

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE MADAM) MONDAY, THE 17TH
)
JUSTICE CONWAY) DAY OF AUGUST, 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**

ORDER

THIS MOTION, made by KSV Kofman Inc. (“**KSV**”), in its capacity as proposal trustee (“**Proposal Trustee**”) in connection with a Notice of Intention to Make a Proposal (“**NOI**”) filed on December 1, 2019 by 7235712 Canada Inc. (formerly, Viafoura Inc.) (the “**Company**”), and in its capacity as receiver appointed pursuant to the Order of this Court dated March 23, 2020 (the “**Receiver**”), for an order: (a) approving the Proposal (as defined below); (b) approving the fees and disbursements of the Receiver; and (c) discharging the Receiver; was heard this day via Zoom videoconference.

ON READING the Fourth Report of KSV dated August 7, 2020 (the “**Fourth Report**”) and on hearing the submissions of counsel for the Proposal Trustee and Receiver, the Company and Viafoura Technologies Inc., no one appearing for any other person on the service list:

SERVICE

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

APPROVAL OF PROPOSAL

2. THIS COURT ORDERS that the Proposal, as accepted by the requisite majority of the Company's creditors and as attached hereto as **Schedule "A"**, be and is hereby approved and is effective in accordance with its terms.

PROPOSAL IMPLEMENTATIONS

3. THIS COURT ORDERS that each of the Company and the Proposal Trustee, as applicable, is hereby authorized and directed to take all steps and actions necessary or appropriate (as determined by the Company or the Proposal Trustee, as the case may be) to implement the Proposal and the transactions contemplated thereby, in accordance with and subject to the terms of the Proposal and, that such steps and actions are hereby approved.

4. THIS COURT ORDERS that, pursuant to Section 59(4) of the BIA, the Company's constating instrument is to be amended in accordance with the Articles of Reorganization attached as Schedule "A" to the Proposal, and that to give effect to such amendment, the Company is hereby authorized and directed to file the Articles of Reorganization, at such time and in such manner as contemplated by the Proposal and as required by applicable corporate laws.

DISCHARGE OF RECEIVER

5. THIS COURT ORDERS that the activities of the Receiver, as set out in the Fourth Report, are hereby approved.

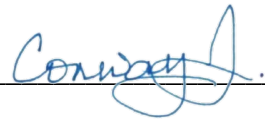
6. THIS COURT ORDERS that the fees and disbursements of the Receiver, as set out in the Fourth Report, are hereby approved.

7. THIS COURT ORDERS that, effective upon the issuance of this Order, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Company, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of KSV in its capacity as Receiver.

GENERAL

8. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada against all persons, firms, corporations, governmental, municipal and regulatory authorities against whom it may be enforceable.

9. THIS COURT ORDERS AND REQUESTS the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province to act in aid of and to be complementary to this Court 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 as may be necessary or desirable to give effect to this Order or to assist the Company and the Proposal Trustee and their agents in carrying out the terms of this Order.

A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

Schedule A – Proposal

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

**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**

PROPOSAL

Viafoura Inc. hereby submits the following Proposal to all of its Creditors pursuant to Part III of the BIA.

**ARTICLE 1
DEFINITIONS**

1.1 Definitions

In this Proposal:

- (a) “Administrative Fees and Expenses” means the proper fees, expenses and legal fees and disbursements of the Trustee and the Debtor on and incidental to the negotiation, preparation, presentation, consideration, Court approval of, and implementation of the Proposal and all proceedings and matters relating to or arising out of the Proposal including, without limitation any meeting or meetings of creditors to consider the Proposal;
- (b) “Affected Claims” means Claims and Director Claims which are not Unaffected Claims;
- (c) “Affected Creditor” means a Creditor having an Affected Claim;
- (d) “Approval Order” means an Order of the Court approving the Proposal;

- (e) “Articles of Reorganization” means the articles of reorganization of the Debtor to become effective on the Implementation Date attached hereto as Schedule “A”;
- (f) “BIA” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and in force as at the Date of Filing;
- (g) “Business Day” means each day other than a Saturday or Sunday or a statutory or civic holiday on which banks are open for business in Toronto, Ontario, Canada;
- (h) “Canada Pension Plan” means the *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended;
- (i) “Claim” means any right of any Person against the Debtor in connection with any indebtedness, liability or obligation of any kind of the Debtor which indebtedness, liability or obligation is in existence on, or which is based in whole or in part on any act, omission or fact that occurred or existed prior to the Date of Filing, whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, under-secured, unsecured, present, future, direct or indirect, known or unknown, by guarantee, by surety or otherwise, at law or in equity, and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action;
- (j) “Court” means the Ontario Superior Court of Justice [Commercial List] (in Bankruptcy and Insolvency);
- (k) “Creditor” means any Person having a Claim or a Director Claim and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf of or in the name of such Person;
- (l) “Creditors’ Meeting” means any meeting of the Affected Creditors called for the purpose of considering and voting upon the Proposal;
- (m) “Creditors’ Meeting Date” means 10:00 a.m. on the date and time as may be called by the Trustee in consultation with the Official Receiver pursuant to Section 6.2 of the Proposal;
- (n) “Date of Filing” or “Date of Proposal” mean the date of the filing of the Proposal with the Official Receiver;
- (o) “Debtor” means Viafoura Inc., a company existing under the federal laws of Canada;

- (p) “Directors” means the present and former directors of the Debtor, as at the Date of Filing;
- (q) “Director Claim” means a claim against Directors of the Debtor that is based in whole or in part on facts, events or matters which existed or occurred on or before the Date of Filing and that relates to the obligations of the Debtor for which the Directors are by law liable in their capacity as Directors for the payment of such obligations. Director Claims do not include claims that relate to: (a) contractual rights of one or more Creditors arising from contracts with one or more Directors; or (b) wrongful or oppressive conduct by Directors.
- (r) “Directors’ Indemnity Claims” means all claims by Directors against the Debtor for indemnity in respect of obligations of the Debtor for which the Directors are by law liable in their capacity as Directors for the payment of such obligations;
- (s) “Employment Insurance Act” means the *Employment Insurance Act*, S.C. 1996, c. 23, as amended;
- (t) “Existing Shares” means all issued preferred and common shares of the Debtor and any and all, warrants, options, instruments, rights or entitlements which have the capacity to be converted into or exchanged for, or give the right to acquire, shares of the Debtor in existence on the Implementation Date;
- (u) “Implementation Date” means the date upon which the conditions set forth in Section 9.3 have been satisfied;
- (v) “Income Tax Act” means *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended;
- (w) “Inspectors” means one or more Inspectors appointed pursuant to the BIA as provided for in the Proposal;
- (x) “Levy” has the meaning ascribed to it in Section 4.7 of the Proposal.
- (y) “New Shares” means the shares of the Debtor to be issued to the Sponsor on the Implementation Date pursuant to the Articles of Reorganization;
- (z) “Official Receiver” shall have the meaning ascribed thereto in the BIA;
- (aa) “Omnibus Suspension Period” mean the period commencing on April 27, 2020 and ending June 30, 2020, defined as the “Suspension Period” in the Order of Chief Justice Morawetz made April 27, 2020 in Court File No. 31-2597721, and any Court ordered extension(s) of the Suspension Period;

- (bb) “Ordinary Claim Determination Date” means the date on which the validity of all Proofs of Claim filed by Ordinary Creditors has been finally determined in accordance with the BIA;
- (cc) “Ordinary Creditors” means Creditors with Proven Claims, except for those Claims that:
 - (i) are Claims by Preferred Creditors; or
 - (ii) are Unaffected Claims.
- (dd) “Person” means any individual, general or limited partnership, joint venture, trust, corporation, unincorporated organization, government, or any agency, regulatory body or instrumentality thereof, or any other entity howsoever designated or constituted;
- (ee) “Preferred Claim Determination Date” means the date on which the validity of all Proofs of Claim filed by Preferred Creditors has been finally determined in accordance with the BIA;
- (ff) “Preferred Creditors” means Creditors with Proven Claims and which are, subject to the rights of Secured Creditors, required by the BIA to be paid in priority to all other Claims under a proposal made by a debtor and including, without limitation, the Required Employee Amount (for greater certainty a Person can be both a Preferred Creditor and an Unsecured Creditor in respect of distinct Claims);
- (gg) “Prescribed Interest” means the participation entitlement of an Ordinary Creditor in the Tax Loss Variable Note, net of the Levy, as determined by the Trustee following the Ordinary Claim Determination Date;
- (hh) “Priority Creditor Cash Amount” means the cash amount necessary to pay and satisfy: (i) the Affected Claims of Preferred Creditors, including the Required Employee Amount; and (ii) the Required Crown Amount, to be delivered by the Sponsor to the Trustee within five (5) Business Days of the Preferred Claim Determination Date;
- (ii) “Proof of Claim” shall mean the proof of claim required by the BIA to be mailed to each known Creditor prior to the Creditors’ Meeting;
- (jj) “Proposal” means this proposal together with any amendments or additions thereto;
- (kk) “Proven Claim” of a Creditor means the amount of the Affected Claim of such Creditor finally determined in accordance with BIA;
- (ll) “Required Employee Amount” means an amount equal to the amount employees and former employees of the Debtor, not to include independent

commissioned sales agents or contractors, would be qualified to receive under paragraph 136(l)(d) of the BIA if the Debtor became bankrupt on the Date of Filing, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approval of the Proposal, together with, in the case of travelling salespersons, disbursements properly incurred by those salespersons in and about the Debtor's business during the same period;

- (mm) "Required Crown Amount" means all amounts outstanding at the time of the filing of the notice of intention to Her Majesty in Right of Canada or a Province and that are of a kind that could be subject to a demand under,
- (i) subsection 224(1.2) of the Income Tax Act;
 - (ii) any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, or an employee's premium, or employer's premium, as defined in the Employment Insurance Act, and of any related interest, penalties or other amounts; or
 - (iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the Income Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
 - (A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act, or
 - (B) is of the same nature as a contribution under the Canada Pension Plan if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;
- (nn) "Sponsor" means Viafoura Technologies Inc., a company existing under the laws of the Province of Ontario;
- (oo) "Tax Loss Variable Note" means the unsecured contingent promissory note to be issued by the Sponsor to Ordinary Creditors in full satisfaction of all Affected Claims, pursuant to this Proposal, substantially in the form attached hereto as Schedule "B";

- (pp) “Trustee” or “Proposal Trustee” means KSV Kofman Inc., or its duly appointed successor or successors;
- (qq) “Unaffected Claims” means the Directors’ Indemnity Claims and the Administrative Fees and Expenses;
- (rr) “Unsecured Creditors” means, collectively, the Preferred Creditors and the Ordinary Creditors; and
- (ss) “Voting Letter” shall mean the voting letter required by Section 51(1) of the BIA to be mailed to each known Creditor prior to the Creditors’ Meeting.

1.2 Articles of Reference

The terms “hereof”, “hereunder”, “herein” and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

1.3 Interpretation Not Affected by Headings

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

1.4 Date for Any Action

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day which is a Business Day.

1.5 Time

All times expressed herein are local time in Toronto, Ontario, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Toronto, Ontario, Canada.

1.6 Numbers, Gender

In the Proposal, where the context requires, a word importing the singular number will include the plural and vice versa and a word or words importing gender will include all genders.

1.7 Currency

Unless otherwise stated herein, all references to currency in the Proposal are to lawful money of Canada.

1.8 Statutory References

Except as otherwise provided herein, any reference in the Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

1.9 Successors and Assigns

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Proposal.

1.10 Schedules

The following are the Schedules to this Proposal:

Schedule "A" - Articles of Reorganization

Schedule "B" – Form of Tax Loss Variable Note

The terms and conditions of the Schedules form an integral part of this Proposal and should be read in conjunction with this Proposal.

ARTICLE 2 PURPOSE OF THE PROPOSAL

2.1 PURPOSE OF THE PROPOSAL

The purpose of this Proposal is to allow the Debtor to effect the restructuring of the indebtedness of the Debtor in the manner contemplated herein and as permitted by the BIA in the expectation that all Affected Creditors will derive greater benefit from the restructuring than they would otherwise receive from a bankruptcy of the Debtor and to provide for:

- (a) the issuance of the Tax Loss Variable Note by the Sponsor to Ordinary Creditors in full satisfaction of all Affected Claims;
- (b) the effective cancellation of all Existing Shares;
- (c) the issuance of New Shares to the Sponsor;

- (d) the payment of the Priority Creditor Cash Amount by the Sponsor to the Trustee in satisfaction of, and for distribution by the Trustee on account of, the Proven Claims of Preferred Creditors (including the Required Employee Amount) and the Required Crown Amount;

The Proposal applies to all Affected Creditors, whether or not any such Affected Creditor proves a Claim against the Debtor under this Proposal. This Proposal does not affect Unaffected Claims.

2.2 Corporate Reorganization

This Proposal contemplates a corporate reorganization of the capital structure of the Debtor in accordance with section 59(4) of the BIA. The Articles of Reorganization attached as Schedule "A" to the Proposal shall, upon Court approval of the Proposal, amend the constating documents of the Debtor to, inter alia, effect the redemption or cancellation of all Existing Shares, and authorize the issuance of a series of New Shares by the Debtor.

ARTICLE 3 CLASSIFICATION OF CREDITORS

3.1 Classes of Creditors

For the purposes of voting on the Proposal, the Creditors of the Debtor shall be comprised of one class of Unsecured Creditors.

ARTICLE 4 TREATMENT OF CREDITORS

4.1 Administrative Fees and Expenses

On the Implementation Date, all Administrative Fees and Expenses incurred to that date which remain unpaid shall be paid by the Sponsor in full in accordance with the BIA from funds delivered to the Trustee in addition to the Priority Creditor Cash Amount.

4.2 Compromise and Satisfaction of Creditor Claims

The Claims of all Affected Creditors shall be compromised on the Implementation Date and thereafter each Affected Creditor with a Proven Claim shall receive the following in full satisfaction of its Proven Claim(s):

- (a) Within ten (10) Business Days of the Ordinary Claim Determination Date, each Ordinary Creditor shall receive its Prescribed Interest in the Tax Loss Variable Note in full satisfaction of all Affected Claims; and
- (b) Within ten (10) Business Days of the Preferred Claim Determination Date, the Proven Claim of each Preferred Creditor (in that capacity), and the

Required Employee Amount and, subject to Section 4.5, the Required Crown Amount shall be paid by the Trustee from the Priority Creditor Cash Amount.

Notwithstanding any other provision hereof, the Ordinary Creditors shall only have recourse to the Tax Loss Variable Note and the payments to be made by the Sponsor thereunder in accordance with the terms of the Tax Loss Variable Note, and Ordinary Creditors shall not be permitted to sue or make any claim against the Debtor, the Sponsor or any other Person for any Claim deficiency remaining after payment of amounts owing under the Tax Loss Variable Note.

4.3 Interest on Claims

Interest will not accrue or be paid on Affected Claims after or in respect of the period following the Date of Filing and no Creditor with an Affected Claim will be entitled to any interest in respect of such Claim accruing on or after or in respect of the period following the Date of Filing.

4.4 Return of Balance of Priority Creditor Cash Amount

To the extent that any excess funds remain in the Priority Creditor Cash Amount after payment in full of the Proven Claims of Preferred Creditors and any Levy thereon, and so long as the Trustee is satisfied that satisfactory arrangements have been made for the payment of Administrative Fees and Expenses to the date of the Trustee's discharge in accordance with Section 7.1, the Trustee shall return such excess funds to the Sponsor within five Business Days of having made the distribution to Preferred Creditors (including the Required Employee Amount) and the Required Crown Amount pursuant to Section 4.2(b) above.

4.5 Required Crown Amount

In the event that the Trustee determines that the Preferred Claim Determination Date will occur more than six (6) months from the date of Court approval of the Proposal, the Required Crown Amount shall be remitted by the Trustee to Her Majesty in Right of Canada from the Priority Claim Cash Amount within six (6) months of the date of Court approval of the Proposal.

4.6 Obligations of the Sponsor

- (a) The Sponsor shall, on or before the Implementation Date:
 - (i) deliver the Priority Creditor Cash Amount to the Trustee;
 - (ii) deliver sufficient additional funds to the Trustee to pay the unpaid Administrative Fees and Expenses incurred to the Implementation Date; and

- (iii) issue the Tax Loss Variable Note to the Ordinary Creditors, subject to the determination by the Trustee of Ordinary Creditors' Prescribed Interest therein on or after the Ordinary Claims Determination Date.
- (b) The Sponsor shall pay to the Trustee all Administrative Fees and Expenses up to and including the date of the Trustee's discharge in accordance with to Section 7.1.

4.7 Superintendent of Bankruptcy Levy

The Office of the Superintendent of Bankruptcy shall be paid its prescribed levy by the Debtor from payments; (i) to Ordinary Creditors under the Tax Loss Variable Note, and (ii) to Preferred Creditors from the Priority Claim Cash Amount, as required by sections 60(4) and 147 of the BIA (the "Levy").

ARTICLE 5 PROCEDURE FOR VALIDATION OF CLAIMS

5.1 Allowance or Disallowance of Claims by the Trustee

Upon receipt of a completed Proof of Claim, the Trustee shall examine the Proof of Claim and shall deal with each claim in accordance with the provisions of the BIA. The Trustee shall have the power and authority to determine the validity of all claims made against the Debtor.

5.2 Claims Bar Process

Forthwith after the Filing Date, the Trustee shall give notice pursuant to section 149 of the BIA, by registered mail, to every Person with an Affected Claim that the Trustee has notice or knowledge but whose claim has not been filed or proved that if such Person does not prove his claim within a period of thirty (30) days after the mailing of the notice, the Trustee will proceed to declare a final list of Prescribed Interests without regard to such Person's claim; the Prescribed Interest referred to in said notice shall be deemed a final dividend and any Person so notified who does not provide its claim within the said thirty (30) day period shall be barred from making a claim in this Proposal or sharing in any dividend or payment hereunder or under the Tax Loss Variable Note, subject to any exceptions set out in subsections 149(2)(3) and (4) of the BIA.

ARTICLE 6 MEETING OF CREDITORS

6.1 Creditors' Meeting

On the Creditors' Meeting Date, the Trustee shall hold the Creditors' Meeting in order for the Creditors to consider and vote upon the Proposal.

6.2 Time and Place of Meeting

The Creditors' Meeting shall be held at a time and place to be established by the Trustee in consultation with Official Receiver, or the nominee thereof, and confirmed in its notice of meeting to be mailed by the Trustee pursuant to the BIA. All Proofs of Claim shall be delivered in accordance with the provisions of the Proposal, the BIA and any Order which may be issued by the Court in respect of the procedure governing the Creditors' Meeting, but in any event shall be no later than twenty-one (21) days following the expiry of the Omnibus Suspension Period, subject at all times to (i) further order of the Court, including without limitation any order respecting COVID-19 related creditor meeting protocols; and (ii) any COVID-19 related creditor meeting directive issued by the Official Receiver.

6.3 Conduct of Meetings

The Official Receiver, or the nominee thereof, shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only Persons entitled to attend the Creditors' Meeting are those Unsecured Creditors, including the holders of proxies, entitled to vote at the Creditors' Meeting and their respective legal counsel, if any, the officers, directors, auditors and legal counsel of the Debtor, one or more representatives of and legal counsel to the Sponsor, together with such representatives of the Trustee as the Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of such meeting. Any other Person may be admitted on invitation of the chair of the Creditors' Meeting or with the consent of the Creditors.

6.4 Adjournment of Meetings

The Creditors' Meeting may be adjourned in accordance with Section 52 of the BIA.

6.5 Voting by Creditors

To the extent provided for herein, each Creditor will be entitled to vote to the extent of the amount which is equal to that Creditor's Proven Claim, or such amount as may be agreed to by the Trustee for voting purposes at or prior to the Creditors' Meeting (dollar amounts to be voted by Creditors in accordance with the foregoing are referred to as "**Voting Claims**").

6.6 Approval by Creditors

In order that the Proposal be binding on the class of Unsecured Creditors in accordance with the BIA, it must first be accepted by a majority in number of the Unsecured Creditors who actually vote upon the Proposal (in person or by proxy) at the Creditors' Meeting or by a Voting Letter, representing two-thirds in value of the Voting Claims of the Unsecured Creditors who actually vote upon the Proposal (whether in person or by proxy) at the Creditors' Meeting or by a Voting Letter.

6.7 Appointment of Inspectors

At the Creditors' Meeting, the Creditors may appoint up to five (5) Inspectors whose powers will be limited to:

- (a) advising the Trustee concerning any dispute which may arise as to the validity of Claims; and
- (b) advising the Trustee from time to time with respect to any other matter that the Trustee may refer to them.

Any decision, direction or act of the Inspectors may be referred to the Court by the Trustee and the Court may confirm, reverse or modify the decision, direction or act and make such order as it thinks just.

The authority and term of office of the Inspectors will terminate upon the performance of the Proposal.

6.8 Valuation of Claims

The procedure for valuing Claims of Creditors and resolving disputes with respect to such Claims will be as set forth in Section 5 and the BIA. The Debtor and/or the Trustee reserve the right to seek the assistance of the Court in valuing the Claim of any Unsecured Creditor, if required, to ascertain the result of any vote on the Proposal or the amount payable or to be distributed to such Unsecured Creditor under the Proposal, as the case may be.

ARTICLE 7 COMPLETION OF THE PROPOSAL

7.1 Discharge of Trustee

Upon distribution by the Trustee of the balance of the Priority Creditor Cash Amount as contemplated in Section 4.2(b), And the Determination of the Prescribed Interests of Ordinary Creditors in the Tax Loss Variable Note following the Ordinary Claim Determination Date, the Trustee shall have discharged its duties as Trustee, the Proposal shall be fully performed and the Trustee shall be entitled to apply for its discharge as Trustee hereunder.

The Trustee is acting in its capacity as Trustee under the BIA and not in its personal capacity and no officer, director, employee or agent of the Trustee shall incur any liabilities or obligations in connection with the Proposal or in respect of the business or obligations of the Debtor or the Sponsor and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful misconduct or gross negligence.

7.2 Completion of The Proposal

The payment, compromise, extinguishment or other satisfaction of any Affected Claim under the Proposal will be binding upon each Affected Creditor, its heirs, executors, administrators, successors and assigns, for all purposes, and as and from the Implementation Date all Affected Claims shall be forever discharged and released, excepting only the obligations to make distributions in respect of such Affected Claims in the manner and to the extent provided for in the Proposal.

ARTICLE 8 PREFERENCES, TRANSFERS AT UNDER VALUE, ETC.

8.1 Sections 95-101 of the BIA

In conformity with Section 101.1 of the BIA, Sections 95-101 of the BIA and any provincial statute related to preference, fraudulent conveyance, transfer at undervalue, or the like shall not apply to this Proposal.

8.2 Recourse

As a result of and in accordance with Section 8.1 hereof and all of the rights, remedies, recourses and Affected Claims described therein:

- (a) all such rights, remedies and recourses and any Affected Claims based thereon shall be completely unavailable to the Trustee or any Creditor against the Company, any other Creditor or any other person whatsoever; and
- (b) the Trustee and all of the Creditors shall be deemed, for all purposes whatsoever, to have irrevocably and unconditionally waived and renounced such rights, remedies and recourses and any Affected Claims based thereon against the Company, any other Creditor or any other persons.

ARTICLE 9 MISCELLANEOUS

9.1 Modification of Proposal

The Debtor, with the consent of the Trustee and the Sponsor, may propose an alteration or modification to the Proposal prior to the conclusion of the first Creditors' Meeting called to consider the Proposal.

9.2 Consents, Waivers and Agreements

As at 12:01 a.m. on the Implementation Date, each Creditor will be deemed to have:

- (a) executed and delivered to the Debtor all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Proposal in its entirety;
- (b) waived any default by the Debtor in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Creditor and the Debtor that has occurred on or prior to the Implementation Date;
- (c) agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Creditor and the Debtor as at the Implementation Date (other than those entered into by the Debtor on, or with effect from, the Implementation Date) and the provisions of the Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly; and
- (d) released the Debtor, the Trustee, the Directors, and all of their respective affiliates, employees, agents, directors, officers, shareholders, advisors, consultants and solicitors from any and all demands, claims, actions, causes of action, counter-claims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein.

9.3 Conditions to Proposal Implementation

The implementation of the Proposal by the Debtor will be conditional upon the fulfilment or satisfaction of the following conditions:

- (a) acceptance of the Proposal by the Unsecured Creditors; and
- (b) approval of the Proposal and the amendments to the Debtor's constating documents as set out in the Articles of Reorganization by the Court pursuant to a final and non-appealable Approval Order;
- (c) The execution of the Tax Loss Variable Note by the Sponsor for delivery to the Ordinary Creditors in accordance with Section 4.2(a); and

- (d) the payment by the Sponsor of the amounts set out in Section 4.6(a).

9.4 Release

Upon the Implementation Date, each and every Director shall be released and discharged from any and all Director Claims. This release shall have no force or effect if the Debtor goes bankrupt before the terms of the Proposal are performed.

9.5 Effect of Proposal Generally

As at 12:01 a.m. on the Implementation Date, the treatment of all Claims under the Proposal shall be final and binding on the Debtor and all Creditors (along with their respective heirs, executors, administrators, legal personal representatives, successors and assigns) and the Proposal shall constitute (i) a full, final and absolute settlement of all rights of the holders of the Claims affected hereby; and (ii) an absolute release and discharge of all indebtedness, liabilities and obligations of the Debtor of or in respect of such Claims.

9.6 Notices

Any notices or communication to be made or given hereunder shall be in writing and shall refer to this Proposal and may, subject as hereinafter provided, be made or given by personal delivery, by prepaid mail or by receipted email (except for Proofs of Claim which may only be sent by personal delivery, receipted email or registered mail) addressed to the respective parties as follows:

- (a) if to the Debtor:

c/o Goldman Sloan Nash & Haber LLP
480 University Avenue, Suite 1600
Toronto, Ontario
M5V 1G2

Attention: Jennifer Stam
email: stam@gsnh.com

- (b) if to a Creditor, to the address or email address for such Creditor specified in the Proof of Claim filed by Creditor or, if no Proof of Claim has been filed, to such other address or email address at which the notifying party may reasonably believe that the Creditor may be contacted; and

- (c) if to the Trustee:

KSV Kofman Inc.
150 King Street West, P.O. Box 42
Toronto Ontario M5H 1J9

Attention: Mitch Vininsky

Email: mvininsky@ksvadvisory.com

or to such other address or email address as any party may from time to time notify the others in accordance with this section. In the event of any strike, lock-out and other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by receipted email and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption will be deemed not to have been given or made. All such notices and communications will be deemed to have been received, in the case of notice by email or by delivery prior to 5:00 p.m. (local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and in the case of notice mailed as aforesaid, on the fifth (5th) Business Day following the date on which such notice or other communication is mailed. The unintentional failure to give a notice contemplated hereunder to any particular Creditor will not invalidate this Proposal or any action taken by any Person pursuant to this Proposal.

9.7 Assignment of Claims

No assignment of a Claim by an Affected Creditor is effective to give the assignee any rights in respect of the Proposal unless written notice of the assignment is given to the Debtor and the Trustee in accordance with the requirements of Section 9.6. The assignment of the Claim will not be effective for a period of five (5) Business Days from the date of effective receipt of the notice of assignment by the Debtor and by Trustee as determined in accordance with Section 9.6.

9.8 Foreign Currency Obligations

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Date of Filing.

9.9 Applicable Law

The Proposal shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

9.10 Non Severability

It is intended that all material provisions of this Proposal shall be fully binding on and effective between all Persons named or referred to in this Proposal and in the event that any material provision or provisions of the Proposal is or are found by the Court to be void, voidable or unenforceable for any reason whatever, then the remainder of this Proposal and all other provisions shall be void and of no force or effect.

9.11 Deeming Provisions

In the Proposal the deeming provisions are not rebuttable and are conclusive and irrevocable.

DATED at the City of Toronto, in the Province of Ontario, this 14th day of May, 2020.

VIAFOURA INC.

Per:



Shahram (Jesse) Moeinifar, Director

Schedule to Articles of Reorganization of Viafoura Inc.

1. to create an unlimited number of shares of a class designated as “New Common Shares”;
2. to change each Common Share, each Seed Preferred Share, each Class A Preferred Share and each Class B Preferred Share into 0.000001 (one one-millionth) of a Redeemable Share;
3. to cancel all options, warrants, convertible instruments and any other rights or interests that are capable of being converted into Common Shares, Seed Preferred Shares, Class A Preferred Shares and Class B Preferred Shares;
4. to remove the authorized but unissued Common Shares, Seed Preferred Shares, Class A Preferred Shares and Class B Preferred Shares and all rights, privileges, restrictions and conditions attaching thereto;
5. to declare that the capital of the Corporation after giving effect to the foregoing shall consist of an unlimited number of New Common Shares and an unlimited number of Redeemable Shares with the rights, privileges, restrictions and conditions set out in these Articles attaching thereto;
6. to change the address of the registered office of the Corporation from 170 University Avenue, Suite 200, Toronto, Ontario M5H 3B3 to 261 Davenport Road, Suite 200, Toronto, Ontario, M5R 1K3.
7. to establish that there shall be a minimum number of one and a maximum number of ten directors of the Corporation and that the number of directors of the Corporation, and the number of directors to be elected at each annual meeting of the shareholders of the Corporation, within the minimum and maximum numbers provided for above, shall be one until otherwise determined by the board of directors;
8. to provide that the issue, transfer or ownership of shares is restricted and the restrictions (if any) are as follows:

The right to transfer shares of the Corporation shall be restricted in that no shares shall be transferred without either: (a) the consent of the directors of the Corporation expressed by a resolution passed by the directors or by an instrument or instruments in writing signed by a majority of the directors, which consent may be given either prior or subsequent to the time of transfer of such shares, or (b) the consent of the holders of shares of the Corporation to which are attached at least a majority of the votes attaching to all shares of the Corporation for the time being outstanding carrying a voting right either under all circumstances or under some circumstances that have occurred and are continuing, expressed by resolution passed by such shareholders or by an instrument or instruments

in writing by such shareholders, which consent may be given either prior or subsequent to the time of transfer of such shares.

9. The rights, privileges, restrictions and conditions attaching to the Redeemable Shares are as follows:
 - (a) **Fractional interest:** No holder of a fractional interest in a Redeemable Share will be entitled to be registered on the books of the Corporation in respect of such fraction of a Redeemable Share.
 - (b) **Redemption by the Corporation:** All of the Redeemable Shares, into which the Common Shares, the Seed Preferred Shares, the Class A Preferred Shares and the Class B Preferred Shares and fractional interests therein outstanding immediately prior to the Effective Time were changed pursuant to the Proposal and the terms hereof, will be deemed to be automatically redeemed by the Corporation as of the Effective Time, without notice to the holders of such Redeemable Shares, on payment, subject to the terms hereof, of \$0.01 for each whole Redeemable Share (such amount being herein referred to as the “**Redemption Price**”). The Corporation will pay or cause to be paid to each holder of Redeemable Shares or fractional interests therein to be redeemed the Redemption Price by cheque, provided that if the aggregate Redemption Price payable to any particular holder is less than \$10.00, the actual Redemption Price payable to each such holder of Redeemable Shares will be deemed to be \$0.00 and the Redeemable Shares or fractional interests therein held by each such holder of Redeemable Shares will be redeemed without any payment or further act or formality by the Corporation or otherwise.
 - (c) **Voting Rights:** The holders of the Redeemable Shares or fractional interests therein will not be entitled to receive notice of or to attend any meeting of the shareholders of the Corporation and will not be entitled to vote at any such meeting.
10. The rights, privileges, restrictions and conditions attaching to the New Common Shares are as follows:
 - (a) **Payment of Dividends:** The holders of the New Common Shares will be entitled to receive dividends if, as and when declared by the board of directors of the Corporation out of the assets of the Corporation properly applicable to the payment of dividends in such amounts and payable in such manner as the board may from time to time determine. Subject to the rights of the holders of any other class of shares of the Corporation entitled to receive dividends in priority to or concurrently with the holders of the New Common Shares, the board may in its sole discretion declare dividends on the New Common Shares to the exclusion of any other class of shares of the Corporation.

- (b) **Participation upon Liquidation, Dissolution or Winding Up:** In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of the New Common Shares will, subject to the rights of the holders of any other class of shares of the Corporation entitled to receive assets of the Corporation upon such a distribution in priority to or concurrently with the holders of the New Common Shares, be entitled to participate in the distribution. Such distribution will be made in equal amounts per share on all the New Common Shares at the time outstanding without preference or distinction.
 - (c) **Voting Rights:** The holders of the New Common Shares will be entitled to receive notice of and to attend all annual and special meetings of the shareholders of the Corporation and to one vote in respect of each New Common Share held at all such meetings.
11. For the purposes of these Articles the following capitalized terms shall have the following respective meanings:
- (a) **“Act”** shall mean the *Business Corporations Act* (Canada), as amended.
 - (b) **“Class A Preferred Shares”** shall mean the Class A Preferred Shares of the Corporation in existence immediately prior to the Effective Time.
 - (c) **“Class B Preferred Shares”** shall mean the Class B Preferred Shares of the Corporation in existence immediately prior to the Effective Time.
 - (d) **“Common Shares”** shall mean the Voting Common Shares and Non-Voting Common Shares of the Corporation in existence immediately prior to the Effective Time. The Common Shares are issuable in one or more series. The first series of Common Shares shall be unlimited in number and shall be designated the “Voting Common Shares”. The second series of Common Shares shall be unlimited in number and shall be designated the “Non-Voting Common Shares”.
 - (e) **“Effective Time”** shall mean 12:01 a.m. on the “Implementation Date” as defined in the Proposal.
 - (f) **“New Common Shares”** shall mean the new common shares of the Corporation.
 - (g) **“Proposal”** shall mean the Proposal pursuant to Part III of the *Bankruptcy and Insolvency Act* (Canada) of the Corporation to all of its Creditors dated May 13, 2020.
 - (h) **“Redeemable Shares”** shall mean the redeemable shares of the Corporation into which the Common Shares, the Seed Preferred Shares,

the Class A Preferred Shares and the Class B Preferred Shares are changed pursuant to the terms hereof.

- (i) “**Seed Preferred Shares**” shall mean the Seed Preferred Shares of the Corporation in existence immediately prior to the Effective Time.

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE LATER OF (I) AUGUST 1, 2020; AND (II) THE DATE THE ISSUER BECAME A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY.

VIAFOURA TECHNOLOGIES INC.

VIAFOURA INC. - TAX LOSS VARIABLE NOTE

Date: [August XX], 2020

Up to a maximum principal amount of \$3,500,000 (Canadian)

1. Preamble

Viafoura Technologies Inc., a corporation organized under the *Business Corporations Act* (Ontario) (“VTI”), proposed a restructuring of 7235712 Canada Inc., formerly Viafoura Inc. (“Viafoura”), a corporation organized under the *Business Corporations Act* (Canada) (“CBCA”), pursuant to a Proposal to Creditors dated May 13, 2020 (the “Proposal”) under the *Bankruptcy and Insolvency Act* (Canada) (the “Restructuring”).

Pursuant to the Restructuring, VTI received all of the issued and outstanding shares of Viafoura, and the Ordinary Creditors of Viafoura received this Tax Loss Variable Note (the “Variable Note”) in full satisfaction of and in exchange for all of their Affected Claims.

Following the Restructuring, VTI and Viafoura intend to amalgamate or otherwise combine (“Amalco”) in order that the accumulated non-capital loss carry-forwards of Viafoura (“NCLs”) can be utilized by Amalco to reduce the future income taxes payable by Amalco.

2. Definitions

For all purposes of this Tax Loss Variable Note, except as otherwise expressly provided or unless the context otherwise requires:

- (a) all accounting terms used herein and not expressly defined herein shall, except as otherwise noted, have the meanings assigned to such terms in accordance with generally accepted accounting principles in Canada, and the term “**generally accepted accounting principles**” or “**GAAP**” means such accounting principles as are generally accepted as they may change from time to time in Canada.
- (b) the words “**herein**,” “**hereof**” and “**hereunder**” and other words of similar import refer to this Variable Note as a whole and not to any particular Article, Section or other subdivision.
- (c) “**Annual Aggregate Note Payment Amount**” means for each Fiscal Year (as defined below), the cash amount equal to 50% of the Tax Savings Cash Proceeds of Amalco for that Fiscal Year, subject at all times to the Maximum Principal Amount.

- (d) **“Change of Control”** shall have the meaning ascribed to it in the CBCA;
- (e) **“Change of Control Prepayment Amount”** means the dollar amount equal to the Maximum Principal Amount less all amounts previously paid to Holders under this Variable Note.
- (f) **“CRA”** means the Canada Revenue Agency.
- (g) **“Final Order”** means (i) an order of a court of competent jurisdiction granting or upholding a Successful Appeal, following the expiry of the applicable appeal period thereof, without appeal; and/or (ii) a withdrawal of a Reassessment by the CRA.
- (h) **“Prescribed Interest”** shall have the meaning in, and be calculated in accordance with, the Proposal.
- (i) **“Reassessment”** means the issuance of a Notice of Reassessment by the CRA to Amalco for any one or more Fiscal Years (as defined below), under which the CRA disallows the deduction of the NCLs in calculating Amalco’s taxable income for such Fiscal Year.
- (j) **“Reassessment Appeal”** means any appeal of or request for review and withdrawal of a Reassessment undertaken by Amalco, in its sole and unfettered discretion.
- (k) **“Reassessment Costs Contribution”** means an amount deducted from the Reassessment Holdback and paid to Amalco on account of 50% of its out of pocket expenses incurred with respect to conducting a Reassessment Appeal that is a Successful Appeal.
- (l) **“Reassessment Holdback”** means the Annual Aggregate Note Payment Amount(s) that would have been payable by Amalco to Holders under the Variable Note after the date of a Reassessment.
- (m) **“Successful Appeal”** means a Reassessment Appeal in respect of which Amalco is successful in obtaining a Final Order overturning a Reassessment.
- (n) **“Tax Savings Cash Proceeds”** means the amount of Canadian federal and provincial income tax that Amalco would have been subject to with respect to each of the fiscal years ended 2021, 2022, 2023, 2024, 2025, 2026, 2027 and 2028 (the **“Fiscal Years”** and each a **“Fiscal Year”**), absent the deduction of the maximum available amount of NCLs in calculating Amalco’s taxable income for each Fiscal Year;
- (o) **“Prepayment Exercise Date”** means a date no earlier than January 1, 2026 and no later than December 31, 2028 upon which Amalco exercises the Prepayment rights under subsections 4(a), (b) or (c) hereof;
- (p) **“Prior Years’ Annual Note Payment Amount”** means the dollar amount equal to the higher Annual Aggregate Note Payment Amount determined for each of the

two Fiscal Years ended immediately preceding the Prepayment Exercise Date. *(By illustrative example, if the 2024 Annual Note Payment Amount is higher than the 2025 Annual Note Payment Amount, for purposes of calculating the 2026 Prepayment Amount, the 2024 Annual Note Payment Amount will be used.)*

- (q) **“2026 Prepayment Amount”** means the lesser of: (i) a dollar amount equal to three times (3x) the Prior Years’ Annual Note Payment Amount; and (ii) the Maximum Principal Amount less all amounts previously paid to Holders under this Variable Note.
- (r) **“2027 Prepayment Amount”** means the lesser of: (i) a dollar amount equal to two times (2x) the Prior Years’ Annual Note Payment Amount; and (ii) the Maximum Principal Amount less all amounts previously paid to Holders under this Variable Note
- (s) **“2028 Prepayment Amount”** means the lesser of: (i) a dollar amount equal to the Prior Years’ Annual Note Payment Amount; and (ii) the Maximum Principal Amount less all amounts previously paid to Holders under this Variable Note

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Proposal.

3. **Maximum Principal Amount and Payment**

- (a) FOR VALUE RECEIVED, VTI for itself and on behalf of Amalco promises to pay to each of the Ordinary Creditors set forth in Schedule “A” attached hereto, or their successors and permitted assigns (collectively, the **“Holders”** and individually, a **“Holder”**), in accordance with their Prescribed Interests set forth in Schedule “A” (**“Interests”**), the Annual Aggregate Note Payment Amount less the Superintendent’s Levy (as defined in Section 11), for each Fiscal Year, up to a maximum aggregate principal amount of the lesser of THREE MILLION, FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000), and the aggregate dollar amount of all Proven Claims of Preferred Creditors and Ordinary Creditors (the **“Maximum Principal Amount”**), subject at all times to the Reassessment Holdback.
- (b) Subject to Section 3(d), each Holder shall be paid its entitlement under this Variable Note (less the Levy amount) by Amalco within 10 Business Days of Amalco receiving its Notice of Assessment from the CRA for the applicable Fiscal Year allowing the deduction of NCLs (**“Payment Date”**). On the Payment Date, Amalco shall provide National Bank of Canada with a copy of its filed CRA tax return and Notice of Assessment for corresponding Fiscal Year, solely for the purpose of National Bank of Canada’s own review.
- (c) Any and all payments made by Amalco to any of the Holders hereunder shall be made contemporaneously and *pro rata* to all Holders without preference or priority of any nature to any one or more Holders. The Interest of each Holder in this

Variable Note shall rank rateably and pari-passu in all respects with the interest of each other Holder herein.

- (d) Notwithstanding Section 3(a), in the event of a Reassessment, Amalco shall maintain a Reassessment Holdback in respect of all amounts otherwise payable to Holders under the Variable Note, which Reassessment Holdback amounts in respect of any Fiscal Year shall only be released to Holders, net of the Reassessment Costs Contribution, in the event of a Final Order in respect of each applicable Fiscal Year. In the event that Amalco determines in its sole discretion to not pursue one or more appeal(s) of a Reassessment in respect of any Fiscal Year, or otherwise fails to obtain a Final Order, the Reassessment Holdback for the applicable Fiscal Year shall be returned to Amalco.

For greater certainty, under no circumstances shall the aggregate payments to the Holders exceed the Maximum Principal Amount (the actual amount owing to the Holders shall be referred to herein as the “**Principal Amount**”).

4. **Permitted Pre-Payments**

(a) At any time following the payment of the Annual Aggregate Note Payment Amount in respect of the Fiscal Year ended 2025, Amalco, in its sole discretion, may pay and satisfy the Annual Aggregate Note Payment Amounts for Fiscal Years 2026, 2027 and 2028, by making a one-time payment to each Holder equal to their Prescribed Interest in the 2026 Prepayment Amount.

(b) At any time following the payment of the Annual Aggregate Note Payment Amount in respect of the Fiscal Year ended 2026, Amalco, in its sole discretion, may pay and satisfy the Annual Aggregate Note Payment amounts for Fiscal Years 2027 and 2028, by making a one-time payment to each Holder equal to their Prescribed Interest in the 2027 Prepayment Amount.

(c) At any time following the payment of the Annual Aggregate Note Payment Amount in respect of the Fiscal Year ended 2027, Amalco, in its sole discretion, may pay and satisfy the Annual Aggregate Note Payment amounts for Fiscal Year 2028, by making a one-time payment to each Holder equal to their Prescribed Interest in the 2028 Prepayment Amount.

(d) At any time, upon the occurrence of a Change in Control of Amalco, Amalco may pay and satisfy all remaining Annual Aggregate Note Payments, by making a one-time payment equal to the Change in Control Prepayment Amount.

Upon payment by Amalco of the amount prescribed under any of Sections 4(a), 4(b), 4(c) or 4(d) above, Amalco shall have satisfied in full all of its obligations under this Variable Note.

5. **Interest**

No interest shall be payable by under the Variable Note.

6. **Place of Payment**

Payments hereunder shall be made by Amalco to each Holder and to the Receiver General with respect to the Levy, by cheque or electronic funds transfer in lawful money of Canada at the respective address set forth on Schedule "A" hereto, or at such other address as may be designated by that Holder in writing.

7. **Transfer**

Neither this Variable Note nor any Interest of any Holder herein may be sold, assigned, pledged, encumbered or in any manner transferred or disposed of, in whole or in part, except to another Holder (which shall only be effective after written notice to Amalco), without the prior written consent of Amalco, and in compliance with applicable securities laws.

The Holder understands that there is not currently, nor is it anticipated that there will be any public market for the Variable Note or Interests therein, and it may not be possible for the Holder to resell or transfer the Variable Note. The Holder has been independently advised as to the restrictions with respect to trading in, and the restricted period or statutory hold period applicable to, the Variable Note imposed by the securities laws of the jurisdiction in which the Holder resides or to which the Holder is subject, that a suitable legend or legends, if required, be placed on the Variable Note to reflect the applicable restricted period and statutory hold period to which the Variable Note interests are subject and it is the responsibility of the Holders to comply with such restrictions before selling or transferring the Variable Notes.

8. **No Security Provided**

This Variable Note shall represent an unsecured obligation of Amalco.

9. **Notice**

Any notice or written communication given pursuant to or in connection with this Variable Note shall be in writing and shall be given by delivering the same personally or by prepaid courier, prepaid registered mail, or read receipted email, addressed to the party to be notified at the address of such party set out in Schedule "A" or at such other address of which such party has given notice to the other party hereto. Any such notice shall be conclusively deemed to have been given and received on the day of actual receipt by the addressee or, if given by prepaid registered or certified mail, on the fifth day following the mailing date (absent a general disruption in postal service).

10. **Amendments with Consent of Majority Holders.**

- (a) Amalco, when authorized by written instrument signed by a majority in number of Holders, representing at least two-thirds in value of the Prescribed Interests, may enter into one or more amendments hereto for the purpose of adding, eliminating or changing any provisions of this Variable Note, even if such addition, elimination or change is in any way adverse to the interests of the Holders. Notwithstanding the foregoing, no portion of Section 3(a) hereof may be amended or deleted without the written authorization of all Holders then holding a Prescribed Interest herein.

- (b) Promptly after the implementation of any amendment to the Variable Note, Amalco shall mail a notice thereof by first-class mail to the Holders at the respective addresses forth on Schedule "A" hereto, setting forth in general terms the substance of such amendment.
- (c) Upon the execution of any amendment under this Section 18, this Variable Note shall be modified in accordance therewith, such amendment shall form a part of this Variable Note for all purposes and every Holder shall be bound thereby.

11. **Superintendent of Bankruptcy Levy**

The payment of the amount due under the Variable note to Holders from time to time shall be subject to the right of the Office of the Superintendent of Bankruptcy Canada (the "**Superintendent**") to first receive payment on account of its statutory Levy pursuant to sections 60(3), (4) and 147 of the *Bankruptcy and Insolvency Act* (Canada). The Superintendent's levy payment amount shall be 5% of the amounts to be paid by Amalco to Holders from time to time, to a maximum amount of \$62,500 (less any other Superintendent levy amounts previously paid under the Proposal) in the aggregate (the "**Superintendent's Levy**").

12. **General Provisions**

- (a) In the event that a Payment Date shall not be a Business Day, then, notwithstanding any provision of this Variable Note to the contrary, any payment required to be made hereunder may be made on the next succeeding Business Day with the same force and effect as if made on the Payment Date.
- (b) Each of the provisions contained in this Variable Note is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.
- (c) This agreement represents the entire understanding of the parties hereto with reference to the Variable Note and supersedes any and all other oral or written agreements made with respect to the Variable Note.
- (d) This Variable Note shall be governed by, and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (other than the conflict of laws rules).
- (e) Each Holder hereby submits to the non-exclusive jurisdiction of the courts of the Province of Ontario in respect of any dispute arising under this Variable Note.
- (f) In this Variable Note, words importing the singular number only shall include the plural and vice versa, and words importing gender shall include all genders.
- (g) This Variable Note shall be binding on VTI, Amalco and its successors, and shall enure to the benefit of the Holders and their successors and assigns.

- (h) This Variable Note may be signed in any number of counterparts (which may be effectively delivered by facsimile or other electronic means), each of which shall be deemed to constitute but one and the same instrument.

13. **Acknowledgments**

VTI ON BEHALF OF ITSELF AND AMALCO WAIVES PRESENTMENT FOR PAYMENT, NOTICE OF NON-PAYMENT, PROTEST AND NOTICE OF PROTEST OF THIS VARIABLE NOTE AND WAIVES EVERY DEFENSE BASED UPON ANY OR ALL INDULGENCES AND FORBEARANCES WHICH MAY BE GRANTED BY THE HOLDERS TO ANY PARTY LIABLE HEREON. THE HOLDERS ACKNOWLEDGE RECEIPT OF A TRUE COPY OF THIS VARIABLE NOTE.

IN WITNESS WHEREOF VTI on behalf of itself and on behalf of Amalco has executed this Variable Note as of the date first above written above.

VIAFOURA TECHNOLOGIES INC.

Per: _____ c/s

Name: Jason Chapnik

Title: Chairman

Schedule "A"
 Holders and Prescribed Interests

Holder	Principal Amount of Determined Claim	Prescribed Interest (expressed as a %)	Registered Address
Superintendent of Bankruptcy	N/A	5%	
TOTAL		100%	

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

Court File No: 31-2590812

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

PROCEEDING COMMENCED AT TORONTO

ORDER

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

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Lawyers for KSV Kofman Inc.