

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR. )

MONDAY, THE 23<sup>rd</sup>

JUSTICE MCEWEN )

DAY OF MARCH, 2020



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF VIAFOURA INC., OF THE CITY OF TORONTO, IN THE PROVINCE OF  
ONTARIO

APPROVAL AND VESTING ORDER

**THIS MOTION**, made by KSV Kofman Inc., in its capacity as Proposal Trustee (the “**Trustee**”) of Viafoura Inc. (the “**Vendor**”) for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Sale Agreement**”) between the Vendor and Intercap Equity Inc. (“**Intercap**”) dated January 22, 2020 and vesting in Intercap’s permitted affiliate, Viafoura Technologies Inc. (the “**Purchaser**”), the Vendor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Third Report of the Trustee dated March 23, 2020 (the “**Third Report**”) and on hearing the submissions of counsel for the Trustee, the Vendor and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amy Casella sworn March 16, 2020, filed:

**SERVICE**

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

**SALE AGREEMENT APPROVAL**

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the Sale Agreement.

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Vendor and the Purchaser is hereby authorized and approved, with such minor amendments as the Vendor and the Purchaser, with the approval of the Trustee, may agree upon. The Vendor and the Trustee are hereby authorized and directed to take such additional steps and execute such additional documents, including for the provision of transition services as contemplated by the Sale Agreement, as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Trustee's Certificate**"), all of the Vendor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto, including, without limitation, the Contracts, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated December 3, 2019 and the Order of the Honourable Justice McEwen dated February 10, 2020; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**" and, for

greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that the Trustee may rely on written notice from the Vendor and the Purchaser regarding fulfillment of conditions to closing under the Sale Agreement and shall incur no liability with respect to the delivery of the Trustee's Certificate.

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Vendor and the Trustee are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendor's records pertaining to the Vendor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendor.

9. **THIS COURT ORDERS** that (i) on or after Closing, the Vendor or the Trustee are hereby authorized, directed and permitted to execute and file articles of amendment or such other documents or instruments as may be required (including any necessary corporate resolutions) to change the legal name of the Vendor to 723571-2 Canada Inc. or such other legal corporation name as may be appropriate and such articles, documents or other instruments (including any necessary corporate resolutions) shall be deemed to be duly authorized, valid and effective and shall be accepted by the Director as defined in the *Canada Business Corporations Act*, without the



requirement, if any of obtaining director, partner or shareholder approval pursuant to any federal or provincial legislation and (ii) that any third party requirements, required consents or solvency requirement pursuant to any federal or provincial legislation relating to the same shall be waived.

10. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) in respect of the Vendor and any bankruptcy order issued pursuant to any such applications or otherwise; and
- (c) any assignment in bankruptcy made in respect of the Vendor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order, and any transition services agreement that may be entered into in connection with the Sale Agreement, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Vendor and shall not be void or voidable by creditors of the Vendor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **GENERAL**

11. **THIS COURT ORDERS** that for a period of not less than two years from the Closing Date, the Purchaser shall provide the Trustee and any trustee in bankruptcy of the Vendor with access to the books and records of the Vendor in the possession of the Purchaser during normal business hours upon request, and shall not thereafter alter or destroy such books and records without providing the Trustee or and any trustee in bankruptcy of the Vendor with 30 days prior written notice, and the trustee may make copies of same as it considers appropriate.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Vendor and the Trustee and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Vendor and the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Vendor and the Trustee and their agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to be "McE...T", is written over a horizontal line.

**Schedule A – Form of Trustee’s Certificate**

Court File No. 31-2590812

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

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

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF VIAFOURA INC., OF THE CITY OF TORONTO, IN THE PROVINCE  
OF ONTARIO**

**TRUSTEE’S CERTIFICATE**

**RECITALS**

- A. Viafoura Inc. (the “**Vendor**”) commenced these proceedings by filing a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, on December 1, 2019 (the “**NOI**”);
- B. KSV Kofman Inc. was appointed as proposal trustee (the “**Trustee**”) under the NOI;
- C. Pursuant to an Order of the Court dated March 23, 2020 (the “**Approval and Vesting Order**”), the Court approved the asset purchase agreement made as of January 22, 2020 (the “**Sale Agreement**”) between the Vendor and Intercap Equity Inc. (“**Intercap**”) providing for the vesting in Intercap’s permitted affiliate, Viafoura Technologies Inc. (the “**Purchaser**”), of the Vendor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Trustee to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 7 of the Sale Agreement have been satisfied or waived by the Vendor and the Purchaser (as applicable); and (iii) the Transaction has been completed to the satisfaction of the Trustee.

D. Pursuant to the Approval and Vesting Order, the Trustee may rely on written notice from the Vendor and the Purchaser regarding fulfillment of conditions to closing under the Sale Agreement.

E. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE TRUSTEE CERTIFIES** the following:

1. The Vendor and the Purchaser have each delivered written notice to the Trustee that all applicable conditions under the Sale Agreement have been satisfied and/or waived, as applicable;
2. The Trustee has received the Closing Cash Payment; and
3. The Transaction has been completed to the satisfaction of the Trustee.
4. This Certificate was delivered by the Trustee at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**KSV Kofman Inc., in its capacity as Trustee  
of Viafoura Inc., and not in its personal  
capacity**

Per: \_\_\_\_\_  
Name:  
Title:



### Schedule B – Purchased Assets

- (1) All movable property, leasehold improvements and equipment, furniture, fixtures and other fixed assets, if any (excluding those that are subject to capital leases), in addition to all computer hardware used in connection with the business;
- (2) all Books and Records;
- (3) all inventory of the Vendor, used in the carrying on of its business;
- (4) the benefit of (i) all customer contracts or agreements of the Vendor (including, but not limited to those referenced in Appendix 1); and (ii) all contracts or other agreements listed in Appendix 1 to this Schedule B in each case, as amended, extended, assigned or otherwise modified, which shall include, (in this Schedule **Error! Reference source not found.**, the **“Assumed Contracts”**);
- (5) all Accounts Receivable;
- (6) all SRED Credits;
- (7) the Designated Shares;
- (8) all prepaid expenses to the extent necessary for the operation of the business form and after the Closing;
- (9) all supplies owned by the Vendor and used in connection with the business;
- (10) all Intellectual Property owned or licensed by the Vendor and used in or relating to the carrying on of the business, including Intellectual Property developed by the Vendor’s employees;
- (11) all customer guarantees, customer notes, security agreements, financing statements under applicable personal property security legislation, customer deposits or collateral, filings or property securing customer obligations (in each case, solely to the extent related to any of the Accounts Receivables and/or Assumed Contracts);



- (12) all government licenses, approvals, permits or similar used in connection with the business;  
and
- (13) all goodwill associated with the business or the Purchased Assets, including the right to carry on the business in continuation of the Vendor.

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*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER  
(Motion Returnable March 23, 2020)

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Proposal Trustee