

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
XIWANG IOVATE HOLDINGS COMPANY LIMITED, IOVATE HEALTH SCIENCES  
INTERNATIONAL INC., IOVATE HEALTH SCIENCES U.S.A. INC., IOVATE HEALTH  
SCIENCES AUSTRALIA PTY LTD, AND NORTHERN INNOVATIONS HOLDING CORP.

Applicants

**FACTUM OF THE MONITOR  
(RETURNABLE JANUARY 29, 2026)**

January 27, 2026

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## PART I - NATURE OF THE MOTION

1. On September 5, 2025, Iovate Health Sciences International Inc. (“**Iovate International**”), Iovate Health Sciences U.S.A. Inc. (“**Iovate USA**”), and Northern Innovations Holding Corp. (“**Northern Innovations**,” and collectively, the “**NOI Applicants**”) each filed a notice of intention to make a proposal (each an “**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), commencing the “**Proposal Proceedings**.” KSV Restructuring Inc. (“**KSV**”) consented to act as proposal trustee.
2. On October 31, 2025, this Court granted an order (the “**Initial Order**”) granting the NOI Applicants, Xiwang Iovate Holdings Company Limited (“**Iovate Holdings**”), and Iovate Health Sciences Australia PTY Ltd (collectively, the “**Applicants**”) protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**,” and such proceedings, the “**CCAA Proceedings**”). By the same order, this Court appointed KSV as the monitor of the Applicants (in such capacity, the “**Monitor**”).
3. On November 28, 2025, this Court granted an order (the “**SISP Order**”) and an Amended and Restated Initial Order (the “**ARIO**”) approving a sale and investment solicitation process (the “**SISP**”) and granting the Monitor certain powers in connection therewith. This Court subsequently granted the Monitor enhanced powers to more directly supervise and, where appropriate, manage the Applicants’ business by order dated December 12, 2025 (the “**Enhanced Monitor Powers Order**”).
4. The Monitor now seeks:

- (a) a Second Amended and Restated Initial Order (the “**SARIO**”) authorizing the Applicants to make the Principal Payments to the Administrative Agent on behalf of the Lenders (each as defined below); and
- (b) an order (the “**Stay Extension and Ancillary Relief Order**”):
  - (i) approving the Incentive Payments, the KERP, and the KERP Charge (each as defined below, and collectively, the “**Employee Relief**”);
  - (ii) granting a sealing order in respect of the KERP Charge Calculation (as defined below);
  - (iii) approving the fees and disbursements of the Monitor and its counsel; and
  - (iv) extending the Stay Period (as defined below) to April 17, 2026.

5. The SARIO and Stay Extension and Ancillary Relief Order should be granted to sustain a stabilized environment in which the Applicants can undertake an orderly and value-maximizing SISP. Making the Principal Payments would be reasonable and appropriate in light of the Lenders’ security and the Monitor’s Cash Flow Forecast (each as defined below). The Employee Relief is necessary to retain employees whose involvement is critical to a successful restructuring. Approving the fees and disbursements of the Monitor and its counsel is also fair and reasonable in the circumstances. Finally, extending the Stay Period is necessary and appropriate to provide the Applicants with the time and stability required to complete the SISP where the Applicants are acting in good faith and due diligence.

## PART II - THE FACTS

6. The facts underlying this motion are more fully set out in the Third Report of the Monitor dated January 23, 2026 (the “**Third Report**”).<sup>1</sup>

### A. Background

7. The Applicants are part of a group of companies engaged in the development, production, and sale of health and nutrition products in Canada, the United States, and internationally.<sup>2</sup>

8. On June 30, 2021, Iovate International entered into an Amended and Restated Credit Agreement (as amended, the “**Credit Agreement**”) with HSBC Bank Canada (now Royal Bank of Canada), as administrative agent (the “**Administrative Agent**”), and certain financial institutions, as syndicated lenders (the “**Lenders**”).<sup>3</sup> The Credit Agreement provides for a revolving credit facility and a term loan facility (together, the “**Credit Facilities**”). As security for the obligations under the Credit Agreement, the NOI Applicants and related affiliates granted the Lenders a comprehensive security package.<sup>4</sup>

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<sup>1</sup> Capitalized terms used but not otherwise defined herein are as defined in the Third Report. Unless otherwise noted, all currency references herein are in US Dollars.

<sup>2</sup> Third Report at para 2.0(1).

<sup>3</sup> Affidavit of Wesley Parris sworn October 29, 2025 at para. 98 (the “**October 29 Parris Affidavit**”); Third Report at paras. 4.4(1), 5.1(1).

<sup>4</sup> Third Report at para. 4.4(1). This security package included: (i) a multi-party Group Guarantee by Iovate International, Iovate USA, Northern Innovations and certain of their affiliates; (ii) a Canadian general security agreement granted by Iovate International, Iovate USA, Northern Innovations, Iovate Holdings and certain of their affiliates creating a first priority lien over all present and after-acquired real and personal property; (iii) a US general security agreement granted by Iovate USA and Iovate International (the “**US Security Agreement**”); and (iv) specific security over intellectual property, including trademarks and patents held by Northern Innovations (collectively, the “**Security Documents**”).

9. After the NOI Applicants received demand letters from the Lenders, among other issues, the NOI Applicants determined that it was in the best interests of their stakeholders to commence the Proposal Proceedings.<sup>5</sup> On September 5, 2025, the NOI Applicants each filed an NOI under the BIA. KSV consented to act as proposal trustee.<sup>6</sup> On October 3, 2025, this Court granted an order extending the time for the NOI Applicants to file a proposal to November 4, 2025.<sup>7</sup>

10. On October 31, 2025, this Court granted the Initial Order under the CCAA, which included a stay of proceedings in favour of the Applicants to and including December 12, 2025 (the “**Stay Period**”), whose benefit was extended to five related foreign entities (together with the Applicants, the “**Iovate Group**”).<sup>8</sup> By the same order, the Court appointed KSV as Monitor of the Applicants.<sup>9</sup>

11. On November 26, 2025, the Administrative Agent wrote to the Monitor requesting an amendment to the ARIO to authorize the Applicants, with the Monitor’s consent, to make principal payments in the aggregate amount of \$2.5 million to the Administrative Agent.<sup>10</sup>

12. On November 28, 2025, this Court granted the SISP Order: (a) approving the SISP to be conducted by the Monitor, with the assistance of the Applicants and the Sales Agent (as defined below), in consultation with the Administrative Agent; and (b) authorizing and empowering the Monitor and the Sales Agent to implement the SISP.<sup>11</sup> On the same date, this Court also granted the ARIO, which extended the Stay Period to and including January 30, 2026, and authorized the

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<sup>5</sup> October 29 Parris Affidavit at paras. 150, 153.

<sup>6</sup> Third Report at para. 1.0(1).

<sup>7</sup> Third Report at para. 1.0(2).

<sup>8</sup> Third Report at para. 1.0(3).

<sup>9</sup> Third Report at para. 1.0(3).

<sup>10</sup> Third Report at para. 5.7(1).

<sup>11</sup> Third Report at para. 1.0(5).

Monitor to perform certain functions in connection with a letter agreement dated November 11, 2025 between the Applicants and Origin Merchant Partners (the “**Sales Agent**”).<sup>12</sup>

13. In addition to the relief granted by the Court on November 28, 2025, the Applicants had sought: (a) authorization to make certain bonus-related payments to employees in accordance with previously agreed contractual arrangements; (b) a key employee retention plan and a related charge in the maximum amount of \$790,000; and (c) authorization to make certain principal payments totaling \$2.5 million to the Administrative Agent in accordance with the terms of the Credit Agreement.<sup>13</sup> This portion of the Applicants’ motion was adjourned by this Court on November 28, 2025, as the Monitor required additional time to confirm certain assumptions in the cash flow forecast.<sup>14</sup> Since November 28, 2025, the Monitor has worked with several senior executives of the Applicants to review the cash flow forecast, and has confirmed its view that the forecast filed previously was reasonable and accurate.<sup>15</sup>

14. On December 12, 2025, this Court granted the Enhanced Monitor Powers Order, which granted the Monitor enhanced powers to permit it to more directly supervise and, where appropriate, manage the Applicants’ business in order to ensure the fair and transparent administration of the CCAA Proceedings and the SISP. The Enhanced Monitor Powers Order enabled the Monitor to exercise any powers that may be properly exercised by a board of directors or any officers of the Applicants.<sup>16</sup>

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<sup>12</sup> Third Report at para. 1.0(5).

<sup>13</sup> Third Report at para. 5.1(1)

<sup>14</sup> Third Report at para. 5.1(2).

<sup>15</sup> Third Report at paras. 5.1(3)-(4).

<sup>16</sup> Third Report at para. 1.0(6).

**B. Update on the CCAA Proceedings**

**(a) The SISP**

15. Since the granting of the SISP Order, the Monitor, with the assistance of the Sales Agent, has prepared and distributed marketing materials designed to solicit interest from strategic and financial parties potentially interested in pursuing either a purchase or investment transaction involving the business and assets of the Iovate Group (each a “**Potential Bidder**”).<sup>17</sup> As of the date of the Third Report, the marketing process is ongoing, and the Sales Agent continues to engage with Potential Bidders under the Monitor’s supervision.<sup>18</sup>

16. Certain financial and operational matters that arose during the initial stages of the SISP added to the time originally anticipated to finalize and provide the Potential Bidders with a Confidential Information Memorandum and access to a virtual data room prepared by the Sales Agent with the assistance and supervision, respectively, of the Monitor.<sup>19</sup> After certain Potential Bidders sought clarification as to whether any milestone dates would be extended, the Monitor, in consultation with the Sales Agent, determined that it would be beneficial for stakeholders and interested parties to revise the SISP timeline by approximately two weeks to provide Potential Bidders with a fair and reasonable opportunity to conduct their diligence. In accordance with the terms of the SISP, the Monitor sought and obtained consent from the Administrative Agent to move the deadlines.<sup>20</sup>

**(b) Other material events**

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<sup>17</sup> Third Report at para. 3.1(2).

<sup>18</sup> Third Report at para. 3.1(5).

<sup>19</sup> Third Report at paras. 3.1(4), 3.2(1).

<sup>20</sup> Third Report at paras. 3.2(2)-(3). The revised SISP timeline is summarized at para. 3.2(4) of the Third Report.

17. Since the date of the Enhanced Monitor Powers Order, the Monitor has been working to resolve certain governance and personnel matters. After discussions with Mr. Parris, he and the Monitor agreed upon terms of his resignation. On December 22, 2025, Mr. Parris resigned from his position as CEO of the NOI Applicants, effective immediately.<sup>21</sup>

18. The Monitor subsequently prepared and delivered a governance protocol on January 6, 2026 (the “**Governance Protocol**”) to each Applicant’s senior management team.<sup>22</sup> The Governance Protocol is intended to maintain the fairness and integrity of the SISP and give proper effect to the SISP Order and Enhanced Monitor Powers Order by providing clarity and direction to the parties regarding their course of conduct as it relates to the CCAA Proceedings, including the SISP.<sup>23</sup> Pursuant to the Governance Protocol, among other things: (a) all persons who previously reported to the CEO must now report to the Monitor; (b) all communications regarding the SISP or information requests relating to the Applicants’ business or property must be directed solely to the Monitor; (c) the Monitor shall make all personnel hiring and termination decisions during the CCAA Proceedings; and (d) all financial forecasts prepared by the finance teams of the Applicants shall be delivered directly to the Monitor.<sup>24</sup>

19. The Monitor has also made certain personnel decisions pursuant to its powers under the Enhanced Monitor Powers Order to make all personnel, hiring, and termination decisions during the CCAA Proceedings.<sup>25</sup> After discussions with and recommendations by senior management of

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<sup>21</sup> Third Report at para. 4.1(1).

<sup>22</sup> Third Report at para. 4.2(1). The Governance Protocol is attached as Appendix “A” to the Third Report.

<sup>23</sup> Third Report at para. 4.2(2).

<sup>24</sup> Third Report at para. 4.2(3).

<sup>25</sup> Third Report at para. 4.3(1).

Iovate International and Iovate USA, the Monitor determined that a reduction in workforce was necessary to address operational redundancies and better align staffing levels with the business' current requirements.<sup>26</sup> Accordingly, on or around January 19, 2026, the Applicants, in consultation with the Monitor, delivered notices of termination of employment to eight employees in Canada and one full-time consultant in Scotland, who were all employed by Iovate International, and one employee in the US, who was employed by Iovate USA.<sup>27</sup>

### **PART III - THE ISSUES**

20. The issues to be considered on this motion are whether this Court should:

- (a) authorize the Applicants to make the Principal Payments (as defined below);
- (b) approve the Employee Relief;
- (c) grant a sealing order in respect of the KERP Charge Calculation (as defined below);
- (d) approve the accounts of the Monitor and its counsel; and
- (e) extend the Stay Period until April 17, 2026.

### **PART IV - THE LAW**

#### **A. This Court should authorize the Principal Payments**

21. The Monitor seeks authorization to make the following principal payments (collectively, the “**Principal Payments**”) to the Administrative Agent pursuant to the proposed SARIO: (a)

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<sup>26</sup> Third Report at para. 4.3(2).

<sup>27</sup> Third Report at para. 4.3(3).

\$750,000 for the week ending February 6, 2026; (b) \$875,000 for the week ending March 6, 2026; and (c) \$875,000 for the week ending April 3, 2026.<sup>28</sup>

22. The authorization to make such Principal Payments is subject to the following conditions:

- (a) the Monitor obtaining a security opinion in respect of the Administrative Agent's security that concludes, subject to customary assumptions and qualifications, that the security is valid, enforceable and properly perfected; and
- (b) at the time a Principal Payment is due, the Monitor must be satisfied, in its sole discretion, that the Applicants have sufficient liquidity to make such payment without imperiling the payment of post-filing operating expenses.<sup>29</sup>

23. Approving the Principal Payments is an appropriate exercise of this Court's discretionary authority under section 11 of the CCAA to "make any order that it considers appropriate in the circumstances." It is also consistent with analogous relief: courts may, for example, authorize a distribution of available cash to creditors during pending *CCAA* proceedings under section 11 in the absence of a plan, with reference to facts like the validity of a secured creditor's security, the amount outstanding, and the effect on stakeholders.<sup>30</sup>

24. Here, the Principal Payments consist of amounts that the Monitor anticipates would be paid in any case to the Lenders under a later distribution in these CCAA Proceedings. The Lenders are

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<sup>28</sup> Third Report at para. 5.7(3).

<sup>29</sup> Third Report at para. 5.7(4).

<sup>30</sup> See, e.g., *Hudson's Bay Company, Re, 2025 ONSC 2903* at paras. 17-23; *In the Matter of BZAM Ltd.* (15 October 2024), Toronto CV-24-00715773-00CL (ONSC) ([Endorsement](#)) at para. 16.

the Applicants' only secured creditors.<sup>31</sup> The Monitor has received opinions from its Canadian<sup>32</sup> and US<sup>33</sup> counsel as to the respective validity of the security granted by the applicable Security Documents and the US Security Agreement. As of August 31, 2025, approximately USD \$114,606,023 in principal was owing under the Credit Facilities, plus an additional USD \$1,179,465 of default interest—an amount that far exceeds the \$2.5 million that would be paid over the three Principal Payments.<sup>34</sup>

25. Further, the Applicants' cash flow projection for the 14-week period commencing on January 12, 2026 and ending on April 17, 2026 (the "**Cash Flow Forecast**") indicates that the Applicants are projected to have sufficient liquidity to make principal payments while continuing to satisfy post-filing obligations in the ordinary course.<sup>35</sup> The conditions to make a Principal Payment—in particular, that the Monitor be satisfied of the Applicants' sufficient liquidity at the relevant time—provide additional safeguards, ensuring that this relief would not confer an absolute direction to pay regardless of any change in circumstance.<sup>36</sup> Finally, making the Principal

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<sup>31</sup> October 29 Parris Affidavit at para. 109.

<sup>32</sup> The Monitor's Canadian counsel, Osler, Hoskin & Harcourt LLP ("Osler") delivered an opinion (the "**Osler Opinion**") to the Monitor that confirms, subject to the standard qualifications and assumptions customary in rendering security opinions of this nature, that the security granted by the NOI Applicants and Iovate Holdings under the applicable Security Documents constitutes valid and enforceable security perfected by registration in the Province of Ontario: Third Report at para. 4.4(3).

<sup>33</sup> The Monitor's US counsel, Cole Schotz P.C., delivered an opinion to the Monitor that confirms, subject to the standard qualifications and assumptions customary in rendering security opinions of this nature, that (i) the US Security Agreement is sufficient to create a valid security interest in the personal property (subject to certain exclusions) of Iovate USA and Iovate International under the laws of the State of New York, (ii) the Administrative Agent was properly granted liens on, and duly perfected such liens on, substantially all of the assets of (a) Iovate USA which can be perfected through the filing of a Uniform Commercial Code ("UCC")-1 financing statement, and (b) Iovate International located in the US in accordance with the UCC: Third Report at para. 4.4(4).

<sup>34</sup> Third Report at para. 4.4(2).

<sup>35</sup> Third Report at paras. 5.7(5), 6.0(1).

<sup>36</sup> Third Report at para. 5.7(4).

Payments would lessen the interest accruing under the Credit Agreement, thereby preserving value for stakeholders.

26. Authorizing the Principal Payments is therefore appropriate in the circumstances, as it would advance the CCAA’s policy objectives of “providing for timely, efficient and impartial resolution of a debtor’s insolvency” and “maximizing creditor recovery,” and the Applicants have been acting in good faith and with due diligence.<sup>37</sup>

**B. This Court should approve the Employee Relief**

27. The Monitor also seeks to incentivize employees to promote continuity, focus, and retention during a critical phase of the restructuring and sale process.<sup>38</sup> As of the date of the Third Report, the Iovate Group employed approximately 150 people in Canada and two people in the United Kingdom through Iovate International, as well as nine people in the United States and Canada through Iovate USA.<sup>39</sup> The Iovate Group’s employees have continued to operate the business through a period of heightened activity and change associated with the CCAA Proceedings, the implementation of enhanced governance protocols, and the conduct of the SISP.<sup>40</sup>

28. The Applicants had communicated to employees a compensation framework under which certain employee and key employee bonus entitlements are tied to the achievement of a minimum adjusted EBITDA target of approximately \$16.288 million (the “**EBITDA Condition**”).<sup>41</sup> As the Applicants’ year-end results have not yet been finalized as of the date of the Third Report, it has

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<sup>37</sup> 9354-9186 Québec inc. v. Callidus Capital Corp., [2020 SCC 10](#) at paras. 40, 42, 48-51; Third Report at para. 8.0(2)(a).

<sup>38</sup> Third Report at paras. 5.2(5), 5.4(2).

<sup>39</sup> Third Report at para. 5.2(1).

<sup>40</sup> Third Report at para. 5.2(5).

<sup>41</sup> Third Report at para. 5.2(2).

not yet been determined whether the EBITDA Condition will be satisfied.<sup>42</sup> Given the timing of year-end close processes and the ongoing demands of the restructuring and SISP, however, the Monitor has concluded, without determining or waiving the applicability of any future performance-based compensation entitlements, that it is appropriate to seek approval to pay a portion of employee incentive compensation at this time.<sup>43</sup>

29. The Monitor has therefore proposed that the Applicants make incentive payments in the aggregate amount of approximately \$863,000 to 136 general and international employees (the “**Employees**”) in February 2026 (the “**Incentive Payments**”).<sup>44</sup> The Monitor has also proposed that the Applicants pay approximately \$514,000 in respect of approximately 20 key employees (the “**Key Employees**”) pursuant to a key employee retention plan (the “**KERP**”). One-half of this amount (the “**Key Employee Incentive Payment**”) is proposed to be paid in February 2026, with the remaining one-half (the “**KERP Payment**”) to be paid at the earlier of: (i) two weeks following the closing of a successful transaction resulting from the SISP; and (ii) September 30, 2026.<sup>45</sup>

30. The Monitor proposes to secure the KERP Payment in the amount of approximately \$257,000 by a charge over the Applicants’ property (the “**KERP Charge**”) that would rank subordinate to the Administrative Professionals Charge, the Directors’ Charge, and the Sales Agent Charge (each as defined in the ARIO).<sup>46</sup>

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<sup>42</sup> Third Report at paras. 5.2(3), 5.5(2).

<sup>43</sup> Third Report at paras. 5.2(4), 5.5(3). Any additional incentive compensation that may be payable under the communicated compensation framework will be assessed and addressed in due course once the Applicants’ year-end results have been finalized and there is greater certainty regarding performance against applicable metrics: Third Report at para. 5.2(6).

<sup>44</sup> Third Report at para. 5.3(1).

<sup>45</sup> Third Report at para. 5.4(1).

<sup>46</sup> Third Report at para. 5.4(5).

31. A CCAA court's discretion to approve a key employee retention plan and grant a KERP charge is well-established. It derives from the court's power under section 11 of the CCAA to make any order it considers appropriate in a CCAA proceeding.<sup>47</sup> Factors considered in granting a KERP vary from case to case, but may include the employee's importance to the restructuring process, the employee's specialized knowledge, whether the employee would otherwise consider other employment options, and the monitor's involvement in the development of and support for the KERP.<sup>48</sup> Underlying these considerations are three criteria examining the presence of arm's length safeguards, the necessity of the KERP, and the reasonableness of its design.<sup>49</sup>

32. These factors support the approval of the proposed Employee Relief. The Employee Relief and the Employees it incentivizes are necessary to a successful restructuring. The Incentive Payments and the KERP are intended to address employee retention concerns arising from recent management and personnel changes, including the resignation of the CEO, and to support continuity during the CCAA Proceedings and the SISP.<sup>50</sup> The continued involvement of the Employees and Key Employees is critical to maintain normal course operations, preserve value, and facilitate the orderly conduct of the SISP.<sup>51</sup> In particular, the Monitor expects that Employees and Key Employees will continue contributing to the restructuring by leveraging their institutional knowledge and expertise to support ongoing operations. Certain individuals are also integral to transaction execution and transition planning in connection with the SISP.<sup>52</sup>

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<sup>47</sup> *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#) at paras. 66-67 [MEC].

<sup>48</sup> MEC at paras. 67-68, citing *Walter Energy Canada Holdings Inc. (Re)*, [2016 BCSC 107](#) at paras. 58-59.

<sup>49</sup> MEC at para. 69, citing *Aralez Pharmaceuticals Inc. (Re)*, [2018 ONSC 6980](#) at para. 30.

<sup>50</sup> Third Report at para. 5.5(5)(a).

<sup>51</sup> Third Report at para. 5.5(5)(b).

<sup>52</sup> Third Report at para. 5.5(5)(c).

33. The design of the Employee Relief is fair and contains proper safeguards. The Monitor assisted with the preparation of the Employee Relief. The KERP Payment in particular is designed to align retention with the successful completion of a transaction arising from the SISP.<sup>53</sup> Further, the contemplated payments are subject to certain conditions. To receive the Incentive Payments and Key Employee Incentive Payment, each Employee and Key Employee (respectively) must: (a) be employed at the time of payment, unless are terminated without cause; and (b) agree to remain employed for a period of at least 12 months following payment, failing which (other than in the case of termination without cause), the applicable payment must be repaid.<sup>54</sup> Similarly, to receive the KERP Payment, each Key Employee must: (a) be employed at the time of payment; and (b) remain employed at the time of the closing of a successful transaction resulting from the SISP or, if earlier, September 30, 2026.<sup>55</sup>

34. The terms of the Employee Relief are reasonable. The Monitor, whose views are attributed great weight, supports the proposed Employee Relief.<sup>56</sup> In the Monitor's view, the Incentive Payments, the Key Employee Incentive Payments, and the KERP Payment are reasonable and consistent with retention arrangements approved in other CCAA proceedings.<sup>57</sup> The KERP Charge is appropriate to provide the Key Employees with comfort that the amounts payable to them under the KERP Payment will be paid.<sup>58</sup>

**C. This Court should grant a sealing order in respect of the KERP Charge Calculation**

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<sup>53</sup> Third Report at para. 5.4(2).

<sup>54</sup> Third Report at paras. 5.3(2), 5.4(3).

<sup>55</sup> Third Report at para. 5.4(4).

<sup>56</sup> *Grant Forest Products Inc. (Re)*, [2009 CanLII 42046](https://www.canlii.org/en/ontario/onsc/doc/2009/2009canlii42046.html) (ONSC) at paras. 18-19; Third Report at para. 5.5(5).

<sup>57</sup> Third Report at para. 5.5(5)(d).

<sup>58</sup> Third Report at para. 5.5(5)(e).

35. To support the granting of the KERP Charge, the Monitor has prepared a detailed breakdown of the amount of the KERP Charge requested (the “**KERP Charge Calculation**”).<sup>59</sup> Pursuant to section 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the Applicants request a sealing order for the KERP Charge Calculation.

36. Courts granting a sealing order consider three factors:<sup>60</sup>

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

37. Each of these considerations supports the proposed sealing order. This Court has found that there is a public interest both in maximizing recovery in an insolvency, and in protecting employees from the disclosure of private and personal information.<sup>61</sup> CCAA courts have accordingly approved sealing orders in respect of a KERP where the order is required to protect commercially sensitive and confidential information relating to the employees of a debtor.<sup>62</sup> The KERP Charge Calculation contains precisely this type of sensitive and personal information. Its

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<sup>59</sup> Third Report at para. 5.6(1). The KERP Charge Calculation is attached as Confidential Appendix “1” to the Third Report.

<sup>60</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para. 38.

<sup>61</sup> *Body Shop Canada Ltd. (Re)*, (15 April 2024), Toronto BK-24-03050417-0031 (ONSC) ([Endorsement of Justice Osborne](#)) at para. 28 [*Body Shop*] (decided in the BIA context, but also discussing CCAA proceedings).

<sup>62</sup> See, e.g., *Peoples Trust Company v. Crown Crest Capital Management Corp. et al.* (2 June 2025), Toronto CV-23-00709183-00CL (ONSC) ([Endorsement](#)) at para. 17; *Ted Baker Canada Inc. et al v. Yorkdale Shopping Centre Holdings Inc.* (3 May 2024), Toronto CV-24-00718993-00CL (ONSC) ([Endorsement](#)) at para. 20; *Mastermind GP Inc. (Re)*, (30 November 2023), Toronto CV-23-00710259-00CL (ONSC) ([Endorsement](#)) at paras. 35-36.

sealing would protect the privacy of Key Employees and help avoid the unnecessary disruption or distraction to the Applicants' business that any disclosure may cause.<sup>63</sup>

38. There is no reasonable alternative to the sealing order that would protect the commercial and privacy interests of the Applicants and the individual Key Employees. Further, the information over which confidentiality is sought to be maintained is "discrete, proportional, and limited,"<sup>64</sup> as the proposed sealing order would only protect the KERP Charge Calculation specifically. The Monitor does not believe that any stakeholder will be prejudiced if the information in the KERP Charge Calculation is sealed.<sup>65</sup> The benefits of the proposed sealing order therefore far outweigh any negative effects.

39. Finally, the Monitor seeks the proposed sealing order. CCAA courts have referred to the support of the monitor as a relevant factor in determining whether the *Sherman Estate* test is met.<sup>66</sup>

**D. The accounts of the Monitor and its counsel should be approved**

40. The ARIQ provides that the Monitor and its legal counsel are to be paid their reasonable fees and disbursements, at their standard rates and charges, by the Applicants as part of the costs of these CCAA Proceedings, and are required to pass their accounts from time to time.<sup>67</sup> The ARIQ further permits KSV to take all necessary steps in furtherance of its discharge as Proposal Trustee in the Proposal Proceedings, including the taxation of its fees and disbursements and those of its

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<sup>63</sup> Third Report at para. 5.6(2).

<sup>64</sup> *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, [2023 ONSC 753](#), at para. 63 [*Original Traders*].

<sup>65</sup> Third Report at para. 5.6(3).

<sup>66</sup> *Original Traders* at paras. 60, 64.

<sup>67</sup> Third Report at para. 7.0(2).

counsel.<sup>68</sup> In accordance with the ARIES, the Monitor seeks approval of the following fees and disbursements in respect of services rendered during both the Proposal Proceedings and the CCAA Proceedings, which have not yet been approved by this Court:<sup>69</sup>

- (a) the total fees of KSV during the period from the commencement of the proceedings to November 30, 2025, amounting to \$383,304.66, together with disbursements in the amount of \$1,487.35, both excluding sales taxes;<sup>70</sup> and
- (b) the total fees of Osler during the period from September 4, 2025 to November 28, 2025, amounting to \$1,042,712.50, together with disbursements in the amount of \$11,910.13, both excluding sales taxes (collectively, the “**Osler Accounts**”).<sup>71</sup>

41. In considering whether to approve fees and disbursements, courts have regard to the “overriding principle of reasonableness,” and do not engage in a docket-by-docket or line-by-line assessment of the accounts.<sup>72</sup> The following factors assist a court in assessing the reasonableness of the Monitor’s fees: (a) the nature, extent and value of the assets being handled; (b) the complications and difficulties encountered; (c) the degree of assistance provided by the company, its officers or its employees; (d) the time spent; (e) the Monitor’s knowledge, experience and skill; (f) the diligence and thoroughness displayed; (g) the responsibilities assumed; (h) the results

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<sup>68</sup> Third Report at para. 7.0(3).

<sup>69</sup> Third Report at paras. 7.0(4)-(6).

<sup>70</sup> Third Report at para. 7.0(5).

<sup>71</sup> Third Report at para. 7.0(6).

<sup>72</sup> *Nortel Networks Inc.*, [2022 ONSC 6680](#) at para. 10 [*Nortel*].

achieved; and (i) the cost of comparable services when performed in a prudent and economical manner.<sup>73</sup>

42. The fees and disbursements are appropriate in light of the Monitor's extensive involvement in the NOI Proceedings and CCAA Proceedings. In particular, since the commencement of the NOI Proceedings, the Monitor has, in relation to matters in both Canada and the U.S.: (a) engaged in extensive negotiations to reach a Court-approved settlement agreement in relation to a dispute with a third-party logistics provider;<sup>74</sup> (b) engaged with parties involved in the withholding of receivables by a major customer in connection with U.S. garnishment proceedings;<sup>75</sup> and (c) coordinated with Canadian and U.S. legal counsel to address cross-border recognition, enforcement, and relief issues arising in connection with proceedings under Chapter 15 of the *United States Bankruptcy Code*.<sup>76</sup> The Monitor's counsel has supported the Monitor's efforts throughout, including by undertaking a security review in connection with its preparation of the Osler Opinion.<sup>77</sup>

43. This Court should approve the fees and disbursements of the Monitor and its counsel. The services reflected in the Osler Accounts have been duly authorized and duly rendered. In the Monitor's opinion, the charges are reasonable.<sup>78</sup>

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<sup>73</sup> *Nortel* at para. 11.

<sup>74</sup> Third Report of the Proposal Trustee dated October 15, 2025 at para. 3.3(1); Fourth Report of the Proposal Trustee dated October 30, 2025 (the “**Fourth Proposal Trustee Report**”) at paras. 3.0(1)(c), 4.2(1)-(6).

<sup>75</sup> Second Report of the Proposal Trustee dated October 1, 2025 (“**Second Proposal Trustee Report**”) at para. 7.0(1)(a); Fourth Proposal Trustee Report at paras. 4.1(1)-(11).

<sup>76</sup> Second Proposal Trustee Report at para. 7.0(1)(h).

<sup>77</sup> See the Third Report at para. 4.4(3).

<sup>78</sup> Third Report at para. 7.0(7).

**E. This Court should extend the Stay Period**

44. This court is authorized to extend a CCAA stay pursuant to section 11.02(2) of the CCAA, provided that the two considerations outlined in subsection 11.02(3) are satisfied. These are: (a) circumstances exist that make the order appropriate; and (b) the applicant has acted, and is acting, in good faith and with due diligence. Both of the subsection 11.02(3) factors are satisfied.

45. The current Stay Period will expire on January 30, 2026. The Monitor is seeking an extension of the Stay Period up to and including April 17, 2026.<sup>79</sup> The stay extension is appropriate and necessary in the circumstances to allow the Applicants the time required to conduct and complete the SISP.<sup>80</sup>

46. The Applicants are acting in good faith and with due diligence.<sup>81</sup> The Monitor forecasts that the Applicants will have sufficient liquidity to fund their operations and the costs of these CCAA Proceedings through the proposed extension period.<sup>82</sup> The Monitor is not aware of any party opposed to this relief as of the date of the Third Report—in fact, the Lenders support the extension of the Stay Period.<sup>83</sup> The Monitor does not believe that any creditor will be materially prejudiced by the proposed extension of the stay of proceedings.<sup>84</sup>

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<sup>79</sup> Third Report at para. 8.0(1).

<sup>80</sup> Third Report at para. 8.0(2)(b).

<sup>81</sup> Third Report at para. 8.0(2)(a).

<sup>82</sup> Third Report at para. 8.0(2)(f).

<sup>83</sup> Third Report at paras. 8.0(2)(d)-(e).

<sup>84</sup> Third Report at para. 8.0(2)(c).

**PART V - RELIEF REQUESTED**

47. The Monitor respectfully requests that the proposed SARIO and Stay Extension and Ancillary Relief Order be granted.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** as of January 27, 2026



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## SCHEDULE “A”

### LIST OF AUTHORITIES

1. *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#)
2. *Aralez Pharmaceuticals Inc. (Re)*, [2018 ONSC 6980](#)
3. *Body Shop Canada Ltd. (Re)*, (15 April 2024), Toronto BK-24-03050417-0031 (ONSC) ([Endorsement of Justice Osborne](#))
4. *Grant Forest Products Inc. (Re)*, [2009 CanLII 42046](#) (ONSC)
5. *Hudson's Bay Company, Re*, [2025 ONSC 2903](#)
6. *In the Matter of BZAM Ltd.* (15 October 2024), Toronto CV-24-00715773-00CL (ONSC) ([Endorsement](#))
7. *Mastermind GP Inc. (Re)*, (30 November 2023), Toronto CV-23-00710259-00CL (ONSC) ([Endorsement](#))
8. *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#)
9. *Nortel Networks Inc.*, [2022 ONSC 6680](#)
10. *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, [2023 ONSC 753](#)
11. *Peoples Trust Company v. Crown Crest Capital Management Corp. et al.* (2 June 2025), Toronto CV-23-00709183-00CL (ONSC) ([Endorsement](#))
12. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
13. *Ted Baker Canada Inc. et al v. Yorkdale Shopping Centre Holdings Inc.* (3 May 2024), Toronto CV-24-00718993-00CL (ONSC) ([Endorsement](#))
14. *Walter Energy Canada Holdings Inc. (Re)*, [2016 BCSC 107](#)

I certify that I am satisfied as to the authenticity of every authority.

Date    January 27, 2026



*Signature*

**SCHEDULE “B”**  
**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

**Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3**

**Notice of intention**

**50.4 (1)** Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person’s locality, stating

- (a)** the insolvent person’s intention to make a proposal,
- (b)** the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c)** the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor’s books,

and attaching thereto a copy of the consent referred to in paragraph (b).

**Certain things to be filed**

**(2)** Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

- (a)** a statement (in this section referred to as a “cash-flow statement”) indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;
- (b)** a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
- (c)** a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

**Creditors may obtain statement**

**(3)** Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

**Exception**

**(4)** The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3) where it is satisfied that

- (a) such release would unduly prejudice the insolvent person; and
- (b) non-release would not unduly prejudice the creditor or creditors in question.

### **Trustee protected**

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

### **Trustee to notify creditors**

(6) Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in paragraphs (1)(a) to (c).

### **Trustee to monitor and report**

(7) Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

(a) shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;

(b) shall file a report on the state of the insolvent person's business and financial affairs — containing the prescribed information, if any —

(i) with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and

(ii) with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and

(c) shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

### **Where assignment deemed to have been made**

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

- (a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;
- (b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;
- (b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and
- (c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

#### **Extension of time for filing proposal**

(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.

#### **Court may not extend time**

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

#### **Court may terminate period for making proposal**

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

- (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,

- (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
- (c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
- (d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

### **Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36**

#### **General power of the court**

**11** Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

#### **Stays, etc. — other than initial application**

**11.02 (2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

#### **Burden of proof on application**

**11.02 (3)** The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

**(b)** in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

### **Disclaimer or resiliation of agreements**

**32 (1)** Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.

### **Court may prohibit disclaimer or resiliation**

**(2)** Within 15 days after the day on which the company gives notice under subsection (1), a party to the agreement may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement is not to be disclaimed or resiliated.

### **Court-ordered disclaimer or resiliation**

**(3)** If the monitor does not approve the proposed disclaimer or resiliation, the company may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement be disclaimed or resiliated.

### **Factors to be considered**

**(4)** In deciding whether to make the order, the court is to consider, among other things,

- (a)** whether the monitor approved the proposed disclaimer or resiliation;
- (b)** whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and
- (c)** whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

### **Date of disclaimer or resiliation**

**(5)** An agreement is disclaimed or resiliated

- (a)** if no application is made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1);
- (b)** if the court dismisses the application made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1) or on any later day fixed by the court; or

**(c)** if the court orders that the agreement is disclaimed or resiliated under subsection (3), on the day that is 30 days after the day on which the company gives notice or on any later day fixed by the court.

### **Intellectual property**

**(6)** If the company has granted a right to use intellectual property to a party to an agreement, the disclaimer or resiliation does not affect the party's right to use the intellectual property — including the party's right to enforce an exclusive use — during the term of the agreement, including any period for which the party extends the agreement as of right, as long as the party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

### **Loss related to disclaimer or resiliation**

**(7)** If an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.

### **Reasons for disclaimer or resiliation**

**(8)** A company shall, on request by a party to the agreement, provide in writing the reasons for the proposed disclaimer or resiliation within five days after the day on which the party requests them.

### **Exceptions**

**(9)** This section does not apply in respect of

- (a)** an eligible financial contract;
- (b)** a collective agreement;
- (c)** a financing agreement if the company is the borrower; or
- (d)** a lease of real property or of an immovable if the company is the lessor.

## **Courts of Justice Act, R.S.O. 1990, c. C.43**

### **Sealing documents**

**137(2)** A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF XIWANG IOVATE HOLDINGS COMPANY LIMITED, IOVATE HEALTH SCIENCES INTERNATIONAL INC., IOVATE HEALTH SCIENCES U.S.A. INC., IOVATE HEALTH SCIENCES AUSTRALIA PTY LTD, and NORTHERN INNOVATIONS HOLDING CORP.

Court File No.: BK-25-03268936-0031

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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PROCEEDING COMMENCED AT TORONTO

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**FACTUM OF THE MONITOR**

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