



NO. S248103
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FELIX PAYMENT SYSTEMS LTD.

PETITIONER

NOTICE OF APPLICATION

Name of applicant: The Petitioner, Felix Payment Systems Ltd. ("**Felix**")

To: Service List, attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the applicant to the Honourable Justice Masuhara at the courthouse at 800 Smithe Street, Vancouver, British Columbia on December 6, 2024 at 10:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 2.5 hours.

- ☐ This matter is within the jurisdiction of an associate judge.
- ☒ This matter is not within the jurisdiction of an associate judge. Justice Masuhara is seized of these proceedings and this matter has been booked through trial scheduling.

PART 1: ORDERS SOUGHT

1. Felix seeks the following:

- (a) an amended and restated initial order (the "**ARIO**") attached hereto as **Schedule "B"** pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**") for, among other things:

- (i) abridging the time for and validating the service of the Application and supporting materials and dispensing with further service thereof;
 - (ii) approving an extension of the Initial Stay Period (as defined below) up to and including February 28, 2025;
 - (iii) approving Felix's ability to borrow up to a principal amount of \$2,350,000 under a debtor-in-possession ("**DIP**") credit facility (the "**DIP Facility**"), to finance Felix's critically required operating expenses and other general corporate purposes, post-filing expenses, and costs in accordance with the Revised Cash Flow Forecast (as defined below);
 - (iv) increasing the quantum of the Administrative Charge (defined below) up to a maximum amount of \$250,000;
 - (v) approving Felix's proposed key employee retention plan (the "**KERP**") and granting a related charge (the "**KERP Charge**") up to the maximum amount of CAD\$95,000 and subordinate to the Charges (as defined in Initial Order of Justice Masuhara, made November 25, 2024 (the "**Initial Order**")); and
- (b) a Stalking Horse and SISP approval order (the "**Stalking Horse and SISP Approval Order**") attached hereto as **Schedule "C"**:
- (i) authorizing and approving Felix's execution of an agreement of purchase and sale (the "**Stalking Horse Subscription Agreement**") among Felix and the First Lien Lenders (defined below, in its capacity as the purchaser under the Stalking Horse Subscription Agreement, the "**Stalking Horse Purchaser**") dated December 3, 2024, including the Expense Reimbursement (as defined below)
 - (ii) approving a sales and investment solicitation process (the "**SISP**") in which the Stalking Horse Subscription Agreement will serve as the "**Stalking Horse Bid**", and authorizing Felix and the Monitor to implement the SISP pursuant to its terms;
 - (iii) authorizing and directing Felix and the Monitor to perform their respective obligations and do all things reasonably necessary to perform their obligations under the SISP; and
- (c) an order (the "**Sealing Order**") attached hereto as **Schedule "D"** sealing Confidential Affidavit #3 of Andrew Cole, sworn December 3, 2024 (the "**Confidential Cole Affidavit**").

2. Capitalized terms used herein and not otherwise defined have the meanings given to them in Affidavit #1 of Andrew Cole, sworn November 21, 2024 (the "**First Cole Affidavit**"), adjusted as the context may require.

PART 2: FACTUAL BASIS

A. Background and Status of the CCAA Proceeding

3. Felix is a privately-held financial technology company based in Vancouver, British Columbia specializing in cloud-based payment acceptance infrastructure and associated software systems. On October 15, 2024, Felix filed a notice of intention to make a proposal (the “NOI”) under the Bankruptcy and Insolvency Act, R.S.C., 1985 c. B-3, which commenced the NOI proceeding (the “NOI Proceeding”). Alvarez & Marsal Canada Inc. (“A&M”) was appointed to act as the proposal trustee (in such capacity, the “Proposal Trustee”). On November 12, 2024, this Court (sitting in bankruptcy and insolvency) granted Felix an extension of time to file a proposal to December 30, 2024.

Affidavit #2 of Andrew Cole, sworn December 3, 2024
(the “**Second Cole Affidavit**”) at para 4

4. As detailed in the First Cole Affidavit, Felix’s primary secured creditors can be categorized in two groups: (i) the first lien lenders—Mr. Jake Boxer and Mr. Douglas Mordy and their associated entities, which include Brookridge Chartered Professional Accounts Inc. (since renamed PEL Chartered Professional Accountants Inc.), the Mordy Trust, Candice Rose Mordy, Ralph McFee, Kapil Nanalal, and Section 3 Ventures (VCC) Inc. (collectively, the “**First Lien Lenders**”); and (ii) the second lien lenders—Mr. Steve Hall and his associated entities, which include SR Hall Management LLC, BBSG Hall Investments, LLC, Ripcord Capital LLC, and Daplt NA, LLC.

Second Cole Affidavit at para 5

5. On November 25, 2024, the Honourable Justice Masuhara granted the Initial Order in respect of Felix under the CCAA. Among other things, the Initial Order:

- (a) established a stay of proceedings against Felix for an initial period of ten (10) days (the “**Initial Stay Period**”). The Initial Stay Period was extended up to and including December 6, 2024;
- (b) granted Felix a continuation of the NOI Proceeding as a proceeding under the CCAA (the “**CCAA Proceeding**”);

- (c) appointed A&M as an officer of the Court to monitor the assets, business, and financial affairs of Felix (in such capacity, the “**Monitor**”);
- (d) approved Felix’s ability to borrow under the DIP Facility, to finance Felix’s critically required operating expenses and other general corporate purposes, post-filing expenses, and costs over the Initial Stay Period but limiting such advances to \$400,000 during the Initial Stay Period;
- (e) granting the Administration Charge, the Directors’ Charge, and the DIP Lender’s Charge (each as defined in the First Cole Affidavit) in the following priorities:
 - (i) First – the Administration Charge in favour of the Monitor, counsel to the Monitor, and counsel to Felix up to a maximum of \$150,000;
 - (ii) Second – the DIP Lender’s Charge in favour of the DIP Lender; and
 - (iii) Third – the Directors’ Charge in favour of the directors and officers of Felix up to a maximum of \$150,000.

Second Cole Affidavit at para 6

6. As previewed in the First Cole Affidavit, following continued negotiations with the First Lien Lenders and in consultation with the Monitor, Felix now seeks the ARIO and the Stalking Horse and SISP Approval Order to advance the purposes of the CCAA Proceeding and facilitate Felix’s restructuring efforts.

Second Cole Affidavit at para 7

B. The Stalking Horse and SISP Approval Order

7. Felix seeks the Stalking Horse and SISP Approval Order to pursue a going-concern transaction for the benefit of its stakeholders. This order has two key aspects: (i) it authorizes and approves the execution of the Stalking Horse Subscription Agreement by Felix; and (ii) it approves the SISP in which the Stalking Horse Subscription Agreement will serve as the Stalking Horse Bid.

Second Cole Affidavit at para 8

i. Stalking Horse Subscription Agreement

8. The Stalking Horse Subscription Agreement between Felix and the Stalking Horse Purchaser (i.e., the First Lien Lenders) will serve as the basis for the Stalking Horse Bid in the SISP.

Second Cole Affidavit at para 9, Exhibit "A"

9. The Stalking Horse Bid is of benefit to Felix because, among other things, it assures Felix's many stakeholders – including its employees, customers, and Critical Suppliers (as defined in the First Cole Affidavit) – that there will be a going-concern outcome for Felix's business. Felix's value is as a going concern, and a liquidation would not realise the same value.

Second Cole Affidavit at para 10

10. In addition, the use of the Stalking Horse Subscription Agreement allows for a streamlined SISP that will efficiently canvas the market while balancing Felix's lack of liquidity.

Second Cole Affidavit at para 10

11. The Stalking Horse Subscription Agreement is the product of significant efforts and negotiations among the Stalking Horse Purchaser and Felix in consultation with the Monitor.

Second Cole Affidavit at para 12

12. The Stalking Horse Subscription Agreement is contemplated to be structured as a reverse vesting transaction whereby the Stalking Horse Purchaser will acquire shares to be issued by Felix (the "**Purchased Shares**") pursuant to an order to be granted by the Court (the "**Approval and Vesting Order**"). The Stalking Horse Subscription Agreement contemplates that, in the event the Stalking Horse Bid is determined to be the "**Successful Bid**" pursuant to the SISP, the Approval and Vesting Order will, among other things:

- (a) approve the transaction contemplated by the Stalking Horse Subscription Agreement;
- (b) vest out of Felix certain excluded assets, excluded contracts and excluded liabilities, which shall be vested into a new subsidiary of Felix to be incorporated ("**ResidualCo**");

- (c) authorize and direct Felix to file the Articles of Reorganization (as defined in the Stalking Horse Subscription Agreement);
- (d) terminate and cancel all Existing Shares (as defined in the Stalking Horse Subscription Agreement) as well any agreement, contract, plan, indenture, deed, certificate, subscription right, conversion right, pre-emptive right, option, or other document or instrument governing and/or having been created or granted in connection with the share capital of Felix, if any (other than the rights of the Stalking Horse Purchaser under the Stalking Horse Agreement), for no consideration; and
- (e) authorize and direct Felix to issue the Purchased Shares, and vest in the Stalking Horse Purchaser the Purchased Shares, free and clear from any Encumbrances, except Permitted Encumbrances (each as defined in the Stalking Horse Subscription Agreement).

Second Cole Affidavit at para 12

13. The significant terms of the Stalking Horse Subscription Agreement include, among other things:

1.1 "Administrative Wind-down Amount"	"Administrative Wind-down Amount" means cash in the amount of \$50,000 to be used to satisfy the costs incurred by the Monitor and its professional advisors to administer ResidualCo, the Company, and the Excluded Assets and Excluded Liabilities, and to wind-down and/or dissolve and/or bankrupt ResidualCo.
1.1 "Assumed Liabilities"	"Assumed Liabilities" means: (a) Liabilities specifically and expressly designated by the Purchaser as Assumed Liabilities in Schedule "E" to the Stalking Horse Subscription Agreement, as the same may be modified by the Purchaser no later than five (5) Business Days before the Approval and Vesting Order Hearing, provided that consent of the Company and the Monitor is required for the removal of any Assumed Liabilities in accordance with the terms hereof; (b) all obligations existing under or in connection with the DIP Lender's Charge; (c) all obligations existing under or in connection with the First Lien Charge; (d) all Liabilities which relate to the Permits and Licenses and the Business under any Assumed Contracts, solely in respect of the period from and after the Closing Time and not relating to any default existing prior to or as a consequence of Closing.

2.1 Purchase and Sale of the Purchased Shares	Subject to the terms and conditions of the Stalking Horse Subscription Agreement, at the Closing Time, Felix will issue to the Purchase, and the Purchaser shall subscribe for that number of shares in the share capital of Felix from treasury, to be specified by the Purchaser at least two (2) Business Days prior to the Approval and Vesting Order Hearings, which shares shall be free and clear of all Encumbrances.
3.1 Purchase Price	The total aggregate consideration payable by the Purchaser for the Purchased Shares shall be equal to the following:(a) all amounts outstanding and obligations payable by Felix under or in connection with the DIP Term Sheet and secured by the DIP Lender's Charge, including principal, interest and fees accrued up to and including the Closing Date, which indebtedness shall be assumed by the Purchaser at Closing; plus (b) all amounts outstanding and obligations payable by Felix under or in connection with the First Lien Loan Documents and secured by the First Lien Charge, including principal, interest and fees accrued up to an including the Closing Date, which indebtedness shall be assumed by the Purchaser at Closing; plus (c) the value of all other Assumed Liabilities, if any, to be satisfied by the Purchaser performing and/or discharging such Assumed Liabilities as and when they become due; plus (d) the value of the Closing Payment, to be paid by the Purchaser in accordance with Section 3.2 of the Stalking Horse Subscription Agreement.
3.2 Closing Payment	At Closing, the Purchaser shall pay to the Monitor an amount equal to the sum of: (i) the Priority Payments; (ii) the CCAA Charge Amount; and (iii) the Administrative Wind-down Amount (collectively the " Closing Payment "), provided, however, that such amount shall not exceed \$500,000. The Monitor shall hold the Closing Payment in trust for the benefit of Persons entitled to be paid from the Closing Payment.
9.1 – Conditions – All Parties	<p>The obligation of the Parties to complete the Transaction is subject to the following conditions being satisfied on or prior to the Closing Date:</p> <ul style="list-style-type: none"> (a) <u>Final Orders</u>. Each of the SISP Order and the Approval and Vesting Order shall have been issued and entered by the Court; (b) <u>No Order</u>. No Applicable Law and no judgment, injunction, order or decree shall have been issued by a Governmental Authority or otherwise be in effect that restrains or prohibits the completion of the Transaction. (c) <u>Successful Bid</u>. This Agreement will be the Successful Bid (as determined pursuant to the SISP).

	<p>(d) <u>No Restraint.</u> No motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction.</p>
<p>9.2 Conditions – Stalking Horse Purchaser</p>	<p>The obligation of the Purchaser to complete the Transaction is subject to the following conditions being satisfied, on or prior to the Closing Date:</p> <p>(a) <u>Implementation Steps.</u> The Implementation Steps shall have been completed in the order and in the timeframes contemplated hereunder.</p> <p>(b) <u>Company's Deliverables.</u> The Company shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 8.3.</p> <p>(c) <u>No Breach of Representations and Warranties.</u> Except as such representations and warranties may be affected by the occurrence of events or transactions specifically contemplated by this Agreement (including the Approval and Vesting Order), each of the representations and warranties contained in Section 5.1 shall be true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date.</p> <p>(d) <u>No Breach of Covenants.</u> The Company shall have performed, in all material respects, all covenants, obligations and agreements contained in this Agreement required to be performed by it on or before the Closing Date.</p> <p>(e) <u>Employees.</u> The Company shall have terminated the employment of the Terminated Employees</p> <p>(f) <u>Permits and Licenses.</u> The Permits and Licenses shall be in good standing at the Closing Time and no material default shall have occurred under any such Permits and Licenses that remains unremedied.</p> <p>(g) <u>Material Adverse Change.</u> After the date of this Agreement and before the Closing Time, there will not have occurred any Material Adverse Change.</p>
<p>9.3 Conditions – Felix</p>	<p>The obligation of the Company to complete the Transaction is subject to the following conditions being satisfied on or prior to the Closing Date:</p> <p>(a) <u>Purchaser's Deliverables.</u> The Purchaser shall have executed and delivered or caused to have been</p>

	executed and delivered to the Company at the Closing all the documents and payments contemplated in Section 8.4.
(b)	<u>No Breach of Representations and Warranties.</u> Each of the representations and warranties contained in Section 5.2 shall be true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date.
(c)	<u>No Breach of Covenants.</u> The Purchaser shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser on or before the Closing.

14. If the Stalking Horse Bid is not the Successful Bid in the SISP, then the Stalking Horse Purchaser will be entitled to payment of the Expense Reimbursement in an aggregate amount of \$50,000. The “**Expense Reimbursement**” is to act as consideration of the Stalking Horse Purchaser’s expenditure of time and money and agreement to act as the “Stalking Horse Bidder”, including the cost of having the Stalking Horse Agreement drafted and which will be used as the base agreement in the SISP.

Second Cole Affidavit at para 14

ii. The SISP

15. The proposed SISP provides for the Monitor, in consultation with Felix, to solicit interest and opportunities for a sale of, or investment in, all or part of Felix’s assets and business operations. The SISP was designed to be a flexible process that will obtain the best value for Felix’s business to maximize value for Felix’s many stakeholders.

Second Cole Affidavit at para 15

16. The SISP contemplates one or more of a restructuring, recapitalization or other form of reorganization of the business and affairs of Felix as a going concern or a sale of all, substantially all or one or more components of the assets of Felix (i.e., the Property) and Felix’s business operations (collectively, the “**Business**”).

Second Cole Affidavit at para 16

17. The SISP contains the following milestones:

Date	Milestone
December 13, 2024	Monitor to commence solicitation of interest from parties, including delivery of the Teaser Letter (as defined in the SISP) and sales packages, and establish confidential data room
January 31, 2025	Bid Deadline (as defined in the SISP) – due date for bids and deposits
<i>If no Qualified Bids (as defined in the SISP) are received other than the Stalking Horse Bid</i>	
February 4, 2025	Selection of Stalking Horse Bid as Successful Bid (as defined in the SISP)
February 14, 2025 (pending the Court's availability)	Approval and Vesting Order Motion
As soon as possible but no later than February 21, 2025	Closing of Stalking Horse Bid
<i>If Qualified Bids are selected other than the Stalking Horse Bid</i>	
February 4, 2025	Monitor to provide the Lead Bid(s) (as defined in the SISP) to the Stalking Horse Bidder and each Qualified Bidder
February 11, 2025	Auction (as defined in the SISP), if needed
February 14, 2025	Selection of Successful Bid and Back-Up Bid, if needed
February 21, 2025 (pending the Court's availability)	Approval and Vesting Order Motion (if there is an Auction)
As soon as possible but no later than February 28, 2025	Closing of the Successful Bid

Second Cole Affidavit at para 17

18. The SISP was prepared in consultation with, and with input from, the Monitor, and is supported by the Monitor. The Monitor agrees that interested parties will have sufficient time to

formulate and submit Qualified Bids (as defined in the SISP) and that the SISP will ensure the Business is sold as a going concern.

Second Cole Affidavit at para 18(a)

19. The SISP is fair and reasonable for the following reasons:

- (a) The SISP will be administered by the Monitor, with the input and support of Felix;
- (b) Felix will work to prepare a data room by gathering as much information as possible about the company, and it will actively participate in the SISP;
- (c) The number of interested parties within the SISP is anticipated to be limited given the nature of Felix's business as a pre-revenue tech-start up, and the SISP (including the Stalking Horse Subscription Agreement) allows a targeted approach to balance cost; and
- (d) The First Lien Lenders are the Stalking Horse Purchaser under the Stalking Horse Subscription Agreement. This makes the SISP process more efficient by ensuring that any purchaser at least satisfies the amounts owing to these lenders, and that there is a going-concern transaction. To achieve a balance and ensure fairness, the SISP also contemplates an auction at the end if necessary.

Second Cole Affidavit at para 18(b)-(e)

C. Revised Cash Flow Forecast

20. With the assistance of the Monitor, Felix has undertaken an updated cash flow analysis to determine the quantum of funding required to finance their operations, assuming the ARIO is granted, over the 13-week period through to the week ending March 2, 2025 (the "**Revised Cash Flow Forecast**").

Second Cole Affidavit at para 19, Exhibit "B"

21. The Revised Cash Flow Forecast indicates that Felix urgently requires DIP financing to ensure that it has the liquidity required to meet its obligations and continue its business operations during the Stay Period and conduct the SISP. However, with the DIP Facility in place, Felix will have sufficient liquidity to meet its obligations during the Stay Period.

Second Cole Affidavit at para 20

D. The Amended and Restated Initial Order

22. As described in the First Cole Affidavit, the relief sought under the Initial Order was circumscribed to provide the stability, breathing room and financing required to prevent the immediate cessation of Felix's going concern operations and address Felix's liquidity crisis during the Initial Stay Period.

First Cole Affidavit at para 5

23. Felix now seeks to extend and expand certain of the limited relief granted under the Initial Order pursuant to the ARIO as previewed in the First Cole Affidavit. Such relief is in the best interests of Felix and its stakeholders, including its employees and vendors. The material relief sought under the proposed ARIO is discussed below.

Second Cole Affidavit at paras 21-22

iii. DIP Facility

24. The Initial Order approved Felix's ability to borrow under the DIP Facility, to finance Felix's critically required operating expenses and other general corporate purposes, post-filing expenses, and costs over the Stay Period but limiting such advances to \$400,000 during the Stay Period. Felix is now seeking authority to access the full value of the DIP Facility—the principal amount of \$2,350,000—to be used in accordance with the Revised Cash Flow Forecast.

Initial Order at para 30; and
Second Cole Affidavit at para 23

25. The DIP Facility was original forecasted to be the principal amount of \$2.1 million, however, Robert Alpert, a creditor of Felix, has taken actions in the United States, including contacting Felix's major customers, which require Felix to seek recognition of these CCAA Proceedings in the United States under Chapter 15 of the U.S. Bankruptcy Code to avoid further harm to the company and the Business. Felix is in the process of engaging United States counsel to address these issues.

Second Cole Affidavit at para 24

26. In addition, payments to certain critical suppliers were set out in my First Affidavit. The original cashflow budgeted for a payment plan to address arrears. However, certain critical suppliers have demanded payment in full to continue providing services, which has necessitated further borrowing.

Second Cole Affidavit at para 25

iv. Increasing the Administration Charge

27. The Initial Order provides for a court-ordered charge in favour of the Monitor, as well as counsel to the Monitor and Felix, over Felix's property, to secure payment of their respective fees and disbursements incurred in connection with services rendered in respect of Felix up to a maximum amount of \$150,000 (the "**Administration Charge**"). Pursuant to the ARIO, Felix seeks to increase the Administration Charge to the maximum amount of \$250,000. The increased quantum was determined by Felix, in collaboration with the Monitor.

Initial Order at para 29; and

Second Cole Affidavit at para 27

28. Felix requires the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during the CCAA Proceeding in order to complete a successful restructuring. Each of the beneficiaries of the Administration Charge will have distinct roles in Felix's restructuring.

Second Cole Affidavit at para 28

29. The increase in quantum of the Administration Charge is fair and reasonable in the circumstances, given the longer Stay Period and more intensive work required during the CCAA Proceeding, including a SISF administered by the Monitor. The Monitor is also of the view that the Administration Charge is fair and reasonable in the circumstances.

Second Cole Affidavit at para 29

v. KERP and KERP Charge

Overview of the Key Terms of the KERP

30. With the assistance of its legal advisors and the Monitor, Felix has developed a proposed KERP term sheet to secure the continued service of a select subset of critical employees (the

"KERP Term Sheet"). Under the terms of the KERP Term Sheet, Felix proposes to make retention payments to certain individuals employed by Felix (collectively, the **"Eligible Employees"**).

Second Cole Affidavit at para 30

31. The KERP has been designed to incentivize Eligible Employees to remain in their employment during the course of these CCAA Proceeding. The Eligible Employees are members of the executive management team, the senior management team, and certain key personnel.

Second Cole Affidavit at para 31

32. A redacted copy of the KERP Term Sheet, which does not include any employee particulars, is attached as Exhibit "D" to the Second Cole Affidavit. An unredacted copy of the KERP Term Sheet, which includes all details concerning the Eligible Employees and KERP Payments, will be attached as Exhibit "A" to the Confidential Cole Affidavit.

Second Cole Affidavit at para 32, Exhibit "D"; and
Confidential Cole Affidavit at para 3, Exhibit "A"

33. Felix seeks court approval of the KERP and the granting of the KERP Charge, in the maximum amount of CAD\$95,000, to secure payment and performance of the obligations under the KERP.

Second Cole Affidavit at para 33

34. Pursuant to the terms of the KERP, each of the Eligible Employee's respective payment entitlement is called the **"KERP Payments"**. The KERP Payments will become payable to the Eligible Employees on the following events:

- (a) the first payment upon Court approval of the KERP and the KERP Charge; and
- (b) the second payment upon the earlier of: the closing of a sale pursuant to the SISP or any other sale of all or substantially all of the assets of Felix, the implementation of a plan of arrangement in the CCAA Proceeding, the termination of the CCAA Proceeding, or the termination of all of substantially all of the employees of Felix.

Second Cole Affidavit at para 34

35. The retention of the Eligible Employees and their ongoing commitment to Felix is critical for the following reasons:

- (a) the Eligible Employees provide essential leadership required to maintain Felix, which is necessary for its ongoing operations;
- (b) the Eligible Employees will, among other roles, provide strategic direction for Felix's business, respond to due diligence inquiries, and assist in identifying, developing, and implementing initiatives to maximize the value available to all of Felix's stakeholders;
- (c) none of the Eligible Employees could be readily or easily replaced internally and the process to find appropriately qualified replacements externally would be lengthy, difficult, and costly at a time when Felix should be focused on its operations and achieving a value-maximizing transaction pursuant to the SISP;
- (d) any replacements for the Eligible Employees would face a steep learning curve;
- (e) the Eligible Employees have knowledge of, and familiarity with, the Business and its operations, and significant experience and expertise;
- (f) without the KERP, the Eligible Employees would likely consider other employment options;
- (g) the KERP Payments will facilitate the continued participation of the Eligible Employees in the CCAA Proceeding;
- (h) the amounts payable under the KERP are modest;
- (i) Felix's base-compensation is generally below market for similar-qualified employees, meaning that without the KERP, employees are incentivised to leave and not easily replaced except at increased cost; and
- (j) Any process to replace the Eligible Employees would likely be more costly in terms of business disruption, money, and time, than the implementation of the KERP.

Second Cole Affidavit at para 35(a)-(j)

36. The scope of the KERP Payments and the identification and number of the Eligible Employees are appropriately tailored to Felix's current circumstances. The Eligible Employees have been identified by the directors and management of Felix, and the aggregate target payment of CAD\$95,000 is reasonable.

Second Cole Affidavit at para 36

The KERP Charge

37. It is anticipated that the KERP Payments will be funded from Felix's cash flow. However, to ensure that the Eligible Employees receive reasonable assurances that their entitlements under the KERP are secure despite Felix's insolvency, Felix seeks the approval of the KERP Charge under the ARIO.

Second Cole Affidavit at para 37

38. The KERP Charge is to be limited to the maximum aggregate amount of CAD\$95,000. The KERP Charge is solely intended to provide the Eligible Employees with a reasonable degree of certainty and assurance that Felix will be able to make the KERP Payments. The proposed KERP Charge is intended to rank after the Administration Charge, the DIP Lender's Charge, and the Directors' Charge.

Second Cole Affidavit at para 38

39. In light of the above, and given the importance of the Eligible Employees to Felix's restructuring strategy and business, Felix's management and directors believe that the amounts payable under the KERP, and the granting of the KERP Charge, are fair, reasonable, and appropriate in the circumstances.

Second Cole Affidavit at para 39

E. The Sealing Order

40. As noted above, Felix is seeking a sealing order in respect of the full contents of the KERP, including Schedule 1 of the KERP, which is attached as Exhibit "A" to the Confidential Cole Affidavit.

Second Cole Affidavit at para 40; and
Confidential Cole Affidavit at para 3, Exhibit "A"

41. The Confidential Cole Affidavit identifies each employee benefiting from the KERP, along with sensitive compensation information for each individual employee, which may cause harm to the Eligible Employees and could lead to disruption to Felix if made public. Such information is not normally made available to the public in the ordinary course. The key terms of the KERP and the maximum amount payable has been appended to the Confidential Cole Affidavit – as such, there is minimal prejudice to the sealing, and the salutary effects outweigh the deleterious effects of its exclusion from the public record.

Second Cole Affidavit at para 41; and
Confidential Cole Affidavit at para 3, Exhibit “A”

PART 3: LEGAL BASIS

A. The Stalking Horse and SISP Approval Order Should be Granted

(i) The Stalking Horse Subscription Agreement Should be Approved

42. Felix is seeking approval of the Stalking Horse Subscription Agreement to serve as the Stalking Horse Bid in the SISP. If the Stalking Horse Subscription Agreement is ultimately designed as the Successful Bid (as defined in the SISP) further approval from this Court for that agreement and the transaction contemplated therein will be sought.

Second Cole Affidavit at para 9, Exhibit “A”

43. Stalking horse agreements are frequently approved concurrently with sale processes under the CCAA.

Indiva Limited, Indiva Amalco Ltd., Indiva Inc., Vieva Canada Limited, and 2639177 Ontario Inc
(July 5, 2024) Toronto, CV-24-00722044-00CL at para 6 (Sale Process Approval Order)
Nortel Networks Corp, Re (2009), OJ No. 3169 at para 56 [**Nortel**]; and
LoyaltyOne, Co (March 20, 2023) Toronto, CV-23-00696017-00CL at paras 13-14
(Endorsement) [**LoyaltyOne**]

44. Courts have widely recognized the benefits of including stalking horse bids within sales processes as they: (i) facilitate sales by establishing a baseline price and deal structure for superior bids from interested parties; and (ii) establish a deal structure by providing a template for competing bidders to use for the submission of competing offers.

Danier Leather Inc., Re, 2016 ONSC 1044 at para 20 [**Danier**];
CCM Master Qualified Fund Ltd. v. blutip Power Technologies,
2012 ONSC 1750 at para. 7 [**CCM**];
Validus Power Corp. et al. and Macquarie Equipment Finance Limited,
2023 ONSC 6367 at para 20 [**Validus**]

45. In this case, the Stalking Horse Subscription Agreement is the product of negotiations among the Stalking Horse Purchaser and Felix, in consultation with the Monitor. Furthermore, the Stalking Horse Subscription Agreement assures Felix's many stakeholders that there will be a going-concern outcome for Felix's business.

Second Cole Affidavit at paras 10-11

46. The Stalking Horse Subscription Agreement includes the Expense Reimbursement of \$50,000. The Expense Reimbursement is intended to compensate the Stalking Horse Purchaser for the time and resources spent in developing a stalking horse agreement, which will serve as a base document under the SISF.

Second Cole Affidavit at para 14

47. Courts in comparable CCAA proceedings have approved similar transaction fees ("**Comparable Transaction Fees**") that range from 1% to 5.7% of the transaction value therein. Agreeing to such payments is a matter of business judgment and therefore judicial deference is appropriate provided the decision falls within a range of reasonableness.

See: *CCM* at para 13 and *LoyaltyOne* at para 13;
BZAM Ltd. Plan of Arrangement, 2024 ONSC 1685 at para 20 [**BZAM**];
Danier at para 44; and
Brainhunter Inc. (Re), [2009] O.J. No. 5578, 2009 CanLII 72333 (ON SC) at para 20

48. The Expense Reimbursement is at the bottom of the range of Comparable Transaction Fees. Thus, Felix submits that the Expense Reimbursement is fair and reasonable in the circumstances and should be approved by the Court.

49. The Monitor is supportive of the Stalking Horse Subscription Agreement, including the Expense Reimbursement, and believe the terms stipulated therein to be reasonable in the circumstances. Felix is not aware of any oppositions to the approval of the Stalking Horse Bid,

which relief has been previewed in prior materials. Felix therefore submits that the Stalking Horse Subscription Agreement should be approved.

(ii) The SISP is Necessary and Appropriate

50. Section 36 of the CCAA sets out the factors that this Court must consider on an application to approve a sale of a debtors' assets or business but does not codify the factors that are to be considered on an application to approve a sales process.

CCAA, s. 36(3)

51. Canadian courts have, however, regularly granted orders approving sales processes in CCAA proceedings, recognizing that such approvals are consistent with the remedial nature of the CCAA, which confers broad powers to approve sales in relation to a CCAA debtor's business and assets either prior to or in the absence of a plan of arrangement and compromise.

Century Services Inc. v Canada (Attorney General), 2010 SCC 60 at para 59

[Century Services]

52. In *Walter Energy*, this Court set out the following three factors for determining whether to approve a sales process, which Felix submits are the appropriate factors to consider on this application:

- (a) the fairness, transparency, and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the applicant debtors; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

Walter Energy Canada Holdings, Inc. (Re), 2016 BCSC 107 at paras 20-21 [**Walter Energy**];

Inca One Gold Corp. (Re), 2024 BCSC 1478 at paras 33-34 citing *Walter Energy*;

PCAS Patient Care Automation Services Inc. (Re), 2012 ONSC 2840

at paras 17-19 [**PCAS Patient Care**]; and

See also: *Nortel* at para 49

53. While the decision to approve a particular form of sales process is distinct from the approval of a proposed sale, the reasonableness and adequacy of a proposed sales process may also be assessed with reference to the non-exhaustive factors set out in section 36 of the CCAA. These factors include whether the process leading to the proposed sale or disposition was reasonable in the circumstances, whether the monitor approved the process leading to the proposed sale or disposition, and the extent to which creditors were consulted.

PCAS Patient Care at para 17; and
CCAA, s. 36(3)

54. The SISP, which was developed in consultation with the Monitor, and with an opportunity for input from Felix's key stakeholders, is a fair and transparent process that will provide Felix with an opportunity to attempt to maximize value for their assets in the interest of stakeholders.

55. In particular:

- (a) the SISP was prepared in consultation with, and with input from, the Monitor, and is supported by the Monitor. The Monitor agrees that interested parties will have sufficient time to formulate and submit Qualified Bids (as defined in the SISP) and that the SISP will ensure the Business is sold as a going concern;
- (b) a sale process with respect to Felix and/or their assets at this time is necessary given Felix's ongoing financial challenges and liquidity needs;
- (c) the SISP will allow for the assessment of the legitimacy of the bidders and their ability to ultimately close on a transaction;
- (d) the SISP is fair and transparent, including because prospective bidders and the service list for this matter will be given a process letter setting out the key dates for the SISP;
- (e) the SISP will maximize value for stakeholders because it provides for the preservation of the Business as a going-concern rather than the liquidation of Felix's assets; and
- (f) the timelines set out in the SISP will provide a reasonable opportunity for all interested parties to submit competing offers, and the process for determining the

Successful Bid (as defined in the SISP), and balance the limited resources that are available.

Second Cole Affidavit at paras 15-18

56. Accordingly, Felix submits that the SISP ought to be approved and that granting the Stalking Horse and SISP Approval Order is both appropriate and necessary in the circumstances.

B. The Amended and Restated Initial Order Should be Granted

(i) The Initial Stay Period Should be Extended

57. Subsection 11.02(2) of the CCAA grants this Court the discretion to grant a stay extension for a period that this Court considers necessary on any terms that this Court may impose. However, subsection 11.02(3) of the CCAA further provides that this Court cannot exercise its discretion to grant the extension of the Initial Stay Period unless it is satisfied that: (a) the Stay Period is appropriate in the circumstances; and (b) Felix has acted and continue to act in good faith and with due diligence.

CCAA, ss 11.02(2), (3); and

Worldspan Marine Inc, Re, 2011 BCSC 1758 at para 12 [**Worldspan**]

The Stay Extension is Appropriate in the Circumstances

58. In assessing whether the Stay Period is appropriate in the circumstances, this Court ought to inquire whether the extension advances the remedial purpose of the CCAA.

Century Services at para 70; and

Worldspan at para 13

59. The Supreme Court of Canada has held that the purpose of the CCAA is “to facilitate the survival of going concerns” by “permit[ing] the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets.”

Century Services at para 15; and

Canada v Canada North Group Inc., 2021 SCC 30 at para 21 [**Canada North**]

60. Moreover, courts have held that a sale of the debtor’s business as a going-concern to new owners satisfies the purposes of the CCAA.

In the Matter of The Body Shop Canada Limited, 2024 ONSC 3882
[**The Body Shop Canada**] at para 14; and
(Re) Clothing for Modern Times Ltd., 2011 ONSC 7522 at para 12

61. The CCAA is a flexible instrument and debtor companies are entitled to seek protection in the context of a wide range of restructuring options.

Canada North at para 138; and
Century Services at para 57, citing *Metcalfe & Mansfield Alternative Investments II Corp., (Re)*, 2008 ONCA 587 at para 44

62. Felix requires the Stay Period to preserve the *status quo* while conducting the SISP. The SISP is fundamental to the restructuring of the Felix's business and to the benefit of the stakeholders and, therefore, the Stay Period is appropriate in the circumstances to maintain the *status quo* while those processes proceed.

63. The Monitor supports the Stay Period and does not believe any of Felix's creditors will be materially prejudiced by the Stay Period extension.

Felix Has Been Acting in Good Faith and with Due Diligence

64. Felix has been working in good faith and with due diligence to advance this CCAA Proceeding. As noted above, since the Initial Stay Period was granted, Felix has continued to advance the restructuring, including by negotiating terms of the SISP. Felix also has sufficient liquidity to meet their obligations during the Stay Period.

65. Accordingly, this Court ought to approve the Stay Period in the present case as it is necessary to conduct the SISP.

(ii) DIP Facility

66. In accordance with section 11.01 and subsection 11.2(5) of the CCAA, the Initial Order limited the quantum of the DIP Lender's Charge to that which was reasonably necessary for Felix's continued operations in the ordinary course of business during the Initial Stay Period. Pursuant to the proposed ARIO, Felix now seeks to increase the quantum of the DIP Lender's Charge from a maximum amount of \$400,000 up to a principal amount of \$2,350,000 reflecting the maximum borrowings available under the DIP Facility, as amended.

CCAA, ss. 11.001 and 11.2(5); and
Second Cole Affidavit at para 23

67. The criteria supporting the granting of the DIP Facility and the DIP Lender's Charge in the Initial Order are still present; Felix is now seeking authority to access the full value of the DIP Facility, to be used in accordance with the Revised Cash Flow Forecast. The DIP Facility is still required in order for Felix to continue to operate in the ordinary course during the CCAA Proceeding and to implement the SISP with a view to sell the Business as a going concern.

Second Cole Affidavit at paras 23-25, Exhibit "C"

68. In accordance with subsection 11.2(1) of the CCAA, notice of the increase being sought has been provided to the secured creditors and the proposed charge will not secure obligations incurred prior to the CCAA proceedings.

CCAA, s. 11.2(1)

(iii) The Administration Charge Should be Increased

69. Felix is seeking to increase their Administration Charge from \$150,000 to \$250,000. The jurisdiction to grant a charge for professional fees is found in section 11.52 of the CCAA:

11.52(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

...

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

Second Cole Affidavit at para 27; and
CCAA, s. 11.52(1)(b)

70. Such a charge has been recognized as necessary to ensure the involvement of such professionals and achieve the best possible outcome for stakeholders. In *Canwest Publishing*, Justice Pepall (as she then was) set out a non-exhaustive list of factors to be considered:

- (a) the size and complexity of the businesses being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the Monitor.

Canwest Publishing Inc, 2010 ONSC 222 at para 54;

Walter Energy at para 41; and

U.S. Steel Canada Inc, 2014 ONSC 6145 at para 22 [**US Steel**]

71. In these circumstances, Felix requires the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during the CCAA Proceeding in order to complete a successful restructuring. Each of the beneficiaries of the Administration Charge will have distinct roles in Felix's restructuring.

Second Cole Affidavit at para 28

72. The increase in quantum of the Administration Charge is fair and reasonable in the circumstances, given the longer Stay Period and more intensive work required during the CCAA Proceeding, including a SISF administered by the Monitor. The Monitor is also supportive of the increase to the Administration Charge.

Second Cole Affidavit at para 29

(iv) The KERP and KERP Charge Are Necessary and Appropriate

73. Courts regularly approve key employee restructuring plans in furtherance of a debtor company's restructuring on the grounds that the possibility that key employees will seek

alternative employment due to the uncertainty associated with a CCAA restructuring is detrimental to the debtor company and its ability to restructure.

Walter Energy at paras 49-61;
1057863 B.C. Ltd. (Re), 2020 BCSC 1359 at paras 99-112 [**Northern Pulp**]; and
Mountain Equipment Co-Operative (Re), 2020 BCSC 1586 at paras 62-71 [**MEC**]

74. This Court's authority to approve the KERP and the KERP charge is found in s. 11 of the CCAA to grant relief it deems "appropriate".

MEC at para 66

75. Factors to be considered by the Court in approving a KERP will vary from case to case, but previous considerations have included the following:

- (a) is this employee important to the restructuring process?
- (b) does the employee have specialized knowledge that cannot be easily replaced?
- (c) will the employee consider other employment options if the KERP is not approved?
- (d) was the KERP developed through a consultative process involving the Monitor and other professionals?; and
- (e) does the Monitor support the KERP and a charge?

Walter Energy at para 59, citing *US Steel* at paras 28-33

76. Three criteria underlie the consideration of the appropriateness of employee retention programs in insolvency proceedings: (a) arm's length safeguards, (b) necessity and (c) reasonableness of design.

Northern Pulp at para 105,
citing *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980 at para 30

77. In the present case, the evidence supports each of the factors and criteria for approving a KERP, including because:

- (a) the KERP was designed to retain and incentivize the Eligible Employees that have institutional knowledge and important skills that have been identified as crucial to value preservation and the success of the SISP;

- (b) Felix's CEO believes that the KERP is necessary to retain the Eligible Employees, particularly in light of the fact that Felix's base-compensation is generally below market for similar-qualified employees, meaning that without the KERP, employees are incentivised to leave and not easily replaced except at increased cost;
- (c) the KERP was developed in consultation with the Monitor; and
- (d) the Monitor believes that the requested KERP Charge is reasonable and appropriate in the circumstances.

Second Cole Affidavit at paras 30 - 35

78. In the above circumstances, Felix believes that the KERP and the KERP Charge are necessary and appropriate in the circumstances.

C. The Confidential Affidavit Should be Sealed

79. In the leading case of *Sierra Club of Canada v Canada (Minister of Finance)*, the Supreme Court of Canada held that a sealing order may be granted where (1) such an order is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and (2) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which includes the public interest in open and accessible court proceedings.

Sierra Club of Canada v Canada (Minister of Finance),
2002 SCC 41 at para 53 [**Sierra Club**]

80. The Supreme Court of Canada had occasion to recently reaffirm its decision in *Sierra Club* in *Sherman Estates v Donovan*, 2021 SCC 25. In that decision, the Court confirmed that the "test laid out in *Sierra Club* continues to be an appropriate guide for judicial discretion" and that the structure provided by *Sierra Club* "remains appropriate and should be affirmed."

Sherman Estates v Donovan, 2021 SCC 25 at para 43 [**Sherman Estates**]

81. The Court in *Sherman Estates* did, however, break down the two-pail test from *Sierra Club* into three parts to help clarify the prerequisites "without altering its essence". As clarified, the

applicant must establish that (1) court openness poses a serious risk to an important public interest; (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Sherman Estates at para 38

82. Both before and after *Sherman Estates*, Canadian courts continue to grant sealing orders in CCAA proceedings including with respect to key employee retention plans such as the KERP.

Walter Energy at para 51; and

Ontario Securities Commission v Bridging Finance Inc., 2021 ONSC 4347 at para 24

83. In the present case, a sealing order with respect to the Confidential Cole Affidavit is necessary and appropriate as its disclosure could be prejudicial to Felix, the Eligible Employees, and others. Among other issues, disclosure of the information the Confidential Cole Affidavit could (a) create morale and other issues as between employees who are either not subject to the KERP or are receiving different entitlements under the KERP; (b) allow Felix's business competitors and others to attempt to induce the Eligible Employees to depart from their employment for more lucrative opportunities; and (c) make it more difficult for Felix to negotiate employment terms for replacement employees if required.

Second Cole Affidavit at para 41

84. These issues and disruptions would be prejudicial to Felix at a time that it is most in need of stability and continuity. Additionally, salary and compensation levels for employees is a particularly personal and private matter to employees. As the information found in the Confidential Cole Affidavit is not of a nature that would normally be made public, prejudice (if any) arising from it being sealed from public view would be outweighed by its disclosure.

PART 4: MATERIAL TO BE RELIED ON


1. Affidavit #1 of Andrew Cole, made November 21, 2024;
2. Pre-Filing Report of the Proposed Monitor, dated November 22, 2024;
3. Initial Order of Justice Masuhara, made November 25, 2024;

4. Affidavit #2 of Andrew Cole, sworn December 3, 2024;
5. Confidential Affidavit #3 of Andrew Cole, sworn December 3, 2024; and
6. Such further and other materials as counsel may advise and this Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

DATE: December 3, 2024


Counsel for the Petitioner
McCarthy Tétrault LLP
(H. Lance Williams and Ashley Bowron)

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs _____ of Part 1 of this notice of application
- ☐ with the following variations and additional terms:

DATE: _____

Signature of ☐ Judge
☐ Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

SCHEDULE "A"

NO. S248103
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FELIX PAYMENT SYSTEMS LTD.

PETITIONER

SERVICE LIST

<p>McCarthy Tétrault LLP Suite 2400, 745 Thurlow Street Vancouver, BC V6E 0C5</p> <p>Attention: H. Lance Williams Ashley Bowron</p> <p>Email: lwilliams@mccarthy.ca abowron@mccarthy.ca sdanielisz@mccarthy.ca</p> <p><i>Counsel to Felix Payment Systems Ltd.</i></p>	<p>Osler, Hoskin & Harcourt LLP Suite 3000, Bentall Four 1055 Dunsmuir Street Vancouver, BC V7X 1K8</p> <p>Attention: Mary Buttery, K.C. Emma Newbery</p> <p>Email: mbuttery@osler.com enewbery@osler.com stse@osler.com</p> <p><i>Counsel to the First Lien Lenders</i></p>
<p>Clark Wilson LLP 900 – 885 West Georgia Street Vancouver, BC V6C 3H1</p> <p>Attention: Christopher Ramsay</p> <p>Email: cramsay@cwilson.com</p> <p><i>Counsel to the Second Lien Lenders</i></p>	<p>Alvarez & Marsal Canada Inc. 925 West Georgia Street, Suite 902 Vancouver, BC V6C 3L2</p> <p>Attention: Anthony Tillman Taylor Poirier</p> <p>Email: atillman@alvarezandmarsal.com tpoirier@alvarezandmarsal.com</p> <p><i>Proposed Monitor</i></p>

<p>Cassels Brock & Blackwell LLP Suite 2200, 885 West Georgia Street Vancouver, BC V6C 3E8</p> <p>Attention: Vicki Tickle Mihai Tomos</p> <p>Email: vtickle@cassels.com mtomos@cassels.com hroberts@cassels.com</p> <p><i>Counsel for the Proposed Monitor</i></p>	<p>Kornfeld LLP 1100 One Bentall Centre 505 Burrard Street, Box 11 Vancouver, BC V7X 1M5</p> <p>Attention: Douglas B. Hyndman</p> <p>Email: dhyndman@kornfeldllp.com</p> <p><i>Counsel for Business Development Bank of Canada</i></p>
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SCHEDULE "B"

NO. S-248103
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FELIX PAYMENT SYSTEMS LTD.

PETITIONER

ORDER MADE AFTER APPLICATION (AMENDED AND RESTATED INITIAL ORDER)

BEFORE THE HONOURABLE)	FRIDAY, THE 6 TH DAY
)	
JUSTICE MASUHARA)	OF DECEMBER, 2024

ON THE APPLICATION of the Petitioner, Felix Payment Systems Ltd., coming on for hearing at Vancouver, British Columbia on the 6th day of December, 2024; AND ON HEARING H. Lance Williams and Ashley Bowron, counsel for the Petitioner, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed herein, including the First Affidavit of Andrew Cole, sworn November 21, 2024, the Pre-filing Report of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as proposed monitor of the Petitioner, dated November 22, 2024, the Second Affidavit of Andrew Cole, sworn December 3 2024, the Third Confidential Affidavit of Andrew Cole, sworn December 3, 2024 (the "**Confidential Cole Affidavit**"), and the Second Report of A&M in its capacity as monitor of the Petitioner (in such capacity, the "**Monitor**") dated December •, 2024; AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. This amended and restated initial order ("**ARIO**") amends and restates the order of this Court made in these proceedings on November 25, 2024.

SERVICE

2. The time for service of the Notice of Application, dated December 3, 2024 (the "**Notice of Application**") and supporting materials is hereby abridged such that the Notice of Application is properly returnable today.

JURISDICTION

3. The Petitioner is a company to which the CCAA applies.

CONTINUANCE UNDER THE CCAA

4. The proposal proceedings commenced by the Petitioner under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (the "**BIA**") by filing a notice of intention to make a proposal (the "**NOI Proceeding**") on October 15, 2024 (the "**NOI Filing Date**") under Estate No. 11-3140093 and Court File No. VLC-S-B-240514 are hereby taken up and continued under the CCAA. The NOI Proceeding shall have no further force or effect, and is hereby terminated save that any and all acts, steps, agreements, and procedures validly taken, done, or entered into by the Petitioner during the NOI Proceeding shall remain valid, binding, and actionable within this proceeding (the "**CCAA Proceeding**"). For certainty, the approval of the Monitor's and its counsel's fees and disbursements, and approval of the Monitor's activities in the CCAA Proceeding shall be deemed approval of the fees, disbursements and activities of A&M in its capacity as the trustee of the proposal of the Petitioner (in such capacity, the "**Proposal Trustee**") and the fees and disbursements of the Proposal Trustee's counsel in the NOI Proceeding. The Petitioner is hereby authorized and directed to file a copy of this Order in the NOI Proceeding.

PLAN OF ARRANGEMENT

5. The Petitioner shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

6. Subject to this Order and any further Order of this Court, the Petitioner shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the **"Property"**), and continue to carry on its business (the **"Business"**) in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioner shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, **"Assistants"**) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

7. The Petitioner shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the NOI Filing Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the NOI Filing Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively **"Wages"**);
- (b) the fees and disbursements of any Assistants retained or employed by the Petitioner which are related to the Petitioner's restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioner, whenever and wherever incurred, in respect of:
 - (i) the NOI Proceeding;
 - (ii) the CCAA Proceeding or any other similar proceedings in other jurisdictions in which the Petitioner or any subsidiaries or affiliated companies of the Petitioner are domiciled;
 - (iii) any litigation in which the Petitioner is named as a party or is otherwise involved, whether commenced before or after the NOI Filing Date;

- (iv) any related corporate matters; and
- (c) such suppliers of good and services as are deemed critical for the preservation of the Property and/or Business with the consent of the Monitor.

8. Except as otherwise provided herein, the Petitioner shall be entitled to pay all expenses reasonably incurred by the Petitioner in carrying on the Business in the ordinary course following the NOI Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure exceeding \$50,000 shall be approved by the Monitor;
- (b) all obligations incurred by the Petitioner after the NOI Filing Date, including without limitation, with respect to goods and services actually supplied to the Petitioner following the NOI Filing Date (including those under purchase orders outstanding at the NOI Filing Date but excluding any interest on the Petitioner's obligations incurred prior to the NOI Filing Date); and
- (c) fees and disbursements of the kind referred to in paragraph 7(b) which may be incurred after the NOI Filing Date.

9. The Petitioner is authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioner in connection with the sale of goods and services by the Petitioner, but only where such Sales Taxes accrue or

are collected after the NOI Filing Date, or where such Sales Taxes accrued or were collected prior to the NOI Filing Date but not required to be remitted until on or after the NOI Filing Date; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

10. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioner shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioner and the landlord from time to time ("**Rent**"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

11. Except as specifically permitted herein, the Petitioner is hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioner to any of its creditors as of the NOI Filing Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided

such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioner to such customers as of the NOI Filing Date; and

- (e) to not incur liabilities except in the ordinary course of Business.

RESTRUCTURING

12. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioner shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of its Business or operations and commence marketing efforts in respect of any of its redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$100,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing for its Business or Property, in whole or part;

all of the foregoing to permit the Petitioner to proceed with an orderly restructuring of the Business (the "**Restructuring**").

13. The Petitioner shall provide each of the relevant landlords with notice of the Petitioner's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioner's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioner, or by further Order of this Court upon application by the Petitioner, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioner disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute

concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioner's claim to the fixtures in dispute.

14. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioner and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioner, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioner of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioner, in the course of these proceedings, is permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or control to stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioner or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant

Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

16. Until and including February 28, 2025, or such later date as this Court may order (the **"Stay Period"**), no action, suit or proceeding in any court or tribunal (each, a **"Proceeding"**) against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioner and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being **"Persons"** and each being a **"Person"**) against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioner and the Monitor or leave of this Court.

18. Nothing in this Order, including paragraphs 16 and 17, shall: (i) empower the Petitioner to carry on any business which the Petitioner is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioner.

NO INTERFERENCE WITH RIGHTS

19. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioner and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

20. During the Stay Period, all Persons having oral or written agreements with the Petitioner or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioner, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the NOI Filing Date are paid by the Petitioner in accordance with normal payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the NOI Filing Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioner on or after the NOI Filing Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioner with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioner whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioner, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioner or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioner that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall

be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

23. The Petitioner shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioner after the commencement of the within proceedings , except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

24. The directors and officers of the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for the indemnity provided in paragraph 23 of this Order. The Directors' Charge shall have the priority set out in paragraphs 44 and 46 herein.

25. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioner's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 23 of this Order.

APPOINTMENT OF MONITOR

26. Alvarez & Marsal Canada Inc. ("**A&M**") is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioner with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioner and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioner pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

27. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Petitioner's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Petitioner, to the extent required by the Petitioner, in its dissemination, to the DIP Lender (as hereinafter defined) and its counsel on a bi-weekly basis of financial and other information as agreed to between the Petitioner and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Petitioner in its preparation of the Petitioner's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than bi-weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Petitioner in its development of the Plan and any amendments to the Plan;
- (f) assist the Petitioner, to the extent required by the Petitioner, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioner, to the extent that is necessary to adequately assess the Petitioner's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

28. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

29. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

30. The Monitor shall provide any creditor of the Petitioner and the DIP Lender with information provided by the Petitioner in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioner is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioner may agree.

31. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, its appointment as the Proposal Trustee, or

the carrying out of its role as the Proposal Trustee, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor or the Proposal Trustee by the CCAA, the BIA, or any applicable legislation.

ADMINISTRATION CHARGE

32. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioner as part of the cost of these proceedings. The Petitioner is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioner on a periodic basis. The prior payment by the Petitioner of retainers to the Monitor, counsel to the Petitioner, and counsel to the Monitor in the amounts of \$75,000, \$75,000 and \$50,000, respectively are hereby authorized, such retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

33. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

34. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioner's restructuring. The Administration Charge shall have the priority set out in paragraphs 44 and 46 hereof.

INTERIM FINANCING

35. The Petitioner is hereby authorized and empowered to obtain and borrow under a credit facility from Mr. Jake Boxer, the CA Mordy Legacy Trust, and PEL Chartered Professional Accountants Inc. (collectively, the "**DIP Lender**") in order to finance the continuation of the Business and preservation of the Property.

36. Such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Petitioner and the DIP Lender dated as of November 21, 2024 (the "**Commitment Letter**"), filed.

37. The Petitioner is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Petitioner is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

38. The DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property. The DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 44 and 46 hereof.

39. Notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon five (5) business days notice to the Petitioner and the Monitor, may exercise any and all of its rights and remedies against the Petitioner or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Petitioner and set off and/or consolidate any amounts owing by the DIP Lender to the Petitioner against the obligations of the Petitioner to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a

bankruptcy order against the Petitioner and for the appointment of a trustee in bankruptcy of the Petitioner; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioner or the Property.

40. The DIP Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the CCAA, or any proposal filed by the Petitioner under the BIA, with respect to any advances made under the Definitive Documents.

KEY EMPLOYEE RETENTION PLAN

41. The Key Employee Retention Plan (the "**KERP**"), an unredacted copy of which is attached as Exhibit "A" to the Confidential Cole Affidavit, is hereby approved and the Petitioner is authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

42. The payments made by the Petitioner pursuant to the KERP do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. The key employees referred to in the KERP (the "**Eligible Employees**") shall be entitled to the benefit of and are hereby granted a charge on the Property (the "**KERP Charge**"), which charge shall not exceed an aggregate amount of \$95,000 to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 44 and 46 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

44. The priorities of the Administration Charge, the DIP Lender's Charge, the Directors' Charge, and the KERP Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$250,000);

Second – DIP Lender's Charge;

Third - Directors' Charge (to the maximum amount of \$150,000);

Fourth – KERP Charge (to the maximum amount of \$95,000).

45. Any security documentation evidencing, or the filing, registration or perfection of, the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

46. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise, but excluding the security interest of Royal Bank of Canada in relation certain amounts held on deposit with them and registered in the Personal Property Registry of British Columbia as Base Registration No. 355037N (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

47. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioner obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Administration Charge and the Director's Charge.

48. The Charges and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Petitioner of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioner entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Petitioner pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

49. Any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioner's interest in such real property leases.

SERVICE AND NOTICE

50. The Monitor shall (i) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioner of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

51. The Petitioner and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioner's creditors or other interested parties at their respective addresses as last shown on the records of the Petitioner and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

52. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: www.alvarezandmarsal.com/felixpayment.

53. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: www.alvarezandmarsal.com/felixpayment.

54. Notwithstanding paragraphs 51 and 53 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

55. The Petitioner or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

56. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioner, the Business or the Property.

57. Each of the Petitioner and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioner to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

58. The Petitioner may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioner determines that such a filing is appropriate.

59. The Petitioner is hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

60. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

61. Any interested party (including the Petitioner and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

62. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

63. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Lawyer for the Petitioner
McCarthy Tétrault LLP
(H. Lance Williams and Ashley Bowron)

BY THE COURT

REGISTRAR

SCHEDULE "A"
LIST OF COUNSEL

[illegible]

SCHEDULE “C”

NO. S-248103
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FELIX PAYMENT SYSTEMS LTD.

PETITIONER

**ORDER MADE AFTER APPLICATION
(STALKING HORSE AND SISP APPROVAL)**

BEFORE THE HONOURABLE)	FRIDAY, THE 6TH DAY
)	
JUSTICE MASUHARA)	OF DECEMBER, 2024

ON THE APPLICATION of the Petitioner, Felix Payment Systems Ltd., coming on for hearing at Vancouver, British Columbia on the 6th day of December, 2024; AND ON HEARING H. Lance Williams and Ashley Bowron, counsel for the Petitioner, and those other counsel listed on **Schedule “A”** hereto; AND UPON READING the material filed herein; including Affidavit #1 of Andrew Cole made November 21, 2024, Affidavit #2 of Andrew Cole made December 3, 2024, and the Second Report of the Monitor, Alvarez & Marsal Canada Inc. (“**A&M**”, in its capacity as court-appointed monitor of the Petitioner, the “**Monitor**”) dated December 4, 2024; AND pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. 0-36 as amended (the “**CCAA**”), the British Columbia Supreme Court Civil Rules, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Application and Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. All capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Amended and Restated Initial Order of this Court dated December 6, 2024 (the "**ARIO**"), the Sales and Investment Solicitation Process attached as **Schedule "B"** to this Order (the "**SISP**"), or the Stalking Horse Subscription Agreement (as defined herein).

THE SALES AND INVESTMENT SOLICITATION PROCESS

3. The SISP is hereby approved and the Petitioner and the Monitor are hereby authorized and directed to implement the SISP pursuant to the terms thereof. The Petitioner and the Monitor are hereby authorized and directed to perform their respective obligations thereunder and to do all things reasonably necessary to perform their respective obligations thereunder, subject to prior approval of the Court being obtained before completion of any transaction(s) under the SISP.
4. The Petitioner, the Monitor, and their respective affiliates, partners, directors, officers, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or wilful misconduct of any such person (with respect to such person alone), in performing their obligations under the SISP, as determined by this Court in a final order that is not subject to appeal or other review.
5. In overseeing and conducting the SISP, the Monitor shall have all of the benefits and protections granted to it under the CCAA, the ARIO and any other Order of this Court in the within proceeding, and notwithstanding anything contained herein or in the SISP, the Monitor shall not take possession of any Property or be deemed to take possession of any Property.

STALKING HORSE SUBSCRIPTION AGREEMENT

6. The Petitioner is hereby authorized and empowered to enter into the Stalking Horse Subscription dated December 3, 2024 (the "**Stalking Horse Subscription Agreement**") between

Felix Payment Systems Ltd., as vendor (the "**Vendor**") and Jake Boxer, Doug Mordy, the CA Mordy Legacy Trust and PEL Chartered Professional Accountants Inc., as purchaser (the "**Stalking Horse Purchaser**"), attached as **Appendix "C"** to the Second Report, *nunc pro tunc*, with such minor amendments as may be acceptable to the Vendor and the Stalking Horse Purchaser, with the approval of the Monitor; provided that, nothing herein approves the sale and the vesting of any Property to the Stalking Horse Purchaser (or any of its designees) pursuant to the Stalking Horse Subscription Agreement and that the approval of any sale and vesting of any such Property shall be considered by this Court on a subsequent motion made to this Court if the transaction set out in the Stalking Horse Subscription Agreement is the Successful Bid.

7. As soon as reasonably practicable following the Vendor and the Stalking Horse Purchaser agreeing to any amendment to the Stalking Horse Subscription Agreement permitted pursuant to the terms of this Order, the Petitioner shall: (a) file a copy thereof with this Court; (b) serve a copy thereof on the Service List; and (c) provide a copy thereof to each Participant (as defined herein) excluding from the public record any confidential information that the Vendor and the Stalking Horse Purchaser, with the consent of the Monitor, agree should be redacted.

EXPENSE REIMBURSEMENT

8. The Expense Reimbursement is hereby approved and, subject to the entry of the Stalking Horse Subscription Agreement, the Vendor is hereby authorized and directed to pay the Expense Reimbursement to the Stalking Horse Purchaser (or to such other person as it may direct) in the manner and circumstances described in the Stalking Horse Subscription Agreement.

PIPEDA

9. Without limiting the provisions of the ARIO, pursuant to Section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any similar legislation in any other applicable jurisdictions, the Monitor, the Petitioner, and their respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants that are party to a non-disclosure agreement (each a "**Participant**") and their respective advisors personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a transaction pursuant to the SISP (a "**Transaction**"). Each Participant 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 Transaction, and,

if it does not complete a Transaction, shall return all such information to the Monitor or the Petitioner, or, in the alternative, destroy all such information and provide confirmation of its destruction if requested by the Monitor or the Petitioner. Any bidder with a Successful Bid shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or the Property acquired pursuant to the SISF in a manner that is in all material respects identical to the prior use of such information by the Petitioner, and shall return all other personal information to the Monitor or the Petitioner, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor or the Petitioner.

10. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Lawyer for the Petitioner
McCarthy Tétrault LLP
(H. Lance Williams and Ashley Bowron)

BY THE COURT

REGISTRAR

SCHEDULE "A"
LIST OF COUNSEL

[illegible]

SCHEDULE "B"

SISP PROCEDURES

On November 25, 2024, Felix Payment Systems Ltd. ("**Felix**" or the "**Petitioner**") obtained an Initial Order (as amended and restated on December 6, 2024, the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985. c. C-36, as amended (the "**CCAA**") from the Supreme Court of British Columbia (the "**Court**"). Pursuant to the Initial Order, Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as the monitor (in such capacity, the "**Monitor**") in the Petitioner's CCAA proceedings (the "**CCAA Proceedings**"). Capitalized terms used herein and not otherwise defined have the meaning ascribed in the Affidavit #2 of Andrew Cole made December 3, 2024.

On December 6, 2024, the Court granted an order (the "**Stalking Horse and SISP Approval Order**") that, among other things: (i) approved a sale and investment solicitation process (the "**SISP**") and corresponding Bidding Procedures and Auction Procedures (each as defined below); (ii) authorized the Monitor and the Petitioner to implement the SISP; (iii) approved and accepted solely for the purposes of conducting the SISP, the Stalking Horse Subscription Agreement dated December 3, 2024 (the "**Stalking Horse Bid**") among Jake Boxer, Doug Mordy, the CA Mordy Legacy Trust and PEL Chartered Professional Accountants Inc. (the "**Stalking Horse Bidder**" or "**DIP Lender**"); and (iv) approved the payment of an expense reimbursement (the "**Expense Reimbursement**") in accordance with the provisions of the Stalking Horse Bid.

The SISP is intended to solicit interest in and opportunities for a sale of the Petitioner's business, including substantially all of the property, assets, and undertakings of the Petitioner (the "**Business**") in accordance with the terms below (the "**Opportunity**"). Set forth below are the bidding procedures (the "**Bidding Procedures**") and auction procedures (the "**Auction Procedures**") to be employed with respect to the sale of the Business pursuant to the Court-approved SISP.

Subject to Court availability and in accordance with the terms hereof, the Petitioner shall bring a motion (the "**Approval and Vesting Order Motion**"), seeking an order (the "**Approval and Vesting Order**") by the Court authorizing the Petitioner to proceed with the sale of the Petitioner's Business to the Qualified Bidder making the Successful Bid (each as defined below) (the "**Successful Bidder**").

BIDDING PROCEDURES

Key Dates¹

Date	Milestone
December 13, 2024	Monitor to commence solicitation of interest from parties, including delivery of the Teaser Letter (as defined below) and sales packages, and establish confidential data room
January 31, 2025	Bid Deadline (as defined below) – due date for bids and deposits
<i>If no Qualified Bids (as defined below) are received other than the Stalking Horse Bid</i>	
February 4, 2025	Selection of Stalking Horse Bid as Successful Bid (as defined below)
February 14, 2025 (pending the Court's availability)	Approval and Vesting Order Motion
As soon as possible but no later than February 21, 2025	Closing of Stalking Horse Bid
<i>If Qualified Bids are selected other than the Stalking Horse Bid</i>	
February 4, 2025	Monitor to provide the Lead Bid(s) (as defined below) to the Stalking Horse Bidder and each Qualified Bidder
February 11, 2025	Auction (as defined below), if needed
February 14, 2025	Selection of Successful Bid and Back-Up Bid, if needed
February 21, 2025 (pending the Court's availability)	Approval and Vesting Order Motion (if there is an Auction)
As soon as possible but no later than February 28, 2025	Closing of the Successful Bid (the " Outside Date ")

¹ The dates or time limits indicated in the table may be extended by the Monitor in consultation with the Petitioner and DIP Lender, as the Monitor deems necessary or appropriate, provided that any change to the Outside Date will be with the consent of the DIP Lender, acting reasonably, or by order of the Court.

Solicitation of Interest: Notice of the SISP

1. As soon as reasonably practicable, but in any event no later than December 13, 2024:
 - (a) the Monitor and the Petitioner will prepare (a) a list of potential bidders who may be interested in acquiring the Petitioner's Business in whole or in part (each a **"Known Potential Bidder"**), and (b) a process summary (the **"Teaser Letter"**) describing the Business, outlining these Bidding Procedures and inviting recipients of the Teaser Letter to express their interest pursuant to these Bidding Procedures;
 - (b) the Monitor will cause a notice of the SISP (and such other relevant information which the Monitor, in consultation with the Petitioner, considers appropriate) (the **"Notice"**) to be published in by the Monitor on its case website at: <https://www.alvarezandmarsal.com/felixpayment> as well as in one or more trade industry and/or insolvency-related publications as may be considered appropriate by the Monitor;
 - (c) the Petitioner will issue a press release setting out the information contained in the Notice and such other relevant information which the Petitioner, in consultation with the Monitor, determine is appropriate; and
 - (d) the Petitioner, with the assistance of and in consultation with the Monitor, will prepare a form of non-disclosure agreement (an **"NDA"**), to be provided to Potential Bidders (as defined below).

The Monitor will cause the Teaser Letter and an NDA to be sent to each Known Potential Bidder by no later than December 13, 2024, and to any other party who requests a copy of the Teaser Letter or NDA or who is identified by the Petitioner or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Confidential Data Room

2. A confidential virtual data room (the **"VDR"**) in relation to the Opportunity will be made available by the Petitioner and the Monitor to Potential Bidders (as defined below) that have executed an NDA. The VDR will be made available as soon as practicable following the commencement of the SISP. The Monitor, in consultation with the Petitioner, may establish or

cause the Petitioner to establish separate VDRs if the Petitioner reasonably determines that doing so would further the Petitioner's and any Potential Bidder's compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information. The Monitor may also, in consultation with the Petitioner, limit the access of any Potential Bidder to any confidential information in the VDR where the Monitor, in consultation with the Petitioner, reasonably determines that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Business or their value.

The Bidding Process and the Auction

3. The Monitor, in consultation with the Petitioner, shall be responsible for the marketing and sale of the Business pursuant to the Stalking Horse and SISP Approval Order, the SISP and these Bidding Procedures on behalf of the Petitioner (the "**Bidding Process**"). The Monitor, in consultation with the Petitioner, 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.

4. The Monitor and its advisors, with the support of the Petitioner and their advisors, will be responsible for conducting an auction (the "**Auction**"), if required in accordance with the terms of these Bidding Procedures, on behalf of the Petitioner.

Participation Requirements

5. Any interested party that wishes to participate in the Bidding Process (each a "**Potential Bidder**") must provide to the Petitioner:

- (a) an NDA executed by it, which shall enure to the benefit of any purchaser of the Business, or any portion thereof; and
- (b) a letter setting forth the identity of the Potential Bidder, and the contact information for such Potential Bidder.

6. To be a "**Qualified Bidder**", a Potential Bidder must satisfy the Required Bid Terms and Materials (as defined below).

7. If any party who is a director, officer or employee of the Petitioner intends to submit a bid pursuant to the SISP any such party must advise the Monitor of such intention in writing by no later than December 31, 2024. Any such party(ies) shall be entitled to participate in the SISP as

a Potential Bidder(s); provided that, such party(ies) (a) shall not be provided with any confidential information or bid information in respect of the SISP, including information relating to any bids, Qualified Bids, Potential Bidders or Qualified Bidders; (b) shall not participate in the review or drafting of any definitive documentation in respect of any other bid submitted pursuant to the SISP or the review, consideration, negotiation or selection of Successful Bid(s); and (c) shall be subject to such restrictions as the Monitor, in its sole discretion, determines to be necessary to ensure compliance with (a) and (b).

Bid Deadline

8. A Potential Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Terms and Materials to the Monitor no later than 5:00 p.m. (Pacific Standard Time) on January 31, 2025 (the "**Bid Deadline**") at the addresses specified in **Schedule "1"** attached hereto.

9. The Monitor shall forthwith provide copies of any bids received to the Petitioner's legal advisor.

Bid Requirements

10. In order to constitute a Qualified Bid, a bid (other than the Stalking Horse Bid) must conform with the following requirements (collectively, the "**Required Bid Terms and Materials**"):

- (a) it is superior to the Stalking Horse Bid and provides for consideration payable in cash in full on closing (the "**Consideration Value**"), and provides a detailed sources schedule that identifies, with specificity, the composition of the Consideration Value and any assumptions that could reduce the net consideration payable including details of any material liabilities that are being assumed or being excluded;
- (b) it contemplates closing of the proposed transaction by not later than the Outside Date;
- (c) it contains the following:
 - (i) duly executed binding transaction document(s);

- (ii) the identity of each entity or person and representatives thereof who are authorized to appear and act on behalf of the Potential Bidder for all purposes regarding the transaction, full disclosure of the Potential Bidder's direct and indirect principals, and the name(s) of its controlling equityholder(s);
 - (iii) a redline to the Stalking Horse Bid;
 - (iv) evidence of authorization and approval from the Potential Bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the Potential Bidder's equityholder(s);
 - (v) disclosure of any connections or agreements with the Petitioner or any of their affiliates, any other bidder participating in the SISP or any officer, manager, director, member or equity security holder of the Petitioner; and
 - (vi) such other information as may be reasonably requested by the Petitioner and the Monitor in advance of the Bid Deadline, including in the Teaser Letter;
- (d) it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until closing of the Successful Bid; provided, that if such bid is not selected as the Successful Bid or as the Back-Up Bid (as defined below) it shall only remain irrevocable until selection of the Successful Bid;
 - (e) it provides that the bid will serve as a Back-Up Bid if it is not selected as the Successful Bid and if selected as the Back-Up Bid it will remain irrevocable until the earlier of (i) closing of the Successful Bid or (ii) closing of the Back-Up Bid;
 - (f) it provides written evidence of the Potential Bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees covering the full Consideration Value;
 - (g) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;

- (h) it is not conditional upon:
 - (i) approval from the Potential Bidder's board of directors (or comparable governing body) or equityholder(s);
 - (ii) the outcome of any due diligence by the Potential Bidder; or
 - (iii) the Potential Bidder obtaining financing;
- (i) it includes an acknowledgment and representation that the Potential Bidder (i) has had an opportunity to conduct any and all required due diligence prior to making its bid and has relied solely upon its own independent review, investigation and inspection in making its bid, (ii) is not relying upon any written or oral statements, representations, promises, warranties, conditions, or guaranties whatsoever, whether express or implied (by operation of law or otherwise), made by any person or party, including the Petitioner, the Monitor and their respective employees, officers, directors, agents, advisors and other representatives, regarding the proposed transaction, this SISP, or any information (or the completeness of any information) provided in connection therewith, except as expressly stated in the proposed transaction documents, (iii) is making its bid on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Petitioner, the Monitor or any of their respective employees, officers, directors, agents, advisors and other representatives, except to the extent set forth in the proposed transaction documents, (iv) is bound by this SISP and the Stalking Horse and SISP Approval Order, and (v) is subject to the exclusive jurisdiction of the Court with respect to any disputes or other controversies arising under or in connection with the SISP or its bid;
- (j) it specifies any regulatory or other third-party approvals the Potential Bidder anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals);
- (k) it includes full details of the Potential Bidder's intended treatment of the Petitioner's employees under the proposed bid;

- (l) it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Consideration Value, which Deposit shall be held by the Monitor in a trust account in accordance with the terms hereof;
- (m) it includes a statement that the Potential Bidder will bear its own costs and expenses (including any legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
- (n) it is received by the Monitor by the Bid Deadline.

11. A bid from a Potential Bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a "**Qualified Bid**", and such Potential Bidder is a Qualified Bidder. The Monitor shall notify each Potential Bidder with respect to whether it has submitted a Qualified Bid as soon as practicable after the Bid Deadline.

12. In consultation with the Petitioner, the Monitor may waive compliance with any one or more of the Required Bid Terms and Materials and deem such non-compliant bid to be a Qualified Bid.

13. The Bid Deadline may be extended by: (a) the Monitor, in consultation with the Petitioner, and, subject to Section 40, with the consent of the DIP Lender and the Stalking Horse Bidder; or (b) further order of the Court.

14. The Monitor, in consultation with the Petitioner, shall be entitled to discuss, negotiate and request additional information with respect to any bid from a Potential Bidder or any Qualified Bid from any Qualified Bidder prior to the Bid Deadline for purposes of amending or clarifying the terms and form thereof.

15. If after reviewing a Qualified Bid submitted by a Qualified Bidder, the Monitor, in consultation with the Petitioner, determines that such Qualified Bidder is unlikely to be able to complete a transaction (e.g., due to not having a *bona fide* interest in completing a proposed transaction or not having the financial capability based on availability of financing, experience and other considerations), the Monitor shall advise the Qualified Bidder of that determination and may terminate such Qualified Bidder's access to the VDR and involvement in the SISP.

16. Notwithstanding the Required Bid Terms and Materials 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.

17. If no Qualified Bids are submitted by the Bid Deadline other than the Stalking Horse Bid, the Stalking Horse Bid shall be deemed to be the Successful Bid, and the SISF shall not proceed to an Auction.

The Sale and Auction Process

18. If one or more Qualified Bids (other than that submitted by the Stalking Horse Bidder) have been received by the Monitor on or before the Bid Deadline, the Monitor shall advise all Qualified Bidders of the Lead Bid (as defined below) and invite all Qualified Bidders (including the Stalking Horse Bidder) to participate in the Auction to be conducted by the Monitor and its advisors, with the support of the Petitioner and their advisors, in accordance with the Auction Procedures attached hereto as **Schedule "2"**. The Auction will be conducted by video conference and/or in person at the discretion of the Monitor.

19. The Monitor, in consultation with the Petitioner, shall review the Qualified Bids to determine which Qualified Bid is the best offer. The Monitor, in consultation with the Petitioner reserves the right to determine the value of any Qualified Bid, and which Qualified Bid (or combination of non-overlapping Qualified Bids) constitutes the best offer (the "**Lead Bid**"). A copy of the Lead Bid will be provided by the Monitor to all Qualified Bidders after the Bid Deadline and no later than 5:00 p.m. (Pacific Standard Time) three (3) days before the date scheduled for an Auction.

20. The Monitor, in consultation with the Petitioner, shall determine after each round of offers in the Auction, in its reasonable business judgment, the best bid to be designated as the Lead Bid for the following round in the Auction. In making such determination, the Monitor, in consultation with the Petitioner, 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 applicable Qualified Bidder 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; (vii) the net economic effect of any changes made to the Stalking Horse Bid; and (viii) such other considerations as the Monitor, in consultation with the Petitioner, deems relevant in its reasonable business judgment. At the end

of each round of offers, the Monitor 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 bid. 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 Overbid Increment (as defined in the Auction Procedures)), then such Qualified Bidder shall not be entitled to continue to participate in the next round of offers or in any subsequent round.

21. 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 Monitor, in consultation with the Petitioner (the "**Back-Up Bid**"), shall be required to keep its offer open and available for acceptance until the closing of the Court-approved transaction with the Successful Bidder.

Highest Versus Best Offer

22. In determining the Lead Bid, the highest and/or best offer during each round of offers, and the Successful Bid, the Monitor, in consultation with the Petitioner, is not required to select the offer with the highest purchase price and may, exercising their 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 Monitor, in consultation with the Petitioner, 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 at paragraph 20.

Expense Reimbursement

23. To provide an incentive and to compensate the Stalking Horse Bidder for performing the 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 SISP and the Bidding Process, Felix has agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, the Expense Reimbursement on account of its reasonable and documented out of pocket fees and expenses, up to a maximum of \$50,000 inclusive of sales tax, in the event that the Stalking Horse Bidder is not the Successful Bidder.

24. The Expense Reimbursement is a material inducement for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Bid. The Expense Reimbursement, if

payable under the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Stalking Horse and SISP Approval Order.

Acceptance of Qualified Bids and Deposits

25. The highest Qualified Bid may not necessarily be accepted by the Monitor. The Monitor, with the consent of the Petitioner, reserves the right not to accept any Qualified Bid or to otherwise terminate the SISP, in which case the Stalking Horse Bid will be the Successful Bid, and the Petitioner will proceed to seek its approval at the Approval and Vesting Order Motion. The Monitor, with the consent of the Petitioner, reserves the right to deal with one or more Qualified Bidders to the exclusion of others, to accept a Qualified Bid for different parts of the business and assets of the Petitioner, or to accept multiple Qualified Bids and enter into definitive agreements in respect of all such bids.

26. The consummation of any transaction between a Successful Bidder and the Petitioner is expressly conditional upon the approval of such bid (the "**Successful Bid**") by the Court at the Approval and Vesting Order Motion. The presentation of the Successful Bid to the Court for approval does not obligate the Petitioner to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. The Petitioner will be deemed to have accepted a bid only when the bid has been approved by the Court at the Approval and Vesting Order Motion.

27. If a Successful Bid is selected and the Approval and Vesting Order authorizing the consummation of the transaction contemplated thereunder is granted by the Court, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid will be returned to the applicable Qualified Bidder by the Monitor as soon as reasonably practicable (but not later than ten (10) business days) after the date upon which the Successful Bid is approved pursuant to the Approval and Vesting Order or such earlier date as may be determined by the Monitor; provided, the Deposit in respect of any Back-Up Bid shall not be returned to the applicable Qualified Bidder until the closing of the Successful Bid.

28. Notwithstanding anything to the contrary herein, the Stalking Horse Bidder will not be required to provide a Deposit in connection with the Stalking Horse Bid.

“As is, Where is”

29. Any sale (or sales) of the Business or portions thereof will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Petitioner or any of their respective agents, advisors or estates (including as to any information contained in the Teaser Letter, the VDR or otherwise made available pursuant to the SISP), except for any representations and warranties that are customarily provided in purchase agreements for a debtor company subject to CCAA Proceedings. Any such representations and warranties provided for in the definitive documents will not survive closing.

Free of Any and All Claims and Interests

30. Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder’s purchase agreement, to the extent permitted by law, and subject to any permitted encumbrances therein (in each case, the “**Permitted Encumbrances**”), all of the Petitioner’s right, title and interest in and to the Business shall be sold free and clear of all liens, pledges, security interests, encumbrances, claims, charges, options, and interests thereon and there against, except for the Permitted Encumbrances, if any (collectively, the “**Claims and Interests**”), pursuant to section 36(6) of the CCAA and the Approval and Vesting Order, such Claims and Interests to attach to the net proceeds of the sale of such Business and/or excluded assets, as applicable (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof).

Approval and Vesting Order Motion Hearing

31. The Approval and Vesting Order Motion shall, subject to the Court’s availability, take place on or before February 21, 2025 (or, if there is no Auction, on or before February 14, 2025). The Petitioner, with the consent of the Monitor, reserves their right to the extent consistent with the Stalking Horse Bid to change the date of the hearing of the Approval and Vesting Order Motion in order to achieve the maximum value for the Business.

Further Orders

32. At any time during the SISP, the Petitioner or the Monitor may apply to the Court for advice and directions with respect to any aspect of the SISP including, but not limited to, the continuation of the SISP or with respect to the discharge of its powers and duties hereunder.

Miscellaneous

33. The SISP, the Bidding Process and these Bidding Procedures are solely for the benefit of the Petitioner and nothing contained in the Stalking Horse and SISP Approval 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 Stalking Horse and SISP Approval Order. The Expense Reimbursement incorporated in these Bidding Procedures is solely for the benefit of the Stalking Horse Bidder.

34. The SISP, the Bidding Process and these Bidding Procedures do not, and will not be interpreted to create any contractual or legal relationship between the Petitioner and any other party, other than as specifically set forth in an NDA or any other definitive agreement executed.

35. The Petitioner and the Monitor shall be permitted, in their discretion, to provide updates and information in respect of the SISP to any creditor (including any advisor thereto) (each a "Creditor") on a confidential basis upon: (a) the irrevocable confirmation in writing from such Creditor that the applicable Creditor will not submit any bid in the SISP; and (b) such Creditor executing a confidentiality agreement or undertaking with the Petitioner in form and substance satisfactory to the Petitioner and the Monitor.

36. Participants in the SISP and the Bidding Process are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Qualified Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction, including, without limitation, any actions pursuant to these Bidding Procedures or within the Auction, except, for greater certainty, the Expense Reimbursement if payable under the Stalking Horse Bid.

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

Bidding Process and these Bidding Procedures. Notwithstanding anything to the contrary herein, the Monitor shall have no liability whatsoever to any person or entity, including without limitation any Potential Bidder, Qualified Bidder, Successful Bidder or any other creditor or stakeholder, or the Petitioner, as a result of implementation or otherwise in connection with the SISP, and all such persons or entities shall have no claim against the Monitor in respect of the SISP for any reason whatsoever.

38. The DIP Lender and any other secured lender of the Petitioner shall have the right (subject to compliance with the terms of this SISP) to credit bid their secured debt against the asset secured thereby up to the full face value of such secured lender's claims, including principal, interest and any other obligations owing to such secured lender; provided that any such secured lender shall be required to: (i) pay in full in cash any obligations of the Petitioner in priority to its secured debt; and (ii) pay appropriate consideration for any assets of the Petitioner which are contemplated to be acquired and that are not subject to such secured lender's security.

39. The Monitor will oversee the conduct of the SISP and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out herein and in the Stalking Horse and SISP Approval Order, and is entitled to receive all information in relation to the SISP.

40. Any amendments to the SISP, the Bidding Process and these Bidding Procedures may only be made by the Petitioner with the written consent of the Monitor and the DIP Lender, or by further order of the Court, provided that the Petitioner shall not amend the requirements specified in Section 13 without the prior written consent of the Stalking Horse Bidder, acting reasonably, or approval of the Court.

**SCHEDULE 1
ADDRESSES FOR DELIVERY OF BIDS**

The Monitor:

Alvarez & Marsal Canada Inc.
Cathedral Place Building,
925 West Georgia Street, Suite 902
Vancouver, BC, V6C 3L2

Attention: Anthony Tillman (Senior Vice President) and Taylor Poirier (Senior Associate)

Email: atillman@alvarezandmarsal.com / tpoirier@alvarezandmarsal.com

with copies to:

Cassels Brock & Blackwell LLP

885 W Georgia St, Suite 2200
Vancouver, BC, V6C 3E8

Attention: Vicki Tickle and Mihai Tomos

Email: vtickle@cassels.com / mtomos@cassels.com

SCHEDULE 2 AUCTION PROCEDURES

1. Auction. If an Auction is to be conducted pursuant to the Bidding Procedures to which these Auction Procedures are appended, the Monitor will notify the Qualified Bidders. The Auction will be convened by the Monitor and conducted by video conference and/or in person (at the discretion of the Monitor) at 10:00 a.m. (Pacific Standard Time) on February 11, 2025, or such other time as the Monitor may advise. Capitalized terms used but not defined have the meaning ascribed to them in the Bidding Procedures. The Auction shall be conducted in accordance with the below procedures.
2. Participation at the Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Monitor shall provide all Qualified Bidders with the amount of the Lead Bid by 5:00 p.m. (Pacific Standard Time) three (3) days before the date scheduled for the Auction. Each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction no later than 12:00 p.m. (Pacific Standard Time) on the business day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, the Monitor, the Petitioner, and their respective counsel and other advisors shall be permitted to attend the Auction.
3. No Collusion. Each Qualified Bidder participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the Bidding Process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid or the Back-Up Bid.
4. Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Lead 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.
5. Monitor Shall Conduct the Auction. The Monitor and its advisors, with the support of the Petitioner and their advisors, shall direct and preside over the Auction. At the start of each round of the Auction, the Monitor shall provide a copy 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 Monitor, in consultation with the Petitioner, 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 Monitor's assessment, in consultation with the Petitioner, 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) any purchase price adjustment; (vi) the net economic effect of any changes from the Opening Bid of the previous round; and (vii) such other considerations as the Monitor, in consultation with the Petitioner, 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 Monitor shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.

6. Terms of Overbids. An "**Overbid**" is any bid made at the Auction subsequent to the Monitor'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:

- (a) *Minimum Overbid Increment:* Any Overbid shall be made in minimum cash purchase price increments of \$100,000 above the Opening Bid, or such increments as the Monitor, in consultation with the Petitioner, 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.
- (b) *Bid Requirements Same as for Qualified Bids:* An Overbid must comply with the Required Bid Terms and Materials (except as modified in accordance with the terms of these Auction Procedures), 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.
- (c) *Announcing Overbids:* At the end of each round of bidding, the Monitor 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, the liabilities proposed to be assumed, if any, and the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
- (d) *Consideration of Overbids:* The Monitor, in consultation with the Petitioner, reserves the right to make one or more adjournments in the Auction in durations set by the

Monitor 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 Monitor with such additional evidence as the Monitor, in consultation with the Petitioner, may require that the Qualified Bidder has obtained all necessary internal 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 Monitor and the Petitioner may have clarifying discussions with a Qualified Bidder, and the Monitor, in consultation with the Petitioner may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions. **BIDDERS MUST OBTAIN ALL NECESSARY APPROVALS AND FUNDING COMMITMENTS IN ADVANCE OF THE AUCTION.**

- (e) *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.

7. Additional Procedures. The Monitor, in consultation with the Petitioner, may adopt additional or alternative 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 and the order of bidding, provided that they are not inconsistent with any of the provisions of the Bidding 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.

8. Closing the Auction. The Auction shall be closed once the Monitor, in consultation with the Petitioner, shall have: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the Bid Assessment Criteria; and (ii) identified the Successful Bid and the Back-Up Bid and the Monitor has advised the Qualified Bidders participating in the Auction of such determination.

9. Finalizing Documentation. Promptly following a bid of a Qualified Bidder being declared the Successful Bid or the Back-Up Bid, the Successful Bidder shall complete, execute and deliver such revised and updated definitive transaction agreement(s) as may be required to reflect and evidence the Successful Bid or Back-Up Bid, as applicable. For greater certainty, every bid made at the Auction is deemed to be a signed and binding bid based on the Qualified Bidder's original Qualified Bid.

SCHEDULE "D"

NO. S-248103
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FELIX PAYMENT SYSTEMS LTD.

PETITIONER

SEALING ORDER

BEFORE THE HONOURABLE)	FRIDAY, THE 6 TH DAY OF
)	
JUSTICE MASUHARA)	DECEMBER, 2024

ON THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia on the 6th day of December, 2024, and on hearing H. Lance Williams and Ashley Bowron, counsel for the Petitioner, and those other counsel listed on **Schedule "A"** hereto;

THIS COURT ORDERS that:

1. The following document be sealed by the Registrar of this Honourable Court for the duration noted:

Description:	Date filed, if applicable	Number of copies filed, including any extra copies for the judge	Duration of sealing order [until further order of the Court; until the first day of trial; or until a specific date]	Sought	Granted	
					YES	NO
1a) Specific documents Affidavit #3 of Andrew Cole made December 3, 2024, including all exhibits thereto	To be filed	One, to be sealed	Until further order of the Court	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

2. Access to the sealed items is restricted to the following persons:
 - a. ☐ Parties
 - b. ☒ Counsel for the Petitioner and counsel for the court-appointed Monitor, Alvarez & Marsal Canada Inc.
 - c. ☐ Others [*Specify*]
3. Endorsement of this Order by counsel appearing on this application, except for counsel for the Petitioner, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

BY THE COURT

REGISTRAR

Signature of Lawyer for the Petitioner
McCarthy Tétrault LLP
(H. Lance Williams and Ashley Bowron)

SCHEDULE "A"
LIST OF COUNSEL

[illegible]