

Court File No. 31-2590812
Estate File No. 31-2590812

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

MOTION RECORD
(Returnable December 3, 2019)

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond F.B. Lamek (LSUC#33338U)
Tel: 416.365.4444
Fax: 416.369.7945
Email: edmond.lamек@dlapiper.com

Danny M. Nunes (LSUC #53802D)
Tel: 416.365.3421
Fax: 416.369.7945
Email: danny.nunes@dlapiper.com

**Lawyers for Viafoura Inc. and Intercap
Equity Inc.**

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OF VIAFOURA INC., OF THE CITY OF TORONTO IN THE PROVINCE OF
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TAB 1

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**

NOTICE OF MOTION

VIAFOURA INC. (the “**Company**”), will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), on Tuesday, December 3, 2019 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario, for an Order, *inter alia*, pursuant to Sections 50.4(9), 50.6 and 64.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order substantially in the form attached at Tab 3 of the Motion Record, among other things:
 - (a) validating and abridging the time and manner of service of the Notice of Motion and Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this Motion is properly returnable on the date scheduled for the hearing of this Motion;

- (b) approving the interim financing revolving credit facility term sheet (the “**DIP Term Sheet**”) between the Company and Intercap Equity Inc. (“**Intercap**”) and granting a charge over all of the Company’s assets, properties and undertakings (the “**Property**”) in favour of Intercap ranking ahead of all other security interests and charges other than the Administration Charge (as defined below) (the “**DIP Charge**”) and the security securing and enabling the continued use of the Company’s corporate VISA cards (the “**TD VISA Security**”);
 - (c) granting a priority charge in the amount of \$200,000 in favour of KSV Kofman Inc. (“**KSV**”), in its capacity as the Company’s proposal trustee (the “**Proposal Trustee**”), counsel to the Proposal Trustee and counsel to the Company, over all of the Company’s Property (the “**Administration Charge**”);
 - (d) extending the time within which the Company is to file a proposal with the Official Receiver under section 62(1) of the BIA to February 13, 2020; and
2. such other and further relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- 3. the Company was incorporated under the *Canada Business Corporations Act* in 2009 and is a software developer focused on helping media, broadcast and entertainment brands better build, manage and monetize their content, audience and data in real time;
- 4. the Company operates from leased premises located in downtown Toronto and presently has 58 full time employees;
- 5. the Company has been experiencing an acute liquidity crisis and recently failed to fund its payroll on November 29, 2019. Without an immediate injection of further funding, the Company will cease operations;
- 6. the Company’s only secured creditors, National Bank of Canada and Espresso Capital, advised that they were not prepared to advance additional funding to the Company and, as such, the Company filed a Notice of Intention to Make a Proposal (the “**NOI**”) on

December 1, 2019 pursuant to Section 50.4(1) of the BIA and entered into the DIP Term Sheet with InterCap;

7. the principal purpose of the NOI proceeding is to create a stabilized environment to allow the Company to complete a restructuring of its balance sheet and to provide the Company with fresh capital to support its business so that it may continue operations on a going concern basis;
8. InterCap, a preferred shareholder of the Company, is prepared to provide up to \$1.0 million in funding to assist the Company with the NOI proceeding and its restructuring;
9. in addition to failing to fund its most recent payroll, the Company is in arrears to certain critical vendors. If the Company is unable to secure immediate funding, its operations will cease and the Company will have no prospect of making a viable proposal or restructuring its business. Furthermore, given the nature of its business, any realization from the sale of the Company's assets in a liquidation would be fairly minimal;
10. it is imperative that the Company secure immediate funding to restore confidence in its business, particularly the confidence of its employees as the failure to do so may result in the departure of certain key employees without whom the Company's future business prospects would be irreparably impaired;
11. it is a condition of the DIP Term Sheet that the Court grant the DIP Charge, subordinate only to the Administration Charge and the TD VISA Security;
12. the granting of the DIP Charge is reasonable in the circumstances to secure the funding necessary for the Company to continue its restructuring efforts;
13. further in that regard, the granting of the Administration Charge is reasonable as the Company will require the participation of its legal counsel, the Proposal Trustee and the Proposal Trustee's legal counsel to assist in the NOI proceedings and it proposes that the Administration Charge be granted by the Court in their favour;
14. at all material times since the filing of the NOI, the Company has acted, and continues to act, in good faith and with due diligence;

15. the current deadline by which the Company must file a proposal with the Official Receiver under the BIA is December 31, 2019;
16. the Company is seeking an extension of the deadline for it to file a proposal with the Official Receiver to February 13, 2020;
17. the Company would likely be able to make a viable proposal if the extension is granted;
18. none of the Company's creditors will be materially prejudiced if the extension is granted;
19. such further and other grounds as set out in the First Report of the Proposal Trustee to be filed (the "**First Report**"); and
20. Rules 1.04, 1.05, 2.01, 2.03, 16 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended.

AND FURTHER TAKE NOTICE that the following materials will be filed in support of the Company's motion, namely:

- (a) the First Report; and
- (b) such further and other material as counsel may advise and this Honourable Court may permit.

December 2, 2019

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond F.B. Lamek (LSO No. 33338U)
Tel: 416.365.3444
Email: edmond.lamek@dlapiper.com

Danny M. Nunes (LSO No. 53802D)
Tel: 416.365.3421
Email: danny.nunes@dlapiper.com

**Lawyers for Viafoura Inc. and Intercap
Equity Inc.**

TO: BORDEN LADNER GERVAIS LLP
World Exchange Plaza,
100 Queen St., Suite 1300,
Ottawa, ON, Canada K1P 1J9

Karen Perron
Email: kperron@blg.com
Tel: 613 369.4795

Hugo Babos Marchand
Email: hbabosmarchand@blg.com
Tel: 514.954.2556

Counsel to National Bank of Canada

AND TO: ESPRESSO CAPITAL LTD
545 King Street West, Suite 300
Toronto, Ontario
M5V 1M1

Alkarim Jivraj, CEO
Email: alkarim@espressocapital.com
Tel: 647.288.3006

AND TO: TORONTO-DOMINION BANK
TD Commercial Banking
TD Bank Tower, 66 Wellington Street West
Toronto Ontario M5K 1E9

Jeffrey Swan
Director, Financial Restructuring Group
Email: jeff.swan@td.com
Tel: 416.308.9215

AND TO: CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit
Email: george@chaitons.com
Tel: 416.218.1141

Counsel to KSV Kofman Inc., Proposal Trustee

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**

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

Proceedings commenced in Toronto

NOTICE OF MOTION

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond F.B. Lamek (LSO No. 33338U)
Tel: 416.365.3444
Email: edmond.lamek@dlapiper.com

Danny M. Nunes (LSO No. 53802D)
Tel: 416.365.3421
Email: danny.nunes@dlapiper.com

Lawyers for Viafoura Inc. and Intercap Equity Inc.

TAB 2



**First Report to Court of
KSV Kofman Inc. as Proposal
Trustee of Viafoura Inc.**

December 2, 2019

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COURT FILE NO.: 31-2590182

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

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

DECEMBER 2, 2019

1.0 Introduction

1. This report ("Report") is filed 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 ("Filing Date") by Viafoura Inc. (the "Company") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("BIA"). A copy of the certificate of filing issued by the Office of the Superintendent of Bankruptcy is provided in Appendix "A".
2. The principal purpose of these proceedings is to create a stabilized environment to allow the Company the opportunity to complete a restructuring and to provide fresh capital to the business so that it can continue to operate on a going-concern basis.
3. KSV was retained on an urgent basis on November 29, 2019. It has worked diligently since that time with representatives of the Company and Intercap Equity Inc. ("Intercap"), a preferred shareholder of the Company, to familiarize itself with the situation.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company;
 - b) report on the Company's weekly cash flow projections for the period November 29, 2019 to January 17, 2020 (the "DIP Loan Forecast");

- c) discuss a proposed debtor-in-possession loan of up to \$1 million (the "DIP Facility") between the Company and InterCap and granting InterCap, as DIP lender, a senior ranking charge (the "DIP Charge") over all of the Company's assets, properties and undertakings (collectively, the "Property") to secure repayment of the amounts borrowed by the Company under the DIP Facility, pursuant to Section 50.6 of the BIA; and
- d) recommend that this Honourable Court make an order:
 - approving the DIP Facility and granting the DIP Charge;
 - granting, pursuant to Section 64.2 of the BIA, a priority charge over the Property in the principal amount of \$200,000 to secure the fees and disbursements of the Proposal Trustee, the Trustee's counsel, Chaitons LLP, and the Company's counsel (the "Administration Charge"); and
 - granting the Company's request for an extension of the time required to file its proposal, from December 31, 2019, the date the current stay expires, to February 13, 2020.

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Company's and InterCap's representatives, the books and records of the Company and discussions with representatives of the Company and InterCap. The Proposal Trustee has not performed an audit or other verification of such information. An examination of the Company's financial forecasts as outlined in the Chartered Professional Accountant Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based on the Company's representative's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

2.0 Background

1. The Company was incorporated under the *Canada Business Corporations Act* on September 2, 2009. The Company was founded by Shahram (Jesse) Moeinifar, the Company's Chief Executive Officer.
2. The Company is a software developer focussed on helping media, broadcast and entertainment brands better build, manage and monetize their content, audience and data in real time.

3. The Company operates from a single location in downtown Toronto and presently has 57 full-time employees. The Company's workforce is not unionized, and it does not provide a pension plan.

2.1 Financial Position

1. The Company's internal and unaudited balance sheet as at September 30, 2019 is provided in Appendix "B". The balance sheet reflects negative retained earnings of \$12.9 million, representing accumulated losses since incorporation (including year-to-date losses).

2.1.1 Assets

1. A summary of the Company's significant assets as at November 29, 2019 is provided below.

Unaudited	\$000s
Cash	55
Accounts receivable	230
Prepaid expenses	235
SR&ED	700
Advance to shareholder	191
FF&E	66
Total	1,477

2. A discussion of each of the assets (other than cash) is provided below:
 - a) Accounts receivable – the receivables balance includes bad debts of \$35,000. The Company invoices its customers for services annually, in advance. Accordingly, receivables are only collectible if the business continues to operate.
 - b) Prepaid expenses – includes insurance and software licenses.
 - c) Scientific Research and Experimental Development ("SR&ED") tax credits – represents an accrual for a tax credit in respect of work performed since January 1, 2019. The Company has not yet filed a SR&ED claim. KSV has not had the chance to consider the collectability of the tax credit; however, significant assistance from individuals familiar with the subject of the tax credits is typically required for these types of credits to be collected. Should the business be discontinued, the ability to recover the tax credit will be impaired.
 - d) Advance to shareholder – represents an amount due from Mr. Moeinifar.
 - e) Furniture, fixtures and equipment – represents the depreciated book value of the Company's computers, office equipment and leasehold improvements.

2.1.2 Liabilities

1. A summary of the Company's creditors as at the Filing Date is provided in the table below.

Unaudited	\$000s
Trade creditors	720
National Bank of Canada ("National Bank")	2,172
Espresso Capital ("Espresso")	864
Total	3,756

2. The Proposal Trustee understands that National Bank and Espresso are the Company's only secured creditors, other than Toronto-Dominion Bank in respect of corporate VISA cards secured by cash collateral and which are required on a post filing basis. The Proposal Trustee further understands that National has advised that it is not prepared to provide additional funding to the Company and Espresso has not committed to make any further advances to the Company.
3. The Company's unsecured creditors include server hosts and software vendors, including Amazon, Twitter and LoginRadius, as well as an unsecured loan from FedDev Ontario in the amount of \$250,000.
4. A copy of the Company's unaudited creditor list is provided in Appendix "C".

3.0 Urgency

1. The Company is without liquidity to continue to operate. It presently has a cash balance of approximately \$55,000. The Company did not fund payroll on November 29, 2019, and without an immediate cash injection, the business of the Company will be permanently discontinued. Significant immediate work is required to restore the loss of employee confidence resulting from missing payroll. The prospects of the business will be irreparably harmed if key employees resign.
2. The Proposal Trustee has been told that National Bank has advised the Company and Intercap that it is not prepared to provide further funding to the business. Intercap is prepared to fund the Company by way of the DIP Facility up to \$1 million under a senior ranking Court-approved debtor-in-possession loan subordinate only to the Administration Charge.
3. The Company has generated losses of approximately \$2.3 million for the year-to-date period ended September 30, 2019. Its monthly cash burn over that period averages approximately \$325,000.

4. The Company, with the assistance of InterCap, has prepared the DIP Loan Forecast for the period ending January 17, 2020 ("Period")¹. The DIP Loan Forecast and the related assumptions, together with Management's Report on the Cash-Flow Statement as required by Section 50.4(2)(c) of the BIA and the Proposal Trustee's Report on the Cash Flow Statement as required by Section 50.4(2)(b) of the BIA, are provided in Appendix "D". The cash flow reflects that the business requires \$450,000 through the Period. InterCap has advised the Proposal Trustee that it is prepared to fund the amounts required under the DIP Facility.

4.0 DIP Facility

1. The Company and InterCap have negotiated a financing agreement ("DIP Loan Agreement"), subject only to Court approval. A copy of the DIP Loan Agreement is provided in Appendix "E". The significant terms of the DIP Loan Agreement² are summarized below.
 - a) Borrower: Viafoura Inc.
 - b) Lender: InterCap
 - c) Availability: lesser of: (i) \$1 million and; (ii) 110% of the Company's then cumulative weekly projected borrowings for the applicable period set out in the Cash Flow.
 - d) Maturity Date: on the earliest of: (i) February 28, 2020, (ii) the Implementation Date; and (iii) such earlier date upon which repayment is required due to the occurrence of an Event of Default.
 - e) Interest: calculated at the rate of the Royal Bank of Canada Prime Rate plus 2% per annum.
 - f) DIP Lender's Charge: all obligations under the DIP Facility are to be secured by the DIP Lender's Charge ranking in priority to all existing security interests and behind only an Administration Charge.
 - g) Use of Proceeds: for the purposes of the short-term liquidity needs of the Company and as approved by the Proposal Trustee, consistent with the restrictions set out in the DIP Loan Agreement and consistent with the Cash Flow Projections in all material respects. Pre-filing amounts may be paid with the prior consent of the Proposal Trustee and the DIP Lender.
 - h) Reporting: to include a weekly report in advance of all planned expenditures in excess of \$500 for the following week, for approval by InterCap and the Proposal Trustee.

¹ The cash flow forecast will be extended to February 14, 2020 to coincide with the requested stay extension date. It will be filed with InterCap and the Office of the Superintendent of Bankruptcy prior to the end of the Period.

² Capitalized terms are as defined in the DIP Loan Agreement.

- i) Conditions: the only significant condition precedent to the DIP Facility is an order approving the DIP Facility and the granting of the DIP Lender's Charge.
- j) Events of Default: the following is a summary of the material Events of Default:
 - i. the entry of an order terminating the proposal proceedings, lifting the stay in the proposal proceedings to permit the enforcement of any security against the Company, or the appointment of a receiver, interim receiver or similar official or the making of a receiving order against the Company, other than in respect of a non-material asset not required for the operations of any of the Company's business and which is subject to a priority Lien;
 - ii. the entry of an order granting any other claim super-priority status or a Lien equal or superior to that granted to Intercap other than with the consent of Intercap;
 - iii. the issuance of an order staying, reversing, vacating or otherwise modifying the DIP Charge or any Orders in a manner which adversely impacts the rights and interests of Intercap;
 - iv. failure of the Company to pay any principal, interest, fees or any other amounts, in each case when due and owing hereunder; and
 - v. failure of the Company to perform or comply with any term or covenant under the DIP Loan Agreement and such default shall continue unremedied for a period of three Business Days.

4.1 Recommendation

1. The Proposal Trustee has considered the factors set out in in Section 50.6(5) of the BIA with respect to the granting of a Court order for interim financing and a charge related thereto. The Proposal Trustee respectfully recommends that the Court make the order sought by the Company for the following reasons:
 - a) the Company's intention is to complete a restructuring and it has been working with Intercap on financial models that underpin the turnaround plan;
 - b) the Company is experiencing a liquidity crisis – it was unable to fund its most recent payroll on November 29, 2019 and is in arrears to certain critical vendors. The Company's operations will be discontinued and the Company will have no prospect of making a viable proposal or restructuring its business if it does not obtain immediate financing;
 - c) the Company does not have the opportunity to source an alternative DIP facility. In respect of the Company's other most likely DIP lenders, being National Bank and Espresso, National Bank has advised the Company and Intercap that it is not prepared to advance further to the Company and Espresso has not committed to make further advances to the Company;

- d) as the Company operates a service business in the information technology sector, its greatest value is as a going concern. In a liquidation, realizations are likely to be insignificant given the nature of the Company's assets, as discussed above;
 - e) it is the Proposal Trustee's view that given the circumstances of this situation, there is no question that the terms of the DIP Facility are within the range of reasonableness, i.e. prime plus 2% with nominal additional fees.
2. Based on the foregoing, the Proposal Trustee recommends that the Court issue an order approving the DIP Facility and granting the DIP Lender a senior ranking charge for amounts advanced under the DIP Facility, subject only to an Administration Charge, as discussed below.

5.0 Administration Charge

1. The Company is seeking an Administration Charge of \$200,000 in respect of the fees and expenses of the professionals incurred in connection with these proceedings. An Administration Charge is a standard feature of restructuring proceedings and is, in the Proposal Trustee's view, appropriate in the present case given the Company's lack of liquidity.
2. The Proposal Trustee understands that Intercap, as DIP Lender, consents to the Administration Charge, as contemplated by the DIP Loan Agreement.

6.0 Company's Request for an Extension

1. The Company is seeking an extension of the time required to file its proposal to February 13, 2020. The principal purpose of doing so at this early stage in the process is to avoid the costs and complications that would arise from a separate motion during the holiday period (December 31st or thereabout) solely to extend the stay. The availability of the Court at that time is also uncertain.
2. The Proposal Trustee supports the Company's request for the following reasons:
 - the Company is acting in good faith and with due diligence, albeit for the few days since the Filing Date;
 - the Company's management has indicated that it may be able to make a viable proposal to its creditors if the extension is granted;
 - Intercap supports the extension – its support is required for the restructuring to have a prospect of success;
 - provided the Court approves the DIP Facility, the extension should not adversely affect or prejudice any group of creditors as the Company is projected to have funding to pay post-filing services and supplies in the amounts contemplated by the Cash Flow; and
 - it would provide the Company the additional time it requires to restructure its affairs.

7.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(d) of this Report.

* * *

All of which is respectfully submitted.



KSV KOFMAN INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL OF
VIAFOURA INC.,
AND NOT IN ITS PERSONAL CAPACITY

Appendix "A"

Appendix "B"

Viafoura Inc.
Balance Sheet
 As of 30 September 2019

30 Sep 19

ASSETS

Current Assets

Chequing/Savings

TD GIC	35,000.00
10100 · TD Business Chequing Acct 4498	81,171.20
10200 · TD USD Chq Acct - 4771	211,360.89
10205 · TD USD Domiciled Acct-3215	1,834.62
10220 · PayPal CAD	8.20
10400 · TD Business Investor 5228655	9.71
10500 · National Bank 00-005-61	10,710.73
10501 · National Bank 00-008-20	8,742.35

Total Chequing/Savings 348,837.70

Accounts Receivable

11000 · Accounts Receivable	113,353.33
11001 · Accounts Receivable - USD	222,437.09
11002 · Accounts Receivable - EUR	1,070.51
11050 · Bad Debt Allowance	(1,506.29)

Total Accounts Receivable 335,354.64

Other Current Assets

11500 · Prepaid Expense	
11503 · LTD Prem Receivable employees	254.83
11500 · Prepaid Expense - Other	237,598.08
Total 11500 · Prepaid Expense	<u>237,852.91</u>
11700 · HST receivable	2,521.06
11750 · SR&ED Tax Credit Receivable	526,120.00
12500 · Advance to Jesse	190,775.69
12600 · Withholding Taxes	2,076.53

Total Other Current Assets 959,346.19

Total Current Assets 1,643,538.53

Fixed Assets

15000 · Furniture and Equipment

15050 · Acc. Amort- Furniture and Equip	(24,606.01)
15000 · Furniture and Equipment - Other	40,539.83

Total 15000 · Furniture and Equipment 15,933.82

15100 · Computer and Software

15150 · Acc. Amort.- Computer and Softw	(121,120.34)
15100 · Computer and Software - Other	168,833.64

Total 15100 · Computer and Software 47,713.30

15900 · Leasehold Improvements

15950 · Acc. Amort. - Leasehold Improve	(3,444.00)
15900 · Leasehold Improvements - Other	5,840.63

Total 15900 · Leasehold Improvements 2,396.63

Total Fixed Assets 66,043.75

TOTAL ASSETS 1,709,582.28

LIABILITIES & EQUITY

Viafoura Inc.
Balance Sheet
 As of 30 September 2019

30 Sep 19

Liabilities

Current Liabilities

Accounts Payable

20000 · Accounts Payable	76,091.72
20001 · Accounts Payable - USD	158,721.11

Total Accounts Payable 234,812.83

Credit Cards

TD Visa - 2301 (R&D)	1,223.21
TD VISA 2277 (Sales)	2,786.80
TD VISA 1995 - Jesse	976.79
TD VISA 7178 - Jesse (IT)	2,285.39
TD VISA 7327 - Jesse (MRKTG)	8,146.83

Total Credit Cards 15,419.02

Other Current Liabilities

20100 · Accrued Expenses	70,629.09
20200 · Short Term Loan	131,287.02
22500 · GST/HST Payable	(14,053.71)
23000 · Payroll Liabilities	(0.01)

24000 · Deferred Subscription Revenue

24100 · Deferred Implementation Revenue	77,655.54
24000 · Deferred Subscription Revenue - Other	1,779,700.16

Total 24000 · Deferred Subscription Revenue 1,857,355.70

24500 · FedDev Loan - Current portion 170,400.00

24510 · Loan Payable - Espresso - SR&ED 837,054.56

24520 · Loan Payable - NBC - SR&ED 534,020.00

24530 · Loan Payable - NBC - Ops 1,645,000.00

Total Other Current Liabilities 5,231,692.65

Total Current Liabilities 5,481,924.50

Long Term Liabilities

25000 · FedDev Loan

25001 · FedDev Loan -Interest Accretion	(24,950.00)
25000 · FedDev Loan - Other	79,250.00

Total 25000 · FedDev Loan 54,300.00

Total Long Term Liabilities 54,300.00

Total Liabilities 5,536,224.50

Equity

30000 · Common Stock 351,554.94

30100 · Capital Stock 1,950,650.27

30110 · Seed Preferred Shares 1,617,786.70

30120 · Class A - Preferred Shares 2,220,191.29

30121 · Class B - Preferred Shares 3,000,000.07

30150 · Issue Cost - Share Capital (37,781.85)

30151 · Issue Cost - Seed Preferred (31,000.00)

30152 · Issue Cost - Class A shares (30,000.00)

30153 · Issue Cost - Class B (126,567.43)

5:23 PM
2019-11-30
Accrual Basis

Viafoura Inc.
Balance Sheet
As of 30 September 2019

	<u>30 Sep 19</u>
30300 · Contributed Surplus	153,563.00
32000 · Retained Earnings	(10,635,637.26)
Net Income	(2,259,401.95)
Total Equity	<u>(3,826,642.22)</u>
TOTAL LIABILITIES & EQUITY	<u><u>1,709,582.28</u></u>

Appendix "C"

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
VIAFOURA INC.**

**Preliminary list of creditors as at December 1, 2019
as submitted by Viafoura Inc., without admission as to any liability or privilege herein shown**

Creditors	Amount due (\$)
<u>Secured</u>	
National Bank Loan	2,171,831.26
Espresso Capital	864,494.56
<u>Unsecured</u>	
ActiveMind Legal	2,761.09
Amazon Web Services	181,218.41
AP Bespoke Consultig Canada Ltd	1,546.69
Cerebral Selling Inc.	27,120.00
Credit Cards - various	16,680.77
Datadog	11,323.04
Federal Development Bank, Ontario	249,650.00
HubSpot	10,408.78
Idea Notion	5,680.13
Keepcon	47,111.36
Lisa Walker Creative	1,130.00
LoginRadius	30,035.40
Michael Shewchenko Group	5,000.00
On The Way cafe Inc.	1,144.44
Osler, Hoskin & Harcourt LLP	11,865.00
Employees - various	53,490.18
Receiver General	24,646.38
SalesForce.com	9,054.44
Themis Solutions Inc.	20,845.22
Twitter International Company	9,250.15

**US dollar amounts were converted to C\$ at 1.35

Appendix "D"

Viafoura Inc.
Projected Statement of Cash Flow
 For the period ending January 17, 2020
 (Unaudited; SC)

Notes	Week Ending						Total	
	06-Dec-19	13-Dec-19	20-Dec-19	27-Dec-19	03-Jan-20	10-Jan-20		17-Jan-20
1	-	-	-	51,265	125,757	146,520	147,312	-
2	-	-	-	-	-	-	-	-
Total Receipts								470,854
Disbursements								
5	65,785	-	-	-	-	59,150	-	124,935
6	217,903	102,832	-	102,832	-	-	9,300	432,868
7	20,845	-	-	-	-	20,845	-	41,690
3	14,500	9,000	9,000	9,000	14,500	14,500	9,000	74,000
4	10,000	10,000	10,000	10,000	10,000	10,000	10,000	70,000
Total Operating Disbursements								743,494
Net Cash Flow before the Undermoted								(272,639)
8	30,000	-	40,000	-	-	40,000	-	150,000
Professional Fees								(422,639)
9	325,000	125,000	-	-	-	-	-	450,000
DIP Advances								
Net Cash Flow								27,361
Opening Cash Balance								55,336
Closing Cash Balance								82,696

The above financial projections are based on management's assumptions detailed in Appendix "1-1".
 The note references correspond to the assumption numbers shown in Appendix "1-1".

KSV KOFMAN INC.
 IN ITS CAPACITY AS TRUSTEE UNDER THE
 NOTICE OF INTENTION TO MAKE A PROPOSAL AND NOT
 IN ITS PERSONAL CAPACITY

VIAFOURA INC.

Per: _____ Date: Dec. 2, 2019

December 2nd 2019
 Date

Purpose and General Assumptions

1. The purpose of the projection is to present a forecast of the cash flow of Viafoura Inc. (the "Company") from November 29, 2019 to January 17, 2020 ("Period") in respect of its proposal proceedings under *The Bankruptcy and Insolvency Act* ("BIA").

The projected cash flow statement has been prepared based on hypothetical and most probable assumptions developed and prepared by the Company.

Hypothetical

2. The Company invoices annually, in advance. This item includes collections of the Company's accounts receivable and future invoices. Collections are based on historical patterns and reflect the Company's payment terms, which are generally 30 days from invoice date.
3. Reflects payment of operating costs, such as contractors for the finance and accounting functions; travel; phone charges; bank charges; supplies; software licenses; and memberships.
4. Represents a provision for miscellaneous expenses

Most Probable

5. Reflects payment of certain services, such as server hosting and third-party software,. These are paid in advance.
6. Reflects payment of gross payroll, which is paid bi-weekly. Commissions and benefits are paid monthly.
7. Reflects payment of rent and utilities at the Company's head office.
8. Reflects the estimated payments to the Proposal Trustee, its counsel and other counsel involved in these proceedings.
9. Represents projected DIP advances during the Period.

**Report on Cash Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the BIA**

The management of Viafoura Inc. (the "Company") has developed the assumptions and prepared the attached statement of projected cash flow of the Company for the period ending January 17, 2020.

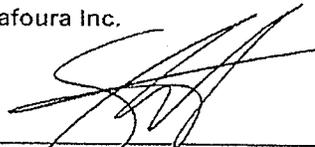
The hypothetical and probable assumptions are suitably supported and consistent with the purpose of the projection and the plans of the Company and provide a reasonable basis for the projection. All such assumptions are disclosed in Notes 2 to 9.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in Note 1, using a set of hypothetical and probable assumptions set out in Notes 2 to 9. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, this 1st day of December, 2019.

Viafoura Inc.



Per: Shahram Moeinifar (Jesse)

Trustee's Report on Cash-flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

The attached statement of projected cash-flow of Viafoura Inc. (the "Company"), as of the 1st day of December, 2019, consisting of a weekly cash flow statement for the period November 29, 2019 to January 17, 2020, has been prepared by the management of the insolvent person for the purpose described in Note 1, using the probable and hypothetical assumptions set out in Notes 2-9.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by the management and employees of the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated this 2nd day of December, 2019.

KSY KOFMAN INC.
TRUSTEE

Per: Robert Kofman

Appendix “E”

BANKRUPTCY AND INSOLVENCY ACT SECTION 50.6

INTERIM FINANCING REVOLVING CREDIT FACILITY TERM SHEET

Dated December 2, 2019

WHEREAS, Viafoura Inc. has requested that the Lender (as defined below) provide it with an interim revolving credit facility (the “**Interim Facility**”) in order to assist with the restructuring of the obligations of Viafoura Inc. pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) in accordance with the terms set out herein;

NOW THEREFORE, the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

BORROWER: Viafoura Inc. (the “**Borrower**”)

LENDER: Intercap Equity Inc. (“**Intercap**” or the “**Lender**”).

PURPOSE/USE OF PROCEEDS: The proceeds of any advance made under the Interim Facility (an “**Advance**”) will be used (i) to pay transaction costs, fees and expenses which are incurred in connection with the Interim Facility; (ii) to pay the costs, fees and expenses which are incurred in connection with the Borrower’s BIA proposal proceedings; (iii) for the Borrower’s working capital; and (iv) for other general corporate purposes.

MAXIMUM AMOUNT: The maximum amount (“**Maximum Amount**”) available under the Interim Facility from time to time shall be the lesser of: (i) Cdn.\$1,000,000 and; (ii) 110% of the Borrower’s then cumulative weekly projected Interim Facility borrowings for the applicable period set out in the Cash Flow Projections (as hereinafter defined) as the line referred to as “Interim Financing Requirement”.

MATURITY DATE: The earliest of: (i) February 28, 2020, (ii) the Implementation Date; and (iii) such earlier date (the “**Termination Date**”) upon which repayment is required due to the occurrence of an Event of Default (as defined below) (the “**Maturity Date**”).

The Maturity Date may be extended at the request of the Borrower and with the consent of the Lender at its sole discretion for additional periods of not more than 30 days and upon payment of any applicable Extension Fee (as defined below), on such additional terms and conditions as the Borrower and Lender may agree.

The commitment in respect of the Interim Facility shall expire on the Maturity Date and all amounts outstanding under the Interim Facility shall be repaid in full no later than the Maturity Date without the Lender being required to make demand upon the Borrower or to give notice that the Interim Facility has expired

and the obligations are due and payable.

INTERIM FACILITY:

The Interim Facility shall be a revolving credit facility up to the Maximum Amount, and shall be available subject to and upon the terms and conditions set out in this Term Sheet (the "**Term Sheet**"). Advances shall be requested by the Borrower in increments of not less than \$25,000 pursuant to written drawdown requests made by the Borrower ("**Drawdown Requests**") to the Lender. Advances shall be deposited by the Lender into the Borrower's existing accounts with Toronto-Dominion Bank (the "**Borrower's Accounts**") and withdrawn by the Borrower strictly in accordance with the terms hereof and the Cash Flow Projections.

Funding Conditions:

(i) the Borrower shall have filed a Notice of Intention to make a Proposal ("**NOI**") under section 50.4(9) of the BIA naming KSV Kofman Inc as trustee (the "**Trustee**") (the date of such initial filing is referred to as the "**Filing Date**");

(ii) The Borrower shall have duly executed this Term Sheet, and the General Security Agreement in favour of the Lender;

(ii) the Court enters an order authorizing the Borrower to enter into the Term Sheet, approving the terms of the Interim Facility, and granting the Lender a charge over the assets of the Borrower ranking in priority to all existing security interests and behind only an administration charge under section 64.2 of the BIA in favour of the Borrower's lawyers, the Trustee and its lawyers (the "**Administration Charge**"), and the security securing and enabling the continued use of the Company's corporate VISA cards (the "**TD VISA Security**"), in form and substance acceptable to the Lender in its sole and absolute discretion (the "**Interim Facility Approval Order**"), and

(iii) The Borrower shall have provided to the Lender prior to December 7, 2019, in form and substance satisfactory to the Lender, the cash flow projections (the "**Cash Flow Projections**") required by the BIA and the Trustee, reflecting the projected cash requirements of the Borrower from the Filing Date through the eleven week period following the Filing Date, calculated on a weekly basis. The expenditures set out in the Cash Flow Projections may be amended by the Borrower from time to time only on the written consent of the Lender. To the extent that the Maturity Date is extended pursuant to this Term Sheet, the Cash Flow Projections with respect to such period shall be provided to the Lender in form and substance satisfactory to the Lender.

The Lender shall fund Interim Facility Advances (as defined below) on the terms and conditions set out in this Term Sheet (the “**Interim Facility Funding**”); *provided, however*, that the Lender shall not be obligated to provide any Interim Facility Funding or further Interim Facility Funding if any one or more of the following occurs: (a) the Interim Facility Approval Order has been vacated, stayed or otherwise caused to become ineffective or is amended in a manner not acceptable to the Lender (such consent not to be unreasonably withheld where any such amendment does not pertain to the Interim Facility), (b) a Default or Event of Default has occurred and is continuing under the Interim Facility, or (c) the Court has not entered the Interim Facility Approval Order on or before December 6, 2019.

CASH MANAGEMENT SYSTEM:

The parties understand and agree that, subject to the Cash Flow Projections and other limitations set forth herein, the Borrower only may request and apply Interim Funding through a cash management system to be agreed to by the Borrower and the Lender on or before the initial drawdown of any amounts under the Interim Facility.

AVAILABILITY UNDER INTERIM FACILITY:

The Interim Facility is to operate as a revolving facility and the amount of any advance under the Interim Facility (an “**Advance**”) that is repaid may be reborrowed thereunder, subject to the other provisions of this Term Sheet. The aggregate amount of all Advances outstanding under the Interim Facility shall not at any time exceed the Maximum Amount.

INTEREST RATE:

The Royal Bank of Canada Prime Rate (as defined below) + 2% *per annum*. Interest on Advances, without duplication, shall be payable monthly in arrears on the last Business Day of each month. Such interest payment shall constitute an Advance under the Interim Facility to the extent that there are insufficient funds on deposit to pay such interest.

Interest shall be calculated daily for the actual number of days elapsed in the period during which it accrues based on a year of 365/366 days, as applicable.

If any provision of this Term Sheet would obligate the Borrower to make any payment of interest or other amount payable to the Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Lender of interest at a criminal rate (as construed under the *Criminal Code* (Canada)), then notwithstanding that provision, that amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or result in a receipt by the Lender of interest at a criminal rate, the adjustment to be effected,

to the extent necessary, as follows:

- (a) firstly, by reducing the amount or rate of interest required to be paid to the Lender under this provision; and
- (b) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to the Lender which would constitute interest for purposes of Section 347 of the *Criminal Code* (Canada).

LENDER EXPENSES

Subject to the Cash Flow Projections, the Borrower shall pay when presented, all invoices, accounts and Lender reimbursement requests on account of the Lender's legal fees and disbursements, and other costs and expenses incurred by the Lender in respect of the Interim Facility and the Borrower's BIA Proposal proceedings generally (collectively "**Expenses**").

EXTENSION FEE:

1.0% of the Maximum Amount shall be payable to the Lender upon the Lender's consent to each extension of the Maturity Date beyond January 30, 2020.

LENDER SECURITY:

- (i) All obligations of the Borrower shall be:
 - (a) secured by a General Security Agreement to be granted by the Borrower in favour of the Lender in form and substance satisfactory to the Lender (the "**GSA**") and such other security documentation and ancillary documentation as may be required by the Lender to be executed by the Borrower in respect of its obligations under the Term Sheet and the GSA (the "**Credit Documentation**"); and
 - (b) secured by a super priority charge over all present and after acquired property, assets and undertakings of the Borrower and ahead of and senior to all other creditors, interest holders, lien holders, and claimants of any kind whatsoever (subject to the Administration Charge and TD Visa Security) pursuant to a court ordered charge under section 50.6 of the BIA (the "**Priority Charge**" and together with the Credit Documentation, the "**Lender Security**").

MANDATORY REPAYMENTS:

Advances to the Borrower shall be repaid and the Maximum Amount shall be permanently reduced upon a sale of any of the property, assets or undertakings of the Borrower or any Guarantor out of the ordinary course of business, in an amount equal to the net cash proceeds (for greater certainty, net of a one-time cash reserve on account of reasonable proposal administration expenses to be held by the Proposal Trustee, reasonable costs and closing adjustments), unless agreed otherwise with the prior written consent of the Lender or unless the amount in question in any one transaction or series of transactions is less than Cdn.\$25,000 and

in all such transactions is less than Cdn.\$50,000, in which event only the excess shall be subject to a permanent reduction as aforesaid.

So long as any Advances remain outstanding, the maximum amount of cash and cash equivalents which the Borrower or the Guarantors may hold in the Borrower's Accounts or otherwise in any other bank accounts as at the close of business on Friday of each week shall not exceed Cdn. \$100,000. To the extent that the cash and cash equivalents are in excess of such limit, on the next Business Day, the Borrower shall make a repayment of the Advances in an amount sufficient to eliminate such excess.

REPRESENTATIONS AND WARRANTIES:

1. The Borrower represents and warrants to the Lender, upon which the Lender relies in entering into this Term Sheet and the other Credit Documentation, that:
 - (a) the transactions contemplated by this Term Sheet or the Credit Documentation:
 - (i) are within the powers of the Borrower;
 - (ii) have been duly authorized by all necessary corporate approval;
 - (iii) have been duly executed and delivered by or on behalf of the Borrower;
 - (iv) constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their terms;
 - (v) do not require the consent or approval of, registration or filing with, or any other action by, any governmental authority, other than filings which may be made to register or otherwise record the Lender Security; and
 - (vi) will not violate the charter documents or bylaws of the Borrower who have executed such documents or any applicable law relating to such parties;

AFFIRMATIVE COVENANTS:

The Borrower covenants and agrees, to do the following (these covenants may be in the Credit Documentation or in the Interim Facility Approval Order, as appropriate):

1. Allow the Lender and Trustee full access to the books and records of the Borrower on reasonable notice and during normal business hours and cause management thereof to fully co-operate with the Lender.
2. Provide to the Lender and Trustee a weekly status update and plan regarding the restructuring process (including reports on the progress including information which may otherwise be confidential subject to same being maintained as confidential, by the Lender, subject to usual exceptions).
3. Use reasonable efforts to keep the Lender and Trustee apprised on a timely basis of all material developments with respect to the business and affairs of the Borrower.
4. Deliver to the Lender and Trustee the reporting and other information from time to time reasonably requested by the Lender at the reasonable times requested and in form and substance satisfactory to the Lender.
5. Use the proceeds of the Interim Facility only for the purposes of the short-term liquidity needs of the Borrower and as approved by the Trustee, consistent with the restrictions set out herein and consistent with the Cash Flow Projections in all material respects.
6. Provide to the Lender with the following:
Weekly (by 12:00 noon on the 3rd business day of each week:
for the preceding week:
 - (i) a statement of receipts and disbursements for each week, including a variance analysis for all variances (favourable or unfavourable) of greater than 10% for any one line item (on a weekly and cumulative basis), including bank reconciliations for all bank accounts;
 - (ii) statement of billed accounts receivable, accrued work in process; accounts payable and statutory prior claims;
 - (iii) revised / updated weekly cash flow forecast (for monitoring purposes only, not for the purpose of re-establishing cash flow covenants under the Interim Facility);
 - (iv) schedule of weekly revenues;

(vi) report by management of any business issues which may unfavourably impact the business of the Borrower, such as issues with current or future customers, suppliers, contractors, employees, or government bodies or regulatory agencies;

(vii) calculation of the Maximum Amount as at the close of business on the final Business Day of the week; and

for the following week:

(i) a report of all planned expenditures in excess of \$500, for approval by the Interim Lender (the "Weekly Expenditure Report");

7. Maintain all cash and cash equivalents, and deposit all proceeds of receivables of the Borrower, with their current account(s) at Toronto-Dominion Bank, or with such institutions and accounts as may be approved in advance in writing by the Lender.
8. Operate the Borrower's businesses in the ordinary course of business, subject always to the BIA, the Proposal, the Cash Flow Projections and Weekly Expenditure Reports delivered to and previously approved by the Lender, and to the credit limits established under the Interim Facility as set out hereunder.
9. Preserve, renew and keep in full force its respective corporate existences, its respective material licenses, etc.
10. Forthwith notify the Lender of the occurrence of any Default or Event of Default, or of any event or circumstance that may constitute a material adverse change from the Cash Flow Projections.
11. Maintain at all times acceptable insurance coverage of such type, in such amounts and against such risks as is prudent for a business of an established reputation with financially sound and reputable insurers in coverage and scope acceptable to the Lender.
12. Duly and punctually pay or cause to be paid to the Lender all principal, interest, fees and other amounts payable by it under this Term Sheet and under any other Credit Documentation on the dates, at the places and in the amounts and manner set forth herein.
13. Comply in all material respects with all applicable laws, rules and regulations applicable to their businesses,

including, without limitation, environmental laws.

14. Negotiate, execute and deliver the GSA, in form and substance satisfactory to the Lender.

NEGATIVE COVENANTS:

The Borrower covenants and agrees, and covenants and agrees not to do the following (these covenants may be in the Credit Documentation or in the Interim Facility Approval Order, as appropriate) other than with the prior written consent of the Lender:

1. Transfer, lease or otherwise dispose of all or any part of its property, assets or undertaking over Cdn.\$5,000 at any one time or through a series of related transactions, or more than Cdn.\$10,000 in the aggregate during the period of the Interim Facility (excluding dispositions in the ordinary course of business), without the prior written consent of the Lender. For greater certainty, in the case of any transfer, lease or disposition of any property, assets or undertaking of the Borrower all proceeds of such transfer, lease or disposition shall be subject to the provisions herein under "**Mandatory Repayments**" to the extent applicable.
2. Enter into any transaction with any affiliate or subsidiary or any of its or their directors or senior or executive officers or senior management, or enter into or assume any employment, consulting or analogous agreement or arrangement with any of its or their directors or senior or executive officers or senior management, or make any payment to any of its or their directors or senior or executive officers or senior management, except in respect of a transaction or agreement or arrangement which is in the ordinary course of business of the Borrower and which is upon fair and reasonable terms no less favourable to the Borrower than it would obtain in a comparable arm's-length transaction.
3. Make any investments or acquisitions of any kind, direct or indirect, in any business or otherwise where to do so would be materially inconsistent with the Cash Flow Projections.
4. Make any payments outside the ordinary course of business, subject always to the Cash Flow Projections, the Weekly Expenditure Reports, and to the maximum availability under the Interim Facility. For greater certainty, payments may only be made to reduce any existing (pre-filing) indebtedness or trade or unsecured liabilities of the Borrower (other than as required by law including, without limitation, the Interim Facility Approval

Order) with the prior approval of the Interim Lender and the Trustee.

5. Make any payments on account of new retainers (other than retainers relating to amounts constituting Administrative Fees and Expenses as defined in the Proposal) or establish or create any trust accounts.
6. Permit any new Liens to exist on any of its properties or assets other than the Priority Charge, Liens in favour of the Lender as contemplated by this Term Sheet and other Credit Documentation and inchoate and statutory Liens.
7. Amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity.

EVENTS OF DEFAULT:

The occurrence of any one or more of the following events shall constitute an event of default ("**Event of Default**") under this Term Sheet:

- (a) the entry of an order terminating the Borrower's BIA Proposal proceedings, lifting the stay in the BIA Proposal proceedings to permit the enforcement of any security against the Borrower, or the appointment of a receiver, interim receiver or similar official or the making of a receiving order against the Borrower, other than in respect of a non-material asset not required for the operations of any of the Borrower's businesses and which is subject to a priority Lien;
- (b) the entry of an order granting any other claim superpriority status or a Lien equal or superior to that granted to the Lender other than with the consent of the Lender;
- (c) the entry of an order staying, reversing, vacating or otherwise modifying the Credit Documentation, the Interim Facility Approval Order or the entry of an order by the Court having the equivalent effect, without the prior written consent of the Lender;
- (d) failure of the Borrower to pay (A) interest or fees when due under the Term Sheet or any other Credit Documentation, (B) principal when due under the Interim Facility, or (C) legal and advisor fees of the Lender within three Business Days of being invoiced therefore;
- (e) failure of the Borrower to comply with any

negative covenants in this Term Sheet or any other Credit Documentation where such failure has continued for more than three Business Days after written notice thereof from the Lender to the Borrower;

- (f) failure of the Borrower to perform or comply with any term or covenant under this Term Sheet or any other Credit Documentation and such default shall continue unremedied for a period of three Business Days;
- (g) the Borrower ceases or threaten to cease to carry on business in the ordinary course, except where such cessation occurs in connection with a sale of all or substantially all of the assets of the Borrower or other restructuring or reorganization of the Borrower which has been consented to by the Lender;
- (h) any representation or warranty by the Borrower shall be incorrect or misleading in any material respect when made where such failure is continuing more than three Business Days after written notice thereof from the Lender to the Borrower;
- (i) borrowings under the Interim Facility exceed the Maximum Amount;
- (j) the expenditure by the Borrower of any amount in excess of \$500 that has not been disclosed in a Weekly Expenditure Report, and received the prior approval of the Interim Lender; and
- (k) the payment by the Borrower of amounts in excess of 15% of any weekly budgeted amounts reflected on the Cash Flow Projections, which have not been consented to by the Lender, or which have not been offset by a corresponding reduction in amounts paid by the Borrower in the immediately subsequent week;

REMEDIES:

Upon the occurrence of an Event of Default, the Lender may (i) immediately terminate its total Interim Facility commitment, (ii) declare the obligations in respect of the Credit Documentation to be immediately due and payable, (iii) apply to a court for the appointment of an interim receiver or a receiver and manager of the undertaking, property and assets of the Borrower and/or the Guarantors, or for the appointment of a trustee in bankruptcy of

any of the Borrower, (iv) exercise the powers and rights of a secured party under the *Personal Property Security Act* (Ontario) or any legislation of similar effect applicable to the Lender's Security, and (v) exercise all such other rights and remedies under the Credit Documentation and the Interim Facility Approval Order. The Lender shall have customary remedies under the Credit Documentation including, but not limited to, the right to realize on all or part of the Lender's Security without the necessity of obtaining further relief or order from the Court.

LENDER APPROVALS:

Any consent, approval (including, without limitation, any approval of or authorization for any waiver under or any amendment to any of the Credit Documentation), instruction or other expression of the Lender under any of the Credit Documentation may be obtained by an instrument in writing signed by the Lender.

FURTHER ASSURANCES:

The Borrower shall at its expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the Lender may reasonably request for the purpose of giving effect to this Term Sheet and the Lender Security, perfecting, protecting and maintaining the Liens created by the Lender Security or establishing compliance with the representations, warranties and conditions of this Term Sheet or any other Credit Documentation.

**ENTIRE AGREEMENT;
CONFLICT:**

This Term Sheet, including the Schedules hereto and the Credit Documentation, constitutes the entire agreement between the parties relating to the subject matter hereof. To the extent that there is any inconsistency between this Term Sheet and any of the other Credit Documentation, this Term Sheet shall govern. In the event of any inconsistency between any Credit Documentation and the Interim Facility Approval Order, the Interim Facility Approval Order shall govern.

**AMENDMENTS, WAIVERS,
ETC.:**

No waiver or delay on the part of the Lender in exercising any right or privilege hereunder or under any other Credit Documentation will operate as a waiver hereof or thereof unless made in writing and signed by an authorized officer of the Lender.

SEVERABILITY:

Any provision in any Credit Documentation which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**COUNTERPARTS AND
FACSIMILE SIGNATURES:**

This Term Sheet may be executed in any number of counterparts and by facsimile, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this Term Sheet by signing any counterpart of it.

**GOVERNING LAW AND
JURISDICTION:**

This Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Borrower irrevocably submits to the non-exclusive courts of the Province of Ontario, waives any objections on the ground of venue or forum non conveniens or any similar grounds, and consents to service of process by mail or in any other manner permitted by relevant law.

ADDITIONAL DEFINITIONS:

Capitalized terms not otherwise defined herein shall have the following meanings:

“**Business Day**” means each day other than a Saturday or Sunday or a statutory or civic holiday that banks are open for business in Toronto, Ontario, Canada;

“**Default**” means an event which, with the giving of notice and/or lapse of time would constitute an Event of Default (as defined herein);

“**Implementation Date**” means the date upon which all conditions precedent to the implementation of the Proposal have been satisfied;

“**Liens**” means all mortgages, charges, encumbrances, hypothecs, liens and security interests of any kind or nature whatsoever;

“**Prime Rate**” means the rate of interest per annum (calculated on the basis of a year of 365/366 days, as applicable) from time to time declared by Royal Bank of Canada as its prime interest rate for Canadian dollar demand commercial loans made by it in Canada as adjusted from time to time; and

“**Proposal**” means a proposal to creditors filed, or to be filed, by the Borrower in the within proceedings, pursuant to section 62(1) of the BIA.

IN WITNESS HEREOF, the parties hereby execute this Term Sheet as at December 2, 2019.

VIAFOURA INC., as Borrower

By: _____
Name: _____
Title: _____

INTERCAP EQUITY INC., as Lender

By: _____
Name: _____
Title: _____

TAB 3

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

THE HONOURABLE) TUESDAY, THE 3RD
)
MR. JUSTICE MCEWEN) DAY OF DECEMBER, 2019

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

AND IN THE MATTER OF THE PROPOSAL OF VIAFOURA INC.
OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

INTERIM FACILITY APPROVAL ORDER

THIS MOTION, made by Viafoura Inc. (the "**Company**"), pursuant to section 50.6 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the first report of KSV Kofman Inc. in its capacity as Proposal Trustee, dated December 2, 2019 (the "**First Report**"); and, on hearing the submissions of counsel for the Company and Intercap Equity Inc., counsel for the Proposal Trustee, counsel for ♦, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of ♦ sworn December 2, 2019, filed:

SERVICE

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

INTERIM FINANCING

2. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to obtain and borrow under a credit facility from Intercap Equity Inc. (the "**Interim**

- Lender**") in order to finance the Company's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed the principal amount of \$1,000,000 unless permitted by further Order of this Court.
3. **THIS COURT ORDERS THAT** the Interim Facility shall be on the terms and subject to the conditions set forth in the term sheet between the Company and the Interim Lender dated as of December 2, 2019 (the "**Term Sheet**"), filed, which Term Sheet is hereby approved.
 4. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Term Sheet or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Company is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Term Sheet and the Definitive Documents (the "**Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order or the BIA.
 5. **THIS COURT ORDERS** that the Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Financing Charge**") on all of the Company's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the "**Property**"), as security for the Obligations, and for greater certainty which Interim Financing Charge shall not secure any obligation of the Company to the Interim Lender that existed prior to the commencement of these proceedings. The Interim Financing Charge shall have the priority set out in paragraph 10 hereof.
 6. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:
 - (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Financing Charge or any of the Definitive Documents;

- (b) upon the occurrence of an event of default under the Definitive Documents or the Interim Financing Charge, the Interim Lender, upon three (3) days' notice to the Company and the Proposal Trustee, may exercise any and all of its rights and remedies against the Company or the Property under or pursuant to the Term Sheet, Definitive Documents and the Interim Financing Charge, including without limitation, to cease making advances to the Company, to seize and retain proceeds from the sale of the Property and the cash flow of the Company to repay amounts owing to the Interim Lender, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Company; and
 - (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Company or the Property.
7. **THIS COURT ORDERS AND DECLARES** that the Company shall grant to the Interim Lender and/or its designates clear and unfettered access to the books and records of the Company and its subsidiaries, and provide to the Interim Lender and/or its designates such other information as the Interim Lender and/or its designates deem necessary or desirable.
8. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed the amount of \$200,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 10 hereof.

VALIDITY AND PRIORITY OF THE CHARGES CREATED BY THIS ORDER

9. **THIS COURT ORDERS** that the filing, registration or perfection of the Interim Financing Charge and the Administration Charge (together, the “**Charges**”) shall not be required and that the Charges shall be valid and enforceable for all purposes,

including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

10. **THIS COURT ORDERS** that the Administration Charge shall rank in priority to the Interim Facility Charge. The Charges shall rank in priority as against all other validly perfected security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, granted by the Company or to which the Company is subject (together, the "**Encumbrances**") as of the date of this Order, in favour of any person or entity (a "**Person**"), other than any Encumbrances arising by operation of, and given priority over the Interim Financing Charge by, any applicable statutory law.
11. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Company also obtains the prior written consent of the Proposal Trustee and the Interim Lender, or further Order of this Court.
12. **THIS COURT ORDERS** that the Term Sheet, the Definitive Documents and the Interim Financing Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Interim Lender thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application for bankruptcy order issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the initiation of any other proceedings under the BIA; (e) the initiation of any proceedings under the CCAA; (f) the provisions of any federal or provincial statutes; or (g) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Company, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Interim Financing Charge nor the execution, delivery, perfection, registration or performance of the Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
 - (b) the Interim Lender shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Company entering into the Term Sheet, the creation of the Interim Financing Charge, or the execution, delivery or performance of the Definitive Documents; and
 - (c) the payments made by the Company pursuant to this Order, the Term Sheet or the Definitive Documents, and the granting of the Interim Financing Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, settlements or other challengeable or voidable transactions under any applicable law.
13. **THIS COURT ORDERS** that the Charges created by this Order, insofar as it is a charge over leases of real property in Canada shall only be a charge in the Company's interest in such real property leases.

EXTENSION OF TIME TO FILE A PROPOSAL

14. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the BIA, the time for the Company to file a proposal with the Official Receiver be and is hereby extended to February 13, 2020.

GENERAL

15. **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 Company, the Proposal Trustee and their respective 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 Company and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign

proceeding, or to assist the Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that each of the Company, the Proposal Trustee and the Interim Lender be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having this Order or these proceedings recognized in a jurisdiction outside Canada.
 17. **THIS COURT ORDERS** that any interested party (including the Company and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
-

Court File No. 31-2590812
Estate File No. 31-2590812

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**

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

Proceedings commenced in Toronto

INTERIM FACILITY APPROVAL ORDER

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond F.B. Lamek (LSO No. 33338U)
Tel: 416.365.3444
Email: edmond.lamek@dlapiper.com

Danny M. Nunes (LSO No. 53802D)
Tel: 416.365.3421
Email: danny.nunes@dlapiper.com

Lawyers for Viafoura Inc. and Intercep Equity Inc.

Court File No. 31-2590812
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**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
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
[COMMERCIAL LIST]**

Proceedings commenced in Toronto

**MOTION RECORD
(returnable December 3, 2019)**

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond F.B. Lamek (LSO No. 33338U)
Tel: 416.365.3444
Email: edmond.lamek@dlapiper.com

Danny M. Nunes (LSO No. 53802D)
Tel: 416.365.3421
Email: danny.nunes@dlapiper.com

Lawyers for Viafoura Inc. and Intercap Equity Inc.