



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

March 16, 2020

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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

THIRD REPORT TO COURT OF
KSV KOFMAN INC. AS PROPOSAL TRUSTEE

MARCH 16, 2020

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 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").
2. Pursuant to an Order of the Ontario Superior Court of Justice ("Court") made February 10, 2020 ("February 10th Order"):
 - a) the maximum amount available under the Court-approved interim financing revolving credit facility (the "DIP Facility") between the Company and InterCap Equity Inc. ("InterCap"), a preferred shareholder of the Company, was increased from \$1 million to \$1.7 million;
 - b) a stalking horse sale process (the "Sale Process") was approved;
 - c) a stalking horse offer made by InterCap pursuant to an agreement of purchase and sale dated January 28, 2020 (the "Stalking Horse Agreement") was approved as the stalking horse bid in the Sale Process; however, the purchase price of the offer and certain other terms were to be redacted and not disclosed, including to prospective purchasers; and
 - d) the stay of proceedings was extended to March 30, 2020.

3. A copy of the February 10th Order is attached as Appendix “A”. A copy of the Endorsement of Justice McEwen dated February 10, 2020 (the “February 10th Endorsement”) is attached as Appendix “B”.
4. The principal purpose of this proceeding is to create a stabilized environment to allow the Company the opportunity to complete a restructuring and to provide liquidity to the business so that it can continue to operate on a going-concern basis while the restructuring process is conducted.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company;
 - b) summarize the results of the Sale Process;
 - c) provide the reasons that the Proposal Trustee supports approval of the transaction contemplated by the Stalking Horse Agreement (the “Transaction”);
 - d) provide the reasons why an extension of the stay of proceedings to May 14, 2020 is required; and
 - e) recommend that this Honourable Court make an order:
 - authorizing the Company to complete the Transaction;
 - vesting in Intericap, or its designee, the Company’s right, title and interest in and to the Purchased Assets (as defined in the Stalking Horse Agreement), free and clear of all liens, charges, security interests and encumbrances other than the Permitted Encumbrances (as defined in the Stalking Horse Agreement);
 - extending the time required by the Company to file a proposal by 45 days for the completion of the Transaction and implementation of any necessary transition arrangements;
 - authorizing the Company to change its name to a numbered company following completion of the Transaction;
 - appointing KSV as receiver of the Company’s remaining assets following completion of the Transaction for the purposes of facilitating the Company’s obligations in the Stalking Horse Agreement, including the Transition Services Agreement (“TSA”);
 - sealing the Confidential Appendices to this Report pending completion of the Transaction; and
 - approving the Proposal Trustee’s activities as set out in this Report.

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 representatives, the books and records of the Company and discussions with representatives of the Company. The Proposal Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants Canada Handbook*.
2. The Proposal Trustee expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Proposal Trustee in preparing this Report. Any party wishing to place reliance on the Company's financial information should perform its own due diligence and any reliance placed by any party on the information presented herein shall not be sufficient for any purpose whatsoever. The Proposal Trustee accepts no reliance to any party based on the information in this Report.
3. 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 representatives' 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.
4. The Company has lost several critical employees in recent weeks and any delay in completing the Transaction could result in further resignations. Certain of the Company's departments are presently thinly staffed. The Company's workforce is not unionized and it does not provide a pension plan.
5. Additional information regarding the Company and its background is included in the Proposal Trustee's First Report to Court dated December 2, 2019 (the "First Report"). A copy of the First Report is attached as Appendix "C", without appendices.

3.0 Sale Process¹

1. A description of the Sale Process was provided in Section 3 of the Proposal Trustee's Second Report to Court dated January 28, 2020 (the "Second Report"). A copy of the Second Report is provided in Appendix "D", without appendices.
2. The purpose of the Sale Process was to market the Company's business and assets for sale, while providing the certainty of a transaction so that the Company's business is preserved as a going concern and continues to operate during the Sale Process. A stalking horse sale process also provides a floor price for the business and assets of a company.
3. The Sale Process commenced immediately following its approval. An overview of the Sale Process is as follows:
 - a) The Proposal Trustee prepared an interest solicitation letter (the "Teaser") that was circulated to 76 targets, including parties referred to the Proposal Trustee by National Bank of Canada ("National Bank") and Espresso Capital Ltd. ("Espresso"), two of the Company's secured creditors. The Proposal Trustee provided National Bank and Espresso with the list of targets at the outset of the Sale Process and National Bank and Espresso provided names of parties that they asked to be added to the list. The Proposal Trustee contacted those parties;
 - b) A confidentiality agreement (the "CA") was attached to the Teaser. Interested parties were required to sign the CA in order to receive a confidential information memorandum ("CIM") and obtain access to an online data room set up by the Proposal Trustee. The CA was executed by five prospective purchasers;
 - c) To increase the likelihood that recipients of the Teaser would pay attention to the opportunity, the Proposal Trustee attempted to contact a personal representative of each interested party by phone to the extent it had their telephone numbers in advance of sending the Teaser. The telephonic outreach was intended to reduce the risk that recipients would immediately delete the email with the Teaser attached. For those parties that the Proposal Trustee did not have a contact or phone number, the Proposal Trustee's initial contact was by email. The Proposal Trustee was unable to speak by phone with all of the parties it attempted to contact prior to sending the Teaser by email, but was successful in speaking or leaving direct messages with approximately half of them. A detailed log of the of the Proposal Trustee's efforts to contact the targets and the results of those efforts to contact is provided in Confidential Appendix "1";

¹ Capitalized terms in this section have the meaning provided to them in the Stalking Horse Agreement unless otherwise defined herein.

- d) Following execution of the CA, prospective purchasers were provided an opportunity to perform due diligence. The Proposal Trustee facilitated all due diligence requests submitted by interested parties on a timely basis, including by updating the data room with financial and other information requested by interested parties;
 - e) Interested parties were provided an opportunity to meet with Mr. Moeinifar and attend a product demonstration. Three meetings were conducted. A representative of the Proposal Trustee attended each meeting;
 - f) The data room included an electronic copy of the Stalking Horse Agreement as redacted in accordance with the February 10th Endorsement. Prospective purchasers were requested to submit offers in this form together with a blacklined version;
 - g) On March 3, 2020, the Proposal Trustee provided the parties that had signed a CA with an estimate of the Closing Cash Payment²;
 - h) Offers were required to be submitted to the Proposal Trustee by 5:00 pm (Eastern time) on March 9, 2020 (the “Offer Deadline”) in the form of the Stalking Horse Agreement, with any changes clearly identified; and
 - i) Bids were required to be submitted with a cash deposit in an amount equal to 15% of the Base Purchase Price.
4. Confidential Appendix “2” to this Report provides a summary of the Proposal Trustee’s dealing with two interested parties: a competitor (the “Competitor”) and a group of individuals (the “Individuals”). The Proposal Trustee understands both parties were introduced to this opportunity by Espresso. Neither party submitted an offer.

3.1 Sale Process Results

- 1. No offers were submitted and accordingly, Intericap was determined to be the Successful Bidder.
- 2. Feedback received from interested parties during the Sale Process included that:
 - a) The business is not synergistic;
 - b) The business will require funding post-closing and be resource intensive;
 - c) The opportunity does not meet their investment criteria; and

² Pursuant to the terms of the Sale Process, an estimate of the Closing Cash Payment amount was to be provided to all interested parties one week prior to the Offer Deadline. No party raised an issue that it was provided on March 3, 2020 instead of March 2, 2020.

- d) There was some confusion expressed regarding the redaction of the purchase price of the stalking horse offer, with one party commenting that “In the Stalking-Horse proceedings that we've seen before, many of the sections that you've redacted are present so that prospective bidders can understand the floor that the Stalking-Horse has sent (*sic*). Can you send us an unredacted version of the APA or some summary of the deal terms as they currently stand?”.³

3.2 The Stalking Horse Agreement

1. A copy of the Stalking Horse Agreement (redacted in accordance with the February 10th Order) is attached as Appendix “E”.
2. A summary of the key terms and conditions of the Stalking Horse Agreement was provided in the Second Report. For ease of reference, that summary is repeated below.
 - **Purchaser:** InterCap, or an Affiliate thereof.
 - **Purchased Assets:** Substantially all of the Company’s Assets, including:
 - (i) Accounts Receivable, including funds on deposit in the Company’s bank accounts and all tax refunds, which includes Scientific Research and Experimental Development tax credits;
 - (ii) material Contracts⁴; and
 - (iii) Intellectual Property.
 - **Stalking Horse Purchase Price:** the calculation of the purchase price is provided in Confidential Appendix “3”.
 - **Excluded Assets:** Employee benefit plans, if any.
 - **Representation and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an “as is, where is” basis, with limited representations and warranties.
 - **Closing:** the date that is three (3) Business Days after the date that the Approval and Vesting Order is obtained or such other date as may be agreed by the Parties. The Proposal Trustee understands that the Company and the Purchaser intend to complete the Transaction immediately following Court approval, and that they are presently in discussions regarding any necessary transition arrangements in connection with completion of the Transaction.

³ The redaction provision of the February 10th Order was specifically requested by National Bank and Espresso.

⁴ References to customer names have been redacted.

- **Material Conditions:**
 - (i) the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied, or vacated (or any such appeal shall have been dismissed with no further appeal therefrom);
 - (ii) the Company will have entered into a Court-approved TSA⁵ with InterCap on or before the Closing Date;
 - (iii) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and
 - (iv) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction.
- **Termination:**
 - (i) The Stalking Horse Agreement can be terminated:
 - upon mutual written agreement of the Company and InterCap;
 - if any of the conditions in favour of InterCap or the Company are not waived or satisfied; or
 - Closing has not taken place by the Outside Date, being April 15, 2020.

3.3 Recommendation

1. The Proposal Trustee recommends that this Court issue an order authorizing the Company to complete the Transaction for the following reasons:
 - a) the Sale Process was carried out in accordance with the terms of the February 10th Order;
 - b) in the Proposal Trustee's view, the duration of the Sale Process was sufficient to allow interested parties to perform diligence and submit offers. Additionally, the duration of the Sale Process was approved by the Court as part of the February 10th Order;
 - c) the Transaction is expected to preserve employment for the Company's employees;
 - d) the Proposal Trustee does not believe that further time spent marketing the Company's business and assets will result in a superior transaction, nor is there funding available to do so as the DIP Facility is projected to be fully drawn in the near term;

⁵ A copy of this agreement will be provided to the Court on or before the return of this motion.

- e) the Company's business requires the stability of a completed transaction and a timely exit from this proceeding in order to continue to operate as a going-concern; and
 - f) the value of the Transaction substantially exceeds the liquidation value of the Company's assets, as reflected in the liquidation analysis provided in Confidential Appendix "4".
2. As the Purchaser is acquiring the name Viafoura, the Proposal Trustee requests that the Court authorize the Company to revert to its numbered company following completion of the Transaction.

3.4 Urgency

1. The Proposal Trustee has previously reported on the risks to the Company's business resulting from this proceeding, including the potential loss of customers and employees. Since this proceeding commenced:
- a) the Company has lost a significant customer accounting for approximately 25% of the Company's revenue;
 - b) several employees have resigned; and
 - c) the Company's limited management resources have been focussed on non-core business issues, such as the Sale Process, to the detriment of growing the business and dealing with day-to-day operating issues.
2. The Company has advised that the outbreak of Covid-19 may have a material effect on its business, particularly as the business generates revenue which is in industries that could be significantly affected by Covid-19.
3. The Company will not have sufficient liquidity to continue to operate.
4. To improve the likelihood that the Company will be successful in the RFP process being conducted by its major customer, it needs to exit this proceeding expeditiously.
5. In light of the above, the Proposal Trustee is of the view that an immediate closing of the Transaction is necessary to preserve the business.

3.5 Confidentiality

1. The Proposal Trustee respectfully requests that the Confidential Appendices be filed with the Court on a sealed basis (the "Sealing Order"). The Confidential Appendices include information which could negatively impact the Company's business. The Proposal Trustee is not aware of any party that will be prejudiced if the information is sealed. Accordingly, the Proposal Trustee believes the proposed Sealing Order is appropriate in the circumstances.

4.0 Next Steps

1. The Company requires an extension of the time required to file a proposal to the extent necessary to complete the Transaction and implement any necessary transition arrangements. A 45-day extension is being sought in this regard.
2. The statutory projected cash flow statement and the related assumptions for the period ending May 14, 2020 (“Cash Flow”) is provided in Appendix “F”, 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,.
3. In order to facilitate the transition, the Proposal Trustee understands that InterCap will be bringing a motion for the appointment by the Court of KSV as Receiver. The principal purpose of the appointment is to assist the Company to provide services under the TSA, including dealing with critical vendors and the collection of tax assets. The Proposal Trustee recommends that this order be granted as its purpose is consistent with that of the Transaction, being a sale of the Company’s business and assets.

5.0 Overview of the Proposal Trustee’s Activities

1. In addition to carrying out the Sale Process, the Proposal Trustee’s activities since the date of the Second Report have included the following:
 - reviewing the responding materials filed by each of National Bank and Espresso related to the Sale Process;
 - drafting the Supplement to the Second Report dated February 8, 2020;
 - attending at Court on February 4 and 10, 2020 regarding the Sale Process approval motion;
 - monitoring the Company’s sales, receipts and disbursements and corresponding with the Company regarding same;
 - assisting the Company with its reporting obligations under the DIP Facility;
 - corresponding with the Company regarding operational and employee matters, including retention issues;
 - corresponding with Borden Ladner Gervais LLP, counsel to National Bank, and Brauti Thorning LLP, counsel to Espresso, regarding the Company’s weekly reporting and the Sale Process;
 - responding to inquiries from Canada Revenue Agency regarding the Company’s sales tax account;

- responding to calls and inquiries from creditors;
- corresponding with Goldman Sloan Nash & Haber LLP, the Company's counsel;
- drafting this Report; and
- dealing with all other matters in this proceeding not specifically addressed above.

6.0 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(1)(e) 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”

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

THE HONOURABLE MR.)

MONDAY, THE 10TH

JUSTICE MCEWEN)

DAY OF FEBRUARY, 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 Viafoura Inc. (the “**Company**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Proposal Trustee dated January 28, 2020 (the “**Second Report**”), the Supplement to the Second Report of the Proposal Trustee dated February 9, 2020 (the “**Supplement**”), the Affidavit of Annie Nguyen sworn February 6, 2020 (the “**Nguyen Affidavit**”) and the Affidavit of Alkarim Jivraj sworn February 7, 2020 (the “**Alkarim Affidavit**”) and together with the Second Report, the Supplement, the Nguyen Affidavit and the Alkarim Affidavit, and all facts filed in connection with this Motion, the “**Materials**”), and on hearing the submissions of counsel for the Proposal Trustee, for the Company, for Intercap Equity Inc. (“**Intercap**”), for National Bank of Canada, for Espresso Capital Ltd., and for such other parties in attendance at the motion,

1. **THIS COURT ORDERS** that in accordance with the terms of the Amended and Restated Term Sheet attached as Appendix “F” to the Second Report (the “**Amended DIP Term Sheet**”), the maximum amount available under the DIP Facility¹ is hereby increased from \$1 million to \$1.7 million, and that Amended DIP Term Sheet be and is hereby approved.

2. **THIS COURT ORDERS** that the Interim Financing Charge provided for in paragraph 5 of the Order of this Honourable Court in these proceedings dated December 3, 2019 (the “**December 3 Order**”), be and is hereby increased to secure the Company’s indebtedness and obligations under the Amended DIP Term Sheet.

3. **THIS COURT ORDERS** that the Sale Process, including the Stalking Horse Agreement and the Bid Protections, is hereby approved with the following amendments to the Sale Process and the Stalking Horse Agreement:

- (a) the amount of the Expense Reimbursement is amended to be a maximum of \$25,000;
- (b) the amount of the “Minimum Overbid Increment” in paragraph 1(d) of the Auction Procedure shall be “\$25,000” for the Opening Bid;

¹ All capitalized terms not defined in this Order are used as defined in the Second Report.

- (c) the location of any Auction shall be at the offices of the Proposal Trustee or as it may determine with regard to capacity, size and availability (but will not be at the offices of counsel for InterCap);
- (d) reference to publication of the acquisition opportunity in the Globe and Mail (National Edition) shall be removed;
- (e) reference to the Base Purchase Price shall be removed from any publicly available materials, but in order for a Bid to constitute a Qualified Bid it must provide for at least enough cash consideration for payment in full of the amounts owing under the DIP Facility, plus \$75,000 and a commitment to pay the Closing Cash Payment; and
- (f) for greater certainty, the Proposal Trustee shall not provide InterCap with information regarding the conduct of the process including questions from other potential Bidders provided that should there be an Auction, InterCap shall receive all information received by other Qualified Bidders participating in the Auction.

4. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Proposal Trustee, the Company and its representatives are hereby authorized and permitted to disclose and transfer to each potential bidder (the “**Bidders**”) and to their representatives, if requested by such Bidders, personal


information of identifiable individuals, including, without limitation, all human resources and payroll information in the Company's records pertaining to the Company's past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale pursuant to the Sale Process (a "Sale"). Each Bidder or representative to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Sale, and if it does not complete a Sale, shall return all such information to the Proposal Trustee, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Proposal Trustee. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction(s) contemplated in the Successful Bid(s) (as defined in the Sale Process), shall be entitled to use the personal information provided to it that is related to the assets acquired pursuant to the Sale Process in a manner that is in all material respects identical to the prior use of such information by the Company and shall return all other personal information to the Proposal Trustee, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Proposal Trustee.

5. **THIS COURT ORDERS** that a charge is hereby granted over the Company's property and assets in the amount of **[\$50,000]** in favour of Intercap to secure payment of the Bid Protections, which charge shall rank immediately behind the Interim Facility Charge, and in priority to all Encumbrances (as defined in the December 3 Order) other than the Administration Charge and the Interim Facility Charge.

6. **THIS COURT ORDERS** that the Materials are hereby sealed until the completion of a transaction in respect of the Company as evidenced by the filing of a certificate by the Proposal Trustee with this Court, provided that the Parties are hereby ordered to each serve and file redacted versions of their own Materials (not including the confidential appendices to the Second Report and the Supplement or Exhibit G to the Nguyen Affidavit) within 2 business days from the date hereof, removing reference to the Purchase Price (as defined in the Stalking Horse Agreement) or any other reference from which any party could determine the Purchase Price.

7. **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 March 30, 2020.

8. **THIS COURT ORDERS** that the Proposal Trustee's activities as set out in the Second Report and the Supplement are hereby approved.



A handwritten signature in black ink, appearing to be 'M. G. T.', is written above a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 10 2020

PER / PAR:



A handwritten signature in blue ink, appearing to be 'M', is written next to the text 'PER / PAR:'.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A ROPOSAL
OF VIAROURA 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

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**Lawyers for KSV Kofman Inc., in its capacity as
Proposal Trustee**

Appendix “B”

9:58 a.m.

COUNSEL SLIP

COURT FILE NO.: BK-19-2590812-003 DATE: _____

FEB 10 2020

NO. ON LIST 9

TITLE OF PROCEEDING

VI AFARA INC.

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- APPLICANT(S)
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10 Feb 20

order to go as per Schedule A
of endorsement attached and the draft
order which I have filed & signed.
The order sought is unopposed. A sealing
order shall also go as the Steme Club
criteria have been met.

me

TM
Schedule A *TM*

Court File No. 31-2590812

TM
Proposed Endorsement

February 10, 2020

National Bank of Canada (“NB”) and Espresso Capital Ltd. (“Espresso”) have requested certain changes to the proposed stalking horse and auction sale process being proposed by the Proposal Trustee.

In order to settle the disputes on this motion, the Company, Proposal Trustee and Intercap have agreed to certain concessions and revisions as set out herein and in the Order including agreeing to redact the price in the stalking horse bid submitted by Intercap. Consequentially, neither NB nor Espresso shall be entitled to raise the redaction of the purchase price as grounds for an objection at any subsequent sale approval motion that the process was unfair or inadequate.

Additionally, the parties have agreed that going forward, NB shall be given 24 hours notice of draw down requests under the DIP. NB shall continue to be entitled to the same financial reporting as the DIP Lender.

Appendix “C”



**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,

A handwritten signature in blue ink that reads "KSV Kofman Inc". The signature is written in a cursive, flowing style.

**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 “D”



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

January 28, 2020

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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

JANUARY 28, 2020

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”).
2. Pursuant to an Order of the Ontario Superior Court of Justice (“Court”) made December 3, 2019 (“December 3rd Order”):
 - a) the stay of proceedings was extended to February 13, 2020; and
 - b) the Court approved an interim financing revolving credit facility in the maximum amount of up to \$1 million (the “DIP Facility”) between the Company and Intercap Equity Inc. (“Intercap”), a preferred shareholder of the Company.
3. A copy of the December 3rd Order is attached in Appendix “A”.
4. The principal purpose of this proceeding is to create a stabilized environment to allow the Company the opportunity to complete a restructuring and to provide liquidity to the business so that it can continue to operate on a going-concern basis while the restructuring process is conducted.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company;
 - b) summarize the terms of a stalking horse offer made by Intercap pursuant to an agreement of purchase and sale (the “Stalking Horse Agreement”), which is subject to Court approval;

- c) discuss a proposed stalking horse sale process (“Sale Process”);
- d) report on the Company’s budget to actual cash flow for the period November 30, 2019 to January 17, 2020 (the “Actual Results”);
- e) report on the Company’s weekly cash flow projections for the period January 18, 2020 to March 27, 2020 (the “Forecast”); and
- f) recommend that this Honourable Court make an order:
 - increasing the maximum amount available under the DIP Facility from \$1 million to \$1.7 million and approving amendments to the reporting requirements under the term sheet applicable to the DIP Facility (“Term Sheet”);
 - approving the Sale Process;
 - approving the Stalking Horse Agreement, including the break fee and expense reimbursement (together, the “Bid Protections”) contemplated therein;
 - granting a charge in the amount of \$70,000 in favour of Intericap over the Company’s property and assets, to secure payment of the Bid Protections (the “Break Fee Charge”);
 - sealing Confidential Appendix “1” to this Report until the completion of a transaction;
 - granting an extension of time for the Company to file a proposal from February 13, 2020 to March 30, 2020; and
 - approving the Proposal Trustee’s activities as set out in this Report.

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 representatives, the books and records of the Company and discussions with representatives of the Company and Intericap. 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 46 full-time employees. Headcount has declined by eleven employees since the commencement of this proceeding. The Company's workforce is not unionized and it does not provide a pension plan.
4. Additional information regarding the Company and its background is included in the Proposal Trustee's First Report to Court dated December 2, 2019 ("First Report"). A copy of the First Report is attached as Appendix "B", without appendices.

3.0 Sale Process and Bidding Procedures¹

3.1 Sale Process

1. The purpose of the stalking horse Sale Process is to market the Company's business and assets for sale, while providing the certainty of a transaction so that the Company's business is preserved as a going concern and continues to operate during the Sale Process.
2. A summary of the proposed Sale Process is as follows (the timeline is to commence on the date that the Court makes an order approving the Sale Process):

| Summary of Stalking Horse Sale Process | | |
|--|--|-------------|
| Milestone | Description of Activities | Timeline |
| <i>Phase 1 – Pre-marketing</i> | | |
| Due diligence | ➤ Proposal Trustee to review all available documents concerning the Purchased Assets (this is in process). | In process. |
| Finalize marketing materials | ➤ Proposal Trustee to: <ul style="list-style-type: none"> ○ prepare a teaser; ○ populate a virtual data room ("VDR"); ○ prepare a Confidentiality Agreement ("CA"); and ○ prepare a Confidential Information Memorandum ("CIM"). | |
| Prospect Identification | ➤ Proposal Trustee to identify strategic and financial prospects (in process). | |

¹ Capitalized terms in this section have the meaning provided to them in the Stalking Horse Agreement or the Bidding Procedures unless otherwise defined herein.

| Summary of Stalking Horse Sale Process | | |
|---|--|--|
| Milestone | Description of Activities | Timeline |
| <i>Phase 2 – Marketing</i> | | |
| Stage 1 | <ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ teaser to be sent to identified prospects; ○ publication of the acquisition opportunity in <i>The Globe and Mail</i> (National Edition); ○ telephone canvass of leading prospects; and ○ meet with and interview bidders. | Week 1 |
| Stage 2 | <ul style="list-style-type: none"> ➤ Proposal Trustee to provide detailed information to qualified prospects that sign the CA, including the CIM and access to the VDR; ➤ Proposal Trustee to facilitate diligence by interested parties; and ➤ Proposal Trustee to provide a copy of the Stalking Horse Agreement to prospective purchasers. | Week 2-4 |
| Stage 3 | <ul style="list-style-type: none"> ➤ Bid Deadline – in order to submit an offer, a prospective purchaser must submit a “Qualified Bid” (as discussed in section 3.1.2 below). | March 9, 2020 |
| <i>Phase 3 – Auction, if applicable</i> | | |
| Auction | <ul style="list-style-type: none"> ➤ Proposal Trustee to conduct Auction; ➤ Leading Bid shall constitute the “Opening Bid” for the first round; ➤ Qualified bidders, including Intercap, to be invited to participate. | Within six (6) business days following bid deadline. |
| Sale Approval Motion and Closing | <ul style="list-style-type: none"> ➤ Motion for sale approval and close transaction. | On or before March 23, 2020 |

3.1.1 Bidding Procedures

1. The Bidding Procedures are provided in Schedule “C” to the Stalking Horse Agreement. The Bidding Procedures are summarized below.

3.1.2 Qualified Bids

1. To be a “Qualified Bid”, a bid must meet the following requirements:
 - a) a cash purchase price of at [REDACTED];
 - b) a commitment to pay the Closing Cash Payment, which amount will be provided to all interested parties one week prior to the Bid Deadline;

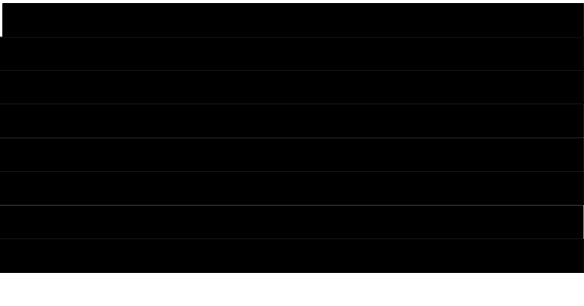
- c) a provision stating that the bidder's offer is irrevocably open for acceptance until the Purchased Assets have been sold pursuant to a transaction approved by the Court;
 - d) an executed copy of a proposed purchase agreement must be submitted by the Bid Deadline together with a redline of the bidder's proposed purchase agreement reflecting variations from the Stalking Horse Agreement; and
 - e) a cash deposit of not less than 15% of the Base Purchase Price offered.
2. Intericap, as the stalking horse, is a Qualified Bidder.

3.1.3 Auction

1. If no Qualified Bids are submitted by the Bid Deadline, Intericap will be the Successful Bidder.
2. If one or more Qualified Bids are received by the Bid Deadline:
 - a) the Proposal Trustee will notify the Qualified Bidders who made a Qualified Bid that the Auction will be held at the offices of DLA Piper (Canada) LLP at 10:00 a.m. (Eastern Time) on a date that is no later than six (6) Business Days after the Bid Deadline;
 - b) only a Qualified Bidder is eligible to participate in the Auction. The Proposal Trustee shall disclose to all Qualified Bidders the amount of the Leading Bid by 5:00 p.m. (Eastern Time) two (2) Business Days before the date scheduled for the Auction. Each Qualified Bidder must inform the Proposal Trustee whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction;
 - c) any Overbid shall be made in minimum Cash Purchase Price increments of \$50,000 above the Opening Bid, or in such increments as the Proposal Trustee may determine in order to facilitate the Auction (the "Minimum Overbid Increment"). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments;
 - d) at the end of each round of bidding, the Proposal Trustee shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid, including the nature of the transaction, the assets proposed to be acquired and the obligations proposed to be assumed, and the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria;
 - e) if, at the end of any round of bidding, a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the next round of the Auction;

- f) the Auction shall be closed after the Proposal Trustee has: (i) reviewed the final Overbid of each Qualified Bidder taking into consideration the Bid Assessment Criteria; and (ii) identified the Successful Bid and the Back-Up Bid and advised the Qualified Bidders participating in the Auction of such determination; and
 - g) promptly following a Bid of a Qualified Bidder being declared the Successful Bid or the Back-Up Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid. For greater certainty, every Bid made at Auction is deemed to be a signed and binding bid based on the terms and conditions of the bidder's original Qualified Bid (other than Purchase Price).
3. If Intericap is not the Successful Bidder, it will be paid the Bid Protections from the proceeds of sale realized from the transaction with the Successful Bidder forthwith after closing of that transaction.

3.2 The Stalking Horse Agreement

1. A copy of the Stalking Horse Agreement is attached as Appendix "C".
2. The key terms and conditions of the Stalking Horse Agreement are provided below.
 - **Purchaser:** Intericap, or an Affiliate thereof.
 - **Purchased Assets:** Substantially all of the Company's Assets, including:
 - (i) Accounts Receivable, including funds on deposit in the Company's bank accounts, all tax refunds, which includes the Company's Scientific Research and Experimental Development tax credits;
 - (ii) material Contracts²; and
 - (iii) Intellectual Property.
 - **Stalking Horse Purchase Price:** 
 - **Deposit:** \$50,000
 - **Excluded Assets:** Employee benefit plans, if any.

² References to customer names have been redacted.

- **Representation and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an “as is, where is” basis, with limited representations and warranties.
- **Closing:** the date that is three (3) Business Days after the date that the Approval and Vesting Order is obtained or such other date as may be agreed by the Parties.
- **Material Conditions:**
 - (i) the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied, or vacated (or any such appeal shall have been dismissed with no further appeal therefrom);
 - (ii) the Company will have entered into a Court-approved Transition Agreement with Intercap on or before the Closing Date for the purposes of, among other things, administering any Non-Assignable Interests;
 - (iii) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and
 - (iv) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction.
- **Termination:**
 - (i) The Stalking Horse Agreement can be terminated:
 - upon mutual written agreement of the Company and Intercap;
 - if any of the conditions in favour of Intercap or the Company are not waived or satisfied; or
 - Closing has not taken place by the Outside Date, being April 15, 2020.

3.2.1 Bid Protections

1. The Stalking Horse Agreement provides the following Bid Protections to Intercap in the event that a superior transaction is completed with another party:
 - a \$25,000 break fee (equal to █████ of the estimated amount payable under the offer); and
 - up to a \$45,000 (including HST) expense reimbursement in respect of actual legal, diligence and other costs incurred by Intercap in respect of the Sale Process, including drafting and negotiating the Stalking Horse Agreement.

3.2.2 Considerations Regarding the Stalking Horse Agreement

1. The Proposal Trustee considered whether Intercap's offer warrants approval of the Court as a stalking horse bid. The Proposal Trustee's considerations included:
 - the Stalking Horse Agreement provides certainty to the Company's customers and prospective customers that a transaction will be completed in the near term;
 - the Stalking Horse Agreement provides comfort to the Company's employees that the business will continue and mitigates the risk of resignations;
 - as discussed in the First Report, the Company operates a service business in the information technology sector and has generated significant accumulated losses since incorporation. In a liquidation, realizations are likely to be insignificant given the nature of the Company's assets which, for the most part, can only be monetized if the business continues as a going concern. In that respect, the value contemplated by the Stalking Horse Agreement appears to be reasonable and, in the view of the Proposal Trustee, exceeds the liquidation value of the business as estimated in Confidential Appendix "1".

3.3 Sale Process Recommendation

1. The Proposal Trustee recommends that this Court issue an order approving the Stalking Horse Agreement and the Sale Process for the following reasons:
 - a) the Sale Process is commercially reasonable;
 - b) stalking horse sale processes are a recognized mechanism in restructuring processes to maximize recoveries, while creating stability for the business;
 - c) the Bidding Procedures allow a market test for the benefit of all stakeholders and provide an opportunity to complete a transaction with greater value than the Stalking Horse Agreement;
 - d) it is in the best interests of the Company's stakeholders that the Stalking Horse Agreement be preserved in order to have the opportunity to maximize value and to protect downside risk in the event that a superior offer is not submitted;
 - e) the duration of the Sale Process is sufficient to allow interested parties to perform diligence and submit offers; and
 - f) the Bid Protections are reasonable in the circumstances, representing █████ of the estimated amount payable under the Stalking Horse offer. Bid protections in Canadian restructuring proceedings commonly range from 2% to 5% of a stalking horse bid. While the Bid Protections are at the high end of the range on a percentage basis, in absolute dollars, the Bid Protection amounts are not significant and are a reflection of the small size of the transaction and expenses incurred to prepare the agreement which will be used by prospective purchasers in the Sale Process. The Proposal Trustee does not believe that the Bid Protections will discourage potential purchasers from participating in the Sale Process.

3.4 Confidentiality

1. The Proposal Trustee respectfully requests that Confidential Appendix “1” be filed with the Court on a sealed basis (the “Sealing Order”). The confidential appendix includes information which could negatively impact the value of a transaction. The Proposal Trustee is not aware of any party that will be prejudiced if the information is sealed. Accordingly, the Proposal Trustee believes the proposed Sealing Order is appropriate in the circumstances.

4.0 Cash Flow

1. The Company’s weekly projected statement of cash flow for the period November 30, 2019 to January 17, 2020 was appended to the First Report.
2. A schedule comparing budget-to-actual results from November 30, 2019 to January 17, 2020 is provided in Appendix “D”³. As at January 17, 2020, the Company had drawn \$774,000 under the DIP Facility, which is approximately \$325,000 more than projected. The variances were mainly related to timing and certain payments to critical vendors for pre-filing amounts which were made with the consent of InterCap and the Proposal Trustee.
3. The Company, with the assistance of the Proposal Trustee, has prepared the Forecast for the period ending March 27, 2020 (“Forecast Period”). The 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 “E”.
4. The Forecast reflects that the business requires an additional \$700,000 through the Forecast Period. InterCap has advised the Proposal Trustee that it is prepared to fund the additional amounts required under the DIP Facility plus a contingency of \$225,000 should a further increase be necessary. Accordingly, the Proposal Trustee respectfully recommends that the DIP Facility be increased to \$1.7 million. Without an increase in the DIP Facility, the Company is unlikely to have sufficient liquidity to continue to operate and its business may be discontinued.

4.1 Amendments to Term Sheet

1. In addition to increasing the limit under the DIP Facility, the Company and InterCap, with the assistance of the Proposal Trustee, have discussed minor revisions to the reporting requirements under the Term Sheet to make the reporting less onerous, particularly given the Company’s limited resources in its finance department. A copy of the Amended and Restated Term Sheet is provided in Appendix “F”. The amendments include:
 - Extending the maturity date from February 28, 2020 to March 30, 2020;

³ References to customer and supplier names have been redacted.

- Deferring payment of the extension fee, representing 1% of the Maximum Amount (as defined in the DIP Facility), from January 30, 2020 to March 30, 2020;
 - Changing the weekly reporting deadline from Wednesday to Friday of each week;
 - Eliminating the requirement to provide a weekly rolling cash flow forecast; and
 - Permitting the Company's account balance to exceed \$100,000, with InterCap's approval. Presently the Term Sheet requires that any balance greater than \$100,000 is to be paid to InterCap.
2. In the Proposal Trustee's view, these amendments are necessary for the Company to be able to report on a timely basis, while also providing the Company more time to focus on operational issues. The Proposal Trustee understands that InterCap, as lender under the DIP Facility, consents to these changes

5.0 Company's Request for an Extension

1. The Company requires an extension of the time required to file a proposal from February 13, 2020 to March 30, 2020.
2. The Proposal Trustee supports the extension request for the following reasons:
- the Company is acting in good faith and with due diligence;
 - the Company has indicated that it would likely 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;
 - subject to approval of the increase in the DIP Facility to \$1.7 million, 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 Forecast; and
 - it would provide the Company the additional time it requires for the Sale Process to be completed.

6.0 Overview of the Proposal Trustee's Activities

1. The Proposal Trustee's activities since the First Report have included, *inter alia*, the following:
- monitoring the Company's sales, receipts and disbursements and corresponding with the Company regarding same;
 - assisting the Company with its reporting obligations under the DIP Facility;

- preparing Sale Process materials;
- reviewing and commenting on the Stalking Horse Agreement;
- corresponding with the Company regarding supplier issues, including critical vendors;
- meeting and corresponding with the Company regarding operational and Sale Process matters;
- corresponding with InterCap regarding all matters in these proceedings, including the DIP Loan, critical vendor issues, cash flow issues and the Sale Process;
- corresponding with Borden Ladner Gervais LLP, counsel to National Bank, regarding reporting and other concerns which it has raised;
- responding to calls and inquiries from creditors;
- drafting this Report; and
- dealing with all other matters in this proceeding not specifically addressed above.

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(1)(f) 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 “E”

VIAFOURA INC.

as Vendor

and

INTERCAP EQUITY INC.

as Purchaser

ASSET PURCHASE AGREEMENT

January 22, 2020

ASSET PURCHASE AGREEMENT

This asset purchase agreement is made as of January 22, 2020, between Viafoura Inc, a corporation incorporated under the laws of Canada (the “Vendor”) and Intercap Equity Inc., a corporation incorporated under the laws of the Province of Ontario (the “Purchaser”).

RECITALS:

- (1) on December 1, 2019, the Vendor filed a Notice of Intention to Make a Proposal pursuant to section 50.4(9) of the BIA;
- (2) pursuant to the Sale Process Order, the Vendor and the Trustee were authorized to conduct the Sale Process and this Agreement was approved as the Stalking Horse Bid; and
- (3) the Vendor desires to sell all or substantially all of its assets and the Purchaser has agreed to purchase such assets subject to the terms and conditions set forth in this Agreement, the Sale Process and the applicable provisions of the BIA.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vendor and the Purchaser agree as follows:

ARTICLE 1 INTERPRETATION

Section 1.1 Definitions

In this Agreement and the recitals above, the following terms have the following meanings:

“**Accounts Receivable**” means, on any date, all accounts receivable (including amounts deposited in the Vendor’s accounts in any financial institution) and tax refunds generated in the operation of the Vendor’s business, together with any unpaid interest or fees accrued thereon which are outstanding on such date and the full benefit of all security or collateral for such amounts, including recoverable advances and deposits, but excluding any amounts owing to the Vendor as at the Closing Time from any of its shareholders or Affiliates, or from any other Person who does not deal at arm’s length with it.

“**Affiliate**” has the meaning given to the term “affiliate” in the *Canada Business Corporations Act*.

“**Agreement**” means this asset purchase agreement, as amended from time to time.

“**Applicable Law**” means, in respect of any Person, property, transaction or event, any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law

or order, in each case, having the force of law, that applies in whole or in part to such Person, property, transaction or event.

"Approval and Vesting Order" means an order by the Court substantially in the form attached as Schedule E authorizing the Transaction and vesting in the Purchaser all the right, title and interest of the Vendor in and to the Purchased Assets.

"Assignment Order" means an order or orders of the Court pursuant to section 84.1 and 66(1.1) of the BIA and other applicable provisions of the BIA, in form and substance satisfactory to the Purchaser, acting reasonably, authorizing and approving (i) the assignment of any Consent Required Contract for which a consent, approval or waiver necessary for the assignment of such Consent Required Contract has not been obtained, (ii) the prevention of any counterparty to such Consent Required Contracts from exercising any right or remedy under such Consent Required Contracts by reason of any defaults arising from the BIA Proceedings or the insolvency of the Vendor and (iii) the vesting in the Purchaser of all right, title and interest of the Vendor in such Consent Required Contracts.

"Assumed Obligations" has the meaning set out in Section 2.4.

"BIA" means *The Bankruptcy and Insolvency Act (Canada)*.

"BIA Proceedings" means the proceedings under the BIA to which the Vendor is subject.

"Bid Protections" has the meaning set out in Section 4.2(a).

"Bid Protections Charge" means the Court-ordered charge in the Sale Process Order in favour of the Purchaser over the Vendor's assets to secure; (i) payment by the Vendor to the Purchaser of the Bid Protections; and (ii) payment by the Vendor to the Purchaser of the amount of the Deposit in accordance with Section 3.4.

"Bidding Procedures" means the bidding procedures substantially in the form attached hereto as Schedule "C";

"Benefit Plans" means all oral or written plans, arrangements, agreements, programs, policies, practices or undertakings of each Vendor with respect to some or all of the Employees and which provide for or relate to (i) bonus, profit sharing or deferred profit sharing, performance compensation, deferred or incentive compensation, supplemental retirement arrangements, share compensation, share purchase or share option, share appreciation rights, phantom stock, vacation or vacation pay, sick pay, employee loans, or any other compensation in addition to salary; or (ii) insured or self-insured benefits for or relating to income continuation or other benefits during absence from work (including short term disability, long term disability and workers compensation), hospitalization, health, welfare, legal costs or expenses, medical or dental treatments or expenses, life insurance, accident, death or survivor's benefits, supplementary employment insurance, day care, tuition or professional commitments or expenses and perquisites or similar employment benefits.

"Books and Records" means all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), including tax and accounting books and records, used or intended for use by, and in the possession of the Vendor, in connection with the ownership, or operation of the Purchased Assets, including the Contracts, customer lists, customer information and account records, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, credit records, records relating to suppliers and other data, in each case, relating to the Purchased Assets, and, for greater certainty, excluding the minute books and corporate records of the Vendor.

"Break Fee" has the meaning set out in Section 4.2(a).

"Business Day" means a day on which banks are open for business in Toronto, Ontario but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario.

"Cash Flow Projections" means the prescribed cash flow projections filed by the Vendor as part of the BIA Proceedings.

"Claims" means any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, chose in or cause of action, suit, default, assessment, litigation, third party action, arbitral proceeding or proceeding by or before any Person.

"Closing" means the successful completion of the Transaction.



"Closing Date" means the date that is three (3) Business Days after the date the Approval and Vesting Order is obtained or such other earlier or later date as may be agreed by the Parties.

"Closing Time" means 2:00 p.m. (Toronto time) on the Closing Date.

"Consent Required Contract" has the meaning set out in Section 2.2a).

"Contracts" means all of the contracts and other written agreements to which the Vendor is a party constituting part of the Purchased Assets, including, for greater certainty, all Contracts listed in Appendix I to Schedule "A" to this Agreement.

"Court" means Ontario Superior Court of Justice (Commercial List).

[REDACTED]

“**Cure Costs**” means the monetary defaults of the Vendor in relation to the Consent Required Contracts, which shall in each case have been reasonably incurred by the Vendor and the quantum of which, having been determined by the Vendor, acting reasonably and in consultation with the Trustee, shall be acceptable to the Purchaser, acting reasonably.

“**Deposit**” has the meaning set forth in Section 3.2.

“**Designated Shares**” means the shares of any wholly owned subsidiary of the Vendor designated by the Purchaser as a Purchased Asset by notice in writing to the Vendor and the Trustee not less than five Business Days before the return of the motion for the Approval and Vesting Order;

“**DIP Facility**” means the Court approved Interim Financing Revolving Credit Facility Term Sheet dated December 3, 2019, as amended and approved by the Court.

“**Employee**” means an individual who is employed by the Vendor, whether on a full-time or a part-time basis, whether active or inactive as of the Closing Date, and includes an employee on short term or long term disability leave.

“**Encumbrances**” means any security interest, lien, claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, adverse claim or right of a third party of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, (including any conditional sale or title retention agreement, or any capital or financing lease).

“**Excise Tax Act**” means the *Excise Tax Act* (Canada).

“**Excluded Assets**” means all of the Vendor’s right, title and interest, in and to those assets and rights set forth in Schedule B.

“**Excluded Equipment**” means any equipment or machinery and any parts and components thereof, that are Excluded Assets.

“**Expense Reimbursement**” has the meaning set out in Section 4.2(a).

“**Governmental Authority**” means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation.

“**Income Tax Act**” means the *Income Tax Act* (Canada).

“Intellectual Property” means all intellectual property of the Vendor used by or currently being developed for use in the business of the Vendor, and all rights of any of the Vendor therein, including all claims for past infringement, worldwide, whether registered or unregistered, including without limitation:

- a) all patents, patent applications and other patent rights, including provisional and continuation patents;
- b) all registered and unregistered trade-marks, service marks, logos, slogans, corporate names, business names and other indicia of origin, and all applications and registrations therefor;
- c) registered and unregistered copyrights and mask works, including all copyright in and to computer software programs and applications and registrations of such copyright;
- d) internet domain names, applications and reservations for internet domain names, uniform resource locators and the corresponding internet sites;
- e) industrial designs; and
- f) trade secrets and proprietary information not otherwise listed in (a) through (e) above, including, without limitation, all inventions (whether or not patentable), invention disclosures, moral and economic rights of authors and inventors (however denominated), confidential information, technical data, customer lists, corporate and business names, trade names, trade dress, brand names, know-how, mask works, circuit topography, formulae, methods (whether or not patentable), designs, processes, procedures, technology, business methods, source codes, object codes, computer software programs (in either source code or object code form), databases, data collections and other proprietary information or material of any type, and all derivatives, improvements and refinements thereof, howsoever recorded or unrecorded.

“Login Credentials” means the login credentials for any software or programs that form part of the Purchased Assets.

“Non-Assignable Interests” means any Purchased Assets which, by their nature cannot be legally or practically sold and assigned by the Vendor to the Purchaser hereunder, including without limitation SRED Claims and any Consent Required Contracts for which an Assignment Order or counterparty consent has not been obtained;

“Ordinary Course of Business” means the ordinary course of business of the Vendor with respect to the Purchased Assets consistent with the conduct of such business on the date hereof and consistent with the Orders of the Court in the BIA Proceedings.

"Outside Date" means April 15, 2020.

"Party" means the Purchaser or the Vendor.

"Permitted Encumbrances" means those Encumbrances set forth in Schedule D.

"Person" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted.

"Priority Payables" means the amounts payable by the Vendor which are secured by liens in favour of a Governmental Authority (including deemed trusts) that encumber the Purchased Assets and rank prior to the interests of the Purchaser, in its capacity as Interim Lender pursuant to the DIP Facility, arising by operation of any applicable statutory law.

"Purchased Assets" means all of the Vendor's right, title and interest, in and to the assets used in the business of the Vendor, including those assets set forth in Schedule A, but excluding Excluded Assets.

"Purchaser" has the meaning set out in the recitals hereto.

"Representative" means, in respect of a Party, each director, officer, employee, agent, Affiliate, manager, lender, solicitor, accountant, professional advisor, consultant, contractor and other representative of such Party or such Party's Affiliates.

"Sale Process Order" means the order of the Court dated January ##, 2020 approving the Sale Process and this Agreement and granting the Bid Protection Charge in favour of the Purchaser.

"Sale Process" means the Court-approved sale process pursuant to which the Vendor, with the assistance of the Trustee, shall market its assets for sale in accordance with the Bidding Procedures.

"Sales Taxes" means all taxes imposed under Sales Tax Legislation.

"Sales Tax Legislation" means Part IX of the *Excise Tax Act* and the regulations made under such legislation.

"SRED Credits" means all amounts claimed or claimable by the Vendor under the Government of Canada Scientific Research and Experimental Development Tax Incentive Program.

"Stalking Horse Bid" has the meaning set out in Section 4.1(b).

"Tax Deduction" has the meaning set out in Section 4.2(b).

"Transaction" means the transaction of purchase and sale contemplated by this Agreement.

"Transfer Taxes" means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including Sales Taxes but excluding any taxes imposed or payable under the Income Tax Act and any other applicable income tax legislation.

"Transition Agreement" means an agreement between the Purchaser and the Vendor (which for purposes of the Transition Agreement shall include and be binding upon a receiver or trustee in bankruptcy of the Vendor pursuant to the Approval and Vesting Order or other order of the Court acceptable to the Purchaser), pursuant to which the Vendor shall provide the Purchaser, at the Purchaser's expense, with such transition services as may reasonably be requested by the Purchaser to give effect to the transaction contemplated by the Agreement, including without limitation; (i) hold any Non-Assignable Interests in trust for the Purchaser; (ii) administer the Non-Assignable Interests for the benefit of, and at the cost and direction of, the Purchaser; and (iii) continue the employment any Transition Employees after the Closing Date as may be requested by the Purchaser;

"Transition Employees" means the Employees of the Vendor designated by the Purchaser not less than five Business Days before the Closing Date to remain employed by the Vendor after the Closing Date, for the period(s) and on the terms set out in the Transition Agreement;

"Trustee" means KSV Kofman Inc. in its capacity as Proposal Trustee of the Vendor in the BIA Proceedings.

"Trustee's Certificate" means the certificate of the Trustee certifying that the Trustee has received written confirmation in form and substance satisfactory to the Trustee from the Parties that all conditions of Closing have been satisfied or waived by the applicable Parties and that the Trustee has received the Closing Cash Payment.

"Vendor" has the meaning set out in the recitals hereto.

Section 1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

Section 1.3 General Construction.

The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof. The expression "Section" or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

Section 1.4 Extended Meanings

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

Section 1.5 Currency

All references in this Agreement to dollars, monetary amounts or to \$ are expressed in Canadian currency unless otherwise specifically indicated.

Section 1.6 Statutes

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules, regulations and interpretations made under it, as it or they may have been or may from time to time be modified, amended or re-enacted.

Section 1.7 Schedules

The following Schedules are incorporated in and form part of this Agreement:

| | | |
|------------|---|------------------------------------|
| Schedule A | - | Purchased Assets |
| Schedule B | - | Excluded Assets |
| Schedule C | - | Bidding Procedures |
| Schedule D | - | Permitted Encumbrances |
| Schedule E | - | Form of Approval and Vesting Order |
| Schedule F | - | Purchase Price Allocation |

**ARTICLE 2
SALE AND PURCHASE AND ASSIGNMENT****Section 2.1 Sale and Purchase of Assets**

Subject to the terms and conditions hereof, at the Closing Time, the Vendor hereby agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor, the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances) pursuant to the Approval and Vesting Order.

Section 2.2 Assignment of Contracts

In the event that there are any Contracts which are not assignable in whole or in part without the consent, approval or waiver of another party or parties to them and such consents, approvals or waivers have not yet been obtained as of the Closing Date, then:

- a) nothing in this Agreement will be construed as an assignment of any such Contract (each a "Consent Required Contract");
- b) until the Approval and Vesting Order is granted, the Vendor shall use its commercially reasonable efforts to obtain any such consent, approval or waiver and the Purchaser shall provide its reasonable cooperation to assist the Vendor in obtaining any such consent, approval or waiver;
- c) if any consent, approval or waiver is not obtained for any Consent Required Contract prior to the service of the motion for the Approval and Vesting Order, the Purchaser may request that the Vendor bring a motion to the Court for issuance of an Assignment Order with respect to such Consent Required Contracts together with the motion for the Approval and Vesting Order, or at such later date as may be designated by the Purchaser;
- d) Pending obtaining consent or Assignment Order, the Vendor shall hold the Consent Required Contract as a Non-Assignable Interest to be administered in accordance with the Transition Agreement, and shall use commercially reasonable efforts to continue to perform its obligations under the Consent Required Contract, including engaging the Vendor as its agent to do so; and
- e) once the consent, approval or waiver to the assignment of a Consent Required Contract is obtained or the assignment of such Contract has been ordered by the Court, such Consent Required Contract shall be deemed to be assigned to the Purchaser on Closing.

With respect to each Consent Required Contract, subject to Closing and to either (i) the consent of the other parties thereto to the assignment thereof, or (ii) in the absence of such consent, the obtaining of an Assignment Order, in addition to its other obligations under this Agreement, the Purchaser shall pay the applicable Cure Costs related to such Consent Required Contract on Closing.

Section 2.3 "As is, Where is"

The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an "as is, where is" basis as they shall exist as at the Closing Time. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets. No representation, warranty or condition is expressed or can be implied as to title, Encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the

foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Schedules is for purpose of identification only. Except as otherwise provided in Section 5.2, no representation, warranty or condition has or will be given by the Vendor concerning completeness or accuracy of such descriptions.

Notwithstanding anything contained in this Section 2.3, the Vendor confirms that it shall be in possession of and shall deliver all Login Credentials to the Purchaser on the Closing Date.

Section 2.4 Assumed Obligations

The Purchaser shall assume and perform, discharge and pay when due the following obligations and liabilities of the Vendor (the "**Assumed Obligations**") after the Closing:

- a) all debts, liabilities and obligations under the Contracts (to the extent assigned or transferred to the Purchaser on Closing) for the period from and after the Closing Time;
- b) the obligation and liability of the Vendor to pay Cure Costs in respect of any Contract; and
- c) all debts, liabilities and obligations arising from ownership and use of the Purchased Assets for the period from and after the Closing Time.

Section 2.5 Excluded Obligations

Other than the Assumed Obligations, the Purchaser shall not assume and shall not be liable, directly or indirectly, or otherwise responsible for any debts, liabilities or other obligations of the Vendor, including, without limiting the generality of the foregoing:

- a) all debts, liabilities, obligations or Claims related to any Benefit Plans, Employees or any Excluded Asset;
- b) all debts, liabilities and obligations related to any Purchased Asset arising out of or related to the period prior to the Closing Time;
- c) all obligations and liabilities owing by the Vendor to any Affiliate;
- d) all debts, liabilities and obligations for or related to any obligation for any taxes that are not expressly assumed by the Purchaser;
- e) all taxes imposed on or relating to the Purchased Assets that are attributable to any pre-Closing tax period whether or not any such period ends on or before the Closing Date (other than any Transfer Taxes); and
- f) all debts, liabilities and obligations of the Vendor arising under this Agreement.

ARTICLE 3 PURCHASE PRICE

Section 3.1 Purchase Price



The aggregate purchase price (the "Purchase Price") payable by the Purchaser to the Trustee on behalf of the Vendor for the Purchased Assets is the sum of: (i) the Monetary Purchase Price, and (ii) the Assumed Obligations. The Monetary Purchase Price shall be allocated on Closing amongst the Purchased Assets in accordance with the provisions of Schedule F.

Section 3.2 Deposit

The Vendor acknowledges, contemporaneously with the execution of this Agreement, of a deposit (the "Deposit") in the amount of \$50,000 on account of the Monetary Purchase Price, paid to the Trustee and held in trust by the Trustee pursuant to the terms of this Agreement. If the Closing takes place, the Deposit shall be credited and set off against the Monetary Purchase Price. The Deposit shall be forfeited in favour of the Vendor on the Outside Date in the event that the Closing does not occur by the Outside Date solely as a result of the failure by the Purchaser to perform any of its obligations in Section 7.2.

Section 3.3 Satisfaction of Purchase Price

Provided that all conditions precedent to Closing have been satisfied or waived in accordance with Article 7, the Purchase Price shall be paid and satisfied on Closing as follows:

- a) as to the amount of the Deposit, by the crediting and set off of the Deposit against an amount of the Monetary Purchase Price equal to the amount of the Deposit;
- b) 
- c) 
- d) as to the dollar value of the Assumed Obligations, by the assumption by the Purchaser of the Assumed Obligations.

Section 3.4 Return of Deposit

In the event that the Purchaser is not the successful bidder in the Sale Process, the Vendor shall repay the amount of the Deposit to the Purchaser in addition to an amount sufficient to cover the Bid Protections. In the event that that Transaction fails to close by the Outside Date OTHER THAN as a result of the failure by the Purchaser to perform any of its obligations hereunder, the Trustee shall repay the Deposit to the Purchaser no later than the earlier of: (i) the Outside Date; and (ii) one (1) Business Day after the closing of a sale of all of

the Vendor's assets in an amount equal to the lesser of the actual proceeds of such sale or the amount of the Deposit.

Section 3.5 Transfer Taxes

- (1) The Parties agree that:
- a) the Purchase Price is exclusive of all Transfer Taxes and the Purchaser shall be liable for and shall pay any and all applicable Transfer Taxes pertaining to the Purchaser's acquisition of the Purchased Assets;
 - b) subject to Section 3.5(c), the Purchaser shall pay any applicable Transfer Taxes on the Purchaser's acquisition of the Purchased Assets;
 - c) if applicable, the Vendor and the Purchaser shall jointly elect that no Sales Taxes be payable pursuant to the Sales Tax Legislation with respect to the purchase and sale of the Purchased Assets under this Agreement and the Purchaser will file an election pursuant to section 167 of the Excise Tax Act, prepared by the Purchaser and made jointly by the Purchaser and the Vendor, in compliance with the requirements of the Sales Tax Legislation. The Purchaser shall indemnify the Vendor for any Sales Tax, interest and penalties applicable to the Vendor on the sale of the Purchased Assets caused by the Purchaser's failure to file a valid election under section 167 of the Excise Tax Act in the prescribed time.
- (2) If requested by the Purchaser, the Vendor shall make:
- a) a joint election(s) to have the rules in section 22 of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply in respect of the Accounts Receivable; and
 - b) a joint election(s) to have the rules in subsection 20(24) of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of the Vendor in respect of undertakings which arise from the operation of the business to which the Purchased Assets related and to which paragraph 12(1)(a) of the Income Tax Act applies.

ARTICLE 4

BIDDING PROCEDURES

Section 4.1 Bidding Procedures

- a) The Vendor and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to Court approval.

- b) The Vendor and the Purchaser acknowledge and agree that the Trustee or the Vendor shall apply to the Court by no later than January 30, 2020, or such other date as they may agree, for the Sale Process Order, inter alia, recognizing this Agreement, and in particular the Purchase Price, as a baseline or "stalking horse bid" (the "**Stalking Horse Bid**") and approving the Bidding Procedures, the payment of the Break Fee and Expense Reimbursement in the circumstances set out in Section 4.2, and the parties will use commercially reasonable efforts to have the Sale Process Order issued. The Purchaser acknowledges and agrees that the Bidding Procedures are in contemplation of determining whether a superior bid can be obtained for the Purchased Assets.

Section 4.2 Break Fee and Expense Reimbursement

- a) In consideration for the Purchaser's expenditure of time and money and agreement to act as the initial bidder through the Stalking Horse Bid, and the preparation of this Agreement, and in performing due diligence pursuant to this Agreement, and subject to Court approval, the Purchaser shall be entitled to: (i) a break fee in the amount of \$25,000 (inclusive of HST, if any) (the "**Break Fee**"); and (ii) an expense reimbursement amount not to exceed \$45,000 (inclusive of HST) (the "**Expense Reimbursement**", and together with the Break Fee, the "**Bid Protections**"), in each case payable by the Vendor to the Purchaser only in the event that a successful bid other than the Stalking Horse Bid is accepted by the Vendor, approved by the Court and completed. The payment of the foregoing amounts shall be approved in the Sale Process Order and shall be payable to the Purchaser out of the sale proceeds derived from and upon completion of the successful bid. Each of the parties hereto acknowledges and agrees that the foregoing amounts represent a fair and reasonable estimate of the costs and damages that will be incurred by the Purchaser as a result of non-completion of this Agreement, and is not intended to be punitive in nature nor to discourage competitive bidding for the Purchased Assets, business and Assumed Liabilities.
- b) The Bid Protections shall be paid by the Vendor to the Purchaser without deduction or withholding for taxes (a "**Tax Deduction**"), unless a Tax Deduction is required by Applicable Law. In the event that the Vendor determines that a Tax Deduction is required by Applicable Law to be made in respect of the payment of the Bid Protections, or any portion thereof, the Vendor shall pay such additional amount (the "**Additional Amount**") as shall be required to result in the Purchaser receiving an amount equal to the amount which it would have received if no Tax Deduction had been required.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

Section 5.1 Purchaser's Representations

The Purchaser represents and warrants to the Vendor as of the date hereof and acknowledges that, as of the Closing Time, the Vendor is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- a) the Purchaser is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation and has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;
- b) the Purchaser has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;
- c) neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms; and
- d) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

Section 5.2 Vendor's Representations

The Vendor, represents and warrant to the Purchaser as of the date hereof and as of the Closing Time as follows and acknowledges that the Purchaser is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- a) the Vendor is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation;
- b) the Vendor is not a non-resident of Canada for purposes of the *Income Tax Act* or the *Excise Tax Act*, as applicable;

- c) to the best of the Vendor's actual knowledge, and without investigation, no notices of termination have been received by the Vendor under any customer or vendor contracts of the Vendor;
- d) on the Closing Date, the Vendor shall be in possession of active and accurate Login Credentials and shall be able to transfer such Login Credentials to the Purchaser; and
- e) subject to obtaining the Sale Process Order and the Approval and Vesting Order and, if applicable, the Assignment Order, the Vendor has the requisite power and authority to enter into this Agreement and to complete the Transaction contemplated hereunder.

Section 5.3 Limitations

With the exception of the Vendor's representations and warranties in Section 5.2 and the Purchaser's representations and warranties in Section 5.1, none of the Vendor or the Purchaser, or their respective Representatives, nor any of their respective officers, directors or Employees make, have made or shall be deemed to have made any other representation or warranty, express or implied, at law or in equity, in respect of the Vendor, the Purchaser, or the Purchased Assets or the sale and purchase of the Purchased Assets pursuant to this Agreement.

ARTICLE 6 COVENANTS

Section 6.1 Conduct of Business in the Ordinary Course

- (1) The Vendor shall use commercially reasonable efforts to conduct its business in the Ordinary Course of Business except to the extent required to allow the Vendor to comply with its obligations under this Agreement, subject in all cases to any limitation imposed by being subject to BIA Proceedings and any Court order.
- (2) Without limiting the generality of Section 6.1(1), the Vendor shall use its commercially reasonable efforts to:
 - a) remain in possession of the Purchased Assets until Closing, use the Purchased Assets only in the Ordinary Course of Business and maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the Ordinary Course of Business,
 - b) not dispose of any of the Purchased Assets,
 - c) not disclaim any Contract that is material to the business of the Vendor; and

- d) not enter into any material contract or other material written agreement in respect of any of the Purchased Assets other than in the Ordinary Course of Business; except, in each case, with the prior written consent of the Purchaser, such consent not to be unreasonably withheld, or an order of the Court, and provided that such consent of the Purchaser shall be deemed to have been given with respect to any request for such a consent to which the Purchaser fails to respond within two (2) Business Days after such request is made.

Section 6.2 Actions to Satisfy Closing Conditions

- (1) The Vendor agrees to take all such actions as are within its power to control and shall use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Section 7.1 and Section 7.3.
- (2) The Vendor agrees prior to the Closing Date to take all such actions as are within its power to control and shall use its commercially reasonable efforts to assist the Purchaser with the transition of customer and supplier relationships from the Vendor to the Purchaser. The Purchaser agrees to take all such actions as are within its power to control and shall use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Section 7.2 and Section 7.3.

ARTICLE 7 CONDITIONS PRECEDENT

Section 7.1 Conditions Precedent in favour of the Purchaser

- (1) The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed:
 - a) all representations and warranties of the Vendor contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date;
 - b) the Vendor shall have performed in all material respects each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 8.3;
 - c) all stays of proceedings provided for in the BIA Proceedings, including in any Court orders granted therein, shall have remained in effect as at the Closing Time except where any such stay is terminated or lifted or amended in a manner which is not prejudicial to the Purchaser or which does not adversely affect the Purchaser's rights under this Agreement or the Purchased Assets; and

- d) The Vendor shall have entered into a Transition Agreement on terms acceptable to the Purchaser in its sole discretion;
- (2) The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in this Section 7.1 may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. If any condition set out in Section 7.1 is not satisfied or performed on or prior to the Outside Date, the Purchaser may elect on written notice to the Vendor to terminate this Agreement.

Section 7.2 Conditions Precedent in favour of the Vendor

- (1) The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed:
- a) all representations and warranties of the Purchaser contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date; and
 - b) the Purchaser shall have performed in all material respects each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 8.2.
- (2) The foregoing conditions are for the exclusive benefit of the Vendor. Any condition in this Section 7.2 may be waived by the Vendor in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing. If any condition set forth in Section 7.2 is not satisfied or performed on or prior to the Outside Date, the Vendor may elect on written notice to the Purchaser to terminate the Agreement.

Section 7.3 Conditions Precedent in favour of both the Purchaser and the Vendor

- (1) The obligations of the Vendor and the Purchaser to complete the Transaction are subject to the following conditions being fulfilled or performed:
- a) the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied, or vacated (or any such appeal shall have been dismissed with no further appeal therefrom);
 - b) the Transition Agreement shall have been approved by the Court, including without limitation an order making the Transition Agreement binding on a trustee in bankruptcy of the Vendor, and/or a receiver of the Vendor's interests in any Non-Assignable Interests;

- c) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and
 - d) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (2) The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendor and the Purchaser. If the conditions set out in this Section 7.3 are not satisfied performed or mutually waived on or before the Outside Date, any Party shall have the option to terminate this Agreement upon written notice to the other Parties.

ARTICLE 8 CLOSING

Section 8.1 Closing

Subject to the conditions set out in this Agreement, the completion of the Transaction shall take place at the Closing Time at the offices of DLA Piper (Canada) LLP, 6000 First Canadian Place, 100 King Street West, Toronto, Ontario, M5X 1E2, or as otherwise determined by mutual agreement of the Parties in writing and the Parties shall exercise commercially reasonable efforts to cause Closing to occur at the Closing Time and, in any event, prior to the Outside Date.

Section 8.2 Purchaser's Deliveries on Closing

At or before the Closing Time, the Purchaser shall execute and deliver, or arrange for the delivery, as the case may be, to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- a) the Closing Cash Payment in accordance with Section 3.3(c);
- b) payment of Transfer Taxes required by Applicable Law to be collected by any Vendor, or alternatively, if applicable, the election(s) referred to in Section 3.5(1)c) executed by the Purchaser;
- c) an executed assignment and assumption agreement evidencing the assumption by the Purchaser of the Assumed Obligations;
- d) an executed assignment agreement evidencing the assumption by the Purchaser of all Intellectual Property;
- e) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Purchaser has

performed in all respects the covenants to be performed by it prior to the Closing Time; and

- f) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

Section 8.3 Vendor's Deliveries on Closing

At or before the Closing Time, the Vendor shall execute and deliver, or arrange for the delivery, as the case may be, to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing;
- b) the Approval and Vesting Order;
- c) the Transition Agreement and Court order approving it;
- d) an executed assignment and assumption agreement evidencing the assumption by the Purchaser of the Assumed Obligations;
- e) an executed assignment agreement evidencing the assumption by the Purchaser of all Intellectual Property;
- f) a true and complete copy of all Assignment Orders, if any, entered by the Court;
- g) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Vendor contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Vendor have performed in all material respects the covenants to be performed by them prior to the Closing Time;
- h) if applicable, the election(s) referred to in Section 3.5(1)c) executed by the Vendor;
- i) the executed Trustee's Certificate;
- j) such other necessary deeds, conveyances, assurances, transfers and assignments and any other instruments necessary to transfer the Purchased Assets to the Purchaser; and
- k) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

Section 8.4 Possession of Assets

- (1) On Closing, the Purchaser shall take possession of the Purchased Assets where situate at Closing. The Purchaser acknowledges that the Vendor has no obligation to deliver physical possession of the Purchased Assets to the Purchaser. In no event shall the Purchased Assets be sold, assigned, transferred or set over to the Purchaser until the conditions set out in the Approval and Vesting Order have been satisfied or waived by the Purchaser or Vendor, as applicable, and the Purchaser has satisfied all delivery requirements outlined in Section 8.2. The Purchaser shall promptly notify the Vendor of any Excluded Assets which may come into the possession or control of the Purchaser, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Vendor, or to such other Person as the Vendor may direct in writing and, for greater certainty, title shall not be deemed to vest to the Purchaser in respect of any Excluded Assets. The Vendor shall have no obligation to remove any Excluded Equipment from any premises that constitute part of Purchased Assets. All right, title and interest in any such Excluded Equipment which is not sold or removed from such premises after three months following Closing shall vest in the Purchaser unless the Purchaser objects to such title transfer in which case, right, title and interest shall continue to vest in the Vendor but the Purchaser shall be entitled to dispose of such Excluded Equipment at the Purchaser's expense.
- (2) The Purchased Assets shall be and remain until Closing at the risk of the Vendor. In the event of material (exceeding \$100,000) damage by fire or other hazard to the Purchased Assets or any part thereof occurring before the Closing Date, the Vendor shall immediately advise the Purchaser thereof by notice in writing.

Section 8.5 Dispute Resolution

If any dispute arises with respect to any matter related to the Transaction or the interpretation or enforcement of this Agreement such dispute will be determined by the Court, or by such other Person or in such other manner as the Court may direct or as mutually agreed by the Vendor and the Purchaser.

Section 8.6 Termination

- (1) This Agreement shall automatically terminate at any time prior to the Closing Time by mutual written agreement of the Vendor and the Purchaser and on consent of the Trustee.
- (2) This Agreement may be terminated at any time prior to the Closing Time upon the occurrence of any of the following:
 - a) a condition precedent has not been satisfied or waived pursuant to and in accordance with Article 7 and a Party entitled to terminate this Agreement as a result thereof has delivered written notice of termination pursuant to Article 7 (provided that the terminating Party has not failed to satisfy a closing condition under this Agreement); or

- b) Closing shall not have occurred on or prior to the Outside Date in accordance with Section 7.3 and any of the Parties shall have delivered written notice of termination to the other Parties terminating this Agreement as a result thereof (provided that the terminating Party has not failed to satisfy a closing condition under this Agreement).

Section 8.7 Effects of Termination and Closing

- (1) If this Agreement is terminated pursuant to Section 9.6, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for the provisions of: (i) Section 3.2 (Deposit); and (ii) this Section 9.7 (Effects of Termination and Closing), each of which will survive termination.
- (2) If the Transaction is not completed by the Outside Date solely as a result of the Vendor's failure to perform any of its obligations in Section 7.1, then the Deposit and Expense Reimbursement shall become due and payable to the Purchaser in accordance with the terms of this Agreement.
- (3) If the Transaction is not completed by the Outside Date solely as a result of the Purchaser's failure to perform any of its obligations in Section 7.2, then the Deposit shall be forfeited to the Vendor in accordance with Section 3.2 (Deposit), as liquidated damages, and not as penalty, and the Vendor shall have no other rights and remedies against the Purchaser available at law or in equity.
- (4) Under no circumstance shall any of the Parties, their Representatives or their respective directors, officers, employees or agents be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

ARTICLE 9 GENERAL

Section 9.1 Access to Books and Records

- (1) For a period of two years from the Closing Date or for such longer period as may be reasonably required for the Vendor (or any trustee in bankruptcy of the estate of the Vendor) to comply with Applicable Law, the Purchaser will retain all original Books and Records that are transferred to the Purchaser under this Agreement. So long as any such Books and Records are retained by the Purchaser pursuant to this Agreement, the Vendor (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of the Vendor, including the Trustee) has the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser.

Section 9.2 Notice

- (1) Any notice or other communication under this Agreement shall be in writing and may be delivered by read-receipted email, addressed:
- a) in the case of the Purchaser, as follows:

Intercap Equity Inc.

Attention: Jason Chapnik, Chairman
Email: jason@intercap.ca
 - b) in the case of the Vendor, as follows:

Viafoura Inc.

Attention: Jesse Moeinifar, CEO
Email: jesse@viafoura.com
 - c) in each case, with a further copy to the Trustee, as follows:

KSV Kofman Inc.

Attention: Bobby Kofman/Mitch Vininsky
Email: bkofman@ksvadvisory.com/mvininsky@ksvadvisory.com
- (2) Any such notice or other communication, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.
- (3) Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party.

Section 9.3 Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser.

Section 9.4 Survival

The representations and warranties of the Parties contained in this Agreement shall merge on Closing and the covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

Section 9.5 Personal Information

The Purchaser hereby acknowledges that it is aware, and that it will advise its Representatives, that privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (Canada), applies to certain information that may be disclosed to the Purchaser and its Representatives pursuant to this Agreement and/or the Transaction. The Purchaser agrees to comply, and cause its Representatives to comply, with such privacy legislation in connection with any such information disclosed to it or any of them.

Section 9.6 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

Section 9.7 Entire Agreement

This Agreement, the attached Schedules hereto, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by all of the Parties.

Section 9.8 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

Section 9.9 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

Section 9.10 Commission

The Purchaser agrees to indemnify the Vendor and its Representatives against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction and the Vendor shall indemnify the Purchaser and its Representatives for any third party or agent or broker fees or other commissions payable by the Vendor on the Purchase Price or otherwise in connection with the Transaction.

Section 9.11 Assignment by Purchaser

This Agreement may not be assigned by the Purchaser without the prior written consent of the Trustee, which consent may be withheld in the Trustee's sole and absolute discretion; provided, however that the Purchaser shall be permitted to assign the benefit of all or a portion of this Agreement prior to the issuance of the Approval and Vesting Order to an Affiliate thereof in circumstances where (i) prior notice of such assignment is provided to the Vendor, (ii) such assignee agrees to be bound by the terms of this Agreement to the extent of the assignment, and (iii) such assignment shall not release the Purchaser from any obligation or liability hereunder in favour of the Vendor and the Purchaser shall acknowledge and confirm its continuing obligations and liabilities in favour of the Vendor in form and substance satisfactory to the Vendor; for greater certainty, the Purchaser shall be permitted to assign the right to buy all or a portion of the Purchased Assets to one or more Affiliates and such assignment shall be permitted so long as the requirements of this Section 9.11 are complied with. This Agreement may not be assigned by the Vendor.

Section 9.12 Further Assurances

Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

Section 9.13 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

Section 9.14 Severability

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein is prohibited or unenforceable pursuant to Applicable Law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

Section 9.15 Trustee's Certificate

The Parties acknowledge and agree that the Trustee shall be entitled to deliver to the Purchaser, and file with the Court, the executed Trustee's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Trustee shall have no liability to the Parties in connection therewith. The Parties further acknowledge and agree that (i) upon written confirmation from both Parties that all conditions of Closing in favour of such Party have been satisfied or waived (other than the payments contemplated in Section 3.3 and the delivery of the executed Trustee's Certificate), the Trustee may deliver the executed Trustee's Certificate to the Purchaser's

counsel in escrow, with the sole condition of its release from escrow being the Trustee's written confirmation of receipt of the payments contemplated in Section 3.2 to be delivered to it, and (ii) upon the Trustee's written confirmation that all such funds have been received, the Trustee's Certificate will be released from escrow to the Purchaser, and the Closing shall be deemed to have occurred.

Section 9.16 Trustee's Capacity


The Vendor and the Purchaser acknowledge and agree that the Trustee, acting in its capacity as Trustee of the Vendor, will have no liability, in its personal capacity or otherwise, in connection with this Agreement whatsoever as Trustee.

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IN WITNESS WHEREOF, the Parties have executed this Agreement.

PURCHASER:

INTERCAP EQUITY INC.

By: 

Name: Jason Chapnik
Title: Chief Executive Officer

VENDOR:

VIAFOURA INC

By: _____
Name: Jesse Moeinifar
Title: CEO

IN WITNESS WHEREOF, the Parties have executed this Agreement.

PURCHASER:

INTERCAP EQUITY INC.

By: _____
Name: Jason Chapnik
Title: Chief Executive Officer

VENDOR:

VIAFOURA INC
By: _____
Name: Jesse Moeinifar
Title: CEO

Schedule A - Purchased Assets

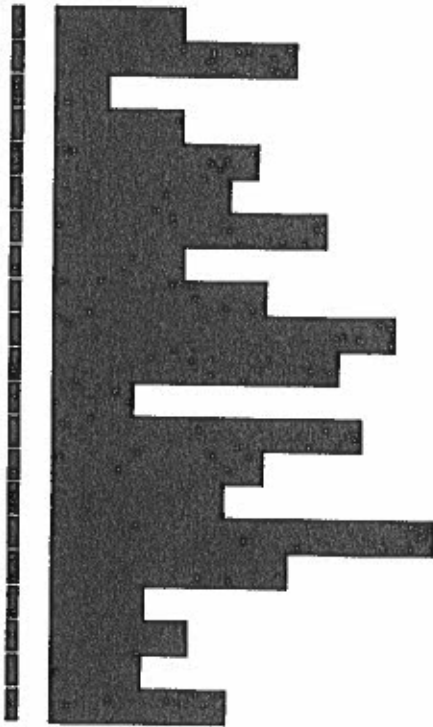
- (1) all movable property, leasehold improvements and equipment, furniture, fixtures and other fixed assets, if any (excluding those that are subject to capital leases), in addition to all computer hardware used in connection with the business;
- (2) all Books and Records;
- (3) all inventory of the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

Appendix 1 to Schedule A - Assumed Contracts

All supplier contracts to which the Vendor is a party, including but not limited to any and all contracts with the following parties:



All customer contracts to which the Vendor is a party, including but not limited to any and all contracts with the following parties:



Schedule B - Excluded Assets

1. Benefit Plans

Schedule C

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VIAFOURA INC. (the "VENDOR") under the *BANKRUPTCY AND INSOLVENCY ACT*, R. S. C. 1985 c B-3 as amended. (the "BIA")

Bidding Procedures

Set forth below are the bidding procedures (the "**Bidding Procedures**") to be employed with respect to the sale (the "**Sale**") of the Vendor's assets pursuant to a court approved solicitation process in the matter of the Notices of Intention to Make a Proposal of the Vendor under the BIA.

On February 4 2020, the Court issued an order (the "**Sale Process Order**") approving and accepting for the purpose of conducting a "stalking horse" solicitation process (the "**Stalking Horse Process**") in accordance with these Bidding Procedures that certain asset purchase agreement dated January 22, 2020 (the "**Stalking Horse Bid**") between the Vendor and InterCap Equity Inc. (the "**Stalking Horse Bidder**"), including, without limitation, the payment of a break fee (the "**Break Fee**") and expense reimbursement (the "**Expense Reimbursement**") by the Vendor to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid, and approving these Bidding Procedures.

Subject to Court availability, within ten (10) business days following the Auction (defined below) the Trustee shall bring a motion (the "**Approval and Vesting Order Motion**") seeking the granting of an order by the Court authorizing the Vendor to proceed with the Sale of the Vendor's Assets to the Qualified Bidder making the Successful Bid (each as defined below) (the "**Successful Bidder**") (such order, as approved, the "**Approval and Vesting Order**").

Assets to Be Sold En Bloc

The Vendor is offering for Sale all of the Vendor's right, title and interest in and to all of the Vendor's assets en bloc (the "**Vendor's Assets**") and only a bid for all of the Vendor's Assets, in whole and not in part can be eligible to be a Qualified Bid (as defined below). KSV Kofman Inc., in its capacity as Proposal Trustee under the Notice of Intention to Make a Proposal of the Vendor (the "**Trustee**") will be responsible for conducting the solicitation process and an auction (the "**Auction**") (if any) on behalf of the Vendor.

The Bidding Process

The Trustee shall be responsible for the marketing and sale of the Vendor's Assets pursuant to the process described by the Proposal Trustee's Second Report to Court dated January 15, 2020 (the "**Bidding Process**"), which is set out below. The Trustee shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Process, *provided, however*, that the adoption of any rule that materially deviates from these Bidding Procedures shall require the prior written consent of the Stalking Horse Bidder.

Participation Requirements

"**Qualified Bidder**" is a bidder who submits a bid in substantially the same form as the Stalking Horse Bid, for a cash purchase price of at least [REDACTED] and includes the Required Bid Terms and Materials (as defined below). Any bid meeting these criteria that is received by the Trustee before the Bid Deadline is a qualified bid ("**Qualified Bid**").

Bid Deadline

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Terms and Materials to the Trustee no later than 5:00 p.m. (prevailing Eastern time) on March 9, 2020 (the "**Bid Deadline**").

Bid Requirements

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Trustee, the following (collectively, the "**Required Bid Terms and Materials**"):

- (i) [REDACTED]
- (ii) [REDACTED]
- (iii) A provision stating that the bidder's offer is irrevocably open for acceptance until the Vendor's Assets have been sold pursuant to the closing of the sale approved by the Court;

- (iv) An executed copy of a proposed purchase agreement and a redline of the bidder's proposed purchase agreement reflecting variations from the Stalking Horse Bid (the "**Marked Agreement**");
- (v) A cash deposit in the amount of not less than fifteen *per cent* (15%) of the amount of the Base Purchase Price, in the form of a wire transfer, certified cheque or such other form acceptable to the Trustee (the "**Bid Deposit**"), which shall be held in the trust account of the Trustee's solicitors (the "**Escrow Account**"). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest on Closing to the purchase price payable by it under its bid on the closing thereof; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer (which in the case of the Back-Up Bidder shall be following closing of the sale to the Successful Bidder).

A Sale bid received from a Qualified Bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a "**Qualified Bid**". The Trustee reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the best offer (the "**Lead Bid**"). Details of the Lead Bid will be provided by the Trustee to all Qualified Bidders after the Bid Deadline and no later than 5:00p.m. (Eastern Time) two (2) Business Days before the date scheduled for the Auction.

Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

"As Is, Where Is, With All Faults"

The Sale of the Vendor's Assets shall be on an "as is, where is" and "with all faults" basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Trustee or the Vendor or their agents, representatives, partners or employees, or any of the other parties participating in the sales process pursuant to these Bid Procedures, except as may otherwise be provided in a definitive purchase agreement with the Vendor. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Vendor's Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Vendor's Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Vendor's Assets, the financial performance of the Vendor's Assets or the physical condition or location of the Vendor's Assets, or the completeness of any information provided in connection

therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Vendor.

Free of Any and All Liens

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder's purchase agreement, and subject to any permitted encumbrances therein, all of the Vendor's right, title and interest in and to the Vendor's Assets shall be sold free and clear of all liens and encumbrances pursuant to the Approval and Vesting Order except for Permitted Encumbrances (as defined in the Stalking Horse Bid).

The Sale and Auction Process

If one or more Qualified Bids (other than that submitted by the Stalking Horse Bidder) have been received by the Trustee on or before the Bid Deadline, the Trustee shall advise all Qualified Bidders of the Lead Bid and invite all Qualified Bidders (including the Stalking Horse Bidder) to attend the Auction to be conducted by the Trustee in accordance with the **Auction Procedures** attached hereto as Appendix 1.

If no Qualified Bid is submitted by the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, and the Stalking Horse Bidder shall be the Successful Bidder.

Trustee to Determine Highest and/or Best Bid: The Trustee shall determine, in its reasonable business judgment, which Qualified Bid is the Lead Bid and which bid after each round of offers is the then-prevailing highest and/or best bid. In making such determination, the Trustee may consider, without limitation: (i) the amount and nature of the consideration; (ii) the proposed assumption of liabilities, if any, and the related implied impact on recoveries for creditors; (iii) the ability of the Qualified Bidder in question to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase price adjustment; (vi) the net economic effect of any changes made to the Stalking Horse Bid; and (vii) such other considerations as the Trustee deems relevant in its reasonable business judgment. At the end of each round of offers, the Trustee shall advise the Qualified Bidders of the material terms of the then highest and/or best bid, and the basis for calculating the total consideration offered in such offer. If at the end of any round of bidding a Qualified Bidder has elected not to submit a further bid meeting the criteria set out herein (including the Minimum Bid Increment), then such Qualified Bidder shall not be entitled to continue to participate in the next round of offers or in any subsequent round.

If only one Qualified Bid is submitted after a round of offers then that Qualified Bid shall be the Successful Bidder. The next highest offer, as determined by the Trustee (the "**Back-up Bid**"), shall be required to keep its offer open and available for acceptance until the closing of the Court Approved Sale of the Vendor's Assets to the Successful Bidder.

Highest versus Best Offer

In determining the Lead Bid, the highest and/or best Sale offer during each round of offers, and the Successful Bid, the Trustee is not required to select the offer with the highest purchase price and may, exercising its reasonable business judgment, select another offer on the basis that it is the best offer even though not the highest purchase price. Without limiting the foregoing, the Trustee may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgment, is appropriate and reasonable, including those considerations described above under "Trustee to Determine Highest and/or Best Bid".

Break Fee and Expense Reimbursement

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Vendor have agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, the Break Fee in the amount of \$25,000 and an Expense Reimbursement on account of its reasonable and documented out of pocket fees and expenses, up to a maximum of \$45,000 inclusive of HST, in the event that the Stalking Horse Bidder is not the Successful Bidder.

The Break Fee and Expense Reimbursement are material inducements for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Bid. The Break Fee and Expense Reimbursement, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Sale Process Order.

Acceptance of Qualified Bids

The sale of the Vendor's Assets to any Successful Bidder by the Vendor is expressly conditional upon the approval of the Successful Bid by the Court at the hearing of the Approval and Vesting Order Motion. The presentation of the Successful Bid to the Court for approval does not obligate the Vendor to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. The Vendor will be deemed to have accepted a bid only when the bid has been approved by the Court at the hearing on the Approval and Vesting Order Motion.

Approval and Vesting Order Motion Hearing

The Approval and Vesting Order Motion shall, subject to court availability, be made returnable on or before March 23, 2020. The Trustee, in the exercise of its business judgement, reserves its right to the extent consistent with the Stalking Horse Bid to change the date of the

hearing of Approval and Vesting Order Motion in order to achieve the maximum value for the Vendor's Assets.

Miscellaneous

The solicitation process and these Bidding Procedures are solely for the benefit of the Vendor and nothing contained in the Sale Process Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Sale Process Order. The bid protections incorporated in these Bidding Procedures are solely for the benefit of the Stalking Horse Bidder.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order, the Stalking Horse Process and the Bidding Procedure.

APPENDIX I

Auction Procedures

Auction

1. If the Trustee determines to conduct an Auction pursuant to the Stalking Horse Bid Procedures, the Trustee will notify the Qualified Bidders who made a Qualified Bid that the Auction will be held at the Toronto office of DLA Piper (Canada) LLP at 10:00 a.m. (Eastern Time) on date that is determined by the Trustee, provided that that is not later than six (6) Business Days after the Bid Deadline, or such other place and time as the Trustee may advise. Capitalized terms used but not defined have the meaning given to them in the Stalking Horse Bid Procedures. The Auction shall be conducted in accordance with the following procedures:
 - a) Participation at The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Trustee shall provide all Qualified Bidders with the amount of the Leading Bid by 5:00pm (Eastern Time) two (2) Business Days before the date scheduled for the Auction. Each Qualified Bidder must inform the Trustee whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, the Trustee, the Vendor and their respective counsel and other advisors shall be permitted to attend the Auction.
 - b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the "Opening Bid" for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the "Opening Bid" for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
 - c) Trustee Shall Conduct the Auction. The Trustee and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Trustee shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take into account any factors that the Trustee reasonably deems relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Trustee's assessment of the certainty of the Qualified Bidder to close the proposed transaction on or before the Outside Date; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the net economic effect of any changes from the Opening Bid of the previous round, and (vi) such other considerations as the Trustee deems relevant in its reasonable business judgment

(collectively, the "Bid Assessment Criteria"). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Trustee shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.

- d) Terms of Overbids. An "Overbid" is any Bid made at the Auction subsequent to the Trustee's announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in minimum Cash Purchase Price increments of \$50,000 above the Opening Bid, or such increments as the Trustee may determine in order to facilitate the Auction (the "Minimum Overbid Increment"). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.
 - (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply. Any Overbid made by a Qualified Bidder must provide that it remains irrevocable and binding on the Qualified Bidder and open for acceptance as a Back-Up Bid until the closing of the Successful Bid.
 - (iii) *Announcing Overbids:* At the end of each round of bidding, the Trustee shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid, including the nature of the transaction, the assets proposed to be acquired and the obligations proposed to be assumed, the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
 - (iv) *Consideration of Overbids:* The Trustee reserves the right to make one or more adjournments in the Auction in durations set by the Trustee to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and, (C) give Qualified Bidders the opportunity to provide the Trustee with such additional evidence as it, may require, that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the

prevailing Overbid amount. The Trustee may have clarifying discussions with a Qualified Bidder, and the Trustee may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions. IT IS HIGHLY RECOMMENDED THAT BIDDERS OBTAIN ALL NECESSARY APPROVALS AND FUNDING COMMITMENTS IN ADVANCE OF THE AUCTION.

- (v) *Failure to Bid*: If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the next round of the Auction.
- e) Additional Procedures. The Trustee may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Stalking Horse Bid Procedures and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.
- f) Closing the Auction. The Auction shall be closed after the Trustee has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Bid and the Back-Up Bid and advised the Qualified Bidders participating in the Auction of such determination
- g) Finalizing Documentation. Promptly following a Bid of a Qualified Bidder being declared the Successful Bid or the Back-Up Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid. For greater certainty, every Bid made at Auction is deemed to be a signed and binding bid based on the bidder's original Qualified Bid.

Schedule C - Permitted Encumbrances



Schedule D - Form of Approval and Vesting Order

Court File No.

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

| | | |
|----------------|---|--------------------|
| THE HONOURABLE |) | WEEKDAY, THE # |
| |) | |
| JUSTICE |) | DAY OF MONTH, 2020 |

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**

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Kofman Inc., in its capacity as Proposal Trustee (the "Trustee") of Viafoura Inc. (the "Vendor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Vendor and Intercap Equity Inc. ("Intercap") dated ♦ and vesting in Intercap's permitted affiliate, [●] (the "Purchaser"), the Vendor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report of the Trustee and on hearing the submissions of counsel for the Trustee and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

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

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

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

4. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate, forthwith after delivery thereof.
5. **THIS COURT ORDERS** that the Trustee may rely on written notice from the Vendor and the Purchaser regarding fulfillment of conditions to closing under the Sale Agreement and shall incur no liability with respect to the delivery of the Trustee's Certificate.
6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Vendor and the Trustee are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendor's records pertaining to the Vendor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendor.
7. **THIS COURT ORDERS** that, notwithstanding:
 - (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* (the "BIA") in respect of the Vendor and any bankruptcy order issued pursuant to any such applications or otherwise; and
 - (c) any assignment in bankruptcy made in respect of the Vendor;

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

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

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

Schedule A - Form of Trustee's Certificate

Court File No. _____

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

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

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

TRUSTEE'S CERTIFICATE

RECITALS

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

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

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

THE TRUSTEE CERTIFIES the following:

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

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

Per: _____
Name:
Title:

Schedule B - Purchased Assets

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

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

Appendix 2 to Schedule B – Assumed Contracts

TBD.

Appendix “F”

Notes to Projected Statement of Cash Flow

For the Period Ending May 15, 2020

(Unaudited; \$C)

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 March 13, 2020 to May 15, 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.

2. The projected cashflow statement reflects receipt of the Closing Cash Payment and the disbursements associated with it, with nil receipts and disbursements thereafter assuming a closing in the week ending March 27, 2020. In the event that there are sundry expenses after closing, arrangements will be made with the Purchaser to fund those amounts.

Hypothetical

3. The Company invoices its services in advance, either monthly or annually. 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.
4. Reflects payment of operating costs, such as contractors for the finance, accounting, and marketing functions; travel phone charges; bank charges; supplies; software licenses; and memberships.
5. Represents a provision for miscellaneous expenses.

Most Probable

6. Reflects payment of certain services, such as server hosting and software applications. Most payments are made in advance.
7. Reflects payment of gross payroll, which is paid bi-weekly. Commissions and benefits are paid monthly.
8. Reflects payment of rent at the Company's head office.
9. Reflects the estimated payments to the Proposal Trustee, its counsel and other counsel involved in this proceeding.
10. Represents funding required during the Period.
11. Represents the Closing Cash Payment by Intercap Equity Inc. ("Intercap") as defined in the Asset Purchase Agreement dated January 22, 2020 ("APA").
12. Cash on hand at closing is an asset of the Purchaser.

**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 May 15, 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 12.

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 12. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, this 16th day of March, 2020.

Viafoura Inc.



Per: **Jesse Moeinifar**
CEO

**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 16th day of March, 2020, consisting of a weekly cash flow statement for the period March 14, 2020 to May 16, 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 2-12.

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 16th day of March 2020.



**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**