

**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 APPLICANTS  
(Returnable November 28, 2025)**

November 27, 2025

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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 together with Iovate International and Iovate USA, 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 “**NOI Proceedings**.”

2. On October 31, 2025, this Court granted an order authorizing the NOI Applicants and their affiliates Xiwang Iovate Holdings Company Limited (“**Xiwang Iovate**”) and Iovate Health Sciences Australia Pty Ltd (together with the NOI Applicants and Xiwang Iovate, the “**Applicants**”) to continue or commence (as applicable) proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”).

3. Since the commencement of these CCAA Proceedings, the Applicants, in consultation with the Monitor, have been preparing for a sale and investment solicitation process (“**SISP**”). The Applicants accordingly seek:

- (a) a sale and investment solicitation process order (the “**SISP Order**”) approving a SISP and authorizing and empowering the Monitor and the Sales Agent to implement it; and
- (b) an amended and restated initial order (the “**ARIO**”):
  - (i) authorizing the Monitor, *nunc pro tunc*, to the exclusion of all others (including the Applicants and their respective officers and directors) to: (A)

negotiate and execute the Engagement Letter (as defined below) on behalf of the Applicants; (B) cause the Applicants to perform their obligations under the Engagement Letter; and (C) perform such other functions and duties, and enter into any agreements or incur any obligations on behalf of and in the name of the Applicants, as may be necessary or incidental to the negotiation, execution, and performance of the Engagement Letter by the Applicants;

- (ii) ratifying and approving the Engagement Letter, *nunc pro tunc*, and authorizing the Applicants to make the payments contemplated thereunder;
- (iii) granting a Sales Agent Charge in the maximum amount of CAD 1.75 million in respect of a Transaction Fee (each as defined below) and the Sales Agent's expenses, which charge shall be subordinate only to the Administrative Professionals Charge and Directors' Charge;
- (iv) ordering that all claims of the Sales Agent pursuant to the Engagement Letter may not be compromised pursuant to a plan of compromise or arrangement under the CCAA (a "**Plan**") and shall be treated as unaffected in any Plan, any proposal under the BIA or any other restructuring and no such Plan, proposal or restructuring shall be approved that does not provide for the payment of all amounts due to the Sales Agent pursuant to the Engagement Letter;
- (v) approving the Incentive Payments (as defined below), payments to the Key Employees (as defined below) pursuant to a key employee retention plan

(the “**KERP**”), and granting the KERP Charge (as defined below);

- (vi) authorizing, but not directing, the Applicants to make, subject to the Principal Payment Conditions (as defined below), the Principal Payments (as defined below) to the Lenders;
- (vii) sealing the unredacted Engagement Letter and the KERP Charge Calculation pending further Court order; and
- (viii) extending the Stay Period until and including January 30, 2026.

4. This Court should grant the SISP Order and the ARIO. The SISP represents the best path forward to monetize the assets of the Applicants for the benefit of their stakeholders. The Monitor’s expanded powers to implement the SISP would safeguard the process’ integrity in the event of a possible related party transaction. The Engagement Letter should be approved, as it engages an investment bank that is well-positioned to support the Applicants in pursuing a going concern transaction through the SISP. The Sales Agent Charge is reasonable and necessary in the circumstances, as it would incentivize the Sales Agent to carry out its critical role in the Applicants’ restructuring. The Incentive Payments should be authorized and the KERP, and the KERP Charge should be approved to ensure retention of the Applicants’ employees, which is vital to maintaining the Applicants’ ongoing business operations and pursuing the SISP. Extending the Stay Period is necessary and appropriate to provide the Applicants with the breathing room required to pursue a successful SISP.

## **PART II - THE FACTS**

5. The facts underlying this motion are more fully set out in the affidavit of Wesley Parris

sworn November 19, 2025 (the “**SISP Affidavit**”), in the affidavit of Wesley Parris sworn October 29, 2025 (the “**Initial Affidavit**”), the First Report of KSV Restructuring Inc. dated November 25, 2025 (the “**First Report**”), and the Supplement to the First Report of KSV Restructuring Inc. dated November 27, 2025 (“**Supplemental First Report**”). Capitalized terms used but not otherwise defined herein are as defined in the SISP Affidavit, the Initial Affidavit, the First Report or the Supplemental First Report, as applicable.

#### **A. Background**

6. 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>1</sup> Following receipt of demand letters from their secured creditors under a syndicated credit agreement (the “**Lenders**”) and loss of access to working capital due to a writ of garnishment against a major customer, the NOI Applicants determined that it was in the best interests of their stakeholders to commence the NOI Proceedings.<sup>2</sup>

7. On September 5, 2025, the NOI Applicants each filed a NOI under section 50.4 of the BIA. KSV Restructuring Inc. was appointed as the proposal trustee.<sup>3</sup> On October 3, 2025, this Court granted an order extending the time for the NOI Applicants to file a proposal under the BIA to and including November 4, 2025.<sup>4</sup> On October 31, 2025, this Court granted an order (the “**Initial Order**”) for the Applicants to continue or commence (as applicable) the CCAA Proceedings.<sup>5</sup>

8. Iovate International also sought recognition as foreign representative of the NOI Applicants

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<sup>1</sup> Affidavit of Wesley Parris sworn September 6, 2025 (the “**September 6 Parris Affidavit**”) at para 4.

<sup>2</sup> September 6 Parris Affidavit at paras 26-36.

<sup>3</sup> Affidavit of Wesley Parris sworn November 19, 2025 (the “**SISP Affidavit**”) at para 4. Additional background on the NOI Proceedings and CCAA Proceedings is set out in the SISP Affidavit at paras 4-8, 13-17.

<sup>4</sup> SISP Affidavit at para 5.

<sup>5</sup> SISP Affidavit at para 8.

and recognition of the NOI Proceedings as the “foreign main proceeding” (the “**Recognition Motion**”) in the United States Bankruptcy Court for the Southern District of New York (the “**New York Court**”) pursuant to Chapter 15 of title 11 of the United States *Bankruptcy Code* (“**Chapter 15**”) on September 9, 2025.<sup>6</sup> The New York Court heard the Recognition Motion on October 28, 2025, and granted an order (the “**Recognition Order**”) recognizing the NOI Proceedings as the “foreign main proceeding” under Chapter 15.<sup>7</sup> On November 12, 2025, the New York Court entered an order amending the Recognition Order and recognizing and enforcing the Initial Order.<sup>8</sup>

## **B. Update on the CCAA Proceedings**

9. Since the commencement of these CCAA Proceedings, the Applicants and the Monitor have focused on stabilizing the business and engaging in marketing efforts. The Applicants, in consultation with the Monitor, have (among other things):

- (a) continued to prepare the Applicants for the proposed SISP, including by assisting the Monitor in finalizing the engagement of Origin as the Sales Agent (as described below), refining the materials expected to be required for the due diligence process undertaken by potential bidders, and developing a confidential information memorandum;
- (b) continued to implement cost-saving initiatives and improve performance metrics, which have assisted the Applicants in operating within the projected cash flow;
- (c) continued to re-align internal resources following the implementation of these

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<sup>6</sup> SISP Affidavit at para 13.

<sup>7</sup> SISP Affidavit at para 16.

<sup>8</sup> SISP Affidavit at para 17.

initiatives to maintain stable operations and minimize disruption to customer service, collections, and billing;

(d) maintained active engagements with key industry participants to understand market trends and the potential impact of the current political and economic environment; and

(e) continued to operate the day-to-day business of the Applicants.<sup>9</sup>

### C. The proposed SISP

10. The proposed SISP would allow the Monitor and the Sales Agent to solicit interest in, and opportunities for: (a) one or more sale(s) or partial sale(s) of all, substantially all, or certain portions of the Applicants' business (the "**Business**") and/or property (the "**Property**"); and/or (b) an investment in, restructuring, recapitalization, refinancing or other form of reorganization of all or some of the Applicants or all or part of the Business.<sup>10</sup>

11. The SISP provides for the manner in which prospective bidders may gain access to due diligence materials concerning the Applicants, the Business and the Property; the manner in which interested parties may participate in the SISP; the requirements related to the receipt and negotiation of bids received; the ultimate selection of a successful bidder; and the requisite approvals to be sought from this Court.<sup>11</sup>

12. Following the swearing of the SISP Affidavit, the Applicants, the Monitor, the Administrative Agent and the Sales Agent all agreed that the key dates in the SISP timeline should

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<sup>9</sup> SISP Affidavit at para 12.

<sup>10</sup> SISP Affidavit at para 21. The material terms and key deadlines of the SISP are summarized in more detail in the SISP Affidavit at paras 23-24.

<sup>11</sup> SISP Affidavit at para 22.

be moved forward one week. Accordingly, the SISP timeline is as follows:

Milestone	Key Dates
Court approval of SISP to be sought	November 28, 2025
SISP Commencement	November 13, 2025
Phase 1 Bid Deadline	January 23, 2026
Phase 1 Bid Assessment and Notification (if any)	January 30, 2026
Phase 2 Qualified Bid Deadline (if applicable)	March 9, 2026
Auction (if applicable)	March 16, 2026
Selection of Successful Bid	March 20, 2026
Approval Order Hearing	April 3, 2026
Outside Date	June 3, 2026

#### **D. The Engagement Letter**

13. In anticipation of seeking this Court’s approval of the SISP, the Monitor commenced preliminary investment-banking outreach. Three investment-banking firms were approached to submit proposals to act as the investment bank in connection with the SISP. Three proposals were received during the last week of October 2025.<sup>12</sup> After reviewing the proposals, Origin, an independent North American investment bank, was selected as the Sales Agent.<sup>13</sup>

14. On November 11, 2025, Origin entered into and executed an engagement letter (the “**Engagement Letter**”) pursuant to which Origin was engaged as the Sales Agent to support the Monitor with the implementation of the SISP.<sup>14</sup>

#### **E. Principal Payments under the Credit Agreement**

15. On November 26, 2025, the administrative agent under the Applicants’ credit facilities (the “**Administrative Agent**”) delivered a letter to the Monitor (copying the Service List) (the “**Letter**”) requesting that the draft ARIO be amended to authorize the Applicants, with the

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<sup>12</sup> SISP Affidavit at para 27.

<sup>13</sup> SISP Affidavit at para 28.

<sup>14</sup> SISP Affidavit at para 29.

Monitor's consent, to make the following principal payments in accordance with the Amended and Restated Credit Agreement dated June 30, 2021 (the "**Credit Agreement**"): (a) USD 750,000 for the week ending December 26, 2025; and (b) USD 1,750,000 for the week ending January 23, 2026 (the "**Principal Payments**").<sup>15</sup>

16. The authorization sought by the Applicants to make the Principal Payments is subject to the following conditions (the "**Principal Payment Conditions**"): (a) the Monitor obtaining a security opinion in respect of the Administrative Agent's security that concludes that the security is valid, enforceable and properly perfected; and (b) at the time a Principal Payment is due, the Monitor must be satisfied that the Applicants have sufficient cash to make such payment without imperiling the payment of post-filing operating expenses.<sup>16</sup>

17. In response to the Letter, the Monitor filed a revised cash flow forecast for the period commencing November 17, 2025 and ending on January 30, 2026, to include the Principal Payments (the "**Updated Cash Flow Forecast**").<sup>17</sup> The Updated Cash Flow Forecast, appended as Appendix "B" to the Supplemental First Report, indicates that the Applicants are projected to have sufficient liquidity to make the Principal Payments while continuing to satisfy post-filing obligations in the ordinary course. The Monitor is of the view that, subject to the Principal Payment Conditions, it is reasonable and appropriate to make the Principal Payments.<sup>18</sup>

#### **E. Incentive Payments, KERP, and KERP Charge**

18. The Applicants have formulated, with the assistance of the Monitor, incentive payment

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<sup>15</sup> Supplement to the First Report of the Monitor dated November 27, 2025 at para 2.0(1) [*Supplemental First Report*].

<sup>16</sup> Supplemental First Report at para 2.02(2).

<sup>17</sup> Supplemental First Report at para 2.02(3).

<sup>18</sup> Supplemental First Report at para 2.02(4).

plans, described below, which are intended to stabilize the workforce during this period of uncertainty,<sup>19</sup> and to retain employees who may otherwise seek other employment opportunities given the circumstances of the CCAA proceedings.<sup>20</sup>

(i) *The Incentive Payments*

19. Specifically, the Applicants propose to make payments in the aggregate amount of approximately USD 1.02 million to approximately 130 general and international employees in the month of February 2026 (the “**Incentive Payments**”). The quantum of the Incentive Payments is based upon the existing contractual bonus entitlements of the Applicants’ employees.<sup>21</sup>

20. To receive the Incentive Payments: (A) the employee must be employed at the time of payment; (B) the Applicants must achieve a minimum adjusted EBITDA of approximately USD 16.288 million (the “**EBITDA Condition**”); and (C) the employee is required to agree that he/she shall remain employed for at least 12 months following payment and, if the employee leaves before the 12-month period expires (other than for being terminated without cause), any Incentive Payments made must be repaid.<sup>22</sup>

(ii) *The KERP*

21. The Applicants propose to pay an approximate CAD 1.58 million to approximately 20 key employees (the “**Key Employees**”) as part of the KERP.<sup>23</sup> Payment under the KERP shall be made as follows: (a) half of such payment (the “**Key Employee Incentive Payment**”) shall be paid to

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<sup>19</sup> First Report of the Monitor dated November 25, 2025 at para 6.1(1) [*First Report*].

<sup>20</sup> First Report at para 6.1(2).

<sup>21</sup> First Report at para 6.1(2)(a).

<sup>22</sup> First Report at para 6.1(2)(a)(i).

<sup>23</sup> First Report at para 6.02(b).

the Key Employees in February 2026; and (b) the remaining half of such payment (the “**KERP Payment**”) shall be paid at the earlier of two weeks after the closing of a successful transaction resulting from the SISP and September 30, 2026. These payments are also conditional on the EBITDA Condition.<sup>24</sup>

22. The quantum of the Key Employee Incentive Payment was calculated in accordance with such Key Employees’ existing contractual bonus entitlements.<sup>25</sup> To receive the Key Employee Incentive Payment, the Key Employees: (A) must be employed at the time of payment, unless they are terminated without cause, and (B) are required to agree that they will remain employed for at least 12 months following payment and if a Key Employee leaves before the 12-month period expires (other than being terminated without cause), any Key Employee Incentive Payment must be repaid.<sup>26</sup>

23. The quantum of the KERP Payment was calculated on the basis of incentivizing the Key Employees to continue their employment through the completion of a transaction resulting from the SISP.<sup>27</sup> To receive the KERP Payment, the Key Employees must: (A) be employed at the time of payment, and (B) continue to be employed at the time of the closing of a successful transaction resulting from the SISP or September 30, 2026.

(iii) *The KERP Charge*

24. The Applicants propose to secure the KERP Payment in the approximate amount of USD

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<sup>24</sup> First Report at para 6.1(2)(b).

<sup>25</sup> First Report at para 6.1(2)(b).

<sup>26</sup> First Report at para 6.1(2)(b)(i).

<sup>27</sup> First Report at para 6.1(2)(b).

790,000 by a charge over the Applicants' property (the "**KERP Charge**").<sup>28</sup>

25. The Monitor has provided a detailed breakdown of the amount of the KERP Charge being requested (the "**KERP Charge Calculation**") in Confidential Appendix "1" to the Supplemental First Report.

26. The KERP Charge Calculation includes personal compensation information.<sup>29</sup> The Applicants are requesting an order sealing the KERP Charge Calculation indefinitely, subject only to further Court order.

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

27. The issues addressed in this factum are whether:

- (a) The SISP should be approved;
- (b) The Monitor's powers should be expanded;
- (c) The Engagement Agreement and Sales Agent Charge should be approved;
- (d) The Incentive Payments, KERP and KERP Charge should be approved;
- (e) The unredacted Engagement Letter and the KERP Charge Calculation should be sealed; and
- (f) The Stay Period should be extended.

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

#### **A. The SISP should be approved**

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<sup>28</sup> First Report at para 6.1(2)(b)(ii).

<sup>29</sup> Supplemental First Report at para 3.0(2).

28. CCAA courts have the jurisdiction to approve a sale process in relation to a CCAA debtor's business and assets. The court in *Nortel* identified factors that should be considered in determining whether to authorize a sale process, including: (i) whether a sale transaction is warranted at the time; (ii) whether the sale will benefit the entire economic community; (iii) whether any of the debtors' creditors have a *bona fide* reason to object to the sale; and (iv) whether there is a better viable alternative.<sup>30</sup>

29. Each of the *Nortel* criteria are satisfied in respect of the SISP. The SISP represents the best path forward to monetize the assets of the Applicants for the benefit of all stakeholders. The SISP is better than any alternative arrangement available to the Applicants and is warranted at this time. The SISP will benefit the entire economic community as it is designed to identify the highest or best offer for a refinancing, sale or other strategic investment or transaction involving the business, assets and/or equity of the Applicants,<sup>31</sup> which will benefit the Applicants' stakeholders, including the Lenders, suppliers, employees and customers. The proposed timeline, which was developed with input from the Sales Agent, is reasonable and appropriate.<sup>32</sup> The Monitor believes that the duration of the SISP is sufficient to allow interested parties to perform diligence and submit offers.<sup>33</sup> None of the Applicants' creditors have a *bona fide reason* to object to the sale—in fact, the Lenders, the Applicants' only secured creditors, support the SISP, as does the Monitor.<sup>34</sup>

30. The SISP also builds on earlier marketing efforts. Since the summer of 2025, the NOI Applicants have been actively marketing the Applicants' business with the assistance of William

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<sup>30</sup> *Nortel Networks Corp. (Re)*, [2009 CanLII 39492](#) (ONSC) at paras [48-49](#). These factors remain applicable in determining whether a sale process should be approved even after the 2009 amendments to the CCAA: *Brainhunter Inc. (Re)*, [2009 CanLII 72333](#) (ONSC) at paras [14-17](#).

<sup>31</sup> First Report at para 3.2(1).

<sup>32</sup> SISP Affidavit at para 25.

<sup>33</sup> First Report at para 3.2(8).

<sup>34</sup> Affidavit of Wesley Parris sworn October 29, 2025 at para 109; First Report at para 3.9(1).

Hood & Company, a U.S.-based investment bank with deep expertise in the health, wellness, and nutrition sectors. The marketing efforts undertaken to date have helped generate market awareness and will support the SISP if approved by the Court.<sup>35</sup>

**B. The Monitor's powers should be expanded**

31. The proposed SISP Order would grant the Monitor certain expanded powers to address the potential involvement of Xiwang Foodstuffs Co. Ltd.—an Applicant's indirect majority shareholder—as it has stated that it is considering participating in the SISP.<sup>36</sup> To maintain the integrity of the sale process, the proposed SISP Order would authorize and empower the Monitor, in consultation with the Sales Agent, and with the assistance of the Applicants, to implement the SISP in accordance with its terms. The proposed SISP specifically provides that: (a) the Applicants shall not communicate directly or indirectly with any potentially interested parties regarding the SISP unless the Monitor or the Sales Agent are participating in the communications or are copied (depending on the method of communication); and (b) no information about the Applicants shall be shared with one potentially interested party unless that information is also made available to all other potentially interested parties, subject to restrictions on the basis of market competition regarding a competitor.<sup>37</sup>

32. The CCAA provides the Court with broad discretion in respect of the Monitor's functions. Section 23(1)(k) of the CCAA provides that the Monitor can “carry out any other functions in relation to the [debtor] company that the court may direct.” In addition, section 11 of the CCAA

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<sup>35</sup> SISP Affidavit at para 26.

<sup>36</sup> Xiwang Foodstuffs Co. Ltd. owns approximately 80% of the issued and outstanding shares of Xiwang Foodstuffs (Qingdao) Co., Ltd., which in turn owns 100% of the issued and outstanding shares of Xiwang Iovate (one of the Applicants in these CCAA Proceedings): SISP Affidavit at para 19, note 2.

<sup>37</sup> SISP Affidavit at para 19.

authorizes this Court to make any order that it considers appropriate in the circumstances.

33. Granting these expanded powers and including additional safeguards in the proposed SISP regarding the Applicants' communications and sharing of information with potentially interested parties would help ensure a fair process in the event of a related-party transaction, all while maximizing value to the benefit of all stakeholders and encouraging wide participation by potential bidders.<sup>38</sup> This Court has expanded a monitor's powers on similar terms in other CCAA proceedings.<sup>39</sup>

**C. The Engagement Agreement and Sales Agent Charge should be approved**

34. The Engagement Letter engaged Origin as the Sales Agent to support the Monitor with the implementation of the SISP.<sup>40</sup> It requires that the Applicants pay to the Sales Agent: (a) a monthly work fee (the "**Work Fee**") for the duration of the Sales Agent's engagement; and (b) a transaction fee (the "**Transaction Fee**") based on the aggregate fair market value of any securities issued and all other consideration paid to or received by the Applicants in respect of any transaction resulting from the SISP (the "**Transaction Value**").<sup>41</sup> The Work Fee is to be credited against any Transaction Fee that becomes payable. The Transaction Fee is calculated as a percentage of the Transaction Value, but the applicable percentages vary depending on the size of the Transaction Value.<sup>42</sup>

35. The Engagement Letter also contemplates that the Transaction Fee and expenses payable to the Sales Agent will be secured by a charge in the maximum amount of CAD1,750,000 (the

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<sup>38</sup> SISP Affidavit at para 20.

<sup>39</sup> *Clarkson Road Developments GP Inc (Re)* (13 May 2024), Toronto CV-24-00719589-00CL (ONSC) ([Order \(Approval of the SISP and the Investment Agreement\)](#)) at para 6.

<sup>40</sup> SISP Affidavit at para 29.

<sup>41</sup> SISP Affidavit at para 30.

<sup>42</sup> SISP Affidavit at para 31.

“**Sales Agent Charge**”), which shall be subordinate only to the Administrative Professionals Charge and the Directors’ Charge.<sup>43</sup>

36. This Court has the jurisdiction to approve the engagement of advisors pursuant to section 11 of the CCAA, and has sanctioned the engagement of advisors to assist with restructuring efforts, including SISP. <sup>44</sup> This Court also has the jurisdiction to grant charges in respect of the fees of an advisor pursuant to section 11.52 of the CCAA.<sup>45</sup> Such priority charges are typically the basis on which advisors are incentivized to work for debtor companies.<sup>46</sup>

37. Origin is a prominent North American independent investment bank with extensive experience providing advisory services to companies considering strategic alternatives. It is well-positioned to provide advisory services as Sales Agent to support the Applicants in pursuing a going-concern transaction for the benefit of their stakeholders.<sup>47</sup> The terms of the Engagement Letter, including the fees to be paid to the Sales Agent, are necessary to incentivize the Sales Agent to carry out its role for the benefit of all stakeholders.<sup>48</sup> Further, the Monitor has concluded that the Work Fee and the Transaction Fee payable to the Sales Agent are commercially reasonable and consistent with the market for compensation of this nature.<sup>49</sup> The Sales Agent Charge is also reasonable and necessary in the circumstances given current market conditions, the particular industry, and the type of assets that would be marketed.<sup>50</sup> The Monitor supports the approval of

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<sup>43</sup> SISP Affidavit at para 32.

<sup>44</sup> See, e.g., *Biosteel Sports Nutrition Inc.* (21 September 2023), Toronto CV-23-00706033-00CL (ONSC) ([Endorsement](#)) at para. 12 [*Biosteel*]; *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#) at para. [158\(b\)](#) [*Tacora*]; *Walter Energy Canada Holdings, Inc., (Re)*, [2016 BCSC 107](#) at paras. [35](#), [48](#) [*Walter Energy*]; *Peoples Trust Company v. Crown Crest Capital Management Corp. et al.* (2 June 2025), Toronto CV-23-00709183-00CL (ONSC) ([Endorsement](#)) at para. 12 [*Simply Green*].

<sup>45</sup> *Walter Energy* at paras [39-40](#); *Biosteel* at para 12.

<sup>46</sup> *Tacora* at para [152](#).

<sup>47</sup> SISP Affidavit at para 28.

<sup>48</sup> SISP Affidavit at para 29.

<sup>49</sup> First Report at para 4.2(4)(d).

<sup>50</sup> SISP Affidavit at para 32.

both the Engagement Letter and Sales Agent Charge.<sup>51</sup>

**D. The unredacted Engagement Letter and KERP Charge Calculation should be sealed**

38. The Applicants seek to seal the unredacted Engagement Letter pending further order of the Court, such that the fees to be paid to the Sales Agent under the Engagement Letter will not be disclosed to the public.<sup>52</sup> The Applicants further request that the KERP Charge Calculation, which contains personal compensation information, be sealed indefinitely, subject only to further Court order, in order to safeguard the privacy interests of the Applicants' employees and avoid the disclosure of personal and confidential information.<sup>53</sup>

39. This Court has jurisdiction to grant such an order pursuant to section 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Courts granting a sealing order consider three factors:<sup>54</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.

40. Each of these considerations supports the proposed sealing order. CCAA courts have found that there is a public interest both in maximizing recovery in an insolvency, and in protecting the

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<sup>51</sup> First Report at para 4.2(4).

<sup>52</sup> SISP Affidavit at para 33.

<sup>53</sup> Supplemental First Report at para 3.0(2).

<sup>54</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para [38](#).

privacy interests of employees from the disclosure of private and personal information.<sup>55</sup> CCAA courts have accordingly approved sealing orders where required to protect: (a) commercially sensitive information found in advisor engagement letters,<sup>56</sup> including where fee information includes formulas tied to transaction proceeds that, if known, could undermine the ability of the monitor and sales agent to consummate a value-maximizing transaction;<sup>57</sup> and (b) confidential information relating to the employees of a debtor.<sup>58</sup>

41. These public interests are likewise engaged here. As the fees to be paid to the Sales Agent under the Engagement Letter are tied to the value of a potential transaction under the SISP, disclosing them publicly could negatively impact the SISP. Potential bidders could use this information to estimate the Sales Agent's views as to the value of the Applicants' Property or Business, and seek to submit strategic bids accordingly.<sup>59</sup> The KERP Charge Calculation contains personal and sensitive information relating to the Applicants' employees, the disclosure of which would compromise their privacy interests. Sealing such information will help avoid any unnecessary disruption or distraction to the Applicants' business that such disclosure may cause.<sup>60</sup>

42. There is no reasonable alternative to the sealing order that would protect the commercial and privacy interests of the Applicants and the Applicants' employees. Courts have found that no reasonable alternative to a sealing order exists where declining to grant the proposed order would

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<sup>55</sup> *The Body Shop of Canada Limited. (Re)*, (April 5, 2024), Ont. S.C.J. [Commercial List], Court File No. BK-24-03050417-0031 ([Endorsement of Justice Osborne](#)) at para. 28; *Danier Leather Inc., Re*, [2016 ONSC 1044](#) at para. 83 [*Danier Leather*].

<sup>56</sup> See, e.g., *Balboa Inc. et al* (12 April 2024), Toronto CV-24-00713245-00CL (ONSC) ([Endorsement](#)) at paras 17-18.

<sup>57</sup> [Simply Green](#) at para 17.

<sup>58</sup> See, i.e., *Danier Leather*, at paras. [83-84](#); *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114](#) (ONSC) at paras. [51-52](#) [*Canwest*]; *Ontario Securities Commission v. Bridging Finance Inc.*, [2021 ONSC 4347](#) at paras. [23-27](#); *Ted Baker Canada Inc. et al. (Re)*, (May 3, 2024), Ont. S.C.J. [Commercial List], Court File No. CV-24-00718993-00CL ([Endorsement of Justice Black](#)) at para. 20.

<sup>59</sup> SISP Affidavit at para 33.

<sup>60</sup> Supplemental First Report at para 3.0(2).

materially impair the maximization of asset value for the benefit of stakeholders.<sup>61</sup> Further, the information over which confidentiality is sought to be maintained is “discrete, proportional, and limited,”<sup>62</sup> as only a small portion of the information—the fee information—would not be publicly available through the redacted Engagement Letter that was filed with the Applicants’ motion materials. The benefits of the proposed sealing order far outweigh any negative effects.

43. Finally, the Monitor supports the proposed sealing order. The Monitor believes that sealing the unredacted Engagement Letter is necessary to avoid prejudicing the SISP and any negotiations with potential bidders.<sup>63</sup> The Monitor does not believe that any stakeholder will be prejudiced if the information in the KERP Charge Calculation is sealed.<sup>64</sup> CCAA courts have referred to the support of the monitor as a relevant factor in determining whether the *Sherman Estate* test is met.<sup>65</sup>

#### **E. The Incentive Payments, KERP and KERP Charge should be approved**

44. In *Re Aralez Pharmaceuticals Inc.* Justice Dunphy reviewed the factors for approving a key employee retention or incentive plan as set out in *Grant Forest Products Inc., Re* and subsequent cases,<sup>66</sup> and provided a framework, which he indicated swept in all relevant considerations enunciated in prior case law:

(a) *Arm’s length safeguards*: The court can justifiably repose significant confidence in the objectivity of the business judgment of parties with a legitimate interest in the matter who are independent of or at arm’s length from the beneficiaries of the program....

(b) *Necessity*: Incentive programs, be they in the form of KERP or KEIP or some variant are by no means an automatic or matter of course evolution in an insolvency file. They need to be justified on a case-by-case basis on the basis of necessity....

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<sup>61</sup> *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, [2023 ONSC 753](#) at para [62](#) [*Original Traders*].

<sup>62</sup> *Original Traders* at para [63](#).

<sup>63</sup> First Report at para 5.0(1).

<sup>64</sup> Supplemental First Report at para 3.0(2).

<sup>65</sup> *Original Traders* at paras [60](#), [64](#).

<sup>66</sup> *Grant Forest Products Inc. (Re)*, [2009 CanLII 42046 \(ONSC\)](#) at paras [8-23](#) [*Grant Forest*], *Canwest* at para [52](#); *Cinram International Inc, Re*, [2012 ONSC 3767](#) at para [91](#) [*Cinram*].

(c) *Reasonableness of Design*: Incentive programs are meant to align the interests of the beneficiaries with those of the stakeholders and not to reward counter-productive behavior nor provide an incentive to insiders to disrupt the process at the least opportune moment. The targets and incentives created must be reasonably related to the goals pursued....<sup>67</sup>

45. The above considerations are satisfied in this case:

- (a) *Arm's Length Safeguards* - The Incentive Payments and KERP were developed by the Applicants, with the assistance of the Monitor and counsel.<sup>68</sup> The Monitor supports the relief sought in respect of the Incentive Payments and the KERP,<sup>69</sup> and is of the view that: (a) the Incentive Payments and the Key Employee Incentive Payments are reasonable as they are calculated in accordance with existing contractual bonus entitlements; and (b) the KERP Payment is reasonable and in line with the quantum of retention payments approved in other CCAA proceedings.<sup>70</sup> The negotiation and design of the Incentive Payments and the KERP has benefitted from the objective oversight of the Monitor, which has inquired into the design and objects of the proposed Incentive Payments, Key Employee Incentive Payments, and KERP Payment, and has concluded that such payments are reasonable in the circumstances.
- (b) *Necessity* - The continued involvement and cooperation of the Applicants' employees is critical to the success of the Applicants' restructuring.<sup>71</sup> The Incentive Payments and the KERP are necessary to address retention concerns in light of recent key employee departures.<sup>72</sup> The proposed Incentive Payments and payments

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<sup>67</sup> *Aralez Pharmaceuticals Inc, (Re)*, [2018 ONSC 6980](#) at para [30](#) [Aralez].

<sup>68</sup> First Report at para 6.0(2).

<sup>69</sup> First Report at para 6.2(2).

<sup>70</sup> First Report at para 6.2(2)(d).

<sup>71</sup> First Report at para 6.2(2)(b).

<sup>72</sup> First Report at para 6.2(2)(a).

under the KERP are required to increase the likelihood that the Applicants' employees will continue to facilitate operations and the conduct of the SISP during the CCAA proceedings.<sup>73</sup> While certain employees are critical to the conduct of the SISP and restructuring efforts generally, other employees will contribute to the CCAA proceedings by using their existing company knowledge and expertise in their roles to continue normal course operations and preserve value.<sup>74</sup>

- (c) *Reasonableness of Design* - The Incentive Payments and the Key Employee Incentive Payments are incentive-based and will only be earned if the EBITDA Condition is met.<sup>75</sup> These incentive payments are reasonable as they are calculated in accordance with existing contractual bonus entitlements. Furthermore, they are appropriate incentives that properly align the interests of the Applicants' employees with other stakeholders. The KERP Payment, on the other hand, is to be paid at the earlier of two weeks after the closing of a successful transaction resulting from the SISP and September 30, 2025.<sup>76</sup> It is a retention bonus that is appropriately structured to incentivize Key Employees to continue their employment through the completion of a transaction resulting from the SISP so as to avoid a situation where the restructuring is disrupted at the least opportune moment.

46. Should this Court approve the KERP, the KERP Charge should also be approved. The KERP Charge is a necessary component of addressing concerns around key employee departures as it provides Key Employees with appropriate comfort that the amounts payable to them under

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<sup>73</sup> First Report at para 6.2(2)(b).

<sup>74</sup> First Report at para 6.2(2)(c).

<sup>75</sup> First Report at para 6.1.

<sup>76</sup> First Report at para 6.1(2)(b).

the KERP Payment will be paid.<sup>77</sup>

**F. The Stay Period should be extended**

47. 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.

48. The current Stay Period will expire on December 12, 2025. The Applicants are seeking an extension of the Stay Period up to and including January 30, 2026. The stay extension is appropriate and necessary in the circumstances to allow the SISP to unfold and permit the Monitor to focus on conducting the SISP with the assistance of the Sales Agent.<sup>78</sup>

49. The Applicants, under the supervision of the Monitor, have acted in good faith and with due diligence since the granting of the Initial Order.<sup>79</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>80</sup> The Applicants are not aware of any opposition to this relief. The Monitor is supportive of the proposed extension of the Stay Period and does not believe that any creditor will be materially prejudiced by the proposed extension of the Stay Period.<sup>81</sup>

**PART V - RELIEF REQUESTED**

50. The Applicants respectfully request that the proposed SISP Order and ARIO be granted.

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<sup>77</sup> First Report at paras 6.2(2)(a) and 6.2(2)(e).

<sup>78</sup> SISP Affidavit at para 34; First Report at para 8.0(2).

<sup>79</sup> SISP Affidavit at para 36.

<sup>80</sup> First Report at para 7.0(3).

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

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** as of November 27, 2025.



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**Lawyers for the Applicants**

## SCHEDULE “A”

### LIST OF AUTHORITIES

1.	<i>Aralez Pharmaceuticals Inc. (Re)</i> , <a href="#">2018 ONSC 6980</a> .
2.	<i>Balboa Inc. et al</i> (12 April 2024), Toronto CV-24-00713245-00CL (ONSC) ( <a href="#">Endorsement</a> ).
3.	<i>Biosteel Sports Nutrition Inc.</i> (21 September 2023), Toronto CV-23-00706033-00CL (ONSC) ( <a href="#">Endorsement</a> ).
4.	<i>Brainhunter Inc. (Re)</i> , <a href="#">2009 CanLII 72333</a> (ONSC).
5.	<i>The Body Shop of Canada Limited. (Re)</i> , (April 5, 2024), Ont. S.C.J. [Commercial List], Court File No. BK-24-03050417-0031 ( <a href="#">Endorsement</a> ).
6.	<i>Canwest Global Communications Corp. (Re)</i> , <a href="#">2009 CanLII 55114</a> (ONSC).
7.	<i>Cinram International Inc. Re</i> , <a href="#">2012 ONSC 3767</a> .
8.	<i>Clarkson Road Developments GP Inc (Re)</i> (13 May 2024), Toronto CV-24-00719589-00CL (ONSC) ( <a href="#">Order (Approval of the SISP and the Investment Agreement)</a> )
9.	<i>Danier Leather Inc., Re</i> , <a href="#">2016 ONSC 1044</a> .
10.	<i>Grant Forest Products Inc. (Re)</i> , <a href="#">2009 CanLII 42046</a> (ONSC).
11.	<i>Nortel Networks Corp. (Re)</i> , <a href="#">2009 CanLII 39492</a> (ONSC).
12.	<i>Ontario Securities Commission v. Bridging Finance Inc.</i> , <a href="#">2021 ONSC 4347</a> .
13.	<i>Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)</i> , <a href="#">2023 ONSC 753</a> .
14.	<i>Peoples Trust Company v. Crown Crest Capital Management Corp. et al.</i> (2 June 2025), Toronto CV-23-00709183-00CL (ONSC) ( <a href="#">Endorsement</a> ).
15.	<i>Sherman Estate v. Donovan</i> , <a href="#">2021 SCC 25</a> .
16.	<i>Tacora Resources Inc. (Re)</i> , <a href="#">2023 ONSC 6126</a> .
17.	<i>Ted Baker Canada Inc. et al. (Re)</i> , (May 3, 2024), Ont. S.C.J. [Commercial List], Court File No. CV-24-00718993-00CL ( <a href="#">Endorsement</a> )
18.	<i>Walter Energy Canada Holdings, Inc., (Re)</i> , <a href="#">2016 BCSC 107</a> .

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

Date November 27, 2025

A handwritten signature in blue ink, consisting of a large loop followed by a smaller loop and a horizontal stroke.

*Signature*

## **SCHEDULE “B”**

### **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 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. — initial application**

**11.02(1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (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.

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

**(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**

(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.

### **Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

### **Court may order security or charge to cover certain costs**

**11.52(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 debtor company 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 monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; 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 their effective participation in proceedings under this Act.

### **Priority**

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

## **Duties and functions**

### **23 (1) The monitor shall**

**(a)** except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

**(i)** publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

**(ii)** within five days after the day on which the order is made,

**(A)** make the order publicly available in the prescribed manner,

**(B)** send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and

**(C)** prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

**(b)** review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

**(c)** make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

**(d)** file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

**(i)** without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

**(ii)** not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

**(iii)** at any other time that the court may order;

**(d.1)** file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days

before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the *Bankruptcy and Insolvency Act*, so advise the court without delay after coming to that opinion;

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

### **Monitor not liable**

(2) If the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

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

#### **Documents public**

**137 (1)** On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

#### **Sealing documents**

(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.

**Court lists public**

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

**Copies**

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

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

	<p><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>COMMERCIAL LIST</b></p> <p>PROCEEDING COMMENCED AT TORONTO</p>
	<p><b>FACTUM OF THE APPLICANTS</b></p> <p>(Returnable November 28, 2025)</p>
	<p><b>CHAITONS LLP</b> Barristers and Solicitors 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9</p> <p><b>Harvey Chaiton</b> (LSO No. 21592F) Tel: (416) 218-1129 E-mail: <a href="mailto:harvey@chaitons.com">harvey@chaitons.com</a></p> <p><b>Danish Afroz</b> (LSO No. 65786B) Tel: (416) 218-1137 E-mail: <a href="mailto:dafroz@chaitons.com">dafroz@chaitons.com</a></p> <p><i>Lawyers for the Applicants</i></p>