



Court File No. CV-23-00698826-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE JUSTICE CONWAY )  
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THURSDAY, THE 8<sup>TH</sup>  
DAY OF JUNE, 2023

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 PLANT-BASED INVESTMENT CORP.

Applicant

**SALE AND INVESTMENT SOLICITATION PROCESS ORDER**

**THIS MOTION**, made by the Plant-Based Investment Corp. (the "**Applicant**") seeking, among other relief, an Order (i) approving the sale and investment solicitation process (the "**SISP**") attached hereto as Schedule "A"; and (ii) authorizing and directing the Monitor to conduct the SISP that was heard this day by way of judicial conference via Zoom at Toronto, Ontario in accordance with the changes to the operations of the Commercial List.

**ON READING** the affidavit of Paul Crath sworn June 6, 2023 and the Exhibits thereto (the "**Crath Affidavit**"), the second report of msi Spergel inc., in its capacity as monitor of the Applicant (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant and counsel for the Monitor, no one appearing for any other party although duly served as appears from the affidavit of service of Darlene Moffett dated June 6, 2023, filed,

## **DEFINED TERMS**

1. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them under the SISP.

## **SERVICE**

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.

## **APPROVAL OF SALE AND INVESTMENT SOLICITATION PROCESS**

3. **THIS COURT ORDERS** that the SISP is hereby approved.

4. **THIS COURT ORDERS** that the Monitor is authorized and directed to take such steps as it deems necessary or advisable to carry out and perform its obligations under the SISP.

5. **THIS COURT ORDERS** that the Monitor and its respective affiliates, partners, employees, representatives and agents 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 such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Monitor in performing its obligations under the SISP as determined by this Court.

6. **THIS COURT ORDERS** that the Monitor and the Applicant and their respective counsel be and are hereby authorized but not obligated, to serve or distribute this SISP Order, any other materials, orders, communication, correspondence or other information as may be necessary or desirable in connection with the SISP to any Person (as defined in the Initial Order

dated May 1, 2023, as amended and restated) or interested party that the Monitor or the Applicant consider appropriate. For greater certainty, any such distribution, communication or correspondence shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Monitor and the Applicant are hereby authorized and permitted to disclose and transfer to each potential bidder (the “**Bidders**”) and to their advisors, if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Applicant’s records pertaining to its past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale of the Property (“**Sale**”) or investment in the Business (“**Investment**”). Each Bidder 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 of the Sale or Investment, and if it does not complete a Sale or Investment, shall return all such information to the Monitor and the Applicant, or in the alternative destroy all such information. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Property of Business acquired pursuant to the Sale or invested in pursuant to the Investment in a manner which is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Monitor and the Applicant, or ensure that all other personal information is destroyed.

8. **THIS COURT ORDERS** that the Monitor is hereby authorized to disclose any information or documentation contained in the Applicant's records (including, without limitation, confidential information or documentation) regarding the Applicants' assets, undertakings and properties, including the Applicant's business and operations (collectively, the "**Property and Business Information**") to Potential Bidders who have signed an NDA, provided that the Monitor will only disclose Property and Business Information that the Monitor determines is reasonably necessary to permit a Qualified Bidder to conduct due diligence regarding a potential Transaction or that is otherwise necessary to implement the SISP or a potential Transaction.

9. **THIS COURT ORDERS** that each Recipient to whom Property and Business Information is disclosed under the SISP will maintain and protect the confidentiality of such Property and Business Information and limit the use of such Property and Business Information to its evaluation of the Opportunity in accordance with the terms of the SISP and the applicable NDA and, if the Opportunity is no longer being considered by the Recipient, if the Recipient does not complete a Transaction under the SISP or otherwise at the request of the Monitor, such Recipient will return all such Property and Business Information to the Monitor or alternatively destroy such Property and Business Information and provide confirmation of its destruction of so requested by the Monitor. The Successful Bidder(s) will maintain and protect the confidentiality of the Property and Business Information and, upon the closing of any Transaction(s), will be entitled to use the Property and Business Information provided to them that is related to the Property or the Business subject to the Transaction(s) in a matter that is in all material respects identical to the prior use of such Property and Business Information by the Applicant and the Monitor, and will return all other Property and Business Information to the Monitor or

alternatively destroy such Property and Business Information and provide confirmation of its destruction if so requested by the Monitor.

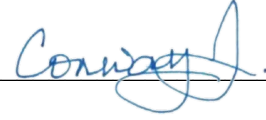
## **GENERAL**

10. **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 their powers and duties hereunder.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere, 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.

12. **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.

13. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.



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**SCHEDULE "A"**  
**SALE AND INVESTMENT SOLICITATION PROCESS**

## Sale and Investment Solicitation Process

### Introduction

1. On May 1, 2023, Plant-Based Investment Corp. (the “**Applicant**”) was granted an initial order (as amended or amended and restated on May 11, 2023, and as may be further amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**” and the “**CCAA Proceedings**”) by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The Initial Order, among other things:
  - (a) stayed all proceedings against the Applicant, its assets and its directors and officers;
  - (b) appointed msi Spergel Inc. as the monitor of the Applicant (in such capacity, the “**Monitor**”);
  - (c) authorized the Applicant to enter into a debtor-in-possession financing facility (the “**DIP Facility**”) with 1000492681 Ontario Inc. (the “**DIP Lender**”) pursuant to a Term Sheet dated April 27, 2023 (the “**DIP Term Sheet**”), and granted a charge in favour of the DIP Lender (the “**DIP Charge**”) over all of the Applicant’s present and future assets, property and undertakings of every nature and kind whatsoever, and wherever situate including all proceeds thereof to secure the amounts outstanding under or in connection with the DIP Facility; and
  - (d) authorized the Applicant to pursue all avenues of sale or investment of its assets or business, in whole or in part, subject to prior approval of the Court before any material sale or refinancing.
2. Further to the Applicant’s restructuring efforts and the terms of the DIP Facility, the Monitor will conduct the sale and investment solicitation process (the “**SISP**”) described herein, with the assistance of the Applicant, and pursuant to a Court order dated June 8, 2023 (the “**SISP Order**”). The SISP is intended to solicit proposals to purchase or invest in some or all of the Applicant’s assets, undertakings, and properties (collectively, the “**Property**”), including the Applicant’s business and operations (the “**Business**”).

### Opportunity

3. Subject to approval of the Court, the Monitor will conduct the SISP described herein, to solicit proposals to purchase or invest in some or all of the Property, including the Business (the “**Opportunity**”).
4. The Opportunity may include one or more transactions involving the recapitalization, investment in, arrangement or reorganization of the Applicant or the Business as a going concern, or a sale of some or all of the Property as a going concern or otherwise, or some combination thereof (each, a “**Transaction**”).
5. This document describes the SISP, including the manner in which interested parties: (a) may gain access to due diligence materials concerning the Applicant, the Business, and the Property; (b) the manner in which an interested party may become a Qualified Bidder (as defined below); (c) the process for the selection of one or more Successful Bidder(s) (as



defined below); and (d) the process for obtaining such approvals (including the approval of the Court) as may be necessary or appropriate in respect of one or more Successful Bid(s).

6. In the SISP, (a) “**Business Day**” means any day (other than Saturday or Sunday) that banks are open for business in Toronto, Ontario. If any deadline date referred to in this SISP falls on a day that is not a Business Day, then such date will be extended until the next Business Day; (ii) the words “include”, “includes”, and “including” will be deemed to be followed by the phrase “without limitation”; (iii) for certainty, the term “Property” includes each loan included advanced by the Applicant to a borrower (each, a “**Loan**”), the rights of the Applicant under the credit, security and other documentation governing each Loan and information regarding each borrower, guarantor or other obligor under each Loan contained in the records of the Applicant.

### Timeline

7. The following table sets out the key milestones under the SISP:

Milestone	Deadline
Commencement Date	No later than June 13, 2023
Bid Deadline	5:00 p.m. Eastern Standard Time on the date that is six weeks from the Commencement Date
Settle and execute one or more binding agreement(s) regarding the Successful Bid(s)	No later than two weeks from the Bid Deadline
Hearing of Sale Approval Motion (as defined below)	No later than 10 Business Days from the selection of the Successful Bid(s), subject to the availability of the Court

8. Subject to any order of the Court, the dates set out in the SISP may be extended by the Monitor with the consent and approval of the Applicant and after consultation with the DIP Lender.

### Solicitation of Interest: Notice of SISP

9. As soon as reasonably practicable, but in any event by no later than **June 13, 2023**:

- (a) the Monitor, in consultation with the Applicant, will prepare a list of potential bidders, including: (i) parties that have approached the Applicant or the Monitor indicating an interest in the Opportunity; and (ii) local and international strategic and financial parties who the Applicant, in consultation with the Monitor, believes may be interested in purchasing all or part of the Business and/or Property or investing in the Applicant pursuant to the SISP, in each case whether or not such party has submitted a letter of intent or similar document (collectively, “**Known Potential Bidders**”);
  - (b) the Monitor will arrange for a notice of SISP (and such other relevant information which the Monitor, in consultation with the Applicant, considers appropriate) (the “**Notice**”) to be published in The Globe and Mail (National Edition), and any other newspaper or journal as the Monitor, in consultation with the Applicant, considers appropriate, if any;
  - (c) the Monitor will issue a press release with Canada Newswire or a comparable newswire entity setting out the information contained in the Notice and such other relevant information which the Monitor, in consultation with the Applicant, considers appropriate, designating dissemination in Canada; and
  - (d) the Monitor, in consultation with the Applicant, will prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Applicant and the Monitor (an “**NDA**”).
10. The Monitor will send the Teaser Letter and NDA to each Known Potential Bidder by no later than June 13, 2023 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Applicant or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

### **Potential Bidders and Due Diligence Materials**

11. Any party who wishes to participate in the SISP (a “**Potential Bidder**”), must provide to the Applicant and the Monitor an NDA executed by it, and which shall inure to the benefit of any purchaser of the Business or Property, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.
12. The Monitor, in consultation with the Applicant, shall in their reasonable business judgment and subject to competitive and other business considerations, afford each Potential Bidder who has signed and delivered a NDA to the Monitor and provided information as to their financial wherewithal to close a transaction such access to due diligence material and information relating to the Property and Business as the Applicant or the Monitor deem appropriate. Due diligence shall include access to an electronic data room maintained by the Monitor containing information about the Applicant and the Business (the “**Data Room**”), and may also include other matters which a Potential Bidder may reasonably request and as to which the Applicant, in its reasonable business judgment and after consulting with the Monitor, may agree. The Monitor will designate a

representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Applicant nor the Monitor will be obligated to furnish any information relating to the Property or Business to any person other than to Potential Bidders. Furthermore, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders if the Applicant, in consultation with and with the approval of the Monitor, determine such information to represent proprietary or sensitive competitive information. Neither the Applicant nor the Monitor is responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the Sale of the Property and the Business.

13. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Applicant.

### Formal Binding Offers

14. Potential Bidders that wish to make a formal offer to purchase or make an investment in the Applicant or its Property or Business (a “**Bidder**”) shall submit a binding offer (a “**Bid**”) that complies with all of the following requirements to the Monitor at the address specified in Schedule “1” hereto (including by e-mail), so as to be received by the Monitor not later than **5:00 PM (Eastern Time) on the date that is four weeks from the Commencement Date** or as may be modified in the Bid process letter that may be circulate by the Monitor to Potential Bidders, with the approval of the Applicant and in consultation with the DIP Lender (the “**Bid Deadline**”):
  - (a) the Bid must be a binding offer to:
    - (i) acquire all, substantially all, or a portion of the Property (a “**Sale Proposal**”);
    - (ii) to recapitalize, invest in, arrange or reorganize the Applicant, the Property or the Business (an “**Investment Proposal**”); and/or
    - (iii) some combination of a Sale Proposal and an Investment Proposal (a “**Hybrid Proposal**”).
  - (b) the Bid (either individually or in combination with other Bids that make up one Bid) is an offer to purchase or make an investment in some or all of the Applicant or its Property or Business and is consistent with any necessary terms and conditions established by the Applicant and the Monitor and communicated to Bidders;
  - (c) the Bid includes a letter stating that the Bidder’s offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder, or the Back-Up Bidder (as defined below), its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
  - (d) the Bid includes duly authorized and executed transaction agreements which clearly state the purchase price, investment amount and any other key economic terms

expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits and schedules thereto;

- (e) the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Applicant and the Monitor to make a determination as to the Bidder’s financial and other capabilities to consummate the proposed transaction;
- (f) the Bid is not conditioned on: (i) the outcome of unperformed due diligence by the Bidder, or (ii) obtaining financing;
- (g) the Bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is otherwise participating or benefiting from such Bid;
- (h) for a Sale Proposal, the Bid includes:
  - (i) the Purchase Price in Canadian dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
  - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (iii) the allocation of the Purchase Price (or range if not finally determined) between the Loans and/or the other Property of the Applicant that is expected to be subject to the Transaction;
  - (iv) a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;
  - (v) the Bidder’s proposal for addressing ongoing servicing and administration of the Loans that are subject to the proposed transaction, including with respect to requests or requirements for further funding;
  - (vi) a description of the conditions and approvals required to complete the closing of the transaction;
  - (vii) a description of those liabilities and obligations which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
  - (viii) any other terms or conditions of the Sale Proposal that the Bidder believes are material to the transaction; and
  - (ix) a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 10% of the Purchase Price, payable upon submission of the Bid;
- (i) for an Investment Proposal, the Bid includes:
  - (i) a description of how the Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;

- (ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicant in Canadian dollars;
  - (iii) the underlying assumptions regarding the pro forma capital structure;
  - (iv) a specific indication of the sources of capital for the Bidder and the structure and financing of the transaction;
  - (v) a description of the conditions and approvals required for to complete the closing of the transaction;
  - (vi) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
  - (vii) any other terms or conditions of the Investment Proposal; and
  - (viii) a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 10% of the total new investment contemplated in the bid upon the Bidder being selected as the Successful Bidder;
- (j) for a Hybrid Proposal, the Bid includes:
- (i) the information set out in subparagraph 14(h) above regarding the portion of the Hybrid Proposal that constitutes a Sale Proposal; (ii) the information set out in subparagraph 14(i) above regarding the portion of the Hybrid Proposal that constitutes an Investment Proposal; and (iii) such other information as may be reasonably requested by the Monitor.
- (k) the Bid includes acknowledgements and representations of the Bidder that the Bidder:
- (i) has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Applicant prior to submitting the Bid;
  - (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
  - (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Applicant or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Applicant;
- (l) the Bid is received by the Bid Deadline; and
- (m) the Bid includes confirmation that, if the Bid is the Successful Bid and the Applicant has cash requirements in excess of the amounts available to it under the DIP Facility to get to a closing of the transaction then the Bidder will advance funds to the Applicant to allow it to fund their cash requirements by way of non-revolving facility in a manner that does not impair the priority of the DIP Facility or otherwise is satisfactory to the DIP Lender.
15. Following the Bid Deadline, the Monitor will assess the Bids received. The Monitor will designate the most competitive Bids that comply with the foregoing requirements to be

**“Qualified Bids”**. No Bids received shall be deemed not to be Qualified Bids without the approval of the Monitor. Only Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

16. The Monitor may waive strict compliance with any one or more of the requirements specified above and deem any non-compliant Bid to be a Qualified Bid; provided, however, that the Monitor shall not waive compliance with the requirements set out in paragraph 14 above without the consent of the DIP Lender.
17. The Monitor in its sole direction may, but is not obligated to, consult with the Applicant regarding the evaluation of Bids and designation of Bids as Qualified Bids.
18. The Monitor shall notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within two (2) business days of the Bid Deadline, or at such later time as the Monitor deems appropriate.
19. If the Monitor, in consultation with the Applicant, is not satisfied with the number or terms of the Qualified Bids, the Monitor may, in consultation with the Applicant and with the approval of the Applicant, extend the Bid Deadline, or the Monitor may seek Court approval of an amendment to the SISP, in each case after consultation with the DIP Lender.
20. The Monitor may, in consultation with the Applicant if deemed necessary, aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.

### **Evaluation of Qualified Bids**

21. The Monitor will review each Qualified Bid.
22. The Monitor in its sole direction may, but is not obligated to, consult with the Applicant regarding the evaluation of Qualified Bids.
23. A Qualified Bid will be evaluated based upon several factors including, without limitation: (a) the Purchase Price and the net value provided by such bid; (b) the identity, circumstances and ability of the Bidder to successfully complete the proposed transaction; (c) the proposed transaction documents; (d) factors affecting the speed, certainty, and value of the proposed transaction; (e) the assets included or excluded from the Bid; (f) the planned treatment of the Applicant’s stakeholders; (g) any related restructuring costs; and (h) the likelihood and timing of consummating the proposed transaction, each as determined by the Monitor.
24. If one of more Qualified Bids is received or so designated by the Monitor, the Monitor, exercising its reasonable judgment and with the assistance of the Applicant if requested, may select the most favourable Qualified Bid(s) (each a **“Successful Bid”**), whereupon the Monitor shall proceed to negotiate and settle the terms of a definitive Transaction agreement, with the applicable Bidder(s) who submitted a Successful Bid (each, a **“Successful Bidder”**). The terms of any such definitive Transaction agreement must be acceptable to the Monitor.

25. The Qualified Bidder putting forward the next most favourable Qualified Bid after the Successful Bid(s), as determined by the Monitor and the Applicant (the “**Back-Up Bidder**”), will be required to keep its offer open and available for acceptance until the closing of the Transaction contemplated by the Successful Bid.

### **Approval Motion for Successful Bid(s)**

26. The Monitor will bring a motion before the Court (the “**Sale Approval Motion**”) for an order approving the Successful Bid(s) and authorizing the Applicant to enter into any and all necessary agreements regarding the Successful Bid(s) and to undertake such other actions as may be necessary or appropriate to give effect to the Successful Bid(s).
27. All Qualified Bids other than the Successful Bid(s), will be deemed to be rejected by the Monitor and the Applicant on and as of the date of approval of the Successful Bid(s) by the Court.
28. The Sale Approval Motion will be held on a date to be schedule by the Court upon motion by the Applicant or the Monitor. The Approval Motion may be adjourned or rescheduled by the moving party, on notice to the Successful Bidder(s), by an announcement of the adjourned date at the Sale Approval Motion and without the need for any further notice thereof, provided that in no circumstance will the Sale Approval Motion, be adjourned or rescheduled beyond September 1, 2023, without the consent of the Successful Bidder(s).

### **Deposits**

29. All cash Deposits will be retained by the Monitor and invested in an interest-bearing trust account. If there is one or more Successful Bid(s), the Deposit (plus accrued interest) paid by the Successful Bidders(s) whose bid is approved at the Sale Approval Motion will be applied in partial satisfaction of the consideration to be paid or provided by the Successful Bidder under the Successful Bid upon closing of the approved Transaction and will be non-refundable. The Deposits (plus applicable interests) of Qualified Bidders not selected as Successful Bidders(s) will be returned to such parties within 5 Business Days of the date upon which the Successful Bid(s) 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 Qualified Bidders within 5 Business Days of the date upon which the SISP is terminated in accordance with its terms.
30. If a Successful Bidder(s) 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**

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

### **“As Is, Where Is”**

32. Any Transaction will be on an “as is, where is” basis at the time of closing and without surviving representations or warranties of any kind, nature, or description by the Applicant or the Monitor or any of their affiliates, advisors, agents or representatives, except to the extent otherwise expressly provided under a definitive agreement with respect to a Transaction with a Successful Bidder executed and delivered by the Applicant and approved by the Court. None of the Applicant or the Monitor, or any of their affiliates, advisors, agents or representatives, makes any representation or warranty as to title, description, fitness for purpose, merchantability, quantity, conditions or quality of the Property, the Business, or the accuracy or completeness of the information provided to any party under the SISP or otherwise, including the information contained in any of the Teaser, and the Data Room. Each party that participates in the SISP shall be deemed, at its own expense, to have relied entirely on its own inspection and investigation regarding the Property, the Business and otherwise regarding the Applicant. It shall be the Successful Bidder’s sole responsibility to obtain, at its own expense, any consents necessary to close a Transaction and any further documents or assurances which are necessary or desirable in the circumstance. Without limiting the generality of the foregoing, any and all conditions, warranties, and representations expressed or implied pursuant to the Sale of Goods Act (Ontario), or any similar legislation in force outside of Ontario, does not apply to any Transaction and will be waived by the Successful Bidder(s).

### **No Obligation to Conclude a Transaction**

33. The highest Bid received under the SISP will not necessarily be accepted. In addition, at any time during the SISP, the Monitor may terminate the SISP and will provide notice of such decision to all Qualified Bidders.

### **Advice and Directions from the Court**

34. At any time during the SISP, the Monitor may apply to the Court for advice and directions and with respect to the discharge of its powers and duties hereunder.

### **Confidentiality and Access to Information**

35. All discussions regarding a Sale Proposal, Investment Proposal, Hybrid Proposal, or Bid should be directed through the Monitor. Under no circumstances should the management of the Applicant be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP process.
36. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Applicant, the Monitor and such other Bidders or Potential Bidders in connection with the SISP, except to the extent the Applicant, with the approval of the Monitor and consent of the applicable participants, are seeking to combine separate bids from Potential Bidders or Bidders.



## **Supervision of the SISP**

37. The Monitor shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in this SISP, the SISP Order, the Initial Order and any other orders of the Court, and is entitled to receive all information in relation to the SISP.
38. This SISP does not, and will not, be interpreted to create any contractual or other legal relationship between the Applicant or the Monitor and any Potential Bidder, any Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Applicant.
39. Without limiting the preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Bidder, the Successful Bidder, the Applicant, the DIP Lender or any other creditor or other stakeholder of the Applicant, for any act or omission related to the process contemplated by this SISP, except to the extent such act or omission is the result from gross negligence or wilful misconduct of the Monitor. By submitting a Bid, each Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever, except to the extent that such claim is the result of gross negligence or wilful misconduct of the Monitor.
40. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities and any further negotiations or other actions whether or not they lead to the consummation of a Transaction.
41. Without limiting in any way the intent and effect of the applicable provisions of the DIP Facility in respect of the SISP, the Applicant and the Monitor shall have the right to modify the SISP (including, without limitation, pursuant to the Bid process letter) following consultation with the DIP Lender if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in these CCAA proceedings shall be advised of any substantive modification to the procedures set forth herein.

**Schedule “1”**

**Address of Monitor**

**To the Monitor:**

msi Spergel Inc.  
200 Yorkland Blvd., Suite 1100  
Toronto, ON M2J 5C1

Attention: Mukul Manchanda, Philip Gennis

Email: [mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)  
[pgennis@spergel.ca](mailto:pgennis@spergel.ca)

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE -**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**SALE AND INVESTMENT SOLICITATION**  
**PROCESS ORDER**  
**(MOTION RETURNABLE JUNE 8, 2023)**

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