

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

**B E T W E E N:**

**NATIONAL BANK OF CANADA**

**Applicant**

- and -

**AXIOM REAL-TIME METRICS INC.**

**Respondent**

**FACTUM OF THE RECEIVER  
(Motion returnable July 11, 2025)**

July 7, 2025

**CHAITONS LLP**

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**Lawyers for KSV Restructuring Inc., in its  
capacity as Court-Appointed Receiver**

**TO: THE SERVICE LIST**

## PART I - OVERVIEW

1. This Factum is submitted by KSV Restructuring Inc. (“**KSV**”), in its capacity as proposed court-appointed receiver (the “**Proposed Receiver**”, and if appointed, the “**Receiver**”) of the assets, undertakings and properties of Axiom Real-Time Metrics Inc. (the “**Company**”), for an order:

- (a) if necessary, abridging and validating the time for service and filing of this notice of motion and motion record;
- (b) approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**APA**”) dated as of July 6, 2025 by and among the Receiver, as vendor, Sitero Canada Inc., as purchaser (the “**Purchaser**”), and Sitero LLC, as guarantor, and appended to the Pre-Filing Report of KSV as proposed receiver (the “**Proposed Receiver**”) dated July 7, 2025 (the “**Pre-Filing Report**”) <sup>1</sup>, and vesting in the Purchaser the Company’s right, title and interest in and to the Purchased Assets (as defined in the APA) free and clear of claims, liabilities, liens and encumbrances (the “**Vesting Order**”);
- (c) approving the distributions of any proceeds of sale, collections or otherwise generated pursuant to the Transaction or through other steps taken in the proposed receivership proceedings, to National Bank of Canada (the “**NBC**”);

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<sup>1</sup> Capitalized terms not defined herein have the meaning defined in the Pre-Filing Report.

- (d) providing for the change of the corporate name of the Company to “2075508 Ontario Inc.”, as required under the terms of the APA; and
  - (e) sealing Confidential Appendix “1” to the Pre-Filing Report.
2. Capitalized terms not defined herein have the meaning defined in the Pre-Filing Report.

## **PART II - FACTS**

### **Background**

3. The Company is a corporation existing under the laws of the Province of Ontario.<sup>2</sup>
4. Great Point Partners III L.P. (“GPP”) is the Company’s controlling shareholder. The Company’s other shareholder is Thinkworks Inc., which is believed to be owned by Andrew Schachter (“**Schachter**”), the Company’s founder.<sup>3</sup>
5. The Company provides software, electronic data collection, project management, clinical consulting, results analysis, and data management solutions for clients in the life sciences sector under two lines of business: (a) technology/software; and (b) services.<sup>4</sup>
6. As at the date of the Pre-Filing Report, the Company had approximately 58 employees, 51 of which are based on Canada, while the remaining seven are based in the U.S.<sup>5</sup>

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<sup>2</sup> Pre-Filing Report, at s. 2.0, para. 1.

<sup>3</sup> Pre-Filing Report, at s. 2.0, para. 2.

<sup>4</sup> Pre-Filing Report, at s. 2.0, para. 4.

<sup>5</sup> Pre-Filing Report, at s. 2.0, para. 5.

## NBC Loan Facility

7. NBC is the Company's primary secured creditor. NBC provided a secured loan facility to the Company in March 2024. As at July 3, 2025, the Company's indebtedness to NBC totalled approximately \$10,405,079.53, which continues to accrue for interest and costs.<sup>6</sup>

8. In May 2024, NBC learned that:<sup>7</sup>

- (a) the Company was experiencing significant financial distress;
- (b) the Company's financial statements contained material misstatements, including allegations by GPP that revenue and accounts receivable were overstated and that Schachter had misused Company funds; and
- (c) Business Development Bank of Canada ("**BDC**") intended to issue a demand for repayment and a notice of intention to enforce security under the *Bankruptcy and Insolvency Act* to the Company with respect to the guarantee it had provided for a loan agreement between BDC and J2ASM Inc., another entity that is believed to be owned by Schachter.

9. NBC discontinued funding the Company's business in or around May 2024, shortly after it learned of the Company's financial irregularities.<sup>8</sup>

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<sup>6</sup> Pre-Filing Report, at s. 2.0, para. 6.

<sup>7</sup> Pre-Filing Report, at s. 2.0, para. 7.

<sup>8</sup> Pre-Filing Report, at s. 2.0, para. 10.

10. On May 31, 2024, at GPP's insistence, Schachter resigned as president of the Company and new senior management known to GPP was retained.<sup>9</sup>

### **KSV's Prior Mandate**

11. KSV<sup>10</sup> was engaged by NBC in September 2024 to provide financial advisory services in respect of NBC's loans to the Company (the "**Advisory Mandate**"). The Advisory Mandate included, among other things, reviewing the Company's financial information, preparing estimates of the realizable value of the Company's business and assets, reviewing and assessing the Company's financial projections, monitoring the Company's financial performance, and considering the Company's restructuring options.<sup>11</sup>

12. KSV's engagement letter states that the Advisory Mandate will terminate if KSV is appointed to act as a court officer in any insolvency proceeding involving the Company. The engagement letter also provides that the Advisory Mandate does not preclude KSV from acting as a court officer in a court-supervised insolvency proceeding of the Company.<sup>12</sup>

### **Sale/Investment Process**

13. In late August 2024, GPP and the Company commenced a process to secure a material investment in the Company through a wide canvassing of the market, that included discussions with multiple potential investors. To assist its efforts, on November 26, 2024, the Company

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<sup>9</sup> Pre-Filing Report, at s. 2.0, para. 8.

<sup>10</sup> KSV's affiliate, KSV Advisory Inc., was engaged for the advisory mandate. KSV is a subsidiary of KSV Advisory Inc.

<sup>11</sup> Pre-Filing Report, at s. 1.1, para. 1.

<sup>12</sup> Pre-Filing Report, at s. 1.1, para. 2.

retained SSG Capital Advisors, LLC (“SSG”), an investment banking and consulting firm, with a focus on middle-market businesses facing special situations.<sup>13</sup>

14. In mid May 2025, GPP advised NBC that its efforts to find a capital partner had been unsuccessful and that it was no longer prepared to continue providing liquidity to the business. Thereafter, negotiation of a forbearance agreement commenced pursuant to which SGG would conduct a sale process (the “**Sale Process**”), and in June 2025, the Company, in consultation with GPP and NBC, entered into a revised engagement letter with SSG for that purpose.<sup>14</sup>

15. SSG’s marketing efforts, which were conducted in consultation with KSV, resulted in three opportunities, including the Transaction.<sup>15</sup>

16. Two opportunities from the Sale Process were rejected. The first opportunity required that NBC continue to finance the business, and NBC and KSV deemed the capital commitment from that prospective purchaser to be materially insufficient. The second opportunity was submitted by a party in the early stages of its due diligence, and it was not pursued as it involved a 5-year unsecured, non-recourse note payable from free cash flow from a restructured “Axiom”.<sup>16</sup>

17. Subsequent discussions between the Purchaser, SSG and representatives of KSV led to the negotiation of the Transaction and the APA.<sup>17</sup>

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<sup>13</sup> Pre-Filing Report, at s. 2.0, para. 9.

<sup>14</sup> Pre-Filing Report, at s. 2.0, para. 10.

<sup>15</sup> Pre-Filing Report, at s. 5.0, para. 5.

<sup>16</sup> Pre-Filing Report, at s. 5.0, para. 5.

<sup>17</sup> Pre-Filing Report, at s. 5.0, para. 6.

## The Proposed Transaction

18. Key aspects of the APA are summarized below (capitalized terms have the meanings ascribed to them in the APA):<sup>18</sup>

- (a) **Purchaser:** Sitero Canada Inc.
- (b) **Guarantor:** Sitero LLC
- (c) **Purchased Assets:** substantially all of the Company's right, title, and interest in its property and assets including, among other things: (i) the Assigned Contracts; (ii) the Intellectual Property; (iii) the inventory and owned equipment of the Company; and (iv) the Receivables;
- (d) **Excluded Assets:** all property and assets of the Company other than the Purchased Assets, including, among other things: (i) cash, bank balances, moneys in possession of banks and other depositories, term or time deposits and similar cash items of, owned or held by or for the account of the Vendor; (ii) amounts owing from and claims against related parties; (iii) any tax refunds, rebates, scientific research and experimental development tax credits (i.e., the SR&ED Refunds), and substantially similar credits and rebates in respect of any period up to and including the Closing Date; (iv) all litigation claims of the Company, except claims against counterparties to the Assigned Contracts; (v) all employment contracts with Employees; and (vi) the Excluded Contracts.

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<sup>18</sup> Pre-Filing Report, at s. 6.0, para. 1.

- (e) **Purchase Price:** the Purchase Price essentially consists of amounts payable under an “Earn Out” provision, being 10% of the total financial value of any Performance Contract (and any Sales Taxes applicable thereto) entered into by the Purchaser during a fifteen (15) month period after closing. Sitero LLC has guaranteed the obligation of the Purchaser to make the Earn Out Payments.
- (f) **Employee Matters:** at least three (3) Business Days prior to Closing, the Purchaser shall provide the Vendor with a list of those employees of the Company it wishes to offer employment on terms and conditions substantially similar and no less favourable than those they currently enjoy. The employees who accept the Purchaser's offer shall be referred to as "Transferred Employees". The Purchaser shall assume and be responsible for all liabilities and obligations with respect to Transferred Employees following the Closing Date.
- (g) **Name Change:** after Closing, the Vendor will discontinue use of the name “Axiom Real-Time Metrics” and will file articles of amendment to change the corporate name of the Company back to its numbered company name.
- (h) **Closing:** Closing is to occur by no later than three business day following the Vesting Order being granted by the Court.
- (i) **Material Conditions:** include the following:
  - i. the Purchaser shall have received written consent to assignment from those counterparties to Assigned Contracts identified in Schedule “A” as “Necessary Contracts”, in form and substance satisfactory to the Purchaser,



which consents shall include not less than 75% of all such Assigned Contracts;<sup>19</sup> and

- ii. the Vesting Order shall have been issued and entered by the Court and shall not have been stayed, varied or set aside and no appeal or motion for leave to appeal shall have been commenced.

### **Urgency**

19. The Proposed Receiver is of the view that there is urgency to complete the Transaction for the following reasons:<sup>20</sup>

- (a) the Company is incurring substantial negative cash flow that is projected to continue indefinitely unless the business can be restructured;
- (b) absent approval of the Transaction, there is no party that is prepared to continue to finance the Company's operations;
- (c) if the Transaction is not completed, given the Company's lack of liquidity, it is likely to result in an immediate discontinuation of the Company's business, resulting in the termination of all of the Company's employees as well as several ongoing clinical trials;

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<sup>19</sup> For the purposes of this condition, the Purchaser has identified all "Client Contracts" listed on Schedule "A".

<sup>20</sup> Pre-Filing Report, at s. 7.0, para. 1.

- (d) given the lack of alternatives to the Transaction arising from the Sale Process, no party would realistically be treated more favourably in a different scenario given the Company does not have sufficient liquidity to fund a further sale process;
- (e) the continued uncertainty in the business has resulted in a substantial risk that key employees will resign; and
- (f) the Company is under significant pressure from its customers and its vendors (who are significantly in arrears).

### **Sealing Order**

20. Confidential Appendix “1” to the Pre-Filing Report includes unredacted versions of Schedules “A” and “B” to the APA (i.e., the list of Assigned Contracts and Pipeline Opportunities, respectively). The Proposed Receiver recommends that Confidential Appendix “1” be filed with the Court on a confidential basis for the reasons set out in paragraphs 30 to 32 below.

### **Distribution and Next Steps**

21. If appointed Receiver and the Transaction is approved by the Court, the Receiver intends to close the Transaction and, subject to Court approval, make distributions to NBC from the Earn Out and the SR&ED Refunds up to the amount of the NBC Indebtedness, after paying or reserving for the costs of these proceedings, including the fees and costs of SSG and the Receiver.<sup>21</sup>

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<sup>21</sup> Pre-Filing Report, at s. 10.0, para. 1.

### PART III - ISSUES

22. The Proposed Receiver's motion raises the following main legal issues:
- (a) Should the Court approve the Transaction and grant the Vesting Order?
  - (b) Is it appropriate for the Court to seal the Confidential Appendix "1" pending closing of the Transaction?
  - (c) Should the Proposed Receiver be authorized and approved to make distributions to NBC from the Earn Out and the SR&ED Refunds up to the amount of the NBC Indebtedness?

### PART IV - LAW AND ARGUMENT

#### A. The Transaction Should Be Approved and the Vesting Order Should Be Granted

23. In determining whether to approve a proposed sale of assets by a receiver, the Court must consider the following principles set out by the Ontario Court of Appeal in *Royal Bank v. Soundair* ("*Soundair*"): <sup>22</sup>

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) whether the interests of all parties have been considered;

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<sup>22</sup> [\*Royal Bank of Canada v Soundair Corp\*](#) (1991), [4 OR \(3d\) 1](#) at para 16 (ONCA).

- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.

24. This Court has, on numerous occasions, also applied *Soundair* principles to approve “quick flip” transactions, such as this one, in which a receiver, immediately upon its appointment, requests approval of an already negotiated purchase agreement. In the context of such transactions, this Court has noted that “specific consideration to the economic realities of the business and the specific transactions in question” is warranted.<sup>23</sup> In particular, courts have approved immediate sales where:

- (a) an immediate sale is the only realistic way to provide maximum recovery for a creditor who stands in a clear priority of economic interest to all others; and
- (b) delay of the transaction will erode the realization of the security of the creditor in sole economic interest.

25. In *Tool-Plas Systems Inc., Re.* (“***Tool-Plas***”), Justice Morawetz, as he then was, noted that:<sup>24</sup>

A ‘quick flip’ transaction is not the usual transaction. In certain circumstances, however, it may be the best, or the only, alternative. In considering whether to approve a ‘quick flip’ transaction, the Court should consider the impact on various parties and assess whether their respective positions and the proposed treatment that they will receive in the ‘quick flip’ transaction would realistically be any different if an extended sales process were followed.

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<sup>23</sup> [Elleway Acquisitions Limited v 4358376 Canada Inc.](#), 2013 ONSC 7009 at para 33.

<sup>24</sup> [Tool-Plas Systems Inc \(Re\)](#) (2008), 2008 CanLII 54791 at para 15 (ONSC).

26. In assessing the circumstances of a situation, the Court will show considerable deference to receivers and decisions made by them.<sup>25</sup>

27. The Proposed Receiver recommends that the Court approve the Transaction and respectfully submits that the test for approval as articulated in the cases noted above has been met in this case for the following reasons:<sup>26</sup>

- (a) the Company and GPP made extensive efforts to raise capital for the business. SSG, which has experience in the Company's sector, participated in the Financing Transaction Process and when that failed, it conducted the Sale Process in consultation with KSV;
- (b) SSG was able to source three opportunities for the sale of the business. SSG is of the view that the Transaction maximizes recoveries and is the best available transaction in the circumstances. The Proposed Receiver does not believe a superior transaction is likely to be completed if the Sale Process is continued, and in any event, the Company is without liquidity to continue the Sale Process;
- (c) the Transaction is structured such that the Earn-Out becomes payable on execution of each Performance Contract, which de-risks collection. The Earn-Out is not subject to the performance of the Performance Contracts. The Pipeline Opportunities will have no value if the Transaction is not approved;

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<sup>25</sup> *Skvepharma PLC v Hyal Pharmaceutical Corp* (1999), [1999 CanLII 15007](#) at para 7 (ONSC).

<sup>26</sup> Pre-Filing Report, at s. 8.0, para. 1.

- (d) the Transaction will see the business of the Company continue, which is anticipated to preserve employment for a significant number of the Company's employees. The Transaction will avoid disruption in ongoing clinical trials, which is in the interest of the Company's clients and the participants in the trials;
- (e) the liquidation value of the Assets is immaterial. Other than cash, the only liquid asset of the Company is accounts receivable, and they are unlikely to generate any net recoveries if operations are discontinued. The SR&ED Refunds are an excluded asset and are assumed to have the same value regardless of whether the Transaction is completed;
- (f) NBC, which is expected to incur a significant shortfall on the NBC Indebtedness, supports the Transaction;
- (g) SSG has advised the Proposed Receiver that it believes that:
  - i. the Transaction maximizes the value of the Company's business and assets in the circumstances;
  - ii. the Transaction is the best option available in the circumstances; and
  - iii. further time marketing the business would not result in a superior transaction; and
- (h) the Proposed Receiver, as an anticipated officer of the court, has exercised its business judgment in recommending the Transaction; and
- (i) the urgency described in paragraph 19 above.

## **B. The Sealing Order Should Be Granted**

28. The Supreme Court of Canada has held that a sealing order may be granted:<sup>27</sup>

- (a) where it is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
- (b) where the salutary effects of the confidentiality outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

29. In *Sherman Estate v. Donovan*, the Supreme Court of Canada held that a person asking a court to exercise discretion in limiting the ‘open court’ presumption must establish that:<sup>28</sup>

- (a) court openness poses a serious risk to public interest;
- (b) the order sought is necessary to prevent the risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

30. The Proposed Receiver recommends that Confidential Appendix “1” be filed with the Court on a confidential basis as it contains proprietary customer information that is confidential to their businesses and which they have no expectation would be made publicly available. Before

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<sup>27</sup> [\*Sierra Club of Canada v Canada \(Minister of Finance\)\*, 2002 SCC 41](#) at para 45.

<sup>28</sup> [\*Sherman Estate v Donovan\*, 2021 SCC 25](#) at para 38.

the Company submitted a proposal or engaged in discussions with customers regarding the Pipeline Opportunities, the Company entered into confidentiality agreements with the customers, and it would be prejudicial to the customers if the information in the Pipeline Opportunities schedule is made publicly available.<sup>29</sup>

31. The salutary effects of sealing the information in Confidential Appendix “1” from the public record greatly outweigh the deleterious effects of doing so under the circumstances. The Proposed Receiver is not aware of any party that will be prejudiced if the information in Confidential Appendix “1” is sealed or any public interest that will be served if such details are disclosed in full. The Proposed Receiver is of the view that the sealing of Confidential Appendix “1” is consistent with the decision in *Sherman Estate v. Donovan*. Accordingly, the Proposed Receiver believes the proposed sealing of Confidential Appendix “1” is appropriate in the circumstances.<sup>30</sup>

32. The Proposed Receiver recommends that this information remain sealed indefinitely as it is not Transaction-related, but rather, is proprietary information that belongs to the Company’s customers.<sup>31</sup>

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<sup>29</sup> Pre-Filing Report, at s. 9.0, para. 1.

<sup>30</sup> Pre-Filing Report, at s. 9.0, para. 2.

<sup>31</sup> Pre-Filing Report, at s. 9.0, para. 3.



### C. Proposed Distributions

33. KSV, as Proposed Receiver, retained Chaitons LLP (“**Chaitons**”) as its independent legal counsel, and instructed Chaitons to provide it with an opinion as to the validity and enforceability of NBC’s security.<sup>32</sup>

34. Chaitons’ opinion confirms that, subject to the standard assumptions and qualifications contained therein, NBC’s security is valid and enforceable.<sup>33</sup>

35. Accordingly, if the Proposed Receiver is appointed and the Transaction is approved, the Receiver recommends approval of the distributions proposed in the Pre-Filing Report.<sup>34</sup>

### PART V – RELIEF SOUGHT

36. For the reasons set out above, the Proposed Receiver respectfully recommends and requests that the Court grant the orders sought on this motion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 7<sup>th</sup> day of July, 2025.




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**CHAITONS LLP**

*Lawyers for the Proposed Receiver,  
KSV Restructuring Inc.*

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<sup>32</sup> Pre-Filing Report, at s. 4.1, para. 3.

<sup>33</sup> Pre-Filing Report, at s. 4.1, para. 3.

<sup>34</sup> Pre-Filing Report, at s. 10.0, para. 1.

## SCHEDULE “A”

### Table of Authorities

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2	<a href="#"><i>Elleway Acquisitions Limited v 4358376 Canada Inc</i>, 2013 ONSC 7009</a>	33
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## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY-LAWS**

**NATIONAL BANK OF CANADA**  
Applicant

-and-

**AXIOM REAL-TIME METRICS INC.**  
Respondent

Court File No.: CV-25-00746939-00CL

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

Proceedings commenced at TORONTO

**FACTUM OF THE**  
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