Estate No. 32-2853708
Court File No. 32-2853708

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	MONDAY, THE 17TH
	)	
JUSTICE CAVANAGH	)	DAY OF OCTOBER, 2022

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF iS5 COMMUNICATIONS INC., OF THE CITY OF MISSISSAUGA IN THE PROVINCE OF ONTARIO

ORDER
(Stalking Horse & SISP)

THIS MOTION, made by iS5 Communications Inc. (the "**Debtor**"), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") for an order, *inter alia*, approving the Sale and Investment Solicitation Process in respect of the Debtor attached hereto as Schedule "A" (the "**SISP**") was heard this day by video conference at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Clive Dias sworn October 6, 2022 and the supplementary affidavit of Clive Dias sworn October 17, 2022 (the "**Supplementary Dias Affidavit**"), and the Exhibits thereto, and the third report of Grant Thornton Limited (the "**Third Report**"), in its capacity as proposal trustee (the "**Proposal Trustee**"), and on hearing the submissions of counsel for the Debtor, counsel for the proposed Stalking Horse Bidder (as defined below), counsel for Silicon Valley Bank ("**SVB**"), and such other counsel who were present as listed on the Counsel Slip, no one else appearing for any other person on the service list, although duly served as it appears from the affidavits of service of Daniel Richer sworn October 6, 2022 and October 17, 2022, filed.

SERVICE & DEFINITIONS

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

2. THIS COURT ORDERS that capitalized terms used in this Order and not otherwise defined shall have the meaning ascribed to them in: (i) the share purchase agreement dated October 14, 2022 and attached as Exhibit "A" to the Supplementary Dias Affidavit (the "**Stalking Horse Agreement**") between the Debtor and Elektrophoenix GmbH (the "**Stalking Horse Bidder**"); or (ii) the SISP, as the case may be.

APPROVAL OF STALKING HORSE AGREEMENT

3. THIS COURT ORDERS that the Debtor is hereby authorized and empowered to enter into the Stalking Horse Agreement, *nunc pro tunc*, with such minor amendments as may be acceptable to each of the parties thereto, with the approval of the Proposal Trustee, *provided, however*, that nothing in this Order approves the transactions contemplated in the Stalking Horse Agreement and that, if the Stalking Horse Agreement is the Successful Bid under the SISP, the approval of the transactions contemplated in the Stalking Horse Agreement shall be considered by this Court on a subsequent motion made to this Court following completion of the SISP.

4. THIS COURT ORDERS that the Stalking Horse Agreement be and is hereby approved and accepted solely for the purposes of being the Stalking Horse Bid under the SISP and subject to the further Order of the Court referred to in paragraph 3 above.

BID PROTECTIONS

5. THIS COURT ORDERS that, if the Stalking Horse Bidder is not the Successful Bidder, the Debtor is authorized to pay the Break-Up Fee in the amount of USD $200,000, and the Expense Reimbursement Fee in the amount of USD $50,000, in accordance with the terms of the Stalking Horse Agreement.

6. THIS COURT ORDERS that the Stalking Horse Agreement shall not be rendered invalid or unenforceable and the rights and remedies of the Stalking Horse Bidder thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made in connection therewith; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA in respect of the Debtor, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments in bankruptcy made or deemed to be made in respect of the Debtor pursuant to the BIA; (d) the provisions of any federal or provincial statutes, including any such provisions pertaining to fraudulent preferences, assignments, fraudulent conveyances, transfers at undervalue, other reviewable transactions, or oppressive or unfairly prejudicial conduct; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of security interests, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Debtor, and notwithstanding any provision to the contrary in any Agreement:

(a) the execution, delivery or performance of the Stalking Horse Agreement shall not create or be deemed to constitute a breach by the Debtor of any Agreement to which it is a party;

(b) the Stalking Horse Bidder shall not have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the Debtor entering into the Stalking Horse Agreement; and

(c) the payments made by the Debtor pursuant to this Order or the Stalking Horse Agreement, if any, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

APPROVAL OF SISP

7. THIS COURT ORDERS that the SISP be and is hereby approved and the Debtor is hereby authorized to implement the SISP pursuant to the terms thereof, subject to such non-material amendments as may be agreed to by the Debtor and the Proposal Trustee.

8. THIS COURT ORDERS that the Debtor and the Proposal Trustee are hereby authorized and directed to perform their respective obligations and to take such steps necessary or advisable to perform their obligations under the SISP, subject to prior approval of this Court being obtained before completion of any transaction(s) under the SISP.

9. THIS COURT ORDERS that the Debtor and the Proposal Trustee and their respective affiliates, partners, directors, employees, agents and controlling persons (collectively, "**Assistants**") shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their

duties under the SISP, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or wilful misconduct of the Debtor or the Proposal Trustee, as applicable, as determined by the Court.

REGULATORY COMPLIANCE

10. THIS COURT ORDERS that the Debtor and the Proposal Trustee, and their respective counsel, are at liberty to serve or distribute this Order, any other materials, orders, communication, correspondence or other information as may be necessary or desirable in connection with the SISP to any Known Potential Bidders or other potentially interested party that the Debtor and the Proposal Trustee 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).

11. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Debtor, the Proposal Trustee, and their respective Assistants, are hereby authorized and permitted to disclose and transfer to each prospective bidder (including, without limitation, the Stalking Horse 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 Debtor's records pertaining to the Debtor's past and current employees, but only to the extent desirable or required to carry out the SISP and to negotiate or attempt to complete a transaction pursuant to the SISP ("**Sale**"). 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, and if it does not complete a Sale, shall return all such information to the

Debtor, 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 Assets and/or Business acquired pursuant to the Sale in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Debtor, or ensure that all other personal information is destroyed.

EXTENSION OF THE PROPOSAL PERIOD

12. THIS COURT ORDERS that, pursuant to subsection 50.4(9) of the BIA, the time for filing a proposal with the Official Receiver in the proceedings of the Debtor, including the stay of proceedings, is extended to and including December 1, 2022.

REPORT AND ACTIVITIES OF THE PROPOSAL TRUSTEE

13. THIS COURT ORDERS that the Third Report, and the actions, conduct and activities of the Proposal Trustee described therein, be and are hereby approved, provided, however, that only the Proposal Trustee, in its personal capacity only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

14. THIS COURT ORDERS that the Debtor or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

15. 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 Debtor, the Proposal Trustee, 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 Debtor and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Debtor and the Proposal Trustee, and their respective agents in carrying out the terms of this Order.

16. THIS COURT ORDERS that each of the Debtor and the Proposal Trustee 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 Proposal Trustee 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.

17. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order, and this Order is enforceable without the need for entry and filing.

Digitally signed by Mr. Justice Cavanagh

SCHEDULE "A"
(SISP)

SALE AND INVESTOR SOLICITATION PROCESS

On August 5, 2022, iS5 Communications Inc. (the "**Company**") filed a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") with the Office of the Superintendent of Bankruptcy. Grant Thornton Limited was appointed as proposal trustee (in such capacity, the "**Proposal Trustee**").

It is anticipated that on October 17, 2022, the Company will apply to Court for an Order, which, among other things: (a) approves this sale and investor solicitation process (the "**SISP**"), and (b) authorizes the execution by the Company of the stalking horse agreement of purchase and sale between the Company and the Stalking Horse Bidder (as defined below) (the "**Stalking Horse Agreement**") as the stalking horse bid for the purpose of conducting the SISP.

The purpose of the SISP is to identify one or more financiers, purchasers of and/or investors in the Company, the Business and/or Assets (each as defined below) to make an offer (each a "**Bid**") that is superior to the offer contemplated by the Stalking Horse Agreement, and to complete the transactions contemplated by any such offer, or by the Stalking Horse Agreement if no other offers are accepted. Set forth below are the procedures (the "**SISP Procedures**") that shall govern the SISP and any transactions consummated as a result thereof.

1. <u>Defined Terms</u>

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

"**2020 Noteholders**" means collectively, BDC Capital Inc., ClearSky Power & Technology Fund II LLC, ClearSky Security Fund I LLC, Phoenix Contact Venture Funds I GmbH, Cao Yang, and Coutinho Family Trust;

"**2020 Notes**" means the secured convertible promissory notes issued to the 2020 Noteholders in the aggregate amount of CAD $6,055,000 on November 19, 2020;

"**2021 Noteholders**" means collectively, ClearSky Power & Technology Fund II LLC, ClearSky Security Fund I LLC, Phoenix Contact Venture Funds I GmbH, Cao Yang, Clive Dias, and Artemis Capital Limited;

"**2021 Notes**" means the secured convertible promissory notes issued to the 2021 Noteholders in the aggregate amount of CAD $3,820,000 on August 17, 2021;

"**Acknowledgment of the SISP**" means an acknowledgment of the SISP in the form attached as Schedule "A" hereto;

"Additional Confidential Information" means commercially sensitive information with respect to the Company, the Business and/or Assets, which may include copies of material customer and vendor agreements, details of the equity and capital structure of the Business, and meetings with management and key employees;

"**Aggregate Bid**" means a combination of Portion Bids that do not overlap for Assets sought to be purchased, and which, when totalled, equal or exceed the Minimum Bid Amount;

"**Assets**" means the assets, undertakings and property of the Company;

"**Auction**" has the meaning given to it in Section 15;

"**Auction Procedur**e" has the meaning given to it in Section 15;

"**Back-Up Bid Expiration Date**" has the meaning given to it in Section 18;

"**Back-Up Bid**" has the meaning given to it in Section 15;

"**Back-Up Bidder**" has the meaning given to it in Section 15;

"**BIA**" has the meaning given to it in the introduction;

"**Bid**" has the meaning given to it in the introduction;

"**Business**" means the business carried on by the Company, which consists primarily of providing integrated services and information technology solutions to clients, and manufacturing intelligent industrial ethernet products designed to meet the stringent demand requirements of utility sub-stations, roadside transportation, rail, and industrial applications;

"**Business Day**" means any day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario, on which commercial banks in Toronto, Ontario are open for business;

"**Company**" has the meaning given to it in the introduction;

"**Confidentiality Agreement**" means the confidentiality agreement, with terms satisfactory to the Proposal Trustee and the Company, entered into between the Company and an Interested Party;

"**Court**" has the meaning given to it in the introduction;

"**Data Room**" means an electronic data room created and maintained by the Company containing confidential information in respect of the Company, the Business and the Assets, but does not contain the Additional Confidential Information.

"**Deposit**" has the meaning given to it in Section 14(e);

"**DIP Lender**" means Phoenix Contact Venture Funds I GmbH;

"**DIP Term Sheet**" means the debtor-in-possession financing term sheet dated August 5, 2022 between iS5 Communications Inc., as borrower, and the DIP Lender, as lender;

"**Form Purchase Agreement**" means the template agreement of purchase and sale posted in the Data Room substantially in the form of the Stalking Horse Agreement;

"**Guaranteed Purchase Price**" has the meaning given to it in the Stalking Horse Agreement;

"**Interested Party**" has the meaning given to it in Section 2;

"**Investment Proposal**" has the meaning given to it in Section 9;

"**Known Potential Bidders**" has the meaning give to it in Section 5(a);

"**Management**" has the meaning given to it in Section 4;

"**Minimum Bid Amount**" means in the case of a Sale Proposal or Investment Proposal, an overall result or value which the Company, in consultation with the Proposal Trustee, considers to be greater than the Guaranteed Purchase Price by at least USD $350,000;

"**Notes**" means together, the 2020 Notes and the 2021 Notes;

"**Notice**" has the meaning given to it in Section 5(b);

"**Outside Date**" means December 23, 2022, or such other date as the Company, the Proposal Trustee, and the Successful Bidder(s) or the Back-Up Bidder, if applicable, may agree, acting reasonably;

"**Participation Notice**" has the meaning given to it in Section 4;

"**Phase I Bid**" means an initial non-binding Bid submitted by an Interested Party pursuant to Section 9 hereof;

"**Phase I Bid Deadline**" has the meaning given to it in Section 9 hereof;

"**Phase I Bidder**" means a bidder submitting a Phase I Bid;

"**Phase I Deposit**" has the meaning given to it in Section 11(i);

"**Phase I Participant Requirements**" has the meaning given to it in Section 10 hereof;

"**Phase II Bid**" means a binding unconditional Bid submitted by a Qualified Phase I Bidder;

"**Phase II Bidder**" means a bidder submitting a Phase II Bid;

"**Phase II Bid Deadline**" has the meaning given to it in Section 9;

"**Portion Bid**" means a Bid for less than all, or substantially all of the Assets, that is otherwise a Qualified Phase I Bid or a Qualified Phase II Bid;

"**Portion Bidder**" means a Qualified Phase I Bidder and/or a Qualified Phase II Bidder that submits a Portion Bid;

"**Proposal Trustee**" has the meaning given to in the introduction;

"**Purchase Price**" has the meaning given to it in Section 11(a)(i);

"Qualified Phase I Bid" means a Phase I Bid that satisfies the conditions set out in Section 11 hereof. For greater certainty, a Portion Bid may be a Qualified Phase I Bid if it forms part of an Aggregate Bid;

"**Qualified Phase I Bidder**" means a bidder submitting a Qualified Phase I Bid;

"**Qualified Phase II Bid**" means a Phase II Bid that satisfies the conditions set out in Section 14 hereof. For greater certainty, a Portion Bid may be a Qualified Phase II Bid if it forms part of an Aggregate Bid;

"**Qualified Phase II Bidder**" means bidder submitting a Qualified Phase II Bid;

"**Qualified Investment Bid**" is an Investment Proposal that is determined to be a Qualified Phase II Bid by the Company and the Proposal Trustee pursuant to Section 14;

"**Qualified Sale Bid**" is a Sale Proposal that is determined to be a Qualified Phase II Bid by the Company and the Proposal Trustee pursuant to Section 14;

"**Sale Proposal**" has the meaning given to it in Section 9;

"**Secured Lender**s" means Silicon Valley Bank and the holders of the Company's secured notes;

"**SISP**" has the meaning given to it in the introduction;

"**SISP Procedures**" has the meaning given to it in the introduction;

"**Stalking Horse Agreement**" has the meaning given to it in the introduction;

"**Stalking Horse Bidder**" means Elektrophoenix GmbH, or an affiliate thereof;

"**Successful Bid**" has the meaning given to it in Section 15;

"**Successful Bidder**" has the meaning given to it in Section 15;

"**SVB**" means Silicon Valley Bank; and

"**Teaser Letter**" has the meaning given to it in Section 5(c).

2. The SISP Procedures

The SISP shall consist of two phases. In the first phase, any interested party (an "**Interested Party**") that meets the preliminary participant requirements set out herein, including having executed a Confidentiality Agreement and an Acknowledgment of the SISP, shall be provided with access to the Data Room in order to prepare and submit a Phase I Bid by the Phase I Bid Deadline. Phase I Bidders that are determined by the Company, in consultation with the Proposal Trustee, to be Qualified Phase I Bidders shall be invited to participate in the second phase wherein they will be given access to the Additional Confidential Information in order to complete diligence prior to submitting a Phase II Bid by the Phase II Bid Deadline.

The Company, in consultation with the Proposal Trustee, shall supervise the SISP Procedures and each will generally consult with the other in respect of all matters arising out of these SISP Procedures. The Proposal Trustee shall direct and preside over the Auction, if applicable. In the event that there is disagreement as to the interpretation or application of these SISP Procedures, the Court will have the jurisdiction to hear and resolve such dispute.

3. "As Is, Where Is"

The sale of the Business or all or any part of the Assets or an investment in the Company will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature or description by the Company, the Proposal Trustee or any of their employees, officers, directors, agents or advisors, except to the extent set forth in the relevant definitive Sale Proposal or Investment Proposal agreement, as applicable, with a Successful Bidder.

By participating in this process, each Interested Party is deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Business, the Assets or the Company prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or regarding the Business, the Assets or the Company in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Business, the Assets or the Company or the completeness of any information provided in connection therewith, except as expressly stated in the terms of any definitive transaction documents.

4. Timeline

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

Milestone	Deadline
Commencement of SISP	October 17, 2022
Distribution of the Notice, Teaser Letter Confidentiality Agreement and Acknowledgement of SISP	October 21, 2022
Phase I Bid Deadline (5:00 PM (Eastern Time))	November 16, 2022
Phase II Bid Deadline (5:00 PM (Eastern Time))	December 1, 2022
Selection of Successful Bid(s), Back-Up Bid(s), or Notification of Auction (if any)	December 2, 2022
Auction (if any)	December 5, 2022
Sale Approval Hearing	As soon as practicable
Closing Date Deadline	December 23, 2022

5. Solicitation of Interest

As soon as is reasonably practicable and, in any event, by no later than October 21, 2022:

(a) the Company and the Proposal Trustee will prepare a list of potential bidders, including (i) parties that have approached the Company or the Proposal Trustee indicating an interest in the opportunity; and (ii) strategic parties who the Company and the Proposal Trustee believe may be interested in purchasing all or part of the Business and Assets, or investing in the Company, pursuant to the SISP (“**Known Potential Bidders**”);

(b) the Proposal Trustee, with the assistance of the Company, will cause a notice of the SISP (and such other relevant information that the Company, in consultation with the Proposal Trustee, considers appropriate (the “**Notice**”) to be published in *The Globe and Mail* (National Edition) and *Insolvency Insider* and any other newspaper, journal or industry publication as the Company and the Proposal Trustee considers appropriate, if any; and

(c) the Company and the Proposal Trustee 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; a (ii) Confidentiality Agreement; and (iii) an Acknowledgement of the SISP, in each case in form and substance satisfactory to the Company and the Proposal Trustee.

The Proposal Trustee, with the assistance of the Company will publish the Notice and send the Teaser Letter, Confidentiality Agreement, and Acknowledgement of the SISP to all Known Potential Bidders by no later than October 21, 2022, and to any other party who requests a copy of the Teaser Letter, Confidentiality Agreement, and Acknowledgement of the SISP, or who is identified to the Company or the Proposal Trustee as a potential bidder, as soon as reasonably practicable after such request or identification, as applicable

6. Role of Management of the Company

In the event that any party or parties that are associated with the Board of Directors or management of the Company (collectively, "**Management**") intends to submit a Bid pursuant to the SISP, any such party or parties must advise the Proposal Trustee of such intention in writing by November 1, 2022 (the "**Participation Notice**"). Upon receipt of a Participation Notice, such party or parties will be excluded from any participation in the SISP that might create an unfair advantage or jeopardize the integrity of the SISP, and any such party or parties delivering a Participation Notice will be subject to the SISP Procedures as an Interested Party. For greater certainty, Marcus Boker, a Senior Director of the Stalking Horse Bidder and a Director of the Company shall be excluded from participating in the SISP without the requirement of delivering a Participation Notice.

7. Role of the Proposal Trustee

The Proposal Trustee's responsibilities pursuant to the SISP include:

(a) consulting with the Company in connection with the bidding procedures included in this SISP and the closing of the transaction contemplated in the Successful Bid(s);

(b) overseeing the SISP Procedures;

(c) reporting to the Court in connection with the SISP Procedures, including the bidding procedures described in this SISP, and the closing of the transaction contemplated in the Successful Bid(s);

(d) conducting an Auction, if necessary, in accordance with the Auction Procedures attached hereto as Schedule "C"; and

(e) assisting the Company to facilitate information requests, including assisting the Company in preparing or modifying financial information to assist with the bidding procedures described in this SISP and the closing of the transaction contemplated in the Successful Bid(s) (including the Stalking Horse Agreement).

8. Access to Due Diligence Materials

Only Interested Parties that satisfy the Phase I Participant Requirements will be eligible to receive access to the Data Room. If the Company, in consultation with the Proposal Trustee, determines that a Phase I Bidder does not constitute a Qualified Phase I Bidder, then such Phase I Bidder shall not be eligible to receive the Additional Confidential Information. For greater certainty, the Data Room shall not contain the Additional Confidential Information and the Company shall provide the Additional Confidential Information to a Qualified Phase I Bidder by alternative means.

The Company, with the assistance of the Proposal Trustee, will be responsible for the coordination of all reasonable requests for additional information and due diligence access from Interested Parties. Neither the Company nor the Proposal Trustee shall be obligated to furnish any due diligence information after the Phase I Bid Deadline other than the Additional Confidential Information to Qualified Phase I Bidders before the Phase II Bid Deadline. Neither the Company nor the Proposal Trustee shall be obligated to furnish any due diligence information after the Phase II Bid Deadline, provided however that the Company and the Proposal Trustee may, but are not obligated to, provide further information including, without limitation, financial information to the Successful Bidder (including the Stalking Horse Bidder). Neither the Company nor the Proposal Trustee is responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Assets and the Business, or an investment in the Company. If the Company provides additional information and due diligence to an Interested Party that was not previously provided to the Stalking Horse Bidder, the Company shall concurrently provide such additional information to the Stalking Horse Bidder or notify the Stalking Horse Bidder that such information is available in the Data Room.

9. Bid Deadlines

An Interested Party that wishes to make a Bid to: (a) acquire the Business or all, substantially all or any part of the Assets, including any offer to acquire some or all of the Company's software, intellectual property, manufacturing equipment, accounts receivable and furniture, fixtures and equipment (a "**Sale Proposal**"), or (b) make an investment in the Company by way of private issuances, sale or placement of newly issued or treasury equity, equity-linked or debt securities, instruments or obligations of the Company with one or more lenders and/or investors or security holders (an "**Investment Proposal**"), must deliver an executed copy of a Phase I Bid to the Proposal Trustee, at the address specified in Schedule "B" hereto (including by email) so as to be received by it **not later than 5:00 p.m. (Eastern Time) on November 16, 2022**, or such other later date or time as may be agreed by the Company and the Proposal Trustee (the "**Phase I Bid Deadline**").

All Phase II Bids must be submitted to the Proposal Trustee, at the address specified in Schedule "B" hereto (including by email) so as to be received by it **not later than 5:00 p.m. (Eastern Time) on December 1, 2022**, or such other later date or time as may be agreed by the Company and the Proposal Trustee (the "**Phase II Bid Deadline**").

PHASE I – NON BINDING BIDS

10. Phase I Participant Requirements.

To participate in Phase I of the SISP and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Company with an executed copy of each of the following prior to being provided with access to the Data Room: (i) a Confidentiality Agreement; and (ii) an Acknowledgement of the SISP (collectively, the "**Phase I Participant Requirements**").

11. Qualified Phase I Bids

Only Qualified Phase I Bidders shall be allowed to participate in Phase II of the SISP and be eligible to receive the Additional Confidential Information.

In order for the Company to determine whether an Interested Party is a Qualified Phase I Bidder, the Interested Party must provide, in form and substance satisfactory to the Company, in consultation with the Proposal Trustee, each of the following on or before the Phase I Bid Deadline:

(a) Non- Binding Letter of Intent Describing the Phase 1 Bid: A non-binding letter of intent describing the material terms of the Phase I Bid which includes the following information:

(i) Sale Proposal: in the case of a Sale Proposal, the material terms and conditions of the proposed transaction, including identification of the Business or the Assets proposed to be acquired, the obligations to be assumed, the purchase price for the Business or Assets proposed to be acquired (the "**Purchase Price**"), and the structure and financing of the proposed transaction; and

(ii) Investment Proposal: in the case of an Investment Proposal, the material terms and conditions of the proposed transaction, including details regarding the proposed equity and debt structure of the Company following completion of the proposed transaction, the direct or indirect investment target and the aggregate amount of equity and debt investment (including the sources of such capital, the underlying assumptions regarding the *pro forma* capital structure, as well as anticipated tranches of debt, debt service fees, interest and amortization) to be made in the Company, and the debt, equity, or other securities, if any, proposed to be allocated to creditors of the Company;

(b) Purchase Price: Evidence that the Purchase Price (in the case of a Sale Proposal) or imputed value (in the case of an Investment Proposal) under the Phase I Bid or Aggregate Bid shall be an amount greater than the Minimum Bid Amount (a "**Superior Offer**"); provided that any Portion Bidder shall not be subject to the Minimum Bid Amount except to the extent that it forms an Aggregate Bid. For greater certainty, any Phase I Bid must provide for payment in full in cash on closing in an amount sufficient to satisfy all indebtedness, fees, and expenses owed by the Company to the DIP Lender in accordance with the DIP Term Sheet;

(c) Proof of Financial Ability to Perform: Written evidence upon which the Company and the Proposal Trustee may reasonably conclude that the Interested Party has the necessary financial ability to close the contemplated transaction on or before the Outside Date and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:

(i) evidence of the Interested Party's internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction;

(ii) contact names and phone numbers for verification of financing sources; and

(iii) any such other form of financial disclosure or credit-quality support information or enhancement requested by and reasonably acceptable to the Company and the Proposal Trustee demonstrating that such Interested Party has the ability to close the contemplated transaction;

(d) Outstanding Due Diligence: a description of any additional due diligence required to be conducted in order to submit a Qualified Phase II Bid;

(e) Identification: Full written disclosure of the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the Phase I Bid, including whether any prior or current member of the Company's board, management, any employee or consultant to the Company or any creditor) or shareholder of the Company is involved in any way with the Phase I Bid or assisted with the Phase I Bid, and the complete terms of any such participation as well as evidence of corporate authority to sponsor or participate in the Phase I Bid;

(f) Acknowledgment: An acknowledgement and representation that the Interested Party: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents regarding the Company, the Business and/or the Assets to be acquired, or the liabilities to be assumed in making its Phase I Bid; and (ii) did not rely upon any written or oral statements, representations, promises, warranties conditions or guaranties whatsoever, whether express or implied (by operation of law or otherwise) by the Company, the Proposal Trustee or any of their respective employees, directors, officers, agents, advisors or other representatives, regarding the Company, the Business, the Assets to be acquired, or the liabilities to be assumed, or the completeness of any information provided in connection therewith, except as expressly provided in any definitive transaction documents;

(g) Authorization: Evidence, in form and substance reasonably satisfactory to the Company and the Proposal Trustee, of authorization and approval from the Interested Party's board of directors (or comparable governing body) with respect to the submission, execution and delivery of the Phase I Bid, and identification of any anticipated shareholder, regulatory or other approvals outstanding, and the anticipated time frame and any anticipated impediments for obtaining such approvals;

(h) Break or Termination Fee: Evidence that it does not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;

(i) Deposit: A cash deposit (the "**Phase I Deposit**") in an amount equal to 5% of the Purchase Price (in the case of a Sale Proposal) or imputed value (in the case of an Investment Proposal) that shall be paid to the Proposal Trustee in trust, which Phase I Deposit shall be held and dealt with in accordance with these SISP Procedures;

(j) Employees: If applicable, the proposed number of employees of the Company who are expected to become employees of the Phase I Bidder if determined to be the Successful Bidder;

(k) Other: Such other information as may reasonably be requested by the Company or the Proposal Trustee; and

(l) Phase I Bid Deadline: It is received by the Proposal Trustee, at the address specified in Schedule "B" hereto (including by email) on or before the Phase I Bid Deadline.

The Company and with the approval of the Proposal Trustee, may waive any one or more minor and non-material violations of the requirements specified for Qualified Phase I Bids and deem such non-compliant Bids to be Qualified Phase I Bids.

12. Evaluation of Qualified Phase I Bids and Designation as Qualified Phase I Bidder

The Company, in consultation with the Proposal Trustee, shall evaluate Qualified Phase I Bids on various grounds including, but not limited to, the Purchase Price or imputed or projected value, the treatment of creditors and related implied recovery for creditors (in each case, as applicable), the assumed liabilities, the certainty of closing the transactions contemplated by the Phase I Bid on or before the Outside Date and any delay or other risks (including closing risks) in connection with the Qualified Phase I Bids.

The Company, with the approval of the Proposal Trustee, shall have the option, in its discretion, to aggregate Portion Bids into an Aggregate Bid.

The Company shall be under no obligation to accept the highest or best offer or any offer (other than the offer contained in the Stalking Horse Agreement if no other higher or better offer is accepted).

As soon as practicable after the Phase I Bid Deadline, the Company, in consultation with the Proposal Trustee, will advise an Interested Party whether or not its Phase I Bid constitutes a Qualified Phase I Bid and that it is a Qualified Phase I Bidder and, if such Phase I Bidder is a Qualified Phase I Bidder, that it is invited to participate in Phase II of the SISP.

For certainty, the Stalking Horse Agreement is a Qualified Phase I Bid and the Stalking Horse Bidder is a Qualified Phase I Bidder for all purposes of these SISP Procedures.

13. No Qualified Phase I Bids

If no Qualified Phase I Bid other than the Bid pursuant to the Stalking Horse Agreement is received by the Phase I Bid Deadline, the Stalking Horse Bidder shall be declared the Successful Bidder and the Stalking Horse Agreement shall be declared the Successful Bid.

PHASE II – BINDING BIDS

14. Qualified Phase II Bid Requirements

Only Qualified Phase I Bidders shall be entitled to submit a Phase II Bid. In order to be considered a Qualified Phase II Bid, as determined by the Company, in consultation with the Proposal Trustee: (i) a Phase II Bid must satisfy all of the requirements for a Qualified Phase I Bid contained in Section 11, provided, however, that the Phase I Bid Deadline shall not apply, and; (ii) the Qualified Phase I Bidder must also submit the following, in form and substance satisfactory to the Company, in consultation with the Proposal Trustee, on or before the Phase II Bid Deadline:

(a) Irrevocable Bid: A cover letter stating that the Phase II Bid is irrevocable until Court approval of the Successful Bid(s), provided that if such Phase II Bidder is selected as the Successful Bidder or the Back-Up Bidder, its Phase II Bid shall remain irrevocable until the Back-Up Bid Expiration Date (as defined below), which includes:

   (i) Sale Proposal: in the case of a Sale Proposal, a duly authorized and executed definitive purchase agreement together with all completed schedules thereto substantially in the form of the Form Purchase Agreement, together with a blackline comparing the purchase agreement submitted to the Form Purchase Agreement which includes all or substantially all of the terms set out in the non-binding letter of intent submitted in Phase I; and

   (ii) Investment Proposal: in the case of an Investment Proposal, a duly authorized and executed binding term sheet which includes all or substantially all of the terms set out in the non-binding investment proposal submitted in Phase I;

(b) Unconditional Bid: Evidence that it is not conditioned on: (i) the outcome of unperformed due diligence including the review of any Additional Confidential Information; (ii) obtaining financing; and/or (iii) any other material closing conditions;

(c) Acknowledgment: An acknowledgement and representation that the Phase II Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents regarding the Company, the Business and/or the Assets to be acquired, or liabilities to be assumed in making its Phase II Bid; and (ii) did not rely upon any written or oral statements, representations, promises, warranties conditions or guaranties whatsoever, whether express or implied (by operation of law or otherwise) by the Company, the Proposal Trustee or any of their respective employees, directors, officers, agents, advisors or other representatives, regarding the Company, the Business, the Assets to be acquired, liabilities to be assumed, or the completeness of any information provided in connection therewith, except as expressly provided in any definitive transaction documents;

(d) Authorization: Evidence, in form and substance reasonably satisfactory to the Company and the Proposal Trustee, of authorization and approval from the Interested Party's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Phase II Bid, and confirmation that any other required approvals have been obtained;

(e) Deposit: A cash deposit (the "**Deposit**") which, in combination with the Phase I Deposit, shall be in an amount not less than 10% of the Purchase Price (in the case of a Sale Proposal) or imputed value (in the case of an Investment Proposal) that shall be paid to the Proposal Trustee in trust, which Deposit shall be held and dealt with in accordance with these SISP Procedures;

(f) Employees: If applicable, full details of the proposed number of employees of the Company who will become employees of the Phase II Bidder if determined to be the Successful Bidder and the proposed terms and conditions of employment to be offered to those employees;

(g) Other: Such other information as may reasonably be requested by the Company or the Proposal Trustee; and

(h) Phase II Bid Deadline: It is received by the Proposal Trustee, at the address specified in Schedule "B" hereto (including by email) on or before the Phase II Bid Deadline.

15. Evaluation of Qualified Phase II Bids and Subsequent Actions

The Company, in consultation with the Proposal Trustee, shall evaluate Qualified Phase II Bids on various grounds including, but not limited to, the Purchase Price or imputed or projected value, the treatment of creditors and related implied recovery for creditors (in each case, as applicable), the assumed liabilities, the certainty of closing the transactions contemplated by the Qualified Phase II Bid on or before the Outside Date and any delay or other risks (including closing risks) in connection with the Qualified Phase II Bids.

For certainty, the Stalking Horse Agreement is a Qualified Phase II Bid and the Stalking Horse Bidder is a Qualified Phase II Bidder for all purposes of these SISP Procedures.

Following such evaluation, the Company, with the approval of the Proposal Trustee, shall:

(a) identify if any Qualified Phase II Bid is a Superior Offer; and

(b) if one or more Qualified Phase II Bids are considered to be a Superior Offer, each Qualified Phase II Bidder presenting a Superior Offer shall proceed to an auction (the "**Auction**") with the Stalking Horse Bidder in accordance with the procedures set out in the attached Schedule "C" (the "**Auction Procedure**") to identify the "**Successful Bid**", and the Qualified Phase II Bidder making such Successful Bid, the "**Successful Bidder**". The determination of any Successful Bid by the Company, in consultation with the Proposal Trustee, shall be subject to approval by the Court.

The Company, with the approval of the Proposal Trustee, shall have the option to aggregate Portion Bids into an Aggregate Bid. Notwithstanding anything to the contrary herein, the Company, with the approval of the Proposal Trustee, shall be permitted to include Qualified Investment Bids or Qualified Sale Bids in the Auction, including to the extent such Qualified Phase II Bids are Portion Bids, provided that such Qualified Investment Bids or Qualified Sale Bids constitute a Superior Offer.

Following the selection of the Successful Bid, the Company shall take such steps as may be necessary to finalize definitive transaction documents for the Successful Bid(s) with the Successful Bidder(s).

The Company may conditionally accept one or more (if for distinct and compatible transactions that are Portion Bids) Qualified Phase II Bids, which acceptance will be conditional upon the failure of the transaction(s) contemplated by the Successful Bid to close (the "**Back-up Bid**" and Qualified Phase II Bidder making such Back-up Bid being the "**Back-Up Bidder**").

The Company shall be under no obligation to accept the highest or best offer or any offer (other than the offer contained in the Stalking Horse Agreement if no Superior Offer is accepted) or to select any Successful Bidder(s) and any Back-Up Bidder(s). For greater certainty, any accepted offer, whether at the Auction or otherwise, must constitute a Superior Offer.

As soon as reasonably practicable and by no later than December 2, 2022, the Company shall advise the Qualified Phase II Bidders if Successful Bid(s) and Back-Up Bid(s) have been accepted, or conditionally accepted, as the case may be. If the Company determines it is necessary to conduct an Auction pursuant to the SISP Procedures, the Company or the Proposal Trustee will advise the Qualified Phase II Bidders of the date, time, location and the rules (if any) of the Auction in accordance with the Auction Procedure.

16. <u>No Qualified Phase II Bids</u>

If no Superior Offer is received by the Phase II Bid Deadline, the Auction will not be held, and the Stalking Horse Bidder will be declared to be the Successful Bidder and the Stalking Horse Agreement shall be declared the Successful Bid.

APPROVAL MOTION

17. <u>Approval Motion</u>

The Company shall use reasonable efforts to make a motion to the Court to approve the Successful Bid(s) and Back-Up Bid(s) as soon as practicable following the determination by it and the Proposal Trustee of the Successful Bidder(s). The Company will be deemed to have accepted the Successful Bid(s) only when it has been approved by the Court. All Qualified Phase II Bids (other than the Successful Bid(s) and the Back-Up Bid(s)) shall be deemed rejected by the Company on and as of the date of approval of the Successful Bid(s) by the Court.

18. <u>Back-Up Bidder</u>

If a Successful Bidder fails to close the transaction contemplated by the Successful Bid(s) on or before the Outside Date for any reason, then the Company will be deemed to have accepted the Back-Up Bid(s) and will proceed with the transaction pursuant to the terms thereof. The Back-Up Bid(s) shall remain open for acceptance until the closing of the Successful Bid(s), or such other later date as the Company and the Back-Up Bidder may agree, acting reasonably (the "**Back-Up Bid Expiration Date**").

MISCELLANEOUS

19. <u>Information From Interested Parties</u>

Each Interested Party shall comply with all reasonable requests for additional information by the Company or the Proposal Trustee regarding such Interested Party and its contemplated transaction. Failure by an Interested Party to comply with requests for additional information will be a basis for the Company to determine that the Interested Party is not a Qualified Phase I Bidder or a Qualified Phase II Bidder, as applicable.

20. <u>Deposits</u>

All Deposits shall be held by the Proposal Trustee in a single interest bearing account designated solely for such purpose. A Deposit paid by a Successful Bidder shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid. Deposits, and any interest earned thereon, paid by Phase I Bidders not selected as either a Qualified Phase I Bidder or a Qualified Phase II Bidder shall be returned to such Phase I Bidder within three Business Days of being advised that it is not a Qualified Phase I Bidder or a Qualified Phase II Bidder, as the case may be. Deposits, and any interest thereon, paid by Qualified Phase II Bidders not selected as either a Successful Bidder or a Back-Up Bidder shall be returned to such Qualified Phase II Bidders within three Business Days of Court approval of the Successful Bid. In the case of Back-Up Bid(s), the Deposit and any interest earned thereon shall be retained by the Proposal Trustee until the Back-Up Bid Expiration Date and returned to the Back-Up Bidder within three Business Days thereafter or, if a Back-Up Bid becomes a Successful Bid, shall be dealt with in accordance with the definitive documents for the Back-Up Bid.

21. <u>Modifications and Termination</u>

The Company, in consultation with the Proposal Trustee, shall have the right to adopt such other rules for the SISP Procedures (including rules that may depart from those set forth herein) that will better promote the sale of the Business or all or any part of the Assets or investment in the Company under these SISP Procedures. The Company, in consultation with the Proposal Trustee, shall apply to the Court if it wishes to materially modify or terminate the process set out in these SISP Procedures. For certainty, any amendments to the Phase I Bid Deadline or the Phase II Deadline or other dates set out in these SISP Procedures, including those relating to the Auction, shall not constitute a material modification, provided that any extensions to the Phase I Bid Deadline or the Phase II Deadline are not longer than seven calendar days.

22. <u>Consultation with the Secured Lenders</u>

The Company, in consultation with the Proposal Trustee, shall, as appropriate, consult with SVB throughout the SISP; provided that, SVB shall not be permitted to participate in the SISP.

23. <u>Credit Bids</u>

Any holder of Notes is permitted to credit bid the amount outstanding under the Notes that it holds in partial satisfaction of the Purchase Price provided that: (i) the amount owing to any party with a claim against the Company in priority to the Notes; and (ii) the amount outstanding under all of the Notes, which each rank *parri passu*, is paid in cash or assumed by the Purchaser with the consent of such party.

24. <u>Other</u>

Neither the Company nor the Proposal Trustee shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the SISP arising out of any agreement or arrangement entered into by the parties that submitted the Successful Bid(s) and Back-Up Bid(s). Any such claim shall be the sole liability of the parties that submitted such Successful Bid(s) and Back-Up Bid(s).

Neither the Company nor the Proposal Trustee shall have any liability whatsoever to any person or party, including without limitation, to any Potential Bidder, Phase 1 Bidder, Phase 2 Bidder, a Successful Bidder or Back-Up Bidder, or any creditor, or other stakeholder, for any act or omission related to this SISP. By submitting a Bid, each

Interested Party shall be deemed to have agreed that it has no claim against the Company or the Proposal Trustee for any reason, matter or thing whatsoever related to this SISP.

SCHEDULE "A"

Acknowledgement of the SISP

The undersigned hereby acknowledges receipt of the Sale and Investor Solicitation Process approved by the Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) dated October 17, 2022 (the "**SISP**") and that compliance with the terms and provisions of the SISP is required in order to participate in the SISP and for any Bids to be considered by the Company.

This ____day of _______________, 2022.

[NAME]

By:

____
[Signing Officer]

SCHEDULE "B"
ADDRESS PARTICULARS

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

Attention:	Jason Kanji
Phone:	416.777.6136
Fax:	416.360.4949
Email:	jason.kanji@ca.gt.com

SCHEDULE "C"
AUCTION PROCEDURES

Auction

1. If the Company, with the approval of the Proposal Trustee, determines to conduct an Auction pursuant to the SISP Procedures, the Company or the Proposal Trustee will notify the Qualified Phase II Bidders (including the Stalking Horse Bidder) who made a Qualified Phase II Bid that the Auction will be held virtually at 9:00 a.m. (Eastern Time) on a date that is determined by the Company or the Proposal Trustee, provided that it is a date that is not later than two Business Days after the Phase II Bid Deadline, or such other place, date and time as the Company or the Proposal Trustee may advise. Capitalized terms used but not defined herein have the meaning given to them in the SISP Procedures.

   The Auction shall be conducted in accordance with the following procedures:

   (a) Participation At the Auction. Only a Qualified Phase II Bidder is eligible to participate in the Auction. Each Qualified Phase II Bidder must inform the Company and the Proposal Trustee whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction. Only the authorized representatives of each of the Qualified Phase II Bidders, the Proposal Trustee and the Company, and their respective counsel and other advisors, and any other parties acceptable to the Company in consultation with the Proposal Trustee, shall be permitted to attend the Auction.

   (b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The highest Qualified Phase II Bid at the beginning of the Auction shall constitute the "**Opening Bid**" for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the "**Opening Bid**" for the following round. In each round, a Qualified Phase II Bidder may submit no more than one Overbid. Only a Qualified Phase II Bidder who bids in a round (including the Qualified Phase II Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction. For greater certainty, an Aggregate Bid may be determined to be the Opening Bid for any round including the opening round.

   (c) Proposal Trustee Shall Conduct the Auction. The Proposal Trustee and its advisors shall direct and preside over the Auction. At the start of the Auction, the Proposal Trustee shall provide the terms of the Opening Bid to all participating Qualified Phase II Bidders at the Auction. The determination of which Qualified Phase II Bid constitutes the Opening Bid for each round shall take into account any factors that the Proposal Trustee reasonably deems relevant to the value of the Qualified Phase II Bid, including, among other things, the following: (i) the amount and nature of the consideration, including the value of any non-cash consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Proposal Trustee's reasonable assessment of the certainty of the Qualified Phase II Bidder to close the proposed transaction on or before the Outside Date; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the impact of the contemplated transaction on any actual or potential litigation; (vi) the net economic effect of any changes from the Opening Bid of the previous round; (vii) the net after-tax consideration to be received by the Company; and (viii) such other considerations as the Proposal Trustee deems relevant in its reasonable business judgment (collectively, the "**Bid Assessment Criteria**"). For greater certainty, the Proposal Trustee may ascribe monetary values to non-monetary terms in Overbids for the purposes of assessing and valuing such Overbids, including without limitation, the value to be ascribed to any liabilities or contracts to be assumed. All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid shall be fully disclosed to all other Qualified Phase II Bidders that are participating in the Auction. The Proposal Trustee shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction, including the Successful Bid and the Back-Up Bid.

(d) Terms of Overbids. An "**Overbid**" is any Bid made at the Auction subsequent to the Proposal Trustee's announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Phase II Bidder must comply with the following conditions:

(i) *Minimum Overbid Increment:* Any Overbid shall be made in such increments as the Proposal Trustee may determine in order to facilitate the Auction (the "**Minimum Overbid Increment**"). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time plus any additional Minimum Overbid Increments. In respect of the Stalking Horse Agreement and any Overbid by the Stalking Horse Purchaser, the value shall include the amount of any indebtedness owing to it that is to be deemed repaid or otherwise released and any priority indebtedness to be assumed pursuant to and in accordance with the terms of the Stalking Horse Agreement.

(ii) *The Bid Requirements same as for Qualified Phase II Bids:* Except as modified herein, an Overbid must comply with the bid requirements contained herein, provided, however, that the Phase II Bid Deadline shall not apply. Any Overbid made by a Qualified Phase II Bidder must provide that it remains irrevocable and binding on the Qualified Phase II Bidder and open for acceptance until the closing of the Successful Bid(s).

(iii) *Announcing Overbids:* At the end of each round of bidding, the Proposal Trustee shall announce the identity of the Qualified Phase II Bidder and the material terms of the then highest and/or best Overbid, including the nature of the proposed transaction contemplated by the best Overbid, the assets proposed to be acquired and the obligations proposed to be assumed, the basis for calculating the total consideration offered in such Overbid, and the resulting benefit to the Company based on, among other things, the Bid Assessment Criteria. For greater certainty, an Aggregate Bid may be determined to be the highest and/or best Overbid.

(iv) *Consideration of Overbids:* The Proposal Trustee reserves the right, in consultation with the Company, to make one or more adjournments in the Auction to, among other things: (A) facilitate discussions between the Company and individual Qualified Phase II Bidders; (B) allow individual Qualified Phase II Bidders to consider how they wish to proceed; (C) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (D) give Qualified Phase II Bidders the opportunity to provide the Proposal Trustee with such additional evidence as it, or the Company, may require, that the Qualified Phase II Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Proposal Trustee and Company may have clarifying discussions with a Qualified Phase II Bidder, and the Proposal Trustee may allow a Qualified Phase II Bidder to make technical clarifying changes to its Overbid following such discussions.

(v) *Portion Bids:* Notwithstanding the forgoing, each Portion Bidder entitled to participate in the Auction shall be entitled to submit an Overbid (in a minimum increment to be determined by the Proposal Trustee) with respect to the Assets on which it is bidding without being required to submit an Overbid with respect to all Assets or the applicable Opening Bid; provided that any Aggregate Bid that is an Overbid shall be subject to these Auction procedures as any other Overbid, including that such Aggregate Bid that is an Overbid shall be subject to the Minimum Overbid Increment. Portion Bids can be aggregated with any other Qualified Phase II Bid, as determined by the Company and the Proposal Trustee.

(vi) *Failure to Bid:* If at the end of any round of bidding a Qualified Phase II Bidder (other than a Portion Bidder, or the Qualified Phase II Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Phase II Bidder shall not be entitled to continue to participate in the next round of the Auction.

(e) Discussion with other Bidders. A Qualified Phase II Bidder shall not strategize or discuss with other Qualified Phase II Bidders for the purpose of submitting an Overbid without the consent of the Proposal Trustee.

(f) Additional Procedures. The Proposal Trustee may, in consultation with the Company, adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the SISP Procedures and provided further that no such rules may change the requirement that all material terms of the then highest and/or best

Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Phase II Bidders.

(g) Closing the Auction. The Auction shall be closed after the Proposal Trustee, with the assistance of the Company and their respective legal counsel, has (i) reviewed the final Overbid of each Qualified Phase II Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale, and (ii) identified the Successful Bid and the Back-Up Bid and advise the Qualified Phase II Bidders participating in the Auction of such determination. One or more Portion Bids can, in the discretion of the Proposal Trustee, form part of a Successful Bid and Back-Up Bid so long as such Portion Bids do not overlap in respect of the Assets sought to be purchased and in such case, such Portion Bid shall be included in the definition of Successful Bidder or Back-Up Bid, as applicable.

(h) Finalizing Documentation. Promptly following a Bid of a Qualified Phase II Bidder being declared the Successful Bid or the Back-Up Bid, the applicable Qualified Phase II Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid.

(i) Qualified Investment Bids. Notwithstanding any other provision of these SISP Procedures, if a Qualified Phase II Bidder submits a Qualified Investment Bid, which the Company or the Proposal Trustee considers would result in a greater value being received for the benefit of the Company's creditors than the Qualified Sale Bids, then the Proposal Trustee may allow such Qualified Phase II Bidder to participate in the Auction, notwithstanding that such Qualified Investment Bid may not otherwise comply with the terms of these Auction Procedures. In such case, the Proposal Trustee may adopt appropriate rules to facilitate such Qualified Phase II Bidder's participation in the Auction.

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF iS5 COMMUNICATIONS INC., OF THE CITY OF MISSISSAUGA IN THE PROVINCE OF ONTARIO

Estate No. 32-2853708
Court File No. 32-2853708

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER
(Re: Stalking Horse & SISP)

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