

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED, OF GO-FOR INDUSTRIES INC.**

**FACTUM OF GO-FOR INDUSTRIES INC.
(INITIAL ORDER)**

March 22, 2024

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PART I: OVERVIEW

1. Go-For Industries Inc. (“**Go-For**” or the “**Company**”) seeks urgent relief under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) in the form of an order substantially in the form attached as Tab 3 to the Company’s Motion Record (the “**Initial Order**”).

2. The facts with respect to this application are more fully set out in the affidavit of Dillon McDonald, sworn March 22, 2024 (the “**McDonald Affidavit**”).¹ All capitalized terms used but not defined herein have the meanings ascribed to them in the McDonald Affidavit.

3. All references to monetary amounts herein are in United States Dollars unless noted otherwise.

4. On March 20, 2024, the Company filed a notice of intention to make a proposal (the “**NOI**”) pursuant to section 50.4 of the BIA, with KSV Restructuring Inc. acting as the proposal trustee in connection with the NOI (in such capacity, the “**Proposal Trustee**”). The proceedings commenced therein are hereinafter referred to as the “**NOI Proceedings**”. The Company is seeking further relief to supplement the limited relief obtained under the BIA upon filing the NOI.

5. The Company is a privately held corporation that carries on business as a tech-enabled last mile delivery facilitator for oversized and bulky items.

6. The Company has recently faced significant cash constraints as a result of, among other things, a buildup of outstanding accounts payable, several litigation settlements that have been levied against it and other business expenditures. As a result of these circumstances, the Company is in default of its obligations to its senior secured lender, Trinity Capital Inc. (“**Trinity**”). Trinity has refrained from enforcement on its secured debt, and is supporting these NOI Proceedings, including, among other things, by facilitating a proposed debtor-in-possession financing facility for which approval is sought in the Initial Order. As a result of the foregoing cash constraints the Company is facing an acute liquidity shortfall, rendering it unable to service payments as they

¹ Affidavit of Dillon McDonald sworn March 22, 2024 [McDonald Affidavit]. Company’s Motion Record at Tab 2 [Motion Record].

generally fall due. Absent emergency financing in the form of the Trinity DIP Loan (as defined below), the Company does not have sufficient liquidity to operate as a going-concern.

7. The Company believes these NOI Proceedings provide the best means of rehabilitating its business with a view to maintaining operations as a going concern, while maximizing value for the benefit of all its stakeholders. The relief sought in the Initial Order is necessary for the Company to access urgently required financing, which is essential to its ability to continue to operate in the ordinary course and will maintain the stability of its business and operations, and preserve the value of the Company's business, while the Company pursues a sale transaction to provide necessary long-term liquidity and support for the business.

8. This factum is filed in support of the Company's motion seeking an Initial Order, *inter alia*:

- (a) authorizing and empowering the Company to obtain and borrow under a credit facility in an amount not to exceed \$750,000 (the "**Trinity DIP Facility**") from Trinity Capital, as lender (in such capacity, the "**Trinity DIP Lender**"), pursuant to an agreement dated March 20, 2024 (the "**Trinity DIP Term Sheet**") in order to finance the Company's working capital requirements and other general corporate purposes and capital expenditures;
- (b) authorizing and empowering the Company to obtain and borrow under a credit facility in an amount not to exceed \$750,000 (the "**Avren DIP Facility**", together with the Trinity DIP Facility, the "**DIP Facilities**") from Avren FinServe, LLC ("**Avren**"), as lender (in such capacity, the "**Avren DIP Lender**"), pursuant to an agreement dated March 20, 2024 (the "**Avren DIP Term Sheet**", together with the Trinity DIP Term Sheet, the "**DIP Term Sheets**" and each a "**DIP Term Sheet**") in order to finance the Company's working capital requirements and other general corporate purposes and capital expenditures;
- (c) granting the following priority charges (collectively, the "**Charges**"):
 - (i) First - the Administration Charge (to the maximum amount of \$300,000);

- (ii) Second - the Trinity DIP Lender's Charge (to the maximum amount of \$750,000) and the Avren DIP Lender's Charge (to the maximum amount of \$750,000) on a *parri passu* and *pro rata* basis;
 - (iii) Third - the Directors' Charge (to the maximum amount of CAD\$625,000);
and
 - (iv) Fourth - the Expense Reimbursement Charge (to the maximum amount of CAD\$70,000) (each as defined below).
- (d) with the consent of the Proposal Trustee, and in accordance with the cashflows and Trinity DIP Loan, authorizing the Company to pay certain pre-filing arrears to vendors whose products and/or services are essential to the Company's ongoing operations and/or also may be critical to implementing the contemplated sale or other restructuring alternatives in these NOI Proceedings (collectively, the "**Critical Suppliers**");
- (e) approving the First Report of the Proposal Trustee, to be filed, and the actions, conduct and activities of the Proposal Trustee, as set out therein; and
- (d) granting such further and other relief as counsel may advise and this Honourable Court may permit.

PART II: FACTS

A. The Company

9. Go-For is a privately held corporation that was incorporated under the *Canada Business Corporations Act* (R.S.C., 1985, c. C-44). Go-For's registered head office is located in Toronto, Ontario.²

² McDonald Affidavit, *supra* note 1 at para 11. Motion Record at Tab 2.

10. Go-For has a US affiliate which operates under the name GoFor Industries Corp (“**Go-For USA**”) which is incorporated pursuant to the General Corporation Law of the State of Delaware.³ Go-For USA is not a company subject to these NOI Proceedings.⁴

B. Business and Operations

1. The Platform

11. Go-For has developed and maintains a technology enabled platform (the “**Platform**”) that is central to its business.⁵ The Platform offers efficient pairing between the approximately 240 delivery drivers engaged by the Company as independent contractors (collectively, the “**Go-For Drivers**” and each a “**Go-For Driver**”) and partners in need of last mile delivery solutions, i.e. the delivery of oversized or bulky products from a store or distribution centre to the customer’s home or work site.⁶

12. Go-For Drivers are not employees of Go-For, they are independent contractors who utilize the Platform to obtain delivery work.⁷

2. Critical Vendors

13. Go-For utilizes a number of third-party vendors and suppliers that are deemed critical to the Platform and the success of the Company’s day-to-day business operations.⁸ Such Critical Vendors include, among others: (a) Zendesk, which provides around the clock customer service relating to technological inquiries regarding the Platform; and (b) TechVibrant, which assists in the development and management of the Platform on an on-going basis.⁹

³ *Ibid* at para 12. Motion Record at Tab 2.

⁴ *Ibid* at para 12. Motion Record at Tab 2.

⁵ *Ibid* at para 13. Motion Record at Tab 2.

⁶ *Ibid* at paras 15 and 25. Motion Record at Tab 2.

⁷ *Ibid* at para 15. Motion Record at Tab 2.

⁸ *Ibid* at para 16. Motion Record at Tab 2.

⁹ *Ibid* at para 16. Motion Record at Tab 2.

3. Partners

14. Go-For has long-term relationships with several retailers and companies in Canada, referred to as partners. Of these, the most critical relationship by business volume is that with The Home Depot of Canada Inc. (“**Home Depot**”).¹⁰ Go-For is responsible for providing last-mile delivery services to all but 23 of Home Depot’s locations across Canada pursuant to a long-term arrangement entered into as of November 27, 2018 (the “**Home Depot Agreement**”).¹¹ Under the Home Depot Agreement, Home Depot pays fees to the Company on a per-delivery basis and calculated based on the distance travelled by the Go-For Driver.¹²

15. Go-For also addresses the last-mile delivery needs of several other partners including certain locations of Home Hardware, Canadian Tire, Noble Corporation, FloorBox Canada, Colour X, Autoshack, Atlas Tools, Wolseley Canada, Rexel, Hudson’s Bay and Dulux Paints.¹³

4. Owned and Leased Real Property and Vehicles

16. Go-For operates primarily on a remote work basis.¹⁴ As such, Go-For’s only leased real property consists of a cross dock/warehouse located in Vancouver, British Columbia.¹⁵ Additionally, Go-For also rents a 2017 International, 4300 Cube Van from Maxim Transportation Services Inc. pursuant to a lease agreement dated December 1, 2023, with an expiry date of November 30, 2024.¹⁶

17. Go-For owns three light duty trucks in the U.S.¹⁷

¹⁰ *Ibid* at para 17. Motion Record at Tab 2.

¹¹ *Ibid* at para 17. Motion Record at Tab 2.

¹² *Ibid* at para 17. Motion Record at Tab 2.

¹³ *Ibid* at para 18. Motion Record at Tab 2.

¹⁴ *Ibid* at para 19. Motion Record at Tab 2.

¹⁵ *Ibid* at para 19. Motion Record at Tab 2.

¹⁶ *Ibid* at para 19. Motion Record at Tab 2.

¹⁷ *Ibid* at para 21. Motion Record at Tab 2.

5. Employees

18. As of March 1, 2024 Go-For employs a total of 62 employees (the “**Employees**”), the majority of whom are located in Ontario.¹⁸ Of Go-For’s 62 employees, 55 are full-time salaried employees and 7 are part-time or contract.¹⁹

19. Go-For does not have any unionized employees or registered pension plans.²⁰

20. Go-For has a benefits plan in Canada which is active but is currently not being funded.²¹

21. In addition to the Employees, the Company engages approximately 240 Go-For Drivers as independent contractors.²² Prior to their engagement by the Company, Go-For Drivers sign a standard form non-exclusive independent contractor agreement, pursuant to which, among other things, the Go-For Driver agrees to be paid for their services according to amounts calculated by the Platform on a net basis with one week in arrears and agrees that they are a non-exclusive independent contractor.²³

C. Financial Position of the Company

1. Banking Arrangements

22. In the ordinary course of business, Go-For uses a cash management system (the “**Cash Management System**”) to, among other things, collect funds and pay expenses associated with its day-to-day operations.²⁴ This Cash Management System provides Go-For with the ability to efficiently and accurately track and control corporate funds and to ensure cash availability.²⁵

23. As part of the Cash Management System, Go-For maintains 2 bank accounts at the Royal Bank of Canada (together, the “**RBC Accounts**”) one of which is a Canadian Dollar account and

¹⁸ *Ibid* at para 22. Motion Record at Tab 2.

¹⁹ *Ibid* at para 22. Motion Record at Tab 2.

²⁰ *Ibid* at para 24. Motion Record at Tab 2.

²¹ *Ibid* at para 23. Motion Record at Tab 2.

²² *Ibid* at para 24. Motion Record at Tab 2.

²³ *Ibid* at para 25. Motion Record at Tab 2.

²⁴ *Ibid* at para 27. Motion Record at Tab 2.

²⁵ *Ibid* at para 27. Motion Record at Tab 2.

the other holding U.S. Dollars.²⁶ In addition to the RBC Accounts, Go-For maintains a U.S. Dollar Account with the Silicon Valley Bank.²⁷

2. Assets and Liabilities

24. As of December 31, 2023, Go-For's assets had an estimated net value of approximately \$1,026,350 and current liabilities of \$34,926,000.²⁸

25. Go-For's current liabilities combined exceed the net book value of its current assets such that, on a balance sheet test, Go-For is insolvent.²⁹

3. Secured Obligations

26. Go-For's secured debt includes an agreement entered into with Trinity (the "**Trinity Loan Agreement**") for a loan with a maximum principal amount of \$20,000,000.³⁰ The Trinity Loan Agreement made funds available in two tranches: (i) the Tranche A amount of \$10,000,000 which was to be funded on closing as an initial advance; (ii) the Tranche B loan in the form of initial advances available to the Borrowers in an amount equal to or greater than \$1,000,000 of up to \$10,000,000 in total.³¹

27. The Trinity Loan Agreement provides for interest at a variable annual interest rate equal to the greater of: (i) the interest rate noted in the Wall Street Journal, Money Rates section as the "Prime Rate" plus 8.75%; or (ii) 12%.³²

28. The obligations of Go-For under the Trinity Loan Agreement are secured by, among other things, the GSA and IP Security Agreement (the "**Trinity Security**").³³ As of January 17, 2024, the Borrowers were indebted to Trinity under the Trinity Loan Agreement in the aggregate amount

²⁶ *Ibid* at para 28. Motion Record at Tab 2.

²⁷ *Ibid* at para 28. Motion Record at Tab 2.

²⁸ *Ibid* at para 32. Motion Record at Tab 2.

²⁹ *Ibid* at para 33. Motion Record at Tab 2.

³⁰ *Ibid* at para 36. Motion Record at Tab 2.

³¹ *Ibid* at para 36. Motion Record at Tab 2.

³² *Ibid* at para 37. Motion Record at Tab 2.

³³ *Ibid* at para 38. Motion Record at Tab 2.

of \$13,186,979.28 plus accrued and accruing interest, charges, fees and costs (the “**Trinity Indebtedness**”).³⁴

29. Go-For and Trinity entered into a forbearance agreement on January 19, 2024 (the “**Forbearance Agreement**”), pursuant to which Go-For acknowledged that an Event of Default had occurred under the Trinity Loan Agreement and agreed to commence a sale and investment solicitation process (the “**Pre-NOI SISP**”) to market the business and assets of the Borrowers and to solicit offers for a purchase of or investment in some or all of the Borrowers’ business and assets.³⁵

30. Pursuant to the Forbearance Agreement, Trinity agreed to forbear from exercising its rights and remedies under the Trinity Security until the earlier of the: (i) close of business on March 31, 2024; (ii) the occurrence of a Default (as defined in the Forbearance Agreement); or (iii) termination of such period by Trinity in accordance with the terms of the Forbearance Agreement.³⁶

31. In addition to the Trinity Indebtedness, Go-For also owes amounts of approximately CAD \$75,967 and CAD \$325,341 to His Majesty in Right of Ontario Represented by the Minister of Finance, due to outstanding Employer Health Tax.³⁷ The Company has entered into payment plans in respect of these obligations.³⁸

4. Unsecured Obligations

32. Over the course of 2021 and 2022, Go-For issued a series of unsecured Convertible Promissory Notes (collectively, the “**Notes**”) to a number of different parties.³⁹ As of December 31, 2023, the aggregate amount outstanding under the Notes, was approximately \$19,882,462 (the “**Note Indebtedness**”).⁴⁰

³⁴ *Ibid* at para 39. Motion Record at Tab 2.

³⁵ *Ibid* at paras 41 and 42. Motion Record at Tab 2.

³⁶ *Ibid* at para 42. Motion Record at Tab 2.

³⁷ *Ibid* at para 44. Motion Record at Tab 2.

³⁸ *Ibid* at para 44. Motion Record at Tab 2.

³⁹ *Ibid* at para 45. Motion Record at Tab 2.

⁴⁰ *Ibid* at para 45. Motion Record at Tab 2.

33. The principal sum advanced to Go-For under each of the Notes was different, however, and each Note bears interest at the rate of 8% simple interest per annum.⁴¹ The Due Date (as defined in the Notes) under all the Notes has passed and the Note Indebtedness remains outstanding with the Notes yet to be converted to equity in accordance with their terms.⁴²

34. Go-For owes significant aged payables to various third-party suppliers.⁴³ Such amounts were accrued due to Go-For's reliance on a number of vendors and third-party service providers, including, among other things, insurance, phone and internet, professional costs and other services provided in connection with operating a business.⁴⁴

35. Go-For's aggregate payroll and contractor payments is as follows:

- (a) the Employees – approximately \$145,000 bi-weekly; and
- (b) the Go-For Drivers – approximately 74% of revenue or \$150,000 weekly in February, which amount fluctuates with revenue.⁴⁵

36. As of the end of February, 2024, approximately CAD \$69,476 of vacation accrual was owed to Canadian employees.⁴⁶

37. In addition to the aforementioned unsecured amounts, Go-For is also a defendant in five unrelated litigation actions in Georgia, Ontario and California.⁴⁷ As a result of settlements and damages related to these actions, the Company faces liabilities of up to \$1,106,337 and CAD \$961,000.⁴⁸

⁴¹ *Ibid* at para 46. Motion Record at Tab 2.

⁴² *Ibid* at para 46. Motion Record at Tab 2.

⁴³ *Ibid* at para 47. Motion Record at Tab 2.

⁴⁴ *Ibid* at para 47. Motion Record at Tab 2.

⁴⁵ *Ibid* at para 48. Motion Record at Tab 2.

⁴⁶ *Ibid* at para 50. Motion Record at Tab 2.

⁴⁷ *Ibid* at para 51. Motion Record at Tab 2.

⁴⁸ *Ibid* at para 51. Motion Record at Tab 2.

D. RESPONSE TO FINANCIAL DIFFICULTIES

38. Prior to these NOI Proceedings, Go-For took various steps to address its financial difficulties.

39. In an attempt to increase revenues, Go-For, among other things: (i) increased orders per partner by expanding services and adjusting pricing; (ii) executed two letters of intent to partner with companies and add profitable topline growth and expanded deliveries; and (iii) entered into negotiations with a large national retailer that, if completed, could change the operating footprint and profitability of Go-For's business.⁴⁹

40. In addition to its revenue growth efforts, Go-For moved from a gross margin of 16% in 2022 to 24% in 2023, with an expected gross margin of 26% for 2024. Go-For also decreased operating expenses by 45% through a combination of headcount reductions, the elimination of non-essential expenses and reducing downward pressure on markets.⁵⁰

E. THE PRE-NOI SISP AND THE FINANCIAL ADVISOR

41. On February 5, 2024, in accordance with its obligations under the Forbearance Agreement, Go-For engaged Onward Innovation Ltd. ("**Onward**") to act as financial advisor (in such capacity, the "**Financial Advisor**") in connection with the Pre-NOI SISP.⁵¹

42. The Financial Advisor undertook certain efforts in furtherance of the Pre-NOI SISP, including:

- (e) soliciting expressions of interest from over 470 potentially interested parties;
- (f) entering into non-disclosure agreements (the "**NDAs**") with four potentially interested parties;

⁴⁹ *Ibid* at para 10. Motion Record at Tab 2.

⁵⁰ *Ibid* at para 10. Motion Record at Tab 2.

⁵¹ *Ibid* at para 52. Motion Record at Tab 2.

- (g) circulating a confidential information memorandum to all parties that executed NDAs;
- (h) establishing a virtual data room containing information about the Company relevant to interested parties;
- (i) arranging for meetings with the Company's management;
- (j) facilitating due diligence and other information requests; and
- (k) engaging in discussions regarding letters of intention by interested parties.⁵²

41. As a result of the Pre-NOI SISP and the efforts undertaken in connection therewith, the Financial Advisor received one non-binding expression of interest, however such bid was subject to a number of conditions, and did not include any interim financing to support the Company's operations.⁵³

42. Following the March 8, 2024 bid deadline (as extended from the previously contemplated March 5, 2024 deadline), the Company received a viable bid from 1000826405 Ontario Inc. (the "**Proposed Purchaser**").⁵⁴ While the Company has entered into a definitive agreement (the "**Transaction Agreement**") with the Proposed Purchaser, the Company, the Proposed Purchaser and their advisors, with the oversight of the of the Proposal Trustee, continue to work expeditiously to finalize and complete, among other things certain schedules to the Transaction Agreement.⁵⁵ Once finalized, the Company intends to return to Court as soon as is possible to seek approval of the transaction contemplated in the Transaction Agreement (the "**Proposed Transaction**").⁵⁶

43. The Transaction Agreement includes a provision that provides the Proposed Purchaser to be reimbursed for reasonably documented, out-of-pocket expenses incurred in the negotiation, diligence and preparation of the Transaction Agreement in an amount not to exceed

⁵² *Ibid* at para 54. Motion Record at Tab 2.

⁵³ *Ibid* at para 55. Motion Record at Tab 2.

⁵⁴ *Ibid* at para 53. Motion Record at Tab 2

⁵⁵ *Ibid* at para 56. Motion Record at Tab 2.

⁵⁶ *Ibid* at para 56. Motion Record at Tab 2.

CAD\$70,000.⁵⁷ The Expense Reimbursement is only payable by the Company in the event that the Transaction Agreement is finalized and: (i) the Proposed Transaction is not approved by the Court; and (ii) the Company's assets are purchased or assumed or otherwise transferred to a third party. It is proposed that the Proposed Purchaser be entitled to a charge to secure the Expense Reimbursement (the "**Expense Reimbursement Charge**") which charge is proposed to rank subordinate to the Directors' Charge.⁵⁸

F. PROPOSED DIP FACILITIES

43. On March 20, 2024, Go-For entered into the DIP Term Sheets with Trinity and Avren, subject to and in accordance with their respective terms, which are substantially identical.⁵⁹

44. The proceeds of the DIP Term Sheets are proposed to be used solely for the following purposes, in accordance with the DIP Term Sheet:

- (a) to fund the Company and Go-For USA's general corporate and working capital purposes, including, funding the NOI Proceedings and the consummation of the Proposed Transaction, if approved by the Court;
- (b) payment of: (i) the DIP Lenders' Expenses; (ii) the reasonable and documented legal fees and expenses of Go-For; and (iii) the reasonable and documented fees and expenses of the Proposal Trustee and its legal counsel; and
- (c) to pay other fees and interest owing to the DIP Lender under the DIP Term Sheet.⁶⁰

45. The Trinity DIP Term Sheet is conditional on the grant of a court-ordered charge in the amount of \$750,000 (the "**Trinity DIP Lender's Charge**") in favor of the Trinity DIP Lender. Identically, the Avren DIP Term Sheet is also conditional on the grant of a court-ordered charge in the amount of \$750,000 (the "**Avren DIP Lender's Charge**", together with the Trinity DIP Lender's Charge, the "**DIP Lenders' Charges**") in favor of the Avren DIP Lender.⁶¹ It is proposed

⁵⁷ *Ibid* at para 57. Motion Record at Tab 2.

⁵⁸ *Ibid* at para 57. Motion Record at Tab 2.

⁵⁹ *Ibid* at para 58. Motion Record at Tab 2.

⁶⁰ *Ibid* at para 59. Motion Record at Tab 2.

⁶¹ *Ibid* at para 63. Motion Record at Tab 2.

that the Trinity DIP Lender's Charge and the Avren DIP Lender's Charge will rank subordinate only to the Administration Charge and on a *pari passu* and *pro rata* basis.⁶²

PART III: ISSUES

46. The issues in respect of the relief being sought under the Initial Order are whether:
- (a) this Court should approve the DIP Term Sheets and authorize the Company to access the DIP Facilities in order to fund its working capital requirements, capital expenditures and the costs of these NOI Proceedings;
 - (b) this Court should grant the Charges and approve the proposed priority of the Charges; and
 - (c) the Court should authorize the Company, with the consent of the Proposal Trustee, but without obligation, and in accordance with the Cash Flow Forecast and the DIP Term Sheet, to pay the Critical Suppliers.

PART IV: LAW AND ANALYSIS

A. APPROVAL OF THE DIP FACILITIES AND DIP LENDERS' CHARGES

47. Subsection 50.6(1) of the BIA expressly provides this Court with the jurisdiction to order a charge to secure interim financing advanced to a debtor "on notice to the secured creditors who are likely to be affected by the charge [...] in an amount that the court considers appropriate".⁶³ Subsection 50.6(1) stipulates that such a charge may not "secure an obligation that exists before the order is made."⁶⁴

48. Pursuant to subsection 50.6(3) of the BIA, the Court may order that the DIP Lenders' Charges rank in priority over the claim of any secured creditor of the Company.⁶⁵

⁶² *Ibid* at para 63. Motion Record at Tab 2.

⁶³ [Bankruptcy and Insolvency Act, RSC 1985, c. B-3](#) s.50.6(1) [BIA];

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, s. 50.6(3).

49. Subsection 50.6(5) of the BIA enumerates the following factors the Court is to consider in determining whether to grant a charge in favour of debtor-in-possession financing:

- (a) the period during which the debtor is expected to be subject to proceedings under the BIA;
- (b) how the debtor's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the proposal trustee's report.⁶⁶

50. Recognizing that a charge securing an interim financing will invariably "impact all creditors positions to some degree," courts have granted charges where:

- (a) declining to approve interim financing and an attendant charge would result in the cessation of the debtor's business;
- (b) the interim financing and a corresponding charge were supported by the proposal trustee;
- (c) the interim financing provided "at least the prospect of increased value and a successful proposal";⁶⁷

⁶⁶ *Ibid.*, *supra* note 59 at s. 50.6(5).

⁶⁷ [P.J. Wallbank Manufacturing Co. Re](#), 2011 ONSC 7641 at para 24 [*Wallbank*]; [Mustang GP Ltd. \(Re\)](#), 2015 ONSC 6562, at para 28-29 [*Mustang*]; [Eureka 93 Inc. et. al. \(Re\)](#), 2020 ONSC 1482 at para 24. See also: [Aerus Technologies Inc. v. B Riley Farber](#)

51. The above factors and criteria provided under subsection 50.6(1) of the BIA support granting the DIP Facilities and the DIP Lenders' Charges for the following reasons:

- (a) the Company is facing an imminent liquidity crisis;
- (b) the DIP Facilities are necessary to provide urgent liquidity for the Company to pursue its restructuring efforts, including completing the Proposed Transaction, which will preserve its business as a going-concern for the benefit of all stakeholders;
- (c) without the DIP Facilities, the Company would be unable to continue operating in the normal course;
- (d) the quantum of the DIP Facilities is reasonable and appropriate having regard to the Cash Flow Statement;
- (e) Trinity, who is the senior secured lender and a DIP Lender, is supportive of the DIP Lenders' Charges;
- (f) the DIP Lenders' Charges do not secure any obligations that exist prior to the issuance of the requested Initial Order;
- (g) the Canada Revenue Agency has been served with notice of this motion seeking the Initial Order; and
- (h) the Proposal Trustee is supportive of the approval of the DIP Facilities and the corresponding DIP Lenders' Charges.⁶⁸

52. The Company submits that the approval of the proposed DIP Facilities and DIP Lenders' Charge would increase the chances of a going concern outcome and is thus consistent with the

[*Inc.*](#) (August 8, 2023), Toronto BK-23-02971401-0031(Endorsement) (ONSC). See also: [*In the Matter of Whyte's Foods Inc et al.*](#) (August 31, 2023), Toronto (Initial Order) at paras 17-21.

⁶⁸ McDonald Affidavit *supra* note 1 at paras 9, 62-64. Motion Record at Tab 2; The Affidavit of Service of Milan Singh-Cheema sworn March 22, 2024.

BIA's purposes and is necessary to prevent the "devastating social and economic effects of bankruptcy".⁶⁹

B. APPROVAL OF THE ADMINISTRATION CHARGE

53. The Company seeks a first-ranking charge in the maximum principal amount of CAD\$300,000 (the "**Administration Charge**") to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company that are incurred in connection with services rendered to the Company both before and after the commencement of the NOI Proceedings.⁷⁰

54. Section 64.2(1) of the BIA provides that a court may grant a charge in favour of, among others, the Proposal Trustee and other professionals in respect of their fees and expenses to be incurred during NOI proceedings.⁷¹ Subsection 64.2(2) of the BIA provides that that the court may order that the charge rank in priority over the claim of any secured creditor.⁷² Such administration charges are routinely granted where, as here:

- (a) the debtor has limited means to obtain professional assistance;
- (b) the involvement of professional advisors is critical to the success of the proceedings under the BIA; and
- (c) the quantum of the proposed charge is commensurate with the complexity of the debtor's business.⁷³

55. The Administration Charge should be granted for the following reasons:

- (a) the quantum of the Administration Charge was determined by the Company in consultation with the Proposal Trustee based upon the anticipated professional

⁶⁹ McDonald Affidavit *ibid* at para 63. Motion Record at Tab 2.

⁷⁰ McDonald Affidavit *ibid* at para 66. Motion Record at Tab 2.

⁷¹ [BIA](#), *supra* note 59 at s.64.2(1).

⁷² [BIA](#), *supra* note 59 at s.64.2(2).

⁷³ [Mustang](#), *supra* note 63 at para 33; [Colossus Minerals Inc \(Re\)](#), 2014 ONSC 514, at paras 13-14 [*Colossus*]; [Danier Leather Inc. \(Re\)](#), 2016 ONSC 1044 at para 57 [*Danier*];

services to be provided by the beneficiaries of the Administration Charge prior to filing and the fees expected to be incurred for services rendered during the NOI Proceedings;

- (b) the quantum of the Administration Charge is fair and reasonable in the circumstances given the complexity of the Company's business and operations and processes intended to be completed within these NOI Proceedings;
- (c) the beneficiaries of the Administration Charge will play critical roles in assisting the Company in the NOI Proceedings; and
- (d) the Proposal Trustee supports the Administration Charge.⁷⁴

C. APPROVAL OF DIRECTORS' CHARGE

56. The Company is seeking a charge in the amount of CAD\$625,000 to secure the indemnity of the Company's directors and officers (the "**Directors' Charge**"). Under the NOI Proceedings, the Directors' Charge is to be subordinate to the DIP Lenders' Charges and Administration Charge.⁷⁵

57. Section 64.1(1) of the BIA provides that a court may grant a charge in favour of any director or officer to indemnify them against obligations and liabilities that they may incur as a director or officer after the commencement of the proposal proceeding.⁷⁶ Section 64.1(2) stipulates that such a charge may "rank in priority over the claim of any secured creditor."⁷⁷

58. This Court has previously approved charges in favour of an insolvent company's directors and officers charge where, as here:

- (a) the existing insurance coverage may have been insufficient to cover all potential claims;

⁷⁴ McDonald Affidavit *supra* note 1 at para 61. Motion Record at Tab 2.

⁷⁵ *Ibid* at para 73.

⁷⁶ [BIA](#), *supra* note 59 at s. 64.1(1).

⁷⁷ *Ibid*, s. 64.1(1).

- (b) the continued involvement of the debtor's directors and officers was essential to a successful proceeding under the BIA;
- (c) the debtor's directors and officers may not have been willing to continue to provide their services absent the protection of a court-ordered charge; and
- (d) the proposal trustee was supportive of the proposed charge.⁷⁸

59. The Company's director's and officer's liability insurance may not provide sufficient coverage against the potential liability that Go-For's directors and officers could incur during these NOI Proceedings.⁷⁹ Such liability includes may include, among other things, unpaid accrued vacation pay and other amounts owing to employees.⁸⁰

60. The Company's directors have indicated that their continued involvement in the Company's governance, including during the NOI Proceedings, is conditional on the granting of the Directors' Charge.⁸¹

61. The Proposal Trustee is supportive of the granting of the Directors' Charge and its quantum.⁸² The quantum of the Director's Charge reflects an estimate of the maximum potential exposure of the directors and officers of the Company from time to time and has been calculated by the Company in consultation with the Proposal Trustee.⁸³

D. APPROVAL OF EXPENSE REIMBURSEMENT CHARGE

62. As previously noted, the Transaction Agreement, approval of which is not being sought at this time, includes a provision that provides the Proposed Purchaser to be reimbursed for reasonably documented, out-of-pocket expenses incurred in the negotiation, diligence and preparation of the Transaction Agreement in an amount not to exceed CAD\$70,000.⁸⁴ The

⁷⁸ *Danier*, supra note 69 at para 65-71; *Mustang*, supra note 63 at para 35; *Colossus*, supra note 46 at paras 17-21. See also: *Laurentian University of Sudbury, 2021 ONSC 1098* at para 82. *Datataxbusiness Services Limited v KPMG Inc.*, (August 17, 2023), Toronto BK-23-02975175-0031 (Endorsement) (ONSC).

⁷⁹ McDonald Affidavit supra note 1 at para 73. Motion Record at Tab 2.

⁸⁰ McDonald Affidavit *ibid* at para 74. Motion Record at Tab 2.

⁸¹ McDonald Affidavit *ibid* at para 74. Motion Record at Tab 2.

⁸² McDonald Affidavit *ibid* at para 75. Motion Record at Tab 2.

⁸³ McDonald Affidavit *ibid* at para 75. Motion Record at Tab 2.

⁸⁴ McDonald Affidavit *ibid* at para 57. Motion Record at Tab 2.

Expense Reimbursement is only payable in limited circumstances, and specifically, if the Transaction Agreement is finalized and: (i) the Proposed Transaction is not approved by the Court; and (ii) the Company's assets are purchased or assumed or otherwise transferred to a third party.⁸⁵ It is proposed that the Expense Reimbursement be secured by the Expense Reimbursement Charge.

63. Agreeing to such payments is a matter of business judgment and therefore judicial deference is appropriate provided the decision falls within a range of reasonableness.⁸⁶ It is noted that Proposal Trustee approval would be required prior to any such payments being made.

64. Additionally, this Court has the authority pursuant to section 64.2(1)(c) of the BIA to grant the Expense Reimbursement Charge, as the Purchaser and its advisory team are necessary parties for the successful outcome of these proceedings.⁸⁷

65. The Company believes that the Expense Reimbursement and the Expense Reimbursement Charge are fair and reasonable in the circumstances, specifically given the extensive work undertaken to date by the Purchaser and the limited circumstances within which the Expense Reimbursement is earnable.

E. CRITICAL SUPPLIER PAYMENTS

66. To preserve its ordinary course business operations, the Company may seek to pay certain pre-filing arrears to the Critical Suppliers, being those vendors whose products and/or services are essential to the Company's ongoing operations and/or may also be critical to implementing the contemplated Proposed Transaction or other restructuring alternatives in the NOI Proceedings.⁸⁸

67. In the context of restructurings under the *Companies' Creditors Arrangement Act*, R.S.C. 195, c. C-36, this Court has recognized its general and inherent jurisdiction to "permit payment of pre-filing obligations to persons whose services are critical to the ongoing operations of the debtor companies."⁸⁹ This Court's general and inherent jurisdiction to authorize such payments is

⁸⁵ McDonald Affidavit *supra* note 1 at para 57. Motion Record at Tab 2.

⁸⁶ *Danier*, *supra* note 69 at para 44; [Brainhunter Inc \(2009\), 183 ACWS \(3d\) 905](#) at para 20; [BCE Inc v 1976 Debentureholders, 2008 SCC 69](#) at para 40.

⁸⁷ [BIA](#), *supra* note 59 s.64.2(1)(c).

⁸⁸ McDonald Affidavit *ibid* at para 78. Motion Record at Tab 2.

⁸⁹ [BIA](#), *supra* note 59 s.183(1); [Eagle River International Ltd, Re, 2001 SCC 92](#) at para 20. See also, [Residential Warranty Co of Canada Inc, Re, 2006 ABQB 236](#) at paras 26-27 [*Residential Warranty (Queen's Bench)*], *aff'd* [Residential Warranty Co of](#)

prescribed by subsection 183(1) of the BIA, which confers such “jurisdiction at law and in equity as will enable [it] to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act.”⁹⁰

68. In *Re Contech Enterprises Inc.*, the Court approved a proposal that provided for additional recovery to a “key supplier”.⁹¹ In *Contech*, the Court found that if the critical supplier refused to continue to supply products, it was unlikely that the debtor could continue to carry on business.⁹² The Court reasoned that if the critical supplier were to refuse to continue to supply, then the company would be deemed to be assigned into bankruptcy and affected creditors would not recover any part of their proven claims.⁹³

69. The Court of Appeal for Ontario commented on this issue in *1732427 Ontario Inc. v. 1787930 Ontario Inc.*, where the respondent argued that the parties could not enter into an agreement for the payment of past debts in order to secure future supplies. In rejecting this submission, the Court provided as follows:

[...] This would undermine the first stage of the BIA process that serves to encourage a debtor’s successful reorganization as a going concern. Creditors and debtors alike benefit from the latter’s continued operation. The goal of the stay and preference provisions under ss. 69, 95, 96 and 97 of the BIA is to give the debtor some breathing room to reorganize. Legitimate agreements with key suppliers also form a vital part of that process.⁹⁴

70. The Proposal Trustee will oversee any payments of pre-filing amounts made to the Critical Suppliers.⁹⁵ Payments will only be made with the express authorization of the Proposal Trustee,

[Canada Inc. Re, 2006 ABCA 293](#) at para 20. The court’s inherent jurisdiction should be used sparingly in clear cases where (i) the BIA is silent on a point or has not dealt with the matter exhaustively; and (ii) after balancing the competing interests, the ting the relief outweighs the relative prejudice to those affected by it. These considerations are to be applied pragmatically and flexibly.

⁹⁰ [BIA](#), *supra* note 59 s.183(1).

⁹¹ [Re Contech Enterprises Inc.](#), 2015 BCSC 129 [*Contech*].

⁹² [Contech](#) at para 32.

⁹³ [Contech](#) at para 32.

⁹⁴ [1732427 Ontario Inc. v 1787930 Ontario Inc.](#), 2019 ONCA 947 at para 13.

⁹⁵ McDonald Affidavit *ibid* at para 79. Motion Record at Tab 2.

and only to Critical Suppliers that the Proposal Trustee agrees are essential to the Company's business operations and such payments are provided for in the Cash Flow Forecast.⁹⁶

71. The Proposal Trustee and the DIP Lender support the Company's request for approval to make the above payments to Critical Suppliers and for post-filing goods and services in the ordinary course.⁹⁷

PART V: ORDER SOUGHT

72. For the above reasons, the Company requests an order substantially in the form of the draft Initial Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of March, 2024.

Bennett Jones LLP

BENNETT JONES LLP
Counsel for Go-For Industries Inc.

⁹⁶ McDonald Affidavit *ibid* at para 78. Motion Record at Tab 2.

⁹⁷ McDonald Affidavit *ibid* at para 79. Motion Record at Tab 2.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *1732427 Ontario Inc. v 1787930 Ontario Inc.*, [2019 ONCA 947](#).
2. *Aerus Technologies Inc. v. B Riley Farber Inc.* [Endorsement of Cavanagh J.](#) (August 8, 2023).
3. *Baldwin Valley Investors Inc, Re*, [1994] [OJ No. 271](#).
4. *BCE Inc v 1976 Debentureholders*, [2008 SCC 69](#).
5. *Brainhunter Inc.*, [2009 183 ACWS \(3d\) 905](#).
6. *Colossus Minerals Inc (Re)*, [2014 ONSC 514](#).
7. *Danier Leather Inc (Re)*, [2016 ONSC 1044](#).
8. *Datataxbusiness Services Limited v KPMG Inc.*, [Endorsement of Cavanagh J.](#) (17 Aug 2023).
9. *Eagle River International Ltd, Re*, [2001 SCC 92](#).
10. *Eureka 93 Inc. et. al. (Re)*, [2020 ONSC 1482](#).
11. *In the Matter of Whyte's Foods Inc. et al.*, [Order of Cavanagh J.](#) (31 Aug, 2023).
12. *Laurentian University of Sudbury*, [2021 ONSC 1098](#).
13. *Mustang GP Ltd (Re)*, [2015 ONSC 6562](#).
14. *Residential Warranty Co of Canada Inc, Re*, [2006 ABQB 236](#).
15. *Residential Warranty Co of Canada Inc, Re*, [2006 ABCA 293](#).
16. *Re Contech Enterprises Inc*, [2015 BCSC 129](#).
17. *Re P.J. Wallbank Manufacturing Co Limited*, [2011 ONSC 7641](#).

SCHEDULE "B"

RELEVANT LEGISLATION

Bankruptcy and Insolvency Act, RSC 1985, c B-3, as amended

Extension of time for filing proposal

50.4(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted

Order — interim financing

50.6(1) On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

50.6(5) Factors to be considered

In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the debtor is expected to be subject to proceedings under this Act;
- (b) how the debtor's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

Security or charge relating to director's indemnification

64.1(1) On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

Court may order security or charge to cover certain costs

64.2(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective Administration charges have previously been granted in proceedings under the BIA.

Priority

64.2(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Courts vested with jurisdiction

183(1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

- (a) in the Province of Ontario, the Superior Court of Justice;
- (b) [Repealed, 2001, c. 4, s. 33]
- (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
- (d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
- (e) in the Province of Prince Edward Island, the Supreme Court of the Province;
- (f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
- (g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and

(h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
UNDER THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS
AMENDED, OF GO-FOR INDUSTRIES INC.**

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

PROCEEDING COMMENCED AT TORONTO

FACTUM OF GO-FOR INDUSTRIES INC.

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