are party to a postponement and subordination agreement dated as of March 10, 2023 (the "**Subordination Agreement**").

The Subordinated Secured Creditors agreed to subordinate and postpone their security and all payments in favour of 218. A copy of the Subordination Agreement is attached as **Exhibit** "**N**".

57. Under the 218 Note, 218 agreed with the Company that its security would be subordinate to the security held by BDC and Community Business Development Corporation in the amount of $325,000, but, to my knowledge, 218 and BDC did not enter into an inter-creditor agreement among them.

E. Unsecured Creditors

a. Funded Debt

(1) Community Business Development Corporation

58. Swarmio OpCo is party to two loan agreements with the Community Business Development Corporation, through Coastal Business Opportunities Incorporated ("**CBDC**") (together, the "**CBDC Loan Agreements**"):

(a) a letter of offer dated March 31, 2020 in respect of a loan in the principal amount of $166,625.00;

(b) a letter of offer dated July 28, 2021 in respect of a loan in the principal amount of $142,332.

59. Pursuant to an agreement between myself, CBDC and Swarmio OpCo, I agreed to personally guarantee the CBDC loans. The CBDC Loan Agreements and the executed guarantee in respect of same are attached as **Exhibit** "**O**".

60. The Company has made monthly payments on account of principal and interest to CBDC but has missed several monthly payments. The outstanding balance under the CBDC Loan as of

May 20, 2023 was $280,900.

(2) Government Loans

61. Swarmio OpCo (under its former name UBIQUE Networks, Inc.) received loans from Atlantic Canada Opportunities Agency ("**AOCA**") in the total amount of $2,227,993. The AOCA is based in the Province of Nova Scotia and provides funding pursuant to a government program established to increase opportunities for economic development by supporting start-up projects.

62. Swarmio OpCo is party to a number of contribution agreements with the AOCA (collectively, the "**AOCA Agreements**"), under which AOCA advanced the loans. Attached as **Exhibit** "**P**" are copies of the AOCA Agreements.

63. Each AOCA Agreement relates to a particular project and/or activity undertaken in the Company's research and development and commercialization of its products:

Date of Contribution Agreement	Amount of Funding	Project
September 30, 2015	$500,000	Develop a "lagless" gaming experience
December 13, 2016	$468,750	Commercialize recently developed "lagless" gaming technology
March 21, 2017	$50,000	Hire a chief revenue officer
April 4, 2018	$500,000	Execute go to market strategy
October 19, 2018	$50,000	Hire financial controller to streamline financial planning
September 30, 2019	$250,000	Commercialize Swarmio eSports Platform in South Asia
May 29, 2020	$100,000	Provide operating capital to alleviate cash flow challenges as a result of Covid-19
August 18, 2021	$50,000	Hire a Vice President, Product Strategy
August 11, 2022	$500,000	Commercialize Swarmio eSports platform in the Philippines

64. Swarmio OpCo also received a Canada Emergency Business Account ("**CEBA**") loan in the amount of $60,000. Of this amount, $40,000 is due and payable on December 31, 2023, and $20,000 should be forgiven pursuant to the terms of the CEBA loan.

(3) Elie Jeitani

65. Elie Jeitani ("**Jeitani**") made a number of loans to Swarmio Parent pursuant to a series of unsecured promissory notes (collectively, the "**Jeitani Promissory Notes**"):

(a) a promissory note dated September 12, 2022 in the principal amount of USD $100,000;

(b) a promissory note dated December 6, 2022 in the principal amount of USD $100,000;

(c) a promissory note dated January 3, 2023 in the principal amount of USD $100,000; and

(d) a promissory note dated February 28, 2023 in the principal amount of USD $200,000.

66. A copy of the Jeitani Promissory Notes are attached as **Exhibit** "**Q**". The Jeitani Promissory Notes were extended on a number of occasions, including most recently on April 28, 2023 (the "**Jeitani Extension Agreement**"). The Jeitani Promissory Notes became due and payable on May 31, 2023. A copy of the Jeitani Extension Agreement (unsigned) is attached as **Exhibit** "**R**" There is currently $731,599 outstanding under the Jeitani Promissory Notes.

67. Jeitani is the founder and CEO of Westbridge Telecom ("**Westbridge**"), a U.S. based wholesale provider of telecommunications products and services in various regions including Asia, Africa and the Middle East. The Company is party to a distribution agreement with Westbridge pursuant to which Westbridge distributes Swarmio Group's gaming platform to its

clients, including certain of Swarmio Group's telecommunications partners.

68. As indicated below, Jeitani is the principal of the proposed DIP lender, and is expected to bid in the sale process.

(4) Georges Gabi Azar

69. Georges Gabi Azar ("**Azar**") made a loan to Swarmio Parent in the amount of USD $100,000 pursuant to an unsecured promissory note dated February 28, 2023 ("**Azar Promissory Note**"). A copy of the Azar Promissory Note is attached as **Exhibit** "**S**".

70. The Azar Promissory Note bears interest at an annual rate of 25% per annum and became due and payable on March 31, 2023. There is currently $146,781 outstanding under the Azar Promissory Note, including principal and interest.

(5) Wittigsberg as (Appelby), Czech Republic

71. Wittigsberg as (Appelby), Czech Republic ("**Wittigsberg**") and Swarmio Parent are party to a convertible promissory note agreement ("**Convertible Note**") in the principal amount of USD $500,000. There is currently $658,200 outstanding under the Convertible Note. Attached as **Exhibit** "**T**" is a copy of Convertible Note.

b. Other Unsecured Creditors

(1) Trade Creditors

72. The Company is currently indebted to trade creditors in the aggregate amount of $2.1 million attributable to various trade creditors.

(2) Employee Claims

73. The Company has approximately $1,099,097 in unpaid wages up to June 10, 2023.

F. Equity Interests and Share Capital Contributions

74. The Company has approximately 110,453,430.90 issued and outstanding shares. As at the close of business on May 30, 2023, the share price was $0.05 with a market capitalization of $5,522,672.

75. As at December 31, 2022, the Company had issued 10,492,506 warrants carrying value of $366,551.00.

76. According to the Financial Statements, the total shareholders' deficiency as at December 31, 2022 was approximately $4,362,799.

PART VII - CHALLENGES AND LIQUIDITY ISSUES FACED BY APPLICANTS AND STRATEGIC INITIATIVES

77. The Company has spent years developing its technology focused on gaming. In November 2021, the Company listed on the Canadian Securities Exchange through a reverse takeover ("**RTO**") transaction on the strength for gaming and for technology companies in the public markets during the covid-19 pandemic. The Company raised $9 million from public shareholders as part of the RTO. The Company utilized this funding to execute on its strategy.

78. The Company ran into a number of unanticipated challenges. First, because of the size and scale of its telecommunications partners, the Company experienced a lengthier-than-expected sales cycle.

79. Second, after obtaining initial buy-in from a telecommunication partner following a lengthy sales cycle, the parties negotiated contractual terms. In certain circumstances, the commercial relationship required tri-partite or mirroring contracts among Swarmio Group, the

telecommunications provider and one of Swarmio Group's regional marketing partners. This process took longer than anticipated.

80. Third, after finalizing contractual terms, implementation and integration of Swarmio Group's technology into the telecommunication provider's existing platform followed. This implementation and integration process was longer than anticipated. In some cases, integration required Swarmio Group to build bespoke software.

81. Finally, upon completion of implementation and integration, the roll-out and uptake of the gaming platform by the end-user (i.e., the telecommunication provider's customers) has taken longer than expected. The contractual arrangements with telecommunications providers obligate Swarmio Group to participate in and contribute resources towards the telecommunication provider's marketing efforts of its gaming platform (powered by Swarmio technology). The Company experienced a gap between its marketing efforts and ultimate uptake by users of the new gaming platform.

82. The Company remains pre-revenue as it continues this sales, implementation and marketing process, and has exhausted the liquidity raised from its initial public offering. In addition, rising costs and inflation following the Covid-19 pandemic experienced across all industries similarly adversely impacts the Company's operations.

83. In 2022, the frothy public markets precipitously softened for early stage pre-revenue technology companies. The Company's share price suffered. The public markets were no longer a source for additional capital.

84. Throughout 2022, the Company survived on debt financing raised from the Subordinated Secured Creditors, who are primarily employees and other related parties. But with an average

monthly burn rate of approximately $500,000, funding from the Subordinated Secured Creditors was insufficient to satisfy the Company's ongoing operations for an extended period. The Company's management also provided an additional equity injection of approximately $1 million.

85. The Company also pursued other strategic alternatives:

(a) In and around Q2 of 2022, the Company initiated discussions regarding potential equity financing of approximately USD$10 million from one of its telecommunications partners. The parties entered into a letter of intent, but the transaction never ultimately materialized.

(b) The Company pursued a potential sale of its business to a third party. The parties signed a non-disclosure agreement and conducted due diligence, but a transaction did not materialize.

(c) The Company explored a sale transaction with another third party. The parties exchanged a draft letter of intent and non-disclosure agreement. The third party conducted due diligence. But, again, a transaction did not materialize.

(d) One of the Company's other telecommunications partners expressed an interest in acquiring the Company. Those discussions did not progress fast enough because of the Company's dire liquidity. The Company is optimistic that this party may participate in the sale process for which the Company will seek court approval at the Comeback Hearing.

86. In parallel with these strategic discussions, the Company explored other opportunities to generate revenue. In Q3 of 2022, the Company started a new business line (separate from its

gaming business) that leveraged its telecom relationships to facilitate international long-distance calling, known as "**Interconnect Services**". Although the Company generated approximately $4.3 million in gross revenue during Q3 of 2022, profit was negligible. The direct cost of providing Interconnect Services exceeded $4 million during the same period, *plus* overhead costs. The Company decided to discontinue this strategy in 2023.

87. In March, 2023, after the Company exhausted its financing from the Subordinated Secured Creditors, the Company raised $1 million of secured debt from 218 under the 218 Note. This provided additional runway until the end of Q1 2023. But the Company has now exhausted all of its available liquidity. It has missed a number of employee payroll cycles. The Company continues to work diligently to maintain positive relationships with employees despite the missed payroll. I am grateful for our employees' support during these difficult times.

88. In the last several weeks, the Company received letters from trade creditors demanding payment of overdue amounts. These demands are in respect of fees owed from marketing agencies, public relations advisors, and other cloud service providers. Copies of those demands and emails are attached as **Exhibit** "**U**".

PART VIII - NEED FOR CCAA PROCEEDING

89. Given its liquidity challenges, the Company, in consultation with its advisors, has determined that it is in the Company's best interests to seek creditor protection pursuant to the CCAA, and to proceed to design and implement a sale process for the sale of the Company's business.

90. Swarmio Group is a specialized business that requires the technology and expertise of its founders to succeed. The Company believes the likely purchaser will be a strategic partner that

has an existing relationship with the Company (*i.e.*, a telecommunications provider) or one of the parties that has previously entertained a sale or investment transaction, as described above.

91. The Company intends to utilize this initial 10-day period to maintain operations, communicate with its employees, strategic partners and other stakeholders, develop a sale process, which may include a stalking horse purchase agreement with the DIP Lender, and finalize court materials for the Comeback Hearing.

PART IX - RELIEF SOUGHT

92. The Company is seeking an Initial Order substantially in the form attached as **Tab** "**3**" to the Application Record.

A. Stay of Proceedings

93. The Company requires a stay of proceedings to maintain the *status quo* and to give the Applicants the breathing space they require to develop a sales process.

94. The proposed Initial Order contemplates a stay period of 10 days, which I understand is the maximum that can be authorized by a court at the initial application under the CCAA.

B. Appointment of Monitor

95. The Applicants seek the appointment of Grant Thornton Limited ("**GT**") as Monitor of the Applicants in these CCAA proceedings.

96. GT has consented to act as the Monitor, subject to Court approval. GT has not been the auditor of the Applicants within the last two years and is not otherwise restricted from acting as the Monitor. Attached as **Exhibit** "**V**" hereto is a copy of the Proposed Monitor's consent.

C. Director's Charge

97. The Company's Directors' and Officers' insurance policy expired on November 30, 2022. The cost of a new policy will be in the range of $55,000 and may contain unfavourable exclusions. In the circumstances, the Company seeks the Directors' Charge as security for the Applicants' indemnification for possible liabilities that may be incurred by the current directors and officers, to a maximum of $100,000.

98. The proposed quantum of the Directors' Charge was decided upon with the input of the Monitor's counsel. I am concerned that the Company's directors and officers may become subject to ultimately meritless post-filing litigation claims. The Directors' Charge is intended to reflect reasonable legal fees that may be incurred in defending such claims.

99. The Directors' Charge is proposed to rank behind the Administration Charge and the DIP Lender's Charge. The Directors' Charge is required in order to provide a level of protection to the directors and officers with respect to possible liabilities imposed on individuals in their capacity as directors and officers of a corporation in CCAA protection. I believe the quantum of the Directors' Charge is reasonably required at this time. Based on current information available, the Company does not intend to seek an increase to the Directors' Charge.

D. Approval of DIP Financing and DIP Lender's Charge

100. On June 19, 2023, the Company entered into a debtor-in-possession term sheet (the "**DIP Term Sheet**") with Triaxcess Ltd. (the "**DIP Lender**") to provide a non-revolving loan in the maximum aggregate principal amount of $135,000. Jeitani is the principal of the DIP Lender. As noted above, Jeitani is the CEO and founder of Westbridge, a major telecommunications company and key supplier of the Company. The Company expects the DIP Lender to potentially act as a stalking horse bid or otherwise bid in the sale process.

101. A copy of the DIP Term Sheet is attached as **Exhibit** "**W**". The purpose of the DIP financing is to fund the Company's working capital needs and professional fees and expenses during the Initial Stay Period. The key terms of the DIP Term Sheet are as follows (all terms capitalized but not defined below are as defined in the DIP Term Sheet:

(a) **Principal Amount**: $135,000

(b) **Interest**: 12% per annum

(c) **Commitment Fee**: $28,000, representing 2% of the total amount ultimately to be made available under the DIP facility and only payable if further advances beyond the First Advance are made to the Company following approval of an increased DIP Lender's Charge at the Comeback Hearing.

102. The availability of the First Advance under the DIP Facility is subject to and conditional upon the issuance of the proposed Initial Order, including approval of the DIP Term Sheet and the DIP Lender's Charge. It is contemplated that the funds advanced under the DIP Facility will be utilized in accordance with the Cash Flow Forecast attached as **Exhibit** "**X**".

103. In addition to the approval of the DIP Term Sheet, the Company seeks a charge in favour of the DIP Lender to secure advances made under the DIP Term Sheet until the Comeback Hearing, which is anticipated to be approximately $135,000. As between the Court-ordered charges, the DIP Lender's Charge is proposed to rank as a second-in-priority charge on the Company's property and assets, subject only to the proposed Administration Charge.

E. Administration Charge

104. The Company seeks a super-priority charge over the Swarmio Group's Property (as defined in the Initial Order) in favour of the Monitor, counsel to the Monitor and counsel to the

Applicants (the "**Professionals Group**"), to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order.

105. The proposed Administration Charge being sought is for a maximum amount of $100,000.

106. It is contemplated that the Professionals Group will have extensive involvement during the CCAA proceedings. The Professionals Group have contributed and will continue to contribute to the Applicants' restructuring efforts.

107. In preparation of the Cash Flow Forecast, the Applicants, in consultation with the Proposed Monitor, considered the professional fees forecasted to be incurred on a weekly basis during the cash flow period.

108. Accordingly, I believe the quantum of the Administration Charge sought is reasonably necessary at this time to secure the professional fees of the Professionals Group.

F. Authorization to Incur no Further Costs in Connection with Securities Filings

109. The Applicants seek authorization to dispense with certain securities filing requirements. In particular, the Applicants seek authorization for Swarmio Parent to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") that may be required by any federal, provincial, or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including without limitation, the *Securities Act (Ontario)*, RSO 1990 c S. 5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the CSE.

110. In my view, incurring the time and costs associated with preparing the Securities Filings will detract from the Applicants limited resources. It is expected that the Company will continue as a private company following completion of a sale transaction. Further, there is no prejudice to stakeholders given that detailed financial information and other information regarding the Applicants will continue to be made publicly available through the materials filed in these CCAA proceedings.

G. Relief to be Sought at Comeback Hearing

111. If the Initial Order is granted, then the Applicants propose to return to this Court for a Comeback Hearing on June 30, 2023.

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

i) Extension of Stay of Proceedings

113. The Applicants intend to seek an extension of the Initial Stay Period for a sufficient length of time to allow the Applicants to conduct and complete a sale and investment solicitation process.

ii) Approval of a Sale and Investment Solicitation Process

114. The Applicants intend to seek approval of a SISP. The goal of the SISP will be to comprehensively canvass the market, with the assistance of the Monitor, to identify a purchaser for the Company's business.

iii) Increase to Quantum of Charges

115. The Company intends to seek an increase to the quantum of the Administration Charge to $300,000 and to the DIP Lender's Charge to $1.5 million, if appropriate.

116. The Company does not expect to seek an increase in the quantum of the Directors' Charge.

PART X - FORM OF ORDER AND CONCLUSION

117. The Applicants, with the assistance of their legal and financial advisors, have determined that the proposed CCAA proceedings represent the best available strategy to maximize value for the Company's stakeholders. This affidavit is sworn in support of the Applicants' application for protection pursuant to the CCAA and an order in the form of the draft order at **Tab** "**3**" to the Application Record and for no other purpose.

SWORN BEFORE ME via video-conference with the deponent in the Town of Ajax, in the Province of Ontario, and the Commissioner in the City of Mississauga in the Province of Ontario this 20th day of June, 2023

DocuSigned by:
89D3513F00154C8...
VIJAI KARTHIGESU

DocuSigned by:
Monica Faheim
A927823446B742A...
MONICA FAHEIM
A Commissioner for taking Affidavits *(or as may be)*

Note: This affidavit was commissioned via simultaneous video-conference in accordance with the *Commissioners for taking Affidavits Act*, R.S.O. 1990, CHAPTER C.17, and the Law Society of Ontario: COVID-19 Response Statement interpretation of that Act, under which (i) the identity of the deponent was confirmed from government issued identification, (ii) the commissioner administered the oath or affirmation, (iii) the deponent affixed their electronic signature to the affidavit and transmitted the full electronic affidavit, as sworn or affirmed, including exhibits to the commissioner, (iv) the deponent confirmed their electronic signature to the commissioner, (v) the commissioner affixed their electronic signature to the affidavit including exhibits.

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

AFFIDAVIT OF VIJAI KARTHIGESU
(INITIAL APPLICATION)

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Lawyers for the Applicants

This is Exhibit "B" referred to in the Affidavit of Vijai Karthigesu sworn by Vijai Karthigesu of the Town of Ajax, in the Regional Municipality of Durham, before me at the City of Mississauga, in the Province of Ontario, on June 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Monica Faheim

A927328446B742A...

Commissioner for Taking Affidavits (or as may be)

MONICA FAHEIM

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 21st
	)	
JUSTICE STEELE	)	DAY OF JUNE, 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 SWARMIO MEDIA HOLDINGS INC., SWARMIO INC., AND SWARMIO MEDIA INC.,

Applicants

INITIAL ORDER

THIS APPLICATION, 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**") was heard this day by Zoom video conference.

ON READING the affidavit of Vijai Karthigesu sworn June 20, 2023 and the Exhibits thereto ("**First Karthigesu Affidavit**"), 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 Applicants and Grant Thornton Limited ("**GT**" or the "**Monitor**") and on reading the consent of GT to act as 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 Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants 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 Applicants shall remain in possession and control of their 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 Applicants shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicants are 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 they deem 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 Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the First Karthigesu 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 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 Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall 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 Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable 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; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants 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 Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after 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, technology infrastructure services, reimbursements in accordance with the Disbursement Procedures (as defined and described in the First Karthigesu Affidavit), and security services;

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

8. **THIS COURT ORDERS** that the Applicants 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 Applicants in connection with the sale of goods and services by the Applicants, 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 Applicants.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants 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 Applicants 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 advance (but not in arrears). 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 Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as

of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants 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

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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 Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it 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 Applicants 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 Applicants 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.

STAY OF PROCEEDINGS

14. THIS COURT ORDERS that until and including July 1, 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**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants 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 Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are 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 discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right,

contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants 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 with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, technology and software infrastructure providers, contractors, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, technology and software infrastructure, 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 Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants 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 lease 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 Applicants. 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 Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the

Applicants 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants 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 Applicants 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 $100,000, 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, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' 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 GT is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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 Applicants' 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 Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between the Applicants 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 Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis as agreed to by the DIP Lender;

(e) advise the Applicants in their development of the sales process;

(f) assist the Applicants, to the extent required by the Applicants, 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 Applicants, to the extent that is necessary to adequately assess the Applicants' 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 that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants 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 Applicants 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 Applicants may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its 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 the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis.

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 Applicants' 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 $100,000, 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 Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Triaxcess Ltd. (the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed $135,000 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 agreement between the Applicants and the DIP Lender dated as of June 20, 2023 (the "**DIP Term Sheet**"), filed.

34. **THIS COURT ORDERS** that the Applicants are 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 DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and

directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet 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 5 days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of Applicants to the DIP Lender under the DIP Term Sheet, 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 Applicants and for the appointment of a trustee in bankruptcy of the Applicants; 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 Applicants 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 Applicants under the CCAA, or

any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (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, as among them, shall be as follows:

With respect to the Applicants, Swarmio Inc. and Swarmio Media Inc.:

First – Administration Charge (to the maximum amount of $100,000)

Second – DIP Lender's Charge (to the maximum amount of $135,000); and

Third – Directors' Charge (to the maximum amount of $100,000).

Solely with respect to the Applicant, Swarmio Media Holdings Inc.:

First – Administration Charge (to the maximum amount of $100,000)

Second – 218 Security (as defined in the First Karthigesu Affidavit);

Third – DIP Lender's Charge (to the maximum amount of $135,000); and

Fourth – Directors' Charge (to the maximum amount of $100,000).

39. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, 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 Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person; *provided that*, solely with respect Swarmio Media

Holdings Inc., the DIP Lender's Charge and the Directors' Charge shall rank subordinate to 218 Security (as defined in the First Karthigesu Affidavit), but, for greater certainty, the DIP Lender's Charge and the Directors' Charge shall rank in priority to all other Encumbrances.

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

42. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the DIP Term Sheet, the Definitive Documents and the DIP Lender's Charge 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 (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments 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 Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, 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 DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are 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 Applicants entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the DIP Term Sheet 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 Applicants' interest in such real property leases.

RELIEF FROM REPORTING OBLIGATIONS

44. **THIS COURT ORDERS** that the decision by the Applicants to incur no further expenses for the duration of the Stay Period in relation to any filings (including financial statements), disclosures, core or non-core documents, and press releases (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the Canadian Securities Exchange (collectively, the "**Securities Legislation**"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicants failing to make any Securities Filings required by the Securities Provisions.

45. **THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of the Applicants nor the Monitor shall have any personal liability for any failure by the Applicants to make any Securities Filings required by the Securities Provisions during the Stay Period, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of such failure by the Applicants. For greater certainty, nothing in this order is intended to or shall encroach on the jurisdiction of any securities regulatory authorities (the "**Regulators**") in the matter of regulating the conduct of market participants and to issue cease trade orders if and when required pursuant to applicable securities law. Further, nothing in this Order shall constitute or be construed as an admission by the Regulators that the court has jurisdiction over matters that are within the exclusive jurisdiction of the Regulators under the Securities Legislation.

SERVICE AND NOTICE

46. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five 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 Applicants of more than $1000, 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.

47. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (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 http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) 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 21 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.grantthornton.ca/swarmio>'.

48. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants 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 or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile 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.

49. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably

required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

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

51. **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 Applicants, the Business or the Property.

52. **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 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.

53. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are 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.

54. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice

to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

55. **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.

56. **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.

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SWARMIO MEDIA HOLDINGS INC., SWARMIO INC., AND SWARMIO MEDIA INC.,

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at TORONTO

INITIAL ORDER

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Lawyers for the Applicants

This is Exhibit “C” referred to in the Affidavit of Vijai Karthigesu sworn by Vijai Karthigesu of the Town of Ajax, in the Regional Municipality of Durham, before me at the City of Mississauga, in the Province of Ontario, on June 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Monica Faheim

A927328446B742A...

Commissioner for Taking Affidavits (or as may be)

MONICA FAHEIM

SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-23-00701377-00CL **DATE:** June 21, 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: SWARMIO MEDIA HOLDINGS INC, CCAA

BEFORE: Madam Justice Steele

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT

[1] This is an application by the applicants for an initial order under the CCAA. The proposed monitor is Grant Thornton Limited ("GT" or the "Proposed Monitor").

[2] The Proposed Monitor indicated that it was supportive of the relief sought by the applicants today.

[3] The evidence before the Court is set out in an affidavit of Vijai Karthigesu, sworn June 20, 2023. Mr. Karthigesu is the Chief Executive Officer of the applicant, Swarmio Media Holdings Inc. ("Swarmio Parent") and a member of Swarmio Parent's board of directors. He is also the CEO and a member of the board of Swarmio Parent's wholly-owned subsidiary applicants, Swarmio Inc. ("Swarmio Opco"), and Swarmio Media Inc. ("Swarmio Media" and together with Swarmio Opco and Swarmio Parent, the "Swarmio Group" or the "applicants")

[4] Any capitalized terms not defined herein will have the meaning prescribed to them in Mr. Karthigesu's affidavit.

[5] At this initial hearing, the applicants seek (i) the appointment of GT as monitor; (ii) the granting of administration charge to secure professional fees up to $100,000, (iii) the granting of a charge in favour of the current directors and officers of the Swarmio Group in the amount of $100,000; (iv) the approval of interim financing of $135,000 under the terms of the DIP Term Sheet to fund operations during the initial stay period; and (v) authorizing Swarmio Parent to incur no further expenses in relation to the Securities Filings.

[6] The applicant state that the requested relief is necessary to maintain the *status quo* and give the applicants time to develop a restructuring plan in consultation with their advisors and the Proposed Monitor.

[7] The applicants are an early stage, pre-revenue technology and media company focused on the gaming sector. The applicants are insolvent and are unable to raise the necessary capital. They have exhausted their liquidity and not made payroll. They owe almost $1.1 million to their Canadian employees.

[8] The Swarmio Group have 22 full-time employees located in Canada. The applicants also contract with approximately 50 independent consultants to perform a wide-range of functions and services.

[9] As at December 31, 2022, the Swarmio Group, on a consolidated basis, had assets with a book value of approximately $1.2 million. The total liabilities of the Swarmio Group as at June 10, 2023 amount to approximately $10,266,328.

Initial Order

Application of the CCAA

[10] Section 2 of the CCAA defines a "company" to mean any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, among other entities. The applicants are each a "company" as defined in the CCAA:

a. Swarmio Parent is a British Columbia company with a registered office in B.C.

b. Swarmio Opco is a wholly owned subsidiary of Swarmio Parent and is a Canadian federal corporation with a registered office in Nova Scotia.

c. Swarmio Media is a wholly owned subsidiary of Swarmio Opco and a federal Canadian corporation with its registered head office in Sydney, Nova Scotia.

d. Swarmio Group's management team is located in the greater Toronto area in Ontario, and other employees are located in Ontario and Nova Scotia.

[11] Section 2 of the CCAA defines a "debtor company" to include a "company" that is bankrupt or insolvent. The CCAA applies to a "debtor company" where the total claims against it exceed $5 million: s. 3(1) CCAA.

[12] The evidence is that the applicants are unable to meet their obligations as they become imminently due. The Swarmio Group is insolvent. They are in default of their secured debt obligations. They have missed payroll and owe source deductions. The Applicants are insolvent under both the BIA test for solvency and the expanded concept of insolvency accepted by the Stelco test (Stelco Inc. (Re), 2004 CarswellOnt 1211).

[13] The Applicants are also "affiliated companies" for the purposes of section 3(2) of the CCAA. As noted above, both of Opco and Swarmio Media are owned, directly or indirectly, by Swarmio Parent.

[14] I am satisfied that each of the Applicants is a "debtor company" under the CCAA. Each of the Applicants is incorporated in Canada or British Columbia.

[15] Section 9(1) of the CCAA provides that any application under the CCAA shall be made to the Court that has jurisdiction within which the head office or chief place of business of the company in Canada is situated, or, if the company has no business in Canada, in any province within which any of the assets of the company are located. The Swarmio Group states that their locality is Ontario, which is the chief place of business because:

a. The Company's entire executive management team that is responsible for the operation of the business is located in the GTA;

b. Employees are located in Ontario and Nova Scotia;

c. The CEO and director of the Swarmio Group is in Ajax, Ontario; and

d. Sorin Stoian, a senior executive and director of the group, also resides in Ajax.

[16] The applicants have filed the documents required under s. 2(1) of the CCAA.

[17] Further circumstances exist that make the initial order appropriate. The applicants urgently require financing to fund operations and restructuring costs. Among other things, the applicants need CCAA protection to commence a court-supervised sale process to find a value-maximizing transaction and emerge as a going concern. The applicants need the breathing room to obtain interim financing, develop the sales process and emerge as a going concern. Such circumstances are appropriate for an initial order and initial stay of proceedings: *Target Canada Co.*, 2015 ONSC 303, at para. 8.

Relief Requested in Initial Order Limited to what is Reasonably Necessary

[18] Section 11.001 of the CCAA requires that the relief granted in the initial order be limited to what is "reasonably necessary for the continued operations" of the applicants in the ordinary course of business for the initial ten-day period.

[19] The applicants have only requested interim funding needed for the initial 10-day period. The administration charge has been similarly sized.

Appointment of Grant Thornton as Monitor

[20] The Court is required to appoint a person to monitor the business and financial affairs of a debtor company when an initial order is made: CCAA, s. 11.7. There are also requirements set out in the CCAA re who may act as a monitor. A monitor is required to be a trustee within the meaning of s. 2 of the BIA.

[21] Grant Thornton is a trustee within the meaning of s. 2 of the BIA and not subject to any of the restrictions set out in s. 11.7(2) of the CCAA. Grant Thornton has provided its consent to act in this capacity.

[22] Grant Thornton is appointed monitor.

DIP Loan and DIP Lenders Charge

[23] Section 11.2 of the CCAA allows the Court to grant the DIP Loan and order a priority charge on notice to those secured creditors that would be affected and in an amount that the Court considers appropriate.

[24] The Court cannot grant an order for interim financing at the same time as granting an initial order under s. 11.2 unless the terms of the loan are limited to those reasonably necessary for the applicants' continued operation during the initial stay period. The factors the Court is to consider re whether the DIP Lender's charge is appropriate are set out in s. 11.2(4) of the CCAA.

[25] In this case the applicants seek CAD$135,000 to be made available for the initial period. The applicants submit that this is the amount that is reasonably necessary so that they can meet critical payments and continue operations during the initial period. The full DIP Loan facility will provide for up to $1.5 million (however only $135,000 is to be made available under the credit facility during the initial period).

[26] The necessity of the DIP Loan is supported by the cash flow forecast. Without the DIP Loan the applicants will not be able to continue to carry on business. The applicant notes that the proposed monitor is supportive of the DIP Loan, the DIP Term Sheet and the DIP Lender's Charge and sets out several other reasons as to why it is appropriate to grant this relief at s. 54 of their factum.

[27] I am satisfied that this relief should be granted.

Administration Charge

[28] The applicants seek an Administration Charge of $100,000 to secure the professionals' fees and disbursements in respect of the initial period. At the Comeback, the applicants intend to request an increase to the Administration Charge.

[29] The Court has the jurisdiction to grant the Administration Charge pursuant to section 11.52 of the CCAA. In *Re Canwest Publishing*, 2010 ONSC 222, at para. 54, the Court identified six non-exhaustive factors that the Court may consider when determining whether to grant an administration charge:

a. The size and complexity of the business being restructured;

b. The proposed role of the beneficiaries of the charge;

c. Whether there is unwanted duplication of roles;

d. Whether the quantum of the proposed charge appears to be fair and reasonable;

e. The position of the secured creditors likely to be affected by the charge; and

f. The position of the monitor.

[30] The applicants submit that the proposed Administration Charge is warranted, necessary and appropriate in the circumstances. The professional group is needed to assist the applicants with the proceedings, including the sales process. The proposed charge is also supported by the proposed monitor.

[31] Notice has been provided to the secured creditors likely to be affected.

[32] I grant the Administration Charge pursuant to s. 11.52 of the CCAA.

D&O Charge

[33] The applicants also seek a directors' charge in favour of the applicants' current officers and directors in priority to all other charges other than the Administration Charge and the DIP Lender's Charge, in the amount of $100,000.

[34] Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the D&O charge in an amount the Court considers appropriate, provided that notice is given to the secured creditors who are likely to be affected by it.

[35] In *Re Jaguar Mining Inc.*, 2014 ONSC 494 at para. 45, the Court set out factors to be considered re approval of a directors' charge:

a. Whether notice has been given to the secured creditors likely to be affected by the charge;

b. Whether the amount is appropriate;

c. Whether the applicant could not obtain adequate indemnification insurance for the director or officer at a reasonable cost; and

d. Whether the charge does not apply in respect of any obligation incurred by a director or officer as a result of the director's or officer's gross negligence or wilful misconduct.

[36] To ensure the stability of the business during the restructuring period, the Applicants need the ongoing assistance of their directors and officers. The Applicants also state the directors and officers' insurance policy has expired and obtaining a new policy will be cost-prohibitive is unlikely to occur.

[37] Notice has been provided to the secured creditors likely to be affected.

[38] The ranking re priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge are set out at para. 38 of the Order.

[39] The D&O charge is approved.

Comeback Hearing

[40] Order to go as signed by me and sent to counsel for the applicants and the Proposed Monitor for distribution to the Service List. The order is effective from today's date and is enforceable without the need for entry and filing.

[41] The comeback hearing is scheduled for June 30, 2023 at 9 am.

Madam Justice Steele

Date: June 21, 2023

This is Exhibit "D" referred to in the Affidavit of Vijai Karthigesu sworn by Vijai Karthigesu of the Town of Ajax, in the Regional Municipality of Durham, before me at the City of Mississauga, in the Province of Ontario, on June 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Monica Faheim

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Commissioner for Taking Affidavits (or as may be)

MONICA FAHEIM

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

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

This is Exhibit “E” referred to in the Affidavit of Vijai Karthigesu sworn by Vijai Karthigesu of the Town of Ajax, in the Regional Municipality of Durham, before me at the City of Mississauga, in the Province of Ontario, on June 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

89D3513E00154C8...

Commissioner for Taking Affidavits (or as may be)

MONICA FAHEIM

June 20, 2023

Swarmio Media Holdings Inc.
Suite 1430, 800 West Pender St.
Vancouver, BC V6C 2V6

Attention: Vijai Karthigesu, Chief Executive Officer

Re: **Debtor-in-Possession Financing of Swarmio Media Holdings Inc., et al**

A. Swarmio Media Holdings Inc. (the "**Company**"), Swarmio Inc. and Swarmio Media Inc. (collectively, the "**Borrowers**") intend to make an application to the Ontario Superior Court of Justice (Commercial List) (the "**Court**") for an initial order (the "**Initial Order**"), among other things, commencing proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**"), imposing a stay of proceedings in favour of the Borrowers (the "**Initial Stay**"), appointing Grant Thornton Limited as Monitor of the Borrowers (in such capacity, the "**Monitor**"), approving this Term Sheet and granting the DIP Lender's Charge (as defined herein).

B. In the event that the Initial Order is granted, and prior to the expiry of the Initial Stay, the Borrowers will seek: (i) an order amending and restating the Initial Order to, *inter* alia, extend the stay of proceedings and increase the DIP Lender's Charge (as may be further amended and restated from time to time, the "**ARIO**"); and (ii) an order approving and authorizing the Company, in consultation with the Monitor, to conduct a Court-supervised sale and investment solicitation process ("**SISP**") within the CCAA Proceedings (as amended and restated from time to time, the "**SISP Order**").

C. The Borrowers require funding to satisfy the cashflow requirements of the CCAA Proceedings and the SISP, and other short-term liquidity requirements.

D. Triaxcess Ltd. (the "**Lender**") has agreed to establish a debtor-in-possession loan facility in the maximum aggregate principal amount of $1,500,000, subject to and in accordance with the terms and conditions of this term sheet (this "**Term Sheet**").

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

SUMMARY OF TERMS FOR DIP FACILITY

1. **Borrowers:** Swarmio Media Holdings Inc., Swarmio Inc. and Swarmio Media Inc.., on a joint and several basis.

2. **Lender:** Triaxcess Ltd.

3. **DIP Facility:** Non-revolving facility in the maximum aggregate principal amount of $1,500,000 (the "**DIP Facility**").

4. **Purpose:** The DIP Facility shall be available to fund: (i) working capital needs of the Borrowers; (ii) professional fees and expenses incurred by the Borrowers and the Monitor in respect of the CCAA Proceedings and the SISP, in each case in accordance with the cash flow projections approved by the Monitor and the Lender (the "**Cash Flow Projections**"); (iii) the Recoverable Expenses (as defined below); and (iv) such other costs and expenses of the Borrowers as may be agreed to by the Lender, together with the Monitor, in writing.

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The amount and purpose of the DIP Facility may be amended by the Borrowers, the Lender, and the Monitor, in writing. The Borrowers may not use the proceeds of the DIP Facility to pay any pre-filing obligations of the Borrowers, except in accordance with the Cash Flow Projections or with the prior written consent of the Lender and the Monitor.

5. Advances:

Subject to the funding conditions set out in Sections 12 and 13 of this Term Sheet, the DIP Facility shall be available by multiple advances as follows:

(a) upon the issuance of the Initial Order, $135,000, or such lesser amount as may be approved by the Initial Order and secured by the DIP Lender's Charge (the "**First Advance**"), shall be advanced to the Borrowers to finance working capital requirements for the 10-day period immediately following the date of the Initial Order; and

(b) upon the issuance of the ARIO, the balance of the DIP Facility, being $1,365,000, shall be advanced to the Borrowers in one or more draws upon receipt of a written draw request by the Lender from the Borrowers (each a "**Subsequent Advance**", and together with the First Advance, collectively, "**Advances**").

The Borrowers shall provide the Lender with no less than two (2) business days' written notice for any requested Advance, which notice shall state the purpose for which the Advance is to be used by the Borrowers. The Borrowers and the Lender agree that the full amount of the DIP Facility shall be advanced on or before July 21, 2023.

Nothing in this Term Sheet creates a legally binding obligation on the Lender to advance any amount under the DIP Facility at any time unless the Borrowers are in material compliance with the provisions of this Term Sheet.

6. Interest:

Interest shall accrue on amounts Advanced under the DIP Facility at a rate equal to 12% per annum (the "**Interest**"). Interest shall be calculated on the daily outstanding balance owing under the DIP Facility from the date that each drawdown payment is made by the Lender, and shall accrue and be paid on the Maturity Date (as defined herein).

7. Commitment Fee:

The Borrowers shall pay a commitment fee in the amount of $28,000 (the "**Fee**"), representing 2% of the total amount available under the DIP Facility, which shall be fully earned upon the execution of this Term Sheet and shall be paid on the Maturity Date. For certainty, the Fee shall be secured by the DIP Lender's Charge.

8. Recoverable Expenses:

The Borrowers shall pay all fees and expenses (collectively, the "**Recoverable Expenses**") incurred by the Lender in connection with the preparation, registration and ongoing administration of this Term Sheet, the DIP Facility, the Initial Order, the ARIO, the SISP Order, the DIP Lender's Charge (as defined below) and with the enforcement of the Lender's rights and remedies hereunder and thereunder, at law or in equity, including, without limitation all reasonable legal fees and disbursements incurred by the Lender. For greater certainty, "Recoverable Expenses" shall include all reasonable fees and expenses incurred by the Lender in connection with the CCAA Proceedings and all Court attendances in respect thereof. If the

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Lender has paid any expenses for which the Lender is entitled to reimbursement from the Borrowers, such expenses shall be added to the DIP Facility and shall accrue Interest at the rate set out above. All such fees and expenses and Interest thereon shall be secured by the DIP Lender's Charge whether or not any funds under the DIP Facility are advanced.

9. Security:

All debts, liabilities and obligations of the Borrowers to the Lender under or in connection with the DIP Facility (including, without limitation, Interest, Recoverable Expenses and the Fee), this Term Sheet and any other documents executed in connection therewith shall be secured by a Court-ordered priority charge (the "**DIP Lender's Charge**") granted to the Lender in and to all present and future properties, assets, and undertakings of the Borrowers, real and personal, tangible and intangible, whether now owned or hereafter acquired, and the proceeds thereof (the "**Property**"), subject in priority only to:

(a) an administration charge in the maximum aggregate amount of $100,000 under the Initial Order and increased to $300,000 under the ARIO for the payment of the fees and expenses of the Monitor, counsel to the Borrowers and counsel to the Monitor (the "**Administration Charge**"); and

(b) the security interest granted by the Company to 2184907 Ontario Inc., in all of the present and after-acquired personal property of the Company, in the principal amount of $1,000,000 (the "**218 Security**"). For certainty, the DIP Lender's Charge shall rank subordinate to the 218 Security solely in respect of the present and after-acquired personal property of the Company, but the DIP Lender's Charge shall constitute a first-ranking charge against all other Property of the Borrowers.

A directors' charge in the maximum aggregate amount of $100,000 under the Initial Order and the ARIO as security for the indemnity provided to the directors and officers of the Borrowers against obligations and liabilities they may incur after the commencement of the CCAA Proceedings (the "**Directors' Charge**") shall be permitted but shall rank subordinate to the DIP Lender's Charge under the terms of the Initial Order and the ARIO.

10. Maturity Date:

Unless otherwise agreed to by the Lender and the Borrowers in writing, the term of the DIP Facility shall expire, and the Borrowers shall repay all obligations owing to the Lender under this Term Sheet, on the earliest of the following (the "**Maturity Date**"):

(a) September 15, 2023;

(b) the closing of a sale or investment transaction resulting from the SISP, which transaction has been approved by an order of the Court;

(c) the implementation of a plan of compromise or arrangement within the CCAA Proceedings, which has been approved by the requisite majority of the Borrowers' creditors, and by an order of the Court;

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(d) the date on which the CCAA Proceedings are terminated for any reason, including if the CCAA Proceedings are converted into a proceeding under the *Bankruptcy and Insolvency Act* (the "**BIA**"); and

(e) the occurrence of an Event of Default (as defined herein), subject to a cure period of five (5) business days, beginning on the date of the occurrence of such Event of Default.

11. Repayment: The aggregate principal amount owing under the DIP Facility plus all accrued and unpaid Interest, Recoverable Expenses and the Fee, shall become immediately due and payable on the Maturity Date.

12. Funding Conditions; First Advance: The availability of the First Advance under the DIP Facility shall be subject to and conditional upon the following, which may be waived by the Lender in writing:

(a) the Court shall have issued the Initial Order, in a form satisfactory to the Lender, including:

i. approving this Term Sheet and the DIP Facility;

ii. granting the DIP Lender's Charge in favour of the Lender;

iii. authorizing the Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the DIP Lender's Charge;

iv. providing that the DIP Lender's Charge shall be valid and effective to secure all of the obligations of the Borrowers to the Lender hereunder, without the necessity of the making of any registrations or filings and whether or not any other documents have been executed by the Borrower;

v. declaring that the granting of the DIP Lender's Charge and all other documents executed and delivered to the Lender as contemplated herein, including, without limitation, all actions taken to perfect, record and register the DIP Lender's Charge, do not constitute conduct meriting an oppression remedy, settlement, fraudulent preference, fraudulent conveyance or other challengeable or reviewable transaction under any applicable federal or provincial legislation; and

vi. provisions restricting the granting of any additional liens or encumbrances on the assets of the Borrowers, other than as permitted herein and the DIP Lender's Charge.

(b) the Initial Order shall not have been vacated, stayed, appealed or amended in a manner not acceptable to the Lender, acting reasonably; and

(c) no Event of Default shall have occurred.

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13. Funding Conditions; Subsequent Advances:

The availability of each Subsequent Advance under the DIP Facility shall be subject to and conditional upon the following, which may be waived by the Lender in writing:

(a) the Court shall have issued the ARIO, in a form satisfactory to the Lender, including:

i. approving this Term Sheet and the DIP Facility;

ii. granting the increased DIP Lender's Charge in favour of the Lender;

iii. authorizing the Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the DIP Lender's Charge;

iv. providing that the DIP Lender's Charge shall be valid and effective to secure all of the obligations of the Borrowers to the Lender hereunder, without the necessity of the making of any registrations or filings and whether or not any other documents have been executed by the Borrowers;

v. declaring that the granting of the DIP Lender's Charge and all other documents executed and delivered to the Lender as contemplated herein, including, without limitation, all actions taken to perfect, record and register the DIP Lender's Charge, do not constitute conduct meriting an oppression remedy, settlement, fraudulent preference, fraudulent conveyance or other challengeable or reviewable transaction under any applicable federal or provincial legislation; and

vi. provisions restricting the granting of any additional liens or encumbrances on the assets of the Borrowers, other than as permitted herein and the DIP Lender's Charge.

(b) the Court shall have issued the SISP Order, in a form satisfactory to the Lender;

(c) the ARIO and SISP Order shall not have been vacated, stayed, appealed or amended in a manner not acceptable to the Lender, acting reasonably; and

(d) no Event of Default shall have occurred.

14. Covenants:

The Borrowers covenant and agree with the Lender, so long as any amounts are outstanding by the Borrowers to the Lender hereunder, to:

(a) promptly on the receipt by the Borrowers of the same, give the Lender a copy of any Notice of Motion or Application to vary, supplement, revoke, terminate or discharge the Initial Order, the ARIO, the SISP Order, or any other Court order in the CCAA Proceedings, including, without limitation, any application to the Court for the granting of new or additional security that will or may

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have priority over the DIP Lender's Charge, or otherwise for the variation of the priority of the DIP Lender's Charge;

(b) provide the Lender with any additional financial information reasonably requested by the Lender, to the extent that it is readily available;

(c) use the Advances under the DIP Facility for the purposes for which they are being provided, as set out in Section 4 of this Term Sheet, or such other purposes that may be agreed to by the Lender and the Monitor, in writing;

(d) provide the Lender and the Monitor with prompt written notice of any event which constitutes, or which, with notice, lapse of time, or both, would constitute an Event of Default, a breach of any covenant, or other term or condition of this Term Sheet, or of any document executed in connection with this Term Sheet;

(e) keep and maintain books of account and other accounting records in accordance with generally accepted accounting principles;

(f) pay all claims which, under law, may rank prior to or *pari passu* with the DIP Lender's Charge due and payable from and after the commencement of the CCAA Proceedings, as and when such amounts are due;

(g) not make any payment to any director, officer, investor or related party of the Borrowers (except salary and wages in the normal course) without the prior written consent of the Lender and the Monitor;

(h) keep the Borrowers' assets fully insured against such perils in such manner, and only to the extent, as would be customarily insured by companies owning similar assets;

(i) not, without the prior written consent of the Lender, incur any borrowings or other secured indebtedness, obligations or liabilities, other than the DIP Facility, or create or grant any security (other than the Administration Charge, the Directors' Charge and the DIP Lender's Charge) over any of the Borrowers' Property, whether ranking in priority to or subordinate to the DIP Lender's Charge; and

(j) conduct all activities in the ordinary course and in material compliance with the Cash Flow Projections.

15. Events of Default: The DIP Facility shall be subject to the following events of default (each, an "**Event of Default**"):

(a) the Borrowers' failure to pay any amount due hereunder when due and payable;

(b) any covenant, condition precedent, payment obligation, or other term or condition of this Term Sheet is not complied with or fulfilled to

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the satisfaction of the Lender;

(c) the seeking or support by the Borrowers of any Court order (in the CCAA Proceedings or otherwise) which is adverse to the interests of the Lender;

(d) the issuance of any Court order (in the CCAA Proceedings or otherwise) which is adverse to the interests of the Lender;

(e) the failure by the Borrowers to comply with the Initial Order, the ARIO, the SISP Order, or any other Court order in the CCAA Proceedings;

(f) the occurrence of any material adverse change in: (i) the business, operations, or financial condition of the Borrowers; (ii) the Property of the Borrowers; (iii) the DIP Lender's Charge, including its relative priority; (iv) the ability of the Borrowers to perform their obligations to the Lender or to any person under any material contract; (v) the Lender's ability to enforce any of its rights or remedies against the Borrowers' Property or for the obligations of the Borrowers to be satisfied from the realization thereof;

(g) the Borrowers become bankrupt or subject to a proceeding under the BIA, or a receiver, interim receiver, receiver and manager or trustee in bankruptcy is appointed in respect of any Borrower, or any Borrower's Property;

(h) the sale, transfer, assignment, conveyance or lease of substantially all of the business or assets of the Borrowers, except pursuant to a transaction resulting from the SISP or as may be otherwise approved by the Lender in writing;

(i) the commencement of any claim, action, proceeding, application, motion, defense or other contested matter the purpose of which is to seek, or the result of which would be, to obtain any order, judgment, determination, declaration or similar relief: (i) invalidating, setting aside, avoiding, or subordinating the obligations of the Borrowers under the DIP Facility, the DIP Lender's Charge or its priority; (ii) for monetary, injunctive or other relief against the Lender or the Borrowers' Property; or (iii) preventing, hindering or otherwise delaying the exercise by the Lender of any of its rights and remedies hereunder, pursuant to the Initial Order, the ARIO or under applicable law, or the enforcement or realization by the Lender against any of its collateral; unless the Borrowers are contesting such matter in good faith and no final order has been made in respect thereof.

16. Remedies and Enforcement

Following the occurrence of an Event of Default, and the expiration of the cure period prescribed in Section 10(e), upon written notice to the Borrowers and the Monitor, the Lender shall have the right, subject to the Lender obtaining an Order from the Court lifting the stay under the CCAA Proceedings, to:

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(a) enforce the DIP Lender's Charge and realize on the Property and any other collateral securing the DIP Facility;

(b) exercise the rights and powers of a secured lender and mortgagee pursuant to the *Personal Property Security Act*, the *Mortgages Act* or any legislation of similar effect; and

(c) exercise all such other rights and remedies available to the Lender under this Term Sheet, the Initial Order, the ARIO, any other order of the Court or applicable law.

No failure or delay on the part of the Lender in exercising any of its rights and remedies shall be deemed to be a waiver of any kind.

17. Further Assurances: The Borrowers will, at their own expense and promptly on demand by the Lender at any time, do such acts and things and execute and deliver such documents as the Lender may reasonably request to give effect to any other provisions set out hereunder.

18. Assignment: The Borrowers shall not assign this Term Sheet or any of the provisions set out herein without the prior written consent of the Lender. The Lender may assign or sell its rights or obligations with respect to this Term Sheet to any person without the prior written consent of the Borrowers.

19. Governing Law: The DIP Facility and the provisions set out herein shall be governed and construed in all respects in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

20. Currency: All dollar amounts herein are in Canadian Dollars.

21. Acceptance: This Term Sheet is open for acceptance until 5:00 p.m. (Toronto time) on June 20, 2023. The Borrowers may accept this Term Sheet by returning a countersigned copy of this Term Sheet to the Lender (by electronic transmission or personal delivery).

[*Signature Page Follows*]

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Dated this 20th day of June, 2023.

TRIAXCESS LTD.

By: ____

Name: Elie Jeitani

Title: Authorized Signatory

I have authority to bind the Corporation.

ACCEPTANCE

TO THE DIP LENDER:

For good and valuable consideration received, Swarmio Media Holdings Inc., Swarmio Inc. and Swarmio Media Inc. hereby accept and agree to comply with the provisions of the Term Sheet set out above, on a joint and several basis.

Dated this 20th day of June, 2023.

SWARMIO MEDIA HOLDINGS INC.

By: ______________________________
Name: Vijai Karthigesu
Title: Chief Executive Officer
I have authority to bind the Corporation.

SWARMIO INC.

By: ______________________________
Name: Vijai Karthigesu
Title: Chief Executive Officer
I have authority to bind the Corporation.

SWARMIO MEDIA INC.

By: ______________________________
Name: Vijai Karthigesu
Title: Chief Executive Officer
I have authority to bind the Corporation.

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

AFFIDAVIT OF VIJAI KARTHIGESU
(COMEBACK HEARING)

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TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	FRIDAY, THE 30th
	)	
JUSTICE KOEHNEN	)	DAY OF JUNE, 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 SWARMIO MEDIA HOLDINGS INC., SWARMIO INC., AND SWARMIO MEDIA INC.,

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, 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**") was heard this day by Zoom video conference.

ON READING the affidavit of Vijai Karthigesu sworn June 20, 2023 and the Exhibits thereto ("**First Karthigesu Affidavit**"), the affidavit of Vijai Karthigesu sworn June 26, 2023 (the "**Second Karthigesu Affidavit**", and together with the First Karthigesu Affidavit, the "**Karthigesu Affidavits**"), the Initial Order of Justice Steele dated June 21, 2023 (the "**Initial Order**"), the First Report of the Grant Thornton Limited ("**GT**") in its capacity as the Monitor (the "**Monitor**"), 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 Applicants and the Monitor, and any other counsel as appearing on the Counsel Slip, and on reading the consent of GT to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS AND DECLARES** 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.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants 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 Applicants shall remain in possession and control of their 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 Applicants shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicants are 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 they deem 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 Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the First Karthigesu 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 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 Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall 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 Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable 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; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants 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 Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after 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, technology infrastructure services, reimbursements in accordance with the Disbursement Procedures (as defined and described in the First Karthigesu Affidavit), and security services;

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

8. **THIS COURT ORDERS** that the Applicants 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 Applicants in connection with the sale of goods and services by the Applicants, 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 Applicants.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants 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 Applicants 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 advance (but not in arrears). 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 Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants 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

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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 Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it 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 Applicants 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 Applicants 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.

STAY OF PROCEEDINGS

14. THIS COURT ORDERS that until and including September 1, 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**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants 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 Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are 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 discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants 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 with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, technology and software infrastructure providers, contractors, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, technology and software infrastructure, 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 Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants 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 lease 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 Applicants. 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 Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants 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 Applicants 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 $100,000, 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, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' 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 GT is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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 Applicants' 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 Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between the Applicants 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 Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis as agreed to by the DIP Lender;

(e) advise the Applicants in their development of the sales process;

(f) assist the Applicants, to the extent required by the Applicants, 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

Applicants, to the extent that is necessary to adequately assess the Applicants' 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 that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants 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 Applicants 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 Applicants may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its 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 the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis.

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 Applicants' 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 Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Triaxcess Ltd. (the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and

capital expenditures, provided that borrowings under such credit facility shall not exceed the principal amount of $1,500,000 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 agreement between the Applicants and the DIP Lender dated as of June 20, 2023 (the "**DIP Term Sheet**"), filed.

34. **THIS COURT ORDERS** that the Applicants are 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 DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet 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 5 days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of Applicants to the DIP Lender under the DIP

Term Sheet, 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 Applicants and for the appointment of a trustee in bankruptcy of the Applicants; 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 Applicants 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 Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (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, as among them, shall be as follows:

With respect to the Applicants, Swarmio Inc. and Swarmio Media Inc.:

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

Second – DIP Lender's Charge (to the maximum amount of $1,500,000); and

Third – Directors' Charge (to the maximum amount of $100,000).

Solely with respect to the Applicant, Swarmio Media Holdings Inc.:

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

Second – 218 Security (as defined in the First Karthigesu Affidavit);

Third – DIP Lender's Charge (to the maximum amount of $1,500,000); and

Fourth – Directors' Charge (to the maximum amount of $100,000).

39. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, 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 Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person; *provided that*, solely with respect Swarmio Media Holdings Inc., the DIP Lender's Charge and the Directors' Charge shall rank subordinate to 218 Security (as defined in the First Karthigesu Affidavit), but, for greater certainty, the DIP Lender's Charge and the Directors' Charge shall rank in priority to all other Encumbrances.

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

42. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the DIP Term Sheet, the Definitive Documents and the DIP Lender's Charge 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 (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments 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 Encumbrances, contained in any existing

loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, 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 DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are 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 Applicants entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the DIP Term Sheet 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 Applicants' interest in such real property leases.

RELIEF FROM REPORTING OBLIGATIONS

44. **THIS COURT ORDERS** that the decision by the Applicants to incur no further expenses for the duration of the Stay Period in relation to any filings (including financial statements), disclosures, core or non-core documents, and press releases (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the Canadian Securities Exchange (collectively, the "**Securities Legislation**"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in

section 11.1(2) of the CCAA as a consequence of the Applicants failing to make any Securities Filings required by the Securities Provisions.

45. **THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of the Applicants nor the Monitor shall have any personal liability for any failure by the Applicants to make any Securities Filings required by the Securities Provisions during the Stay Period, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of such failure by the Applicants. For greater certainty, nothing in this order is intended to or shall encroach on the jurisdiction of any securities regulatory authorities (the "**Regulators**") in the matter of regulating the conduct of market participants and to issue cease trade orders if and when required pursuant to applicable securities law. Further, nothing in this Order shall constitute or be construed as an admission by the Regulators that the court has jurisdiction over matters that are within the exclusive jurisdiction of the Regulators under the Securities Legislation.

SERVICE AND NOTICE

46. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five 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 Applicants of more than $1000, 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.

47. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (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 http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) 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 21 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.grantthornton.ca/swarmio>’.

48. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants 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 or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile 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.

49. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

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

51. **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 Applicants, the Business or the Property.

52. **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 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.

53. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are 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.

54. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

55. **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.

56. **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.

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SWARMIO MEDIA HOLDINGS INC., SWARMIO INC., AND SWARMIO MEDIA INC.,

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at TORONTO

AMENDED AND RESTATED INITIAL ORDER

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Lawyers for the Applicants

TAB 4

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	~~WEDNESDAY~~FRIDAY, THE ~~21st~~30th
	)	
JUSTICE ~~STEELE~~KOEHNEN	)	DAY OF JUNE, 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 SWARMIO MEDIA HOLDINGS INC., SWARMIO INC., AND SWARMIO MEDIA INC.,

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, 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**") was heard this day by Zoom video conference.

ON READING the affidavit of Vijai Karthigesu sworn June 20, 2023 and the Exhibits thereto ("**First Karthigesu Affidavit**"), the affidavit of Vijai Karthigesu sworn June 26, 2023 (the "**Second Karthigesu Affidavit**", and together with the First Karthigesu Affidavit, the "**Karthigesu Affidavits**"), the Initial Order of Justice Steele dated June 21, 2023 (the "**Initial Order**"), the First Report of the Grant Thornton Limited ("**GT**") in its capacity as the Monitor (the "**Monitor**"), 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 Applicants and ~~Grant Thornton Limited ("GT" or~~ the ~~"~~Monitor~~")~~, and any other counsel as appearing on the Counsel Slip, and on reading the consent of GT to act as the Monitor,

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants 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 Applicants shall remain in possession and control of their 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 Applicants shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicants are 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 they deem 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 Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the First Karthigesu 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 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 Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall 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 Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable 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; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants 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 Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after 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, technology infrastructure services, reimbursements in accordance with the Disbursement Procedures (as defined and described in the First Karthigesu Affidavit), and security services;

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

8. **THIS COURT ORDERS** that the Applicants 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 Applicants in connection with the sale of goods and services by the Applicants, 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 Applicants.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants 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 Applicants 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 advance (but not in arrears). 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 Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants 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

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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 Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it 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 Applicants 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 Applicants 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.

STAY OF PROCEEDINGS

14. THIS COURT ORDERS that until and including ~~July~~September 1, 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**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants 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 Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are 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 discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants 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 with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, technology and software infrastructure providers, contractors, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, technology and software infrastructure, 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 Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants 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 lease 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 Applicants. 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 Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants 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 Applicants 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 $100,000, as security for the indemnity provided in paragraph ~~19~~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, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' 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~~20 of this Order.

APPOINTMENT OF MONITOR

23. **THIS COURT ORDERS** that GT is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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 Applicants' 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 Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between the Applicants 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 Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis as agreed to by the DIP Lender;

(e) advise the Applicants in their development of the sales process;

(f) assist the Applicants, to the extent required by the Applicants, 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 Applicants, to the extent that is necessary to adequately assess the Applicants' 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 that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants 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 Applicants 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 Applicants may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its 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 the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis.

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 Applicants' 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 $~~100,000~~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 Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Triaxcess Ltd. (the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed ~~$135,000~~the principal amount of $1,500,000 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 agreement between the Applicants and the DIP Lender dated as of June 20, 2023 (the "**DIP Term Sheet**"), filed.

34. **THIS COURT ORDERS** that the Applicants are 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 DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet 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 5 days' notice to the Applicants and the

Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of Applicants to the DIP Lender under the DIP Term Sheet, 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 Applicants and for the appointment of a trustee in bankruptcy of the Applicants; 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 Applicants 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 Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (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, as among them, shall be as follows:

With respect to the Applicants, Swarmio Inc. and Swarmio Media Inc.:

First – Administration Charge (to the maximum amount of $~~100,000~~300,000)

Second – DIP Lender's Charge (to the maximum amount of $~~135,000~~1,500,000); and

Third – Directors' Charge (to the maximum amount of $100,000).

Solely with respect to the Applicant, Swarmio Media Holdings Inc.:

First – Administration Charge (to the maximum amount of $~~100,000~~300,000)

Second – 218 Security (as defined in the First Karthigesu Affidavit);

Third – DIP Lender's Charge (to the maximum amount of $~~135,000~~1,500,000); and

Fourth – Directors' Charge (to the maximum amount of $100,000).

39. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, 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 Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person; *provided that*, solely with respect Swarmio Media Holdings Inc., the DIP Lender's Charge and the Directors' Charge shall rank subordinate to 218 Security (as defined in the First Karthigesu Affidavit), but, for greater certainty, the DIP Lender's Charge and the Directors' Charge shall rank in priority to all other Encumbrances.

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

42. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the DIP Term Sheet, the Definitive Documents and the DIP Lender's Charge 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 (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments 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 Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, 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 DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are 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 Applicants entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the DIP Term Sheet 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 Applicants' interest in such real property leases.

RELIEF FROM REPORTING OBLIGATIONS

44. **THIS COURT ORDERS** that the decision by the Applicants to incur no further expenses for the duration of the Stay Period in relation to any filings (including financial statements), disclosures, core or non-core documents, and press releases (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law respecting

securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the Canadian Securities Exchange (collectively, the "**Securities Legislation**"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicants failing to make any Securities Filings required by the Securities Provisions.

45. **THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of the Applicants nor the Monitor shall have any personal liability for any failure by the Applicants to make any Securities Filings required by the Securities Provisions during the Stay Period, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of such failure by the Applicants. For greater certainty, nothing in this order is intended to or shall encroach on the jurisdiction of any securities regulatory authorities (the "**Regulators**") in the matter of regulating the conduct of market participants and to issue cease trade orders if and when required pursuant to applicable securities law. Further, nothing in this Order shall constitute or be construed as an admission by the Regulators that the court has jurisdiction over matters that are within the exclusive jurisdiction of the Regulators under the Securities Legislation.

SERVICE AND NOTICE

46. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five 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 Applicants of more than $1000, 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.

47. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (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 http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) 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 21 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.grantthornton.ca/swarmio>'.

48. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants 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 or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile 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.

49. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

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

51. **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 Applicants, the Business or the Property.

52. **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 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.

53. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are 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.

54. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

55. **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.

56. **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.

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SWARMIO MEDIA HOLDINGS INC., SWARMIO INC., AND SWARMIO MEDIA INC.,

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

Proceeding commenced at TORONTO

AMENDED AND RESTATED INITIAL ORDER

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Document comparison by Workshare Compare on Monday, June 26, 2023 9:41:27 AM

Input:	
Document 1 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/70741607/1
Description	#70741607v1<Legal> - Initial Order (June 21, 2023)
Document 2 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/70741670/1
Description	#70741670v1<Legal> - Amended and Restated Initial Order (Draft)(June 23, 2023)
Rendering set	Standard

Legend:	
Insertion	
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Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
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Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	19
Moved from	1
Moved to	1
Style changes	0
Format changes	0
Total changes	42

TAB 5

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 Inc.

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, 2023 to July 24, 2023
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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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

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

MOTION RECORD
(RETURNABLE JUNE 30, 2023)

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