

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE REGIONAL
SENIOR JUSTICE MORAWETZ

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THURSDAY, THE 26TH
DAY OF MARCH, 2015



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF COMARK INC.

Applicant

INITIAL ORDER

THIS APPLICATION, made by Comark Inc. (the “**Applicant**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Gerald Bachynski sworn March 25, 2015 and the Exhibits thereto (the “**Initial Affidavit**”), the supplementary affidavit of Gerald Bachynski sworn March 26, 2015 (the “**Supplementary Affidavit**” together with the Initial Affidavit, the “**Bachynski Affidavit**) and the pre-filing report of Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as proposed monitor of the Applicant dated March 25, 2015 and on hearing the submissions of counsel for the Applicant, Salus Capital Partners, LLC (“**Salus**”), and A&M and on reading the consent of A&M to act as the monitor of the Applicant (the “**Monitor**”),

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant 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

4. THIS COURT ORDERS that the Applicant 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**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, appraisers, valuers, 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 the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the Current Cash Management System (as defined and described in the Bachynski Affidavit) or, with the consent of the Monitor and Salus, replace it in part or in whole with another substantially similar central cash management system and that any present or future bank or other Person (as hereinafter defined) providing any part of the Current Cash Management System, including The

Toronto Dominion Bank, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Current Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Current Cash Management System, shall be entitled to provide the Current Cash Management System without any liability in respect thereof to any Person other than the Applicant and Salus, pursuant to the terms of the documentation applicable to the Current Cash Management System, and shall be, in its capacity as provider of the Current Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Current Cash Management System.

6. THIS COURT ORDERS that, subject to availability under the DIP Facility (as defined herein) and in accordance with the Budget (as defined in the DIP Agreement), the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and reasonable expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) amounts necessary in order to continue to honour or comply with existing return policies, customer deposits, pre-payments, gift cards and similar programs offered by the Applicant;
- (c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;
- (d) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Applicant prior to the date of this order or to obtain the release of goods contracted for prior to the date of this Order by:
 - (i) logistics or supply chain providers, including customs brokers, freight forwarders and transportation providers;

- (ii) amounts payable in respect of customs and duties for goods;
 - (iii) providers of credit, debit and gift card processing related services; and
 - (iv) other third party suppliers, including payments in respect of outstanding documentary credits or deposits, if, in the opinion of the Applicant, the supplier is critical to the Business and ongoing operations of the Applicant;
- (e) any other costs or expenses that are deemed necessary for the preservation of the Property and/or the Business by the Applicant with the consent of the Monitor and Salus.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, and subject to availability under the DIP Facility and in accordance with the Budget, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance and directors and officers tail insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8. THIS COURT ORDERS that the Applicant shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;
- (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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicant; and
- (d) to the applicable charitable organization, any donations collected by the Applicant from its customers whether prior to or after the date of this Order in respect of the various charitable initiatives of the Applicant as described in the Bachynski Affidavit.

9. THIS COURT ORDERS that, except as specifically permitted herein and subject to the Budget and the terms of the DIP Facility, the Applicant 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 Applicant to any of its creditors as of this date, provided however that the Applicant is hereby authorized and directed to make all such payments under the DIP Agreement, including (i): amounts under the Pre-Petition Revolving Loans and interest thereon; and (ii) interest on the Term Loan (each as defined in the DIP Agreement) in accordance with the DIP Facility;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

10. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant 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 to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each 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 the date of this Order shall also be paid.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$75,000 in any one transaction or \$500,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) in accordance with paragraphs 12 and 13, with the prior consent of the Monitor or further Order of the Court, vacate, abandon or quit the whole but not part of any leased premises and/or disclaim any real property lease and any ancillary agreements relating to any leased premises, in accordance with Section 32 of the CCAA, on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) disclaim, in whole or in part, with the prior consent of the Monitor or further Order of the Court, such of their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with Section 32 of the CCAA, with such disclaimers to be on such terms

as may be agreed upon between the Petitioners and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan;

- (e) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court obtained before any material refinancing; and
- (f) market the Business and Property in accordance with the SISP (as defined herein).

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

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant'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 Applicant'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, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates 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 such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including April 24, 2015, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that 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 Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant 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 security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that 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 Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data

services, centralized banking services, payroll and benefits services, insurance, transportation services, freight services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Applicant, 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 Applicant, and that the Applicant 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 date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

21. THIS COURT ORDERS that the directors and officers of the Applicant 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 \$3 million, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 48 and 50 herein.

22. THIS COURT ORDERS that, 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 Applicant'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 20 of this Order.

MARKETING OF SALE AND INVESTMENT OPPORTUNITY

23. THIS COURT ORDERS AND DIRECTS the Applicant to immediately commence a Sale and Investor Solicitation Process in accordance with the terms attached hereto as Schedule "A" to this Order (the "**SISP**") for the purpose of offering the opportunity for potential investors to purchase all or part of the Property or invest in the Business and operations of the Applicant.

24. THIS COURT ORDERS that the SISP is hereby approved and the Applicant, the Monitor and the Financial Advisor (as defined herein) are hereby authorized and directed to perform each of their obligations.

FINANCIAL ADVISOR

25. THIS COURT ORDERS that the Applicant is authorized to carry out and perform its obligations under its engagement letter with Houlihan Lokey Capital, Inc. (the "**Engagement Letter**") as financial advisor to the Applicant (the "**Financial Advisor**"), including payment of the amounts due to be paid pursuant to the terms of the Engagement Letter, including the monthly work fee (the "**Financial Advisor Retainer**") and any success or transaction fee under the Engagement Letter.

26. THIS COURT ORDERS that all claims of the Financial Adviser pursuant to the Engagement Letter are not claims that may be compromised pursuant to any Plan under the CCAA or any proposal ("**Proposal**") under the *Bankruptcy and Insolvency Act* (the "**BIA**") and no such Plan or Proposal shall be approved that does not provide for the payment of all amounts due to the Financial Advisor pursuant to the terms of the Engagement Letter.

27. THIS COURT ORDERS that notwithstanding any order in these proceedings, the Applicant is authorized to make all payments required by the Engagement Letter, including all fees and expenses, if and when due.

KEY EMPLOYEE RETENTION PROGRAM

28. THIS COURT ORDERS that the Key Employee Retention Plan (the "**KERP**"), as described in the Bachynski Affidavit with respect to key employees, including certain key officers (the "**Key Employees**") is hereby approved and the Applicant is authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

29. THIS COURT ORDERS that the Applicant is authorized and directed to perform the obligations under the KERP, including making all payments to the Key Employees of amounts due and owing under the KERP at the time specified and in accordance with the terms of the KERP.

30. THIS COURT ORDERS that the Applicant is hereby authorized to execute and deliver such additional documents as may be necessary to give effect to the KERP, subject to prior approval of such documents by the Monitor or as may be ordered by this Court.

31. THIS COURT ORDERS that the Key Employees referred to in the KERP shall be entitled to the benefit of and are hereby granted a charge (the “**KERP Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1.81 million to secure amounts owing to such Key Employees. The KERP Charge shall have the priority set out in paragraphs 48 and 50 herein.

32. THIS COURT ORDERS that the Confidential KERP Schedule (as defined in the Bachynski Affidavit) be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

APPOINTMENT OF MONITOR

33. THIS COURT ORDERS that 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 Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant 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.

34. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) liaise with Assistants with respect to all matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;
- (c) 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;

- (d) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel, financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (e) advise the Applicant in its preparation of the Applicant'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 in accordance with the Definitive Documents;
- (f) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (g) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) 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 Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (i) consult with the Applicant and any Assistants retained in connection with the Restructuring;
- (j) be at liberty to engage independent legal counsel or such other persons, or utilize the services of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

35. THIS COURT ORDERS that 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

36. THIS COURT ORDERS that nothing herein contained shall require 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 *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety 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. 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.

37. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant 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 Applicant 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 Applicant may agree.

38. THIS COURT ORDERS that, 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, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

39. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges by the Applicant as part of the costs of these proceedings. The Applicant is

hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amounts of \$100,000, \$50,000 and \$125,000 respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

40. THIS COURT ORDERS that 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 Commercial List of the Ontario Superior Court of Justice.

41. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicant's counsel and the Financial Advisor solely with respect to the Financial Advisor Retainer payable to the Financial Advisor under the terms of the Engagement Letter, 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 \$1.2 million, as security for their professional 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 in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 48 and 50 hereof.

DIP FINANCING

42. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a revolving credit facility (the "**DIP Facility**") from Salus (the "**DIP Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures pursuant and subject to the terms and conditions set forth in the Amended and Restated Credit Agreement between the Applicant and the DIP Lender dated as of March 26, 2015 (the "**DIP Agreement**"), provided that borrowings under such DIP Facility shall not exceed the principal amount of \$28 million unless permitted by further Order of this Court, and further provided that borrowings under the DIP Facility shall not exceed \$15 million prior to April 7, 2015, the date of the Comeback Hearing (as defined herein).

43. THIS COURT ORDERS that the DIP Facility and the DIP Agreement be and are hereby approved and the Applicant is hereby authorized and directed to execute and deliver the DIP Agreement.

44. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, amendments and other definitive documents (collectively, and together with the DIP Agreement, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant 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 Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

45. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall be in the aggregate amount of the obligations outstanding at any given time under the DIP Facility. The DIP Lender's Charge shall not secure any obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 48 and 50 hereof.

46. THIS COURT ORDERS that, 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 the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 3 business days' notice to the Applicant and the Monitor and upon approval of this Court, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under 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 Applicant and for the appointment of a trustee in bankruptcy of the Applicant; 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 Applicant or the Property.

47. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any Proposal filed by the Applicant under the BIA, with respect to all advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

48. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1.2 million);

Second – KERP Charge (to the maximum amount of \$1.81 million);

Third – Directors' Charge (to the maximum amount of \$3 million); and

Fourth – DIP Lender's Charge.

49. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the KERP Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

50. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, other than: (i) any Person with a properly perfected

purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation; (ii) security interests in favour of TD solely to secure amounts that may be owing by the Applicant to TD in respect of services provided under the Current Cash Management System; and (iii) claims which may be asserted under Section 81.3, 81.4, 81.5 and 81.6 of the BIA or other statutory liens and deemed trusts which cannot, by law, be subordinated to the Charges.

51. THIS COURT ORDERS that any Charge created by this Order over leases of real property shall only be a Charge in the Applicant's interest in such real property leases.

52. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

53. THIS COURT ORDERS that 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 thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the 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, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, 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 Definitive Documents shall create or be deemed to constitute a breach by the Applicant 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 Definitive Documents caused by or resulting from the Applicant entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, 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.

54. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

55. THIS COURT DECLARES that, pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and any regulations promulgated under authority of the Act, as applicable (the “**Relevant Enactment**”), the Applicant, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their 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 Applicant 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, upon the request of the Applicant, return the personal information to the Applicant 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 Applicant.

SERVICE AND NOTICE

56. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) and La Press a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (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 Applicant 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, provided that the Monitor shall not make the claims, names or addresses of individuals who are creditors of the Applicant publicly available.

57. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/> shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://alvarezandmarsal.com/comark> (the “**Monitor’s Website**”).

58. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile 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.

GENERAL

59. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

60. THIS COURT ORDERS that 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 Applicant, the Business or the Property.

61. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

62. THIS COURT ORDERS that each of the Applicant 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 that 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.

63. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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MAR 27 2015

Schedule “A”

Comark Inc.
Sale and Investor Solicitation Process

Introduction

On March 26, 2015, Comark Inc. (“**Comark**” or the “**Applicant**”) obtained an initial order (the “**Initial Order**”) under the Companies’ Creditors Arrangement Act (“**CCAA**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Pursuant to the Initial Order, the Court approved this sale and investor solicitation process (“**SISP**”). The purpose of this SISP is to seek Sale Proposals and Investment Proposals from Qualified Bidders and to implement one or a combination of them in respect of the Property and the Business.

This SISP describes, among other things: (a) the Property, including the Divisions available for sale and the opportunity for an investment in the Business of Comark; (b) the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Property and the Business; (c) the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively; (d) the manner in which a Qualified Bidder may become a Stalking Horse Bidder; (e) the process for the evaluation of bids received; (e) the process for the ultimate selection of a Successful Bidder; and (f) the process for obtaining such approvals (including the approval of the Court) as may be necessary or appropriate in respect of a Successful Bid (collectively, the “**Solicitation Process**”).

Capitalized terms used in this SISP and not otherwise defined have the meanings given to them in paragraph 1 below.

Defined Terms

1. The following capitalized terms have the following meanings when used in this SISP:
 - (a) “Approval Motion” is defined in paragraph 37.
 - (b) “Board of Directors” means the board of directors of Comark.
 - (c) “Business” means the business of Comark.
 - (d) “Business Day” means a day (other than Saturday or Sunday) on which banks are generally open for business in Toronto, Ontario.
 - (e) “Claims and Interests” is defined in paragraph 10.
 - (f) “Confidential Information Memorandum” is defined in paragraph 4.
 - (g) “Credit Agreement” means the Credit Agreement between Comark, as borrower and the Lenders dated October 31, 2014.
 - (h) “Data Room” is defined in paragraph 15.
 - (i) “Deposit” is defined in paragraph 29(1).

- (j) “DIP Agreement” means the Amended and Restated Credit Agreement dated March 26, 2015 for a debtor in possession financing facility between Comark, as borrower and the Lenders in the CCAA proceedings.
- (k) “Division” means any of the Cleo division of the Comark Business, the Ricki’s Division of the Comark Business or the Bootlegger division of the Comark Business.
- (l) “Final Bid” is defined in paragraph 28.
- (m) “Financial Advisor” means Houlihan Lokey Inc.
- (n) “Form of Investment Agreement” means the form of equity investment agreement to be developed by Comark in consultation with the Monitor and the Financial Advisor and provided to those Qualified Bidders that submitted a Qualified LOI for an Investment Proposal.
- (o) “Form of Purchase Agreement” means the form of purchase and sale agreement to be developed by Comark in consultation with the Monitor and the Financial Advisor and provided to those Qualified Bidders that submitted a Qualified LOI for a Sale Proposal.
- (p) “Investment Proposal” is defined in paragraph 17(b)(ii).
- (q) “Known Potential Bidders” is defined in paragraph 6.
- (r) “Lender Claims” means the aggregate amount owing to the Lenders arising from or related to the Credit Agreement and the DIP Agreement, which shall include, without limitation, all accrued and unpaid principal, interest, default interest and reasonable fees, costs, charges and expenses all as may be due and payable under the aforementioned credit facilities and/or other financing and any ancillary documents.
- (s) “Lenders” mean Salus Capital Partners, LLC as administrative agent and collateral agent to the lenders party to the Credit Agreement and the DIP Agreement.
- (t) “LOI” is defined in paragraph 14.
- (u) “Monitor” means Alvarez & Marsal Canada Inc.
- (v) “NDA” means a non-disclosure agreement in form and substance satisfactory to the Monitor, the Financial Advisor and the Applicant, which will inure to the benefit of any purchaser of the Property or any investor in the Business or Comark.
- (w) “Outside Date” means August 15, 2015, or such later date as may be agreed to by the Applicant, the Financial Advisor, the Monitor and the Lenders.
- (x) “Phase 1” is defined in paragraph 14.

- (y) “Phase 1 Bid Deadline” is defined in paragraph 16.
- (z) “Phase 2” is defined in paragraph 21.
- (aa) “Phase 2 Bid Deadline” is defined in paragraph 28.
- (bb) “Potential Bidder” is defined in paragraph 11.
- (cc) “Property” means all of property, assets and undertakings of Comark.
- (dd) “Qualified Bid” means: a third party offer or combination of third party offers, in the form of a Sale Proposal(s) or an Investment Proposal(s) or including elements of both, the aggregate purchase price or funds to be invested are in an amount sufficient to pay the Lender Claims in full in cash and which, in any case, meets the requirements in paragraph 29.
- (ee) “Qualified Bidder” is defined in paragraph 12.
- (ff) “Qualified LOI” is defined in paragraph 17.
- (gg) “Sale Proposal” is defined in paragraph 17(b)(i).
- (hh) “Stalking Horse Assets” means all or a portion of the Property proposed to be acquired by the Stalking Horse Bidder.
- (ii) “Stalking Horse Bid” means the bid of a Stalking Horse Bidder for the Stalking Horse Assets.
- (jj) “Stalking Horse Bidder” means a bid submitted by a Qualified Bidder for the Stalking Horse Assets and designated by the Monitor, exercising its reasonable business judgement, in consultation with the Financial Advisor, Comark and the Lenders, as the stalking horse bidder in order to set a floor price for the purchase of the Stalking Horse Assets;
- (kk) “Successful Bid” is defined in paragraph 34.
- (ll) “Teaser Letter” is defined in paragraph 6.

Supervision of the SISP

2. The Initial Order and the SISP shall exclusively govern the process for soliciting and selecting bids for the sale of or investment in the Applicant’s business.
3. The Monitor will supervise, in all respects, the SISP and any attendant sales or investments and, in particular, will supervise the Financial Advisor’s performance under its engagement by Comark in connection therewith. Comark is required to assist and support the efforts of the Monitor and the Financial Advisor as provided for herein. In the event that there is disagreement or clarification required as to the interpretation or application of this SISP or the responsibilities of the Monitor, the Financial Advisor or Comark hereunder, the Court will have jurisdiction to hear such matter and provide

advice and directions, upon application of the Monitor or Comark. For the avoidance of doubt, with respect to the Monitor's role in regards to the SISP, the terms of the Initial Order concerning the Monitor's rights and duties in this CCAA proceeding shall govern.

Sale and Investment Opportunity

4. A confidential information memorandum (the "**Confidential Information Memorandum**") describing the opportunity to acquire all or a portion of the Property or invest in the Business will be made available by the Financial Advisor to Qualified Bidders. One or more Qualified Bids for all or a portion of the Property relating to the Comark Business, all or a portion of the Property relating to a Division or any combination of Divisions will be considered, either alone or in combination as a Qualified Bid, Final Bid or a Successful Bid.
5. A bid may, at the option of the Qualified Bidder, involve, among other things, one or more of the following: a restructuring, recapitalization or other form of reorganization of the business and affairs of Comark as a going concern; a sale of the Property or any part thereof as contemplated herein to the Qualified Bidder or to a newly formed acquisition entity; or a plan of compromise or arrangement pursuant to the CCAA or any corporate or other applicable legislation.

Solicitation of Interest and Publication Notice

6. The Financial Advisor, in consultation with Comark, the Lenders and the Monitor and their respective advisors, has prepared a list of persons who may have interest in bidding for the sale of or investment in the Business (the "**Known Potential Bidders**"). Concurrently, the Financial Advisor, in consultation with Comark, the Lenders, the Monitor and their respective advisors, has prepared an initial offering summary (the "**Teaser Letter**") notifying Known Potential Bidders of the existence of the Solicitation Process and inviting the Known Potential Bidders to express their interest in accordance with the terms of the SISP.
7. Commencing upon the granting of the Initial Order, the Financial Advisor, under the supervision of the Monitor, shall distribute to the Known Potential Bidders the Teaser Letter, as well as a copy of the SISP and a draft form of NDA.
8. As soon as reasonably practicable after the granting of the Initial Order, but in any event no more than five (5) Business Days after the issuance of the Initial Order, the Monitor will cause a notice of the SISP (and such other relevant information which the Monitor, in consultation with the Financial Advisor and Comark, considers appropriate) to be published in The Wall Street Journal (National Edition) and The Globe and Mail (National Edition). On the same date, Comark will issue a press release setting out the notice and such other information, in form and substance satisfactory to the Monitor in consultation with the Financial Advisor, the Lenders and Comark, with Canada Newswire designating dissemination in Canada and major financial centres in the United States.

“As Is, Where Is”

9. The sale of the Property or investment in the Business of Comark will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, Comark or any of their respective agents or estates, except to the extent set forth in the definitive sale or investment agreement executed with a Successful Bidder.

Free Of Any And All Claims and Interests

10. In the event of a sale of all or a portion of the Property, all of the rights, title and interests of Comark in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the “**Claims and Interests**”) pursuant to such court orders as may be desirable, except to the extent otherwise set forth in the definitive sale or investment agreement executed with a Successful Bidder.

Participation Requirements

11. In order to participate in the SISP, each person (a “**Potential Bidder**”) must deliver to the Financial Advisor with a copy to the Monitor at the addresses specified in Schedule “A” hereto (including by email or fax transmission):
 - (a) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the principals of the Potential Bidder; and
 - (b) an executed NDA which shall include provisions whereby the Potential Bidder agrees to accept and be bound by the provisions contained herein.
12. A Potential Bidder that has executed an NDA, and has delivered the documents and information described above, and that the Monitor, in its reasonable business judgement, in consultation with the Financial Advisor and Comark, determines is likely, based on the availability of financing, experience and other considerations, to be able to consummate a Sale Proposal or an Investment Proposal on or before the Outside Date will be deemed a “**Qualified Bidder**”, and will be promptly notified of such determination by the Financial Advisor. In no event shall the Lenders constitute a Qualified Bidder.
13. At any time during Phase 1 or Phase 2, the Monitor may, in its reasonable business judgment and after consultation with the Financial Advisor and Comark and with the consent of the Lenders, recommend to the Board of Directors that a Qualified Bidder be eliminated from the SISP. If the Board of Directors accepts the Monitor’s recommendation, such bidder will be eliminated from the SISP and will no longer be a “Qualified Bidder” for the purposes of this SISP. If the Board of Directors does not accept the Monitor’s recommendation, the Monitor will seek advice and directions of the Court.

SISP – PHASE 1

Phase 1 Initial Timing

14. For a period of forty (40) days following the date of the Initial Order (“**Phase 1**”), the Financial Advisor (with the assistance of Comark and under the supervision of the Monitor and in accordance with this SISP) will solicit non-binding indications of interest in the form of non-binding letters of intent (“**LOIs**”) from: (i) Qualified Bidders who may be interested in acquiring all or a portion of the Property relating to the Comark Business, all or a portion of the Property relating to a Division or any combination of Divisions; and (ii) Potential Bidders who may be interested in making an investment in the Business.

Due Diligence

15. The Financial Advisor will provide each Qualified Bidder with a copy of the Confidential Information Memorandum and access to an electronic data room of due diligence information for Qualified Bidders (the “**Data Room**”). The Monitor, the Financial Advisor and Comark make no representation or warranty as to the information (i) contained in the Confidential Information Memorandum or the Data Room, (ii) provided through the due diligence process in Phase 1 or Phase 2 or (iii) otherwise made available, except to the extent expressly contemplated in any definitive sale or investment agreement with a Successful Bidder executed and delivered by Comark.

Non-Binding Letters of Intent from Qualified Bidders

16. A Qualified Bidder that wishes to pursue a Sale Proposal or an Investment Proposal must deliver a LOI to the Financial Advisor and the Monitor at the addresses specified in Schedule “A” hereto (including by email or fax transmission), so as to be received by it not later than 5:00 PM (Eastern Standard Time) on or before forty (40) days following the date of the Initial Order, unless such day is not a Business day, in which case, on the next Business Day (the “**Phase 1 Bid Deadline**”). The Financial Advisor shall deliver all submitted LOIs to the Monitor and to the Lenders.
17. A LOI so submitted will be considered a qualified LOI (a “**Qualified LOI**”) only if:
 - (a) the LOI is submitted on or before the Phase 1 Bid Deadline by a Qualified Bidder;
 - (b) it contains an indication of whether the Qualified Bidder is offering to:
 - (i) acquire all or a portion of the Property relating to the Comark Business, all or a portion of the Property relating to a Division or any combination of Divisions on a liquidation or going concern basis (a “**Sale Proposal**”); or
 - (ii) make an investment in, or refinance the Business of Comark (an “**Investment Proposal**”).
 - (c) in the case of a Sale Proposal, it identifies or contains the following:

- (i) the purchase price range in Canadian dollars (and U.S. dollar equivalent), including details of any liabilities to be assumed by the Qualified Bidder;
 - (ii) the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - (iii) specific indication of the sources of capital for the Qualified Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Monitor, the Financial Advisor and the Applicant and each of their respective advisors to make a reasonable business or professional judgment as to the Qualified Bidder's financial or other capabilities to consummate the transaction;
 - (iv) the structure and financing of the transaction (including, but not limited to, the sources of financing of the purchase price, preliminary evidence of the availability of such financing, steps necessary and associated timing to obtain such financing and any related contingencies, as applicable);
 - (v) any anticipated corporate, unit holder, shareholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
 - (vi) specific statements concerning the treatment of employees and plans for the ongoing involvement and roles of Comark employees;
 - (vii) specific additional due diligence required to be conducted during Phase 2, if any;
 - (viii) all conditions to closing that the Qualified Bidder may wish to impose; and
 - (ix) any other terms or conditions of the Sale Proposal which the Qualified Bidder believes are material to the transaction;
- (d) in the case of an Investment Proposal, it identifies the following:
- (i) a detailed description of the structure of the transaction;
 - (ii) the aggregate amount of the equity and debt investment to be made in the Business of Comark in Canadian dollars (and U.S. dollar equivalent) (including the sources of such capital, preliminary evidence of the availability of such capital and steps necessary and associated timing to obtain the capital and any related contingencies, as applicable);
 - (iii) the underlying assumptions regarding the pro forma capital structure (including the form and amount of anticipated equity and/or debt levels, debt service fees, interest or dividend rates, amortization, voting rights or other protective provisions (as applicable), redemption, prepayment or repayment attributes and any other material attributes of the investment);

- (iv) equity, if any, to be allocated to the secured and unsecured creditors of Comark;
 - (v) specific indication of the sources of capital for the Qualified Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Monitor, the Financial Advisor and the Applicant and each of their respective advisors to make a reasonable business or professional judgment as to the Qualified Bidder's financial or other capabilities to consummate the transaction
 - (vi) the structure and financing of the transaction, including a sources and uses analysis;
 - (vii) any anticipated corporate, unitholder, shareholder, internal or regulatory approvals required to close the transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals;
 - (viii) specific statements concerning the treatment of employees and plans for the ongoing involvement and roles of Comark employees;
 - (ix) specific additional due diligence required to be conducted during Phase 2, if any;
 - (x) all conditions to closing that the Qualified Bidder may wish to impose; and
 - (xi) any other terms or conditions of the Investment Proposal which the Qualified Bidder believes are material to the transaction;
- (e) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Monitor, in consultation with the Financial Advisor and Comark; and
- (f) the purchase price or funds to be invested, as assessed pursuant to paragraph 17 hereof, are in an amount that can reasonably be expected to be sufficient to pay the Lender Claims in full on closing thereof unless other arrangements are made that are acceptable to the Lenders.
18. The Monitor, in consultation with the Financial Advisor and Comark, may waive compliance with any one or more of the requirements specified above, except the requirement contained in paragraph 17(f) of this SISP, and deem such non-compliant bids to be a Qualified LOI. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

Assessment of Qualified LOIs and Continuation or Termination of SISP

19. Within three (3) Business Days following the Phase 1 Bid Deadline, or such later date as may be determined by the Monitor, the Monitor will, in consultation with the Financial

Advisor, the Applicant and the Lenders, assess the Qualified LOIs received during Phase 1, if any, and will determine whether there is a reasonable prospect of obtaining a Qualified Bid. For the purpose of such consultations and evaluations, the Financial Advisor and/or the Monitor may request clarification of the terms of Qualified LOIs.

20. In assessing the Qualified LOIs, the Monitor, following consultation with the Financial Advisor, the Applicant and the Lenders, will consider, among other things, the following:
 - (a) the form and amount of consideration being offered, including any purchase price adjustments and/or any non-cash consideration;
 - (b) the demonstrated financial capability of the Qualified Bidder to consummate the proposed transaction;
 - (c) the conditions to closing of the proposed transaction; and
 - (d) the estimated time required to complete the proposed transaction and whether, in the Monitor's reasonable business judgment, it is reasonably likely to close on or before the Outside Date.
21. If one or more Qualified LOI is received, the Monitor, exercising its reasonable business judgment and following consultation with the Financial Advisor, Comark and the Lenders, will either:
 - (a) recommend to the Board of Directors that the most favourable Qualified LOI be selected as the Stalking Horse Bid and that the Financial Advisor, the Monitor, Comark and their advisors negotiate and settle the terms of a definitive agreement with the Stalking Horse Bidder acceptable to the Lenders; or
 - (b) recommend to the Board of Directors that the SISP continue into phase 2 in accordance with these SISP procedures ("**Phase 2**").
22. Based on the recommendation of the Monitor and the consent of the Lenders, if the Board of Directors recommends that a Qualified LOI be selected as a Stalking Horse Bidder: (i) Comark shall apply to the Court in accordance with paragraphs 37 and 38 herein to approve the Stalking Horse Bid and any stalking horse bidding procedures in connection therewith; and (ii) the terms of this SISP shall automatically terminate.
23. Based on the recommendation of the Monitor, if the Board of Directors determines that the SISP should continue into Phase 2 pursuant to these SISP procedures and the Monitor, in consultation with the Financial Advisor and Comark, determines there is a reasonable prospect of obtaining a Qualified Bid, the Monitor shall continue the SISP for a further forty (40) days in accordance with these SISP Procedures.
24. At any time during Phase 2, the Monitor, in consultation with the Financial Advisor, the Applicant and the Lenders may extend Phase 2 by an additional fifteen (15) days (provided that in no event shall Phase 2 be longer than fifty-five (55) days total).
25. If the Monitor, after consultation with the Financial Advisor and Comark, determines that
 - (a) no Qualified LOI has been received, and
 - (b) there is no reasonable prospect of a

Qualified LOI resulting in a Qualified Bid and the SISP moving to Phase 2, the Lenders may, in their sole and absolute discretion designate one or more LOIs as a Qualified LOI. If no Qualified LOI is received or designated by the Lenders, any of the Lenders, the Monitor, or Comark may apply to the Court for further advice and directions including with respect to the termination of the SISP.

26. If: (a) one or more Qualified LOIs are received; and (b) the Monitor, in its reasonable business judgment, in consultation with the Financial Advisor and the Applicant, determines that another Qualified Bidder's LOI has a reasonable prospect of becoming a Qualified Bid, the Monitor, on notice to the Lenders may designate such LOI as a Qualified LOI.

PHASE 2

Due Diligence

27. During Phase 2, each Qualified Bidder with a Qualified LOI that is not eliminated from the SISP, and at the request of such Qualified Bidder, the legal and financial advisor(s) and/or lenders of such Qualified Bidder, provided that, in each case, such advisor or lender: (a) is reasonably acceptable to the Financial Advisor; and (b) has executed or is bound by an NDA, will be granted further access to such due diligence materials and information relating to the Property and the Business as the Financial Advisor, in its reasonable business judgment, in consultation with the Monitor and the Applicant, determines, including, as appropriate, information or materials reasonably requested by Qualified Bidders, on-site presentation by senior management of Comark, facility tours and access to further information in the Data Room. In addition, selected due diligence materials may be withheld from certain Phase 2 Qualified Bidders if Comark and the Financial Advisor, in consultation and with the approval of the Monitor, determine such information to represent proprietary or sensitive competitive information.

Final Bids from Qualified Bidders

28. A Qualified Bidder that is not eliminated from the SISP and that wishes to pursue a Sale Proposal or an Investment Proposal must deliver a final binding proposal (the "**Final Bid**"):
- (a) in the case of a Sale Proposal, a duly authorized and executed purchase agreement based on the Form of Purchase Agreement and accompanied by a mark-up of the Form of Purchase Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto;
 - (b) in the case of an Investment Proposal, a duly authorized and executed investment agreement based on the Form of Investment Agreement and accompanied by a mark-up of the Form of Investment Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto;

to the Financial Advisor and to the Monitor at the addresses specified in Schedule "A" hereto (including by email or fax transmission) so as to be received by it not later than 5:00 pm (Eastern Standard Time) on the date which is forty (40) days following the commencement of Phase 2, or such other date as determined by the Monitor, in consultation with the Financial Advisor, and the Applicant (provided that Phase 2 shall not be more than fifty-five (55) days) unless in each case, such day is not a Business Day, in which case, on the next Business Day (the "**Phase 2 Bid Deadline**"). The Financial Advisor shall deliver all submitted Final Bids to the Lenders.

29. A Final Bid will be considered a Qualified Bid only if (a) it is submitted by a Qualified Bidder who submitted a Qualified LOI on or before the Phase 1 Bid Deadline; and (b) the Final Bid complies with, among other things, the following requirements:
- (a) it includes a letter stating that the bidder's offer is irrevocable until the earlier of (a) the approval by a court of competent jurisdiction of a Successful Bid and (b) ten (10) days following the Phase 2 Bid Deadline, provided that if such bidder is selected as the Successful Bidder, its offer will remain irrevocable until the closing of the transaction with such Successful Bidder;
 - (b) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Monitor, in consultation with the Financial Advisor and Comark, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by its Final Bid;
 - (c) in respect of a Sale Proposal, the Property to be included and in the case of an Investment Proposal, any Property to be divested or disclaimed prior to closing;
 - (d) it includes full details of the proposed number of employees of the Applicant who will become employees of the bidder (in the case of a Sale Proposal) or shall remain as employees of the Applicant (in the case of an Investment Proposal) and, in each case, provisions setting out the terms and conditions of employment for continuing employees;
 - (e) details of any liabilities to be assumed by the Qualified Bidder;
 - (f) it is not conditional upon, among other things:
 - (i) the outcome of unperformed due diligence by the Qualified Bidder; or
 - (ii) obtaining financing;
 - (g) it fully discloses the identity of each entity that will be sponsoring or participating in the bid, and the complete terms of such participation;
 - (h) it outlines any anticipated regulatory and other approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;

- (i) it identifies with particularity the contracts and leases the bidder wishes to assume and reject, contains full details of the bidder's proposal for the treatment of related cure costs (and provides adequate assurance of future performance thereunder); and it identifies with particularity any executory contract or unexpired lease the assumption and assignment of which is a condition to closing;
- (j) it provides a timeline to closing with critical milestones;
- (k) it includes evidence, in form and substance reasonably satisfactory to the Monitor and the Applicant, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;
- (l) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a bank account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of the Monitor, in trust, in an amount equal to not less than 10% of the purchase price, to be held and dealt with in accordance with the terms of this SISP;
- (m) it contains other information reasonably requested by the Financial Advisor, in consultation with the Monitor and Comark;
- (n) it is received by the Phase 2 Bid Deadline;
- (o) the purchase price or funds to be invested will be in an amount sufficient to pay the Lender Claims in full on closing thereof unless other arrangements are made that are acceptable to the Lenders;
- (p) in the case of a Sale Proposal, it includes an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the purchase and sale agreement; and
- (q) in the case of an Investment Proposal, it includes an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the business of the Applicant or the completeness of any information provided in connection therewith, except as expressly stated in the Investment Agreement.

30. The Monitor, in consultation with the Financial Advisor and Comark, may waive compliance with any one or more of the requirements specified herein, except the

requirements contained in paragraph 29(o) of this SISP, which may not be waived, and deem such non-compliant bids to be Qualified Bids.

Evaluation of Qualified Bids

31. The Monitor, in consultation with the Financial Advisor, Comark and the Lenders, will review each Qualified Bid as set forth herein. For the purpose of such consultations and evaluations, the Financial Advisor and/or the Monitor may request clarification of the terms of any Final Bid.
32. Evaluation criteria with respect to a Sale Proposal may include, but are not limited to items such as: (a) the purchase price and net value (including assumed liabilities and other obligations to be performed by the bidder); (b) the firm, irrevocable commitment for financing the transaction; (c) the claims likely to be created by such bid in relation to other bids; (d) the counterparties to the transaction; (e) the terms of the proposed transaction documents; (f) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction; (g) planned treatment of stakeholders; (h) the assets included or excluded from the bid; (i) proposed treatment of the employees; (j) any transition services required from the Applicant post-closing and any related restructuring costs; and (k) the likelihood and timing of consummating the transaction.
33. Evaluation criteria with respect to an Investment Proposal may include, but are not limited to items such as: (a) the amount of equity and debt investment and the proposed sources and uses of such capital; (b) the firm, irrevocable commitment for financing the transaction; (c) the debt to equity structure post-closing; (d) the counterparties to the transaction; (e) the terms of the proposed transaction documents; (f) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction); (g) planned treatment of stakeholders; and (h) the likelihood and timing of consummating the transaction.
34. If one or more Qualified Bids is received, the Monitor, exercising its reasonable business judgment and following consultation with the Financial Advisor and Comark, may recommend to the Board of Directors that the most favourable Qualified Bid(s) be selected and that the Financial Advisor, the Monitor, Comark and their advisors negotiate and settle the terms of a definitive agreement (the “**Successful Bid**”).
35. The Board of Directors shall have no obligation to enter into a Successful Bid, and reserves the right, after consultation with the Monitor and the Financial Advisor, to reject any or all Qualified Bids.

Phase 2 Guidelines

36. If the Monitor, after consultation with the Financial Advisor and Comark, determines that no Qualified Bid has been received at the end of Phase 2, the Lenders may, in their sole and absolute discretion designate one or more Final Bids as Qualified Bids. If no Qualified Bid is received or designated by the Lenders, any of the Lenders, the Monitor or Comark may apply to the Court for further advice and directions, including with respect to the termination of the SISP.

Approval Motion for Successful Bid

37. The Applicant will apply to the Court (the “**Approval Motion**”) for an order approving the Successful Bid(s) or the Stalking Horse Bid, as applicable and authorizing Comark to enter into any and all necessary agreements with respect to the Successful Bid or the Stalking Horse Bid, as applicable and to undertake such other actions as may be necessary or appropriate to give effect to the Successful Bid or the Stalking Horse Bid.
38. The Approval Motion will be held on a date to be scheduled by the Court upon application by the Applicant. The Approval Motion may be adjourned or rescheduled by the Applicant or the Monitor, on notice to the Lenders, by an announcement of the adjourned date at the Approval Motion and without the need for any further notice thereof, provided that in no circumstance shall the Approval Motion be adjourned or rescheduled beyond the Outside Date.
39. All Qualified Bids (other than the Successful Bid) will be deemed rejected on the date of approval of the Successful Bid by the Court.

OTHER TERMS

No Derogation

40. Nothing in this SISP shall affect the Lenders’ rights to exercise contractual or legal remedies, or to enter into, and seek court approval for, any transaction with or relating to Comark or its property, subject to the applicable stay provisions of the Initial Order.

Deposits

41. All Deposits will be retained by the Monitor and invested in an interest bearing trust account. If there is a Successful Bid, the Deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved at the Approval Motion will be applied to the purchase price to be paid or investment amount to be made by the Successful Bidder upon closing of the approved transaction and will be non-refundable. The Deposits (plus applicable interest) of Qualified Bidders not selected as the Successful Bidder will be returned to such bidders within 5 Business Days of the date upon which the Successful Bid is approved by the Court. If there is no Successful Bid subject to the following paragraph, all Deposits (plus applicable interest) will be returned to the bidders within 5 Business Days of the date upon which the SISP is terminated in accordance with these procedures.
42. If a Successful Bidder breaches its obligations under the terms of the SISP, its Deposit plus interest shall be forfeited as liquidated damages and not as a penalty.

Approvals

43. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Bid or the Stalking Horse Bid.

No Amendment

44. There will be no amendments to this SISP without the consent of the Monitor, the Financial Advisor, Comark and the Lenders or, in the absence of consent, the approval of the Court.
45. This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between Comark and any Qualified Bidder, other than as specifically set forth in a definitive agreement that may be signed with Comark. At any time during the SISP, the Monitor may, following consultation with the Financial Advisor, and the Applicant, upon reasonable prior notice to the Lenders, apply to the Court for advice and directions with respect to the discharge of its power and duties hereunder.

Schedule "A"

Address for Notices and Deliveries

To the Monitor:

Alvarez & Marsal Canada Inc.

Attn: Adam Zalev and Jamie Belcher

Direct Dial: 416-847-5154

Email: azalev@alvarezandmarsal.com / jbelcher@alvarezandmarsal.com

To the Financial Advisor:

Houlihan Lokey

245 Park Avenue, 20th Fl

New York, NY

Attn: Derek Pitts and Surbhi Gupta

Direct Dial: 212-497-4161

Facsimile: 212-661-3070

E-mail: dpitts@hl.com / sgupta@hl.com

To the Applicant:

Comark Inc.

6789 Millcreek Dr.

Mississauga, ON L5N 5M4

Attn: Gerry Bachynski

E-mail: GBachynski@comark.ca

**IN THE MATTER OF COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMARK INC.**

APPLICANT

Court File No.

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

**PROCEEDING COMMENCED AT
TORONTO**

INITIAL ORDER

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