

SUPERIOR COURT  
(Commercial Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
NO: 500-11-064451-244  
DATE: August 6, 2024

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PRESIDING: THE HONOURABLE CHRISTIAN IMMER, J.S.C.

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
RSC 1985, C C-36 OF:

MEDXL INC.

-and-

LIEBEL-FLARSHEIM CANADA INC.

-and-

9431-0091 QUÉBEC INC.

-and-

9190-2395 QUÉBEC INC.

Debtors/Applicants

-and-

FTI CONSULTING CANADA INC.

Monitor

COPIE CERTIFIÉE CONFORME AU  
DOCUMENT DÉTENU PAR LA COUR

CHILA ZOLA MANGALA

PERSONNE DÉSIGNÉE PAR LE GREFFIER  
EN VERTU DE 67 C.P.C.

6 août 2024

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ORDER APPROVING A  
SALE AND INVESTMENT SOLICITATION PROCESS

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[1] ON READING the Debtors' Application for the Issuance of (i) an Initial Order(ii) an Amended and Restated Initial Order and (iii) an Order Approving a Sale and Investment Solicitation Process dated July 25, 2024 (the "Application") filed by MedXL Inc., Liebel-Flarsheim Inc., 9431-0091 Québec Inc., and 9190-2395 Québec inc (collectively the "Debtors") pursuant to the Companies' Creditors Arrangement Act, RSC 1985, c C-36 (the "CCAA"), the sworn statement and the exhibits filed in support thereof, as well as the First Report to the Court submitted

by FTI Consulting Canada Inc. in its capacity as Proposed Monitor dated July 25, 2024 (the "**Proposed Monitor's Report**");

- [2] **CONSIDERING** the initial order rendered by this Court in these proceedings on July 26, 2024 (as amended and/or restated from time to time, including on August 5, 2024, the "**Initial Order**");
- [3] **CONSIDERING** the notification of the Application;
- [4] **CONSIDERING** the submissions of the attorneys present at the hearing on the Application and the testimony of the witnesses heard;
- [5] **CONSIDERING** the provisions of the CCAA;

**THE COURT HEREBY:**

- [6] **GRANTS**, in part, the Application.

**I. SERVICE**

- [7] **ORDERS** that any prior delays for presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.
- [8] **PERMITS** the service of the present order (the "**Order**") at any time and place and by any means whatsoever, including by email.

**II. DEFINITIONS**

- [9] **DECLARES** that all capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures (as defined below).

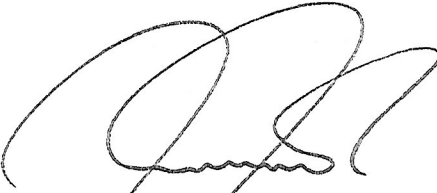
**III. APPROVAL OF THE SALE AND INVESTMENT SOLICITATION PROCESS**

- [10] **APPROVES** the conduct of a Sale and Investment Solicitation Process in respect of the Debtors (the "**SISP**") in accordance with the Procedures for the Sale and Investment Solicitation Process attached hereto as **Schedule "A"** (the "**Bidding Procedures**").
- [11] **AUTHORIZES** the Monitor, with the assistance of the Debtors, to implement the SISP and to take such steps and execute such documentation as may be necessary or incidental thereto, the whole in accordance with the Bidding Procedures, as applicable.
- [12] **ORDERS** that the Debtors and the Monitor are authorized and permitted under applicable law to disclose and transfer to Potential Bidders and to their advisors personal information in the custody or control of the Debtors relating to the operation of any part of the Business being sold pursuant to the SISP, including

human resources and payroll information, records pertaining to the Debtors' past and current employees, and information about any consumer, website visitor or other individual (collectively "**Personal Information**") but only to the extent necessary to negotiate, determine whether to proceed with, and attempt to complete a transaction in accordance with the SISP (a "**Transaction**"). Each Potential Bidder to whom any Personal Information is disclosed shall maintain and protect the Personal Information with security safeguards appropriate to the sensitivity of the Personal Information and as may otherwise be required by applicable federal or provincial privacy legislation and limit the use of such information to its evaluation of a Transaction, and if it does not complete a Transaction with the Debtors, shall return all such information to the Debtors or the Monitor, as applicable, or in the alternative permanently destroy all such information.

- [13] **ORDERS** that the Debtors, the Monitor and each of their respective affiliates, partners, directors, employees, agents, controlling persons, lenders, legal counsel and advisors shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the conduct of the SISP or the performance of their duties under the SISP, except to the extent that such losses, claims, damages or liabilities result from gross negligence or willful misconduct of any such person or entity, as applicable, as determined by this Court.
- [14] **ORDERS** that the Debtors and the Monitor may from time to time apply to this Court for advice and directions in respect of the SISP and the discharge of their respective powers and/or duties hereunder or under the SISP.
- [15] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [16] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America and any court or administrative body elsewhere, to give effect to this Order and to assist the Monitor, the Debtors and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Monitor and the Debtors as may be necessary or desirable to give effect to this Order, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.
- [17] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without security.

[18] THE WHOLE WITHOUT COSTS.



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The Honourable Christian Immer, J.S.C.

**Schedule A**  
**Bidding Procedures**

## **Procedures for the Sale and Investment Solicitation Process**

On July 26, 2024, MedXL Inc., Liebel-Flarsheim Canada Inc., 9190-2395 Québec inc. and 9431-0091 Québec inc. (collectively the **Debtors**) commenced proceedings (the **CCAA Proceedings**) under the *Companies' Creditors Arrangement Act* (Canada) (the **CCAA**) before the Superior Court of Québec (Commercial Division) in the District of Montréal (the **Court**), and, on the same day, the Court rendered an initial order in favour of the Debtors (as amended and/or restated from time to time, including on August 5 and on August 6, 2024, the **Initial Order**).

Pursuant to the Initial Order, FTI Consulting Canada Inc., a licensed insolvency trustee, was appointed as monitor of the Debtors in the CCAA Proceedings (in such capacity, the **Monitor**).

On August 6, 2024 the Court rendered an order in the context of the CCAA Proceedings (the **Bidding Procedures Order**), authorizing the Monitor, with the assistance of the Debtors, and in collaboration with the Senior Secured Creditors (subject to paragraph 43 hereof), to conduct a sale and investment solicitation process with respect to the Debtors (**SISP**) in accordance with these Bidding Procedures (as defined below).

These Bidding Procedures set out the manner in which (i) binding bids for executable transaction alternatives involving the shares and/or the businesses, property and assets of the Debtors (collectively, the **Business**) will be solicited from interested parties, (ii) any such bids received will be addressed, (iii) any Successful Bid (as defined below) will be selected, and (iv) Court approval of any Successful Bid will be sought. Such transactions may include, among other things, a sale of some or all of the Debtors' shares, assets and/or business and/or an investment in the Business, each of which shall be subject to all terms set forth in these Bidding Procedures.

Parties who wish to have their bids considered shall be required to participate in the SISP in accordance with the present bidding procedures governing the solicitation of offers or proposals for the acquisition of the Business or some portion thereof (the **Bidding Procedures**).

### **Defined Terms**

1. Capitalized terms used in the Bidding Procedures have the meanings ascribed to them in Appendix A.

### **Bidding Procedures**

#### ***Opportunity***

2. The SISP is intended to solicit interest in, and opportunities for: (i) one or more sales or partial sales of all, substantially all, or certain portions of the Business; and/or (ii) for an investment, the restructuring, recapitalization, refinancing, reverse vesting or other form of reorganization of the Debtors or all or part of the Business. Bids considered pursuant to the Bidding Procedures may include one or more of an investment, restructuring, recapitalization, refinancing or other form of reorganization of the business and affairs of the Debtors as a going concern or a sale or partial sale of all, substantially all, or a certain part of the Business, or a combination thereof (the **Opportunity**).

3. These Bidding Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning the Debtors and the Business, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder and the requisite approvals to be sought from the Court in connection therewith. The SISP shall be conducted in the manner set forth herein.
4. The Debtors and the Monitor, with the prior consent of the Senior Secured Creditors (subject to paragraph 43 hereof), which consent shall not be unreasonably withheld, may at any time and from time to time modify, amend, vary or supplement the SISP or the Bidding Procedures, without the need for obtaining an order of the Court, provided that it is determined by the Monitor that such modification, amendment, variation or supplement is useful in order to maximize the value of the Business through the SISP, or otherwise give effect to the substance of the SISP, the Bidding Procedures, the Bidding Procedures Order and the Initial Order.
5. The Monitor shall post on the Monitor's website and notify the CCAA Service List, as soon as practicable, any such modification, amendment, variation or supplement to the Bidding Procedures and the Monitor shall inform the bidders impacted by such modifications.
6. In the event of a dispute as to the interpretation or application of the SISP or Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute.
7. As more particularly set out herein, a summary of the key dates pursuant to the SISP are as follows:<sup>1</sup>

| Event  | Deadline                        |
|--|---------------------------------|
| <b>1. Approval of Bidding Procedures</b>   | August 6, 2024                  |
| <b>Phase 1</b>   |                                 |
| <b>2. Solicitation Letter</b><br>Monitor to distribute Solicitation Letter to potentially interested parties                                       | August 12, 2024                 |
| <b>3. CIM and VDR</b><br>Monitor and Debtors to prepare and have available for parties having executed the NDA (Potential Bidders) the CIM and VDR | August 12, 2024                 |
| <b>4. Phase 1 Qualified Bidders &amp; Bid Deadline</b>   | September 12, 2024 at 5:00 p.m. |

<sup>1</sup> All capitalized terms used in the table and not already defined are defined further below in the Bidding Procedures. Titles in the chart are for presentation purposes only.

|   |                    |
|---|--------------------|
| Phase 1 Bid Deadline (for delivery of non-binding LOIs by Phase 1 Qualified Bidders in accordance with the requirement of paragraph 17 of the Bidding Procedures)   |                    |
| <b>5. Phase 1 Satisfactory Bid</b><br>Monitor to notify each Phase 1 Qualified Bidder in writing as to whether its bid constituted a Phase 1 Satisfactory Bid, or to inform the Credit Bidder that its Credit Bid was the Successful Bid. | September 16, 2024 |
| <b>Phase 2</b>  |                    |
| <b>6. Phase 2 Bid Deadline &amp; Qualified Bidders</b><br>Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the requirement of paragraph 23 of the Bidding Procedures)              | October 10, 2024   |
| <b>7. Selection of final Successful Bid or Auction (if needed)</b><br>Deadline for selection of final Successful Bid(s)   | October 17, 2024   |
| <b>8. Definitive Documentation</b><br>Deadline for completion of definitive documentation in respect of Successful Bid(s)   | October 24, 2024   |
| <b>9. Approval Application – Successful Bid</b><br>Deadline for filing of Approval Motion in respect of Successful Bid(s)   | October 29, 2024   |
| <b>10. Closing – Successful Bid</b><br>Anticipated deadline for closing of Successful Bid(s) being the Target Closing Date  | October 30, 2024   |
| <b>11. Outside Date – Closing</b><br>Outside Date by which the Successful Bid(s) must close   | November 7, 2024   |

**Solicitation of Interest: Notice of the SISP**

8. As soon as reasonably practicable after the granting of the Bidding Procedures Order, and by no later than on August 12, 2024 :



- (a) a notice of the SISP and such other relevant information which the Monitor considers appropriate shall be published on the Monitor's website and in *La Presse+* and *The Globe & Mail* and such other publications as may be considered appropriate; and
- (b) a press release setting out the notice and such other relevant information regarding the Opportunity as may be considered appropriate, shall be issued with *Canada Newswire* designating dissemination in Canada.

9. The Monitor or the Debtors shall send to potential bidders, as soon as practical after the granting of the Bidding Procedures Order and by no later than on August 12, 2024, a letter describing the Opportunity (a **Solicitation Letter**), outlining the salient elements of the SISP and inviting recipients of the Solicitation Letter to express their interest pursuant to the SISP and these Bidding Procedures.

### ***Virtual Data Room***

10. As soon as practicable and by no later than on August 12, 2024 a confidential virtual data room (the **VDR**) in relation to the Opportunity will be made available by the Monitor to Potential Bidders that have executed the NDA in accordance with paragraph 11 herein. Following the completion of "Phase 1", but prior to the completion of "Phase 2", additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect of the Debtors, the Business and the Opportunity. The Monitor may establish separate VDRs (including "clean rooms"), if the Monitor reasonably determines that doing so would further the Debtors' and any Potential Bidders' compliance with applicable antitrust and competition laws or would prevent the distribution of commercially sensitive competitive information. The Monitor may also limit the access of any Potential Bidder to any confidential information in the VDR where the Monitor reasonably determines that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Business or its value.

### **PHASE 1: NON-BINDING LOIS**

#### ***Phase 1 Qualified Bidders and Delivery of Confidential Information Memorandum***

11. In order to participate in the SISP, and prior to the distribution of any confidential information to an interested party (including access to the VDR), such interested party must deliver to the Monitor an executed non-disclosure agreement in form and substance satisfactory to the Debtors and the Monitor (each, an **NDA**), which shall enure to the benefit of any Successful Bidder that closes a transaction contemplated by its Successful Bid. Pursuant to the terms of the NDA to be signed by a potential bidder (each potential bidder who has executed an NDA, a **Potential Bidder**), each Potential Bidder will be prohibited from communicating with any other Potential Bidder or with any of the Interim Lenders or Secured Creditors regarding the Opportunity during the term of the SISP, without the consent of the Debtors and the Monitor. Notwithstanding the foregoing, the Senior Secured Creditors shall be entitled to communicate with any Potential Bidder, including any Potential Bidder having submitted an LOI, a Phase 1 Qualified Bid or a Binding Offer, as the case may be, provided, however, that they will inform the Monitor (who will then inform the Debtors) prior to engaging in any exchanges, discussions and/or negotiations with any Potential Bidder, and that the Monitor can elect to take part in those discussions.

12. In addition to the execution of an NDA, any potential bidder may be required to provide additional information or document deemed relevant by the Debtors or the Monitor, including evidence, reasonably satisfactory to the Debtors and the Monitor, of its financial wherewithal to complete a transaction in respect of the Opportunity (either with existing capital or with capital reasonably anticipated to be raised prior to closing) and/or details of their ownership and/or investors. For the avoidance of doubt, a party that has executed an NDA (including on a joint basis with a Potential Bidder) for the purpose of providing financing to a Potential Bidder in connection with the Opportunity (such party a **Financing Party**) shall not be deemed a Potential Bidder for purposes of the SISP, unless such Financing Party undertakes to inform the Monitor (who will then inform the Debtors) that it intends to act as a Potential Bidder.
13. A Potential Bidder that has executed an NDA and that has provided any additional information required pursuant to paragraph 12, will be deemed a "**Phase 1 Qualified Bidder**" and will be promptly notified of such classification by the Monitor.
14. Upon a Potential Bidder being classified as a Phase 1 Qualified Bidder, the Monitor will send to such Phase 1 Qualified Bidder a confidential information memorandum providing additional information considered relevant to the Opportunity (a **CIM**). The Debtors, the Monitor and their respective advisors make no representation or warranty as to the information contained in the CIM or otherwise made available to them, including in the context of the SISP.
15. The Monitor shall provide any person deemed to be a Phase 1 Qualified Bidder with access to the VDR. The Debtors, the Monitor and their respective advisors make no representation or warranty as to the information contained in the VDR.
16. If a Phase 1 Qualified Bidder wishes to submit a bid, it must deliver a non-binding letter of intent (an **LOI**) (each such LOI, provided in accordance with paragraph 17 below, a **Phase 1 Qualified Bid**), to the Monitor at the address specified in Appendix B hereto (including by email) so that it is received by the Monitor by no later than **5:00 p.m. (prevailing Eastern Time) on September 12, 2024**, or such other date or time as may be agreed by the Debtors and the Monitor (the **Phase 1 Bid Deadline**).
17. An LOI submitted by a Phase 1 Qualified Bidder will only be considered a "**Phase 1 Qualified Bid**" if the LOI complies at a minimum with the following:
  - (a) it has been duly executed by all required parties;
  - (b) it is received by the Phase 1 Bid Deadline;
  - (c) it contains an agreement by the Phase 1 Qualified Bidder to be bound by the terms of the SISP and these Bidding Procedures;
  - (d) it provides written evidence, satisfactory to the Debtors and Monitor, of the Phase 1 Qualified Bidder's ability, including financial ability, to consummate the transaction within the timeframe contemplated by the SISP and these Bidding Procedures and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the availability and sources of capital;

- (e) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of agreement or other document required from a government body, stakeholder or other third party, any necessary financing or equity injection required, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such approvals, along with information sufficient for the Debtors and the Monitor, to determine that these conditions are reasonable in relation to the Phase 1 Qualified Bidder;
- (f) it identifies the Qualified Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Qualified Phase 1 Bidder for all purposes regarding the contemplated transaction(s), and it fully discloses the identity of each entity or person that will be sponsoring, participating in or benefiting directly or indirectly from the transaction contemplated by the LOI;
- (g) does not provide for any break fee, expense reimbursement or similar type of payment
- (h) it provides an outline of the due diligence completed to the date of submission of the LOI and any additional due diligence required to be conducted in order to submit a binding offer;
- (i) it clearly indicates whether:
  - (i) the Phase 1 Qualified Bidder is seeking to acquire all or substantially all of the Businesses, whether through an asset purchase or a share purchase or a combination thereof or some other portion of the Businesses (either one being, a **Sale Proposal**) ; and/or whether
  - (ii) the Phase 1 Qualified Bidder is seeking to make an investment in, restructure, recapitalize, reorganize or refinance one or more of the Debtors or one or more of their Businesses (either one being an **Investment Proposal**);
- (i) it contains such other information as may be reasonably requested by the Debtors and the Monitor;
- (j) in the case of a Sale Proposal, it identifies or contains the following:
  - (i) the purchase price or price range, including the cash and non-cash component thereof, and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;
  - (ii) any contemplated purchase price allocation and adjustment;
  - (iii) a description of the specific assets that are expected to be subject to the transaction and any assets expected to be excluded from same;

- (iv) a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
  - (v) information sufficient for the Debtors and the Monitor to determine that the Phase 1 Qualified Bidder has sufficient ability, including financial ability, to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;
  - (vi) a description of the anticipated tax planning, if any; and
  - (vii) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (k) in the case of an Investment Proposal, it identifies the following:
- (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;
  - (ii) the aggregate amount of the equity and/or debt investment to be made in the Debtors or their Business, including the cash and non-cash component thereof, and the identity of the Debtors that are included in the proposal including any contemplated adjustment to the investment amount;
  - (iii) the underlying assumptions regarding the pro forma capital structure;
  - (iv) a description of the specific assets that are expected to be included in the proposed transaction and any assets expected to be excluded;
  - (v) a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
  - (vi) information sufficient for the Debtors and the Monitor, to determine that the Phase 1 Qualified Bidder has sufficient ability, including financial ability, to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (v) above;
  - (vii) a description of the anticipated tax planning, if any; and
  - (viii) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction.

18. The Debtors and the Monitor may waive compliance with any one or more of the requirements specified in paragraph 17 and deem any such non-compliant LOI to be a Phase 1 Qualified Bid.
19. The Debtors and the Monitor may also, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid or a Phase 1 Satisfactory Bid.

***Assessment of Phase 1 Qualified Bids and Subsequent Process***

20. Following the Phase 1 Bid Deadline, the Debtors and the Monitor, shall determine, in accordance with the requirements of paragraph 17, the LOI(s) that are selected as the most favorable Phase 1 Qualified Bid(s), which Phase 1 Qualified Bid(s) shall be deemed a **Phase 1 Satisfactory Bid(s)** and which Phase 1 Qualified Bidder(s) accordingly shall be deemed a **Phase 2 Qualified Bidder(s)**, if any. For greater certainty, there can be more than one Phase 1 Qualified Bid that may be determined as being a Phase 1 Satisfactory Bid, and more than one Phase 1 Qualified Bidder that may be determined as being a Phase 2 Qualified Bidder.
21. Only Phase 2 Qualified Bidders – being those that have submitted a Phase 1 Satisfactory Bid – shall be permitted to proceed to Phase 2 of the SISP.
22. The Monitor shall notify each Phase 1 Qualified Bidder in writing as to whether its Phase 1 Qualified Bid has been qualified as a Phase 1 Satisfactory Bid – such that it is a Phase 2 Qualified Bidder – before September 17, 2024, or at such later time as the Monitor deems appropriate.
23. In the event that none of the LOIs submitted by the Phase 1 Bid Deadline is qualified as a Phase 1 Satisfactory Bid, the Debtors and the Monitor may terminate the SISP.

**PHASE 2: FORMAL OFFERS AND REMOVAL OF CONDITIONS**

***Formal Binding Offers***

24. Any Phase 2 Qualified Bidder that wishes to make a formal offer with respect to a Sale Proposal or an Investment Proposal must submit a binding offer (a **Binding Offer**) comprising: (a) in the case of a Sale Proposal, a purchase agreement; or (b) in the case of an Investment Proposal, a subscription agreement or investment agreement in each case to the Monitor, so as to be received by the Monitor not later than **5:00 p.m. (prevailing Eastern Standard Time) on October 10, 2024**, or such other date or time as may be agreed by the Monitor (as may be extended the **Phase 2 Bid Deadline**).
25. A Binding Offer will only be considered as a Phase 2 Qualified Bid if it:
  - (a) has been received by the Phase 2 Bid Deadline;
  - (b) is a Binding Offer that consist in a Sale Proposal or an Investment Proposal, on terms and conditions reasonably acceptable to the Debtors and the Monitor;

- (c) identifies all executory contracts of the Debtors that the Phase 2 Qualified Bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and non-monetary defaults will be remedied, as applicable;
- (d) in the case of a purchase and sale of assets, contains a proposed allocation of purchase price and in the case of a purchase of shares or an Investment Proposal, contains a proposed allocation of the investment amount among the Debtors;
- (e) is not subject to any due diligence or financing condition;
- (f) contains evidence of authorization and approval from the Phase 2 Qualified Bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, Phase 2 Qualified Bidder's equityholder(s);
- (g) is unconditional, other than upon the receipt of the Approval Order(s) and satisfaction of other customary conditions expressly set forth in the Binding Offer;
- (h) includes a description of any approval that may be required from governmental authorities;
- (i) includes acknowledgments and representations of the Phase 2 Qualified Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Business in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities;
- (j) the Binding Offer must be accompanied by a letter that confirms that the Binding Offer: (i) may be accepted by the Debtors by countersigning the Binding Offer, and (ii) is irrevocable and capable of acceptance until the earlier of (A) two Business Days after the date of closing of the Successful Bid; and (B) the Outside Date;
- (k) does not provide for any break fee, expense reimbursement or similar type of payment;
- (l) is accompanied by a cash deposit in the amount of not less than 10% of the total consideration to be satisfied on closing or total new investment contemplated, as the case may be (the **Deposit**), along with acknowledgement that if the Phase 2 Qualified Bidder is selected as the Successful Bidder, that the Deposit will be non-refundable subject to approval of the Successful Bid by the Court and the terms described in paragraph 33 below;

- (m) contemplates and reasonably demonstrates a capacity, including financial capacity, to consummate a closing of the transaction set out therein on or before October 30, 2024, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing (the **Target Closing Date**) and in any event no later than November 7, 2024 (the **Outside Date**); and
  - (n) contemplates that the Phase 2 Qualified Bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid, is agreeing to refrain from and waive any assertion or request for reimbursement on any basis.
26. The Debtors and the Monitor may waive compliance with any one or more of the requirements specified in paragraph 25 and deem any such non-compliant Binding Offer to be a Phase 2 Qualified Bid.

***Selection of Successful Bid(s)***

27. The Debtors and the Monitor may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered a Phase 2 Qualified Bid.
28. The Debtors and the Monitor will : (a) review and evaluate each Phase 2 Qualified Bid with respect to, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in item (i) above; (iii) the likelihood of the Phase 2 Qualified Bidder's ability to close a transaction and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; financial wherewithal to meet all commitments; and required governmental or other approvals), (iv) the likelihood of the Court's approval of the Phase 2 Qualified Bid as a Successful Bid, (v) the net benefit to the Debtors and its stakeholders, and (vi) any other factors the Monitor may deem relevant; and (b) identify the highest or otherwise best non-overlapping bids (the **Successful Bid(s)**, and the Phase 2 Qualified Bidder(s) making such Successful Bid(s), the **Successful Bidder(s)**). Any Successful Bid shall be subject to approval by the Court.
29. Notwithstanding paragraph 28, the Debtors and the Monitor will alternatively : (a) continue negotiations with a selected number of Phase 2 Qualified Bidders (collectively, the Selected Bidders) with a view to finalizing an agreement with one or more of the Selected Bidders and declaring such bids to constitute Successful Bids, or (b) conduct one or more auctions (the **Auction(s)**) to determine the highest or otherwise best non-overlapping Sale Proposals or Investment Proposals pursuant to Auction rules to be determined ahead of time. To the extent that none of the Binding Offer received by the Monitor provides for the payment or satisfaction in full of the Senior Secured Creditors' secured claims against the Debtors, the Monitor shall be required, before proceeding with the above, to obtain the prior written consent of the Senior Secured Creditors, which consent shall not be unreasonably withheld.

30. In the event that an Auction or Auctions are to be held, all Phase 2 Qualified Bidders who submitted a Phase 2 Qualified Bid that the Debtors and the Monitor determine entitles such Phase 2 Qualified Bidder to participate in the Auction or Auctions, will be promptly advised by the Monitor of such determination, and informed of the procedures applicable to such Auction or Auctions.
31. In the event no Phase 2 Qualified Bidder submits a Phase 2 Qualified Bid, the Debtors and the Monitor, may terminate the SISP.
32. The final Successful Bid(s) shall be selected by no later than October 17, 2024 and the definitive documentation in respect of the Successful Bid must be finalized and executed no later than October 24, 2024, which definitive documentation shall be conditional only upon the receipt of the Approval Order(s) and the express conditions set out therein and shall provide that the Successful Bidder shall use all reasonable efforts to close the proposed transaction by no later than the Target Closing Date, or such longer period as shall be agreed to by the Monitor and the Successful Bidder. In any event, the Successful Bid must be closed by no later than the Outside Date.

#### ***Approval of Successful Bid(s)***

33. The Debtors shall apply to the Court (the **Approval Application**) for one or more orders: (i) approving the Successful Bid(s) and authorizing the taking of such steps and actions and completing such transactions as are set out therein or required thereby; and (ii) granting a vesting order and/or reverse vesting order to the extent that such relief is contemplated by the Successful Bid(s), as applicable, so as to vest title to any purchased assets in the name of the Successful Bidder(s) and/or vesting unwanted liabilities out of one or more of the Debtors (collectively, the **Approval Order(s)**). The Approval Application will be held on a date to be scheduled by the Monitor and the Debtors and confirmed by the Court upon application by the Debtors who shall use their best efforts to schedule the Approval Application by no later than October 29, 2024. The Monitor, the Senior Secured Creditors and the Successful Bidder shall be consulted by the Debtors regarding the Approval Order to be sought as part of the Approval Application.
34. Any Phase 2 Qualified Bid (other than a Successful Bid as the case may be) shall be deemed rejected on and as of the date of the closing of an overlapping Successful Bid, with no further or continuing obligation of the Debtors or the Monitor to such unsuccessful Phase 2 Qualified Bidder.

#### ***Deposits***

35. The Deposit(s):
  - (a) shall, upon receipt from the Phase 2 Qualified Bidder(s), be retained by the Monitor and deposited in a non-interest-bearing trust account.
  - (b) if received from the Successful Bidder(s), shall:
    - (i) be applied to the cash purchase price or investment amount to be paid by the applicable Successful Bidder whose Successful Bid is the subject of an Approval Order, upon closing of the approved transaction; and



- (ii) shall otherwise be held and refunded in accordance with the terms of the definitive documentation in respect of any Successful Bid (including if the consideration payable as part of such Successful Bid is to be satisfied by way of an assumption of debt), provided that all such documentation shall provide that the Deposit shall be retained by the Monitor and forfeited by the Successful Bidder, if the Successful Bid fails to close by the Outside Date, and such failure is attributable to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of the Successful Bid; and
- (c) if received from a Phase 2 Qualified Bidder that is not determined to be a Successful Bidder, shall be fully refunded to the Phase 2 Qualified Bidder that paid the Deposit as soon as practical following the closing of the transaction contemplated by the overlapping Successful Bid(s) and in any event no later than November 7, 2024.

#### **"As is, Where is"**

36. Any transaction made pursuant to this SISP will be on an "as is, where is" basis except for representations and warranties that are customarily provided in purchase agreements, subscription agreements or investment agreements for a company subject to CCAA proceedings. Any such representations and warranties provided for in the definitive documents shall not survive closing.

#### **Further Orders**

37. At any time during the SISP, the Debtors or the Monitor may apply to the Court for advice and directions with respect to any aspect of this SISP and the Bidding Procedures including, but not limited to, the continuation of the SISP or with respect to the discharge of their powers and duties hereunder.

#### **Vaxiron Bid and Credit Bids**

38. In parallel with the SISP, Vaxiron Inc. and/or its affiliate(s), will be given the opportunity to submit an LOI (the **Vaxiron Offer**) to the Debtors and to the Monitor by no later than August 12, 2024 (the **Vaxiron Deadline**), following which the Debtors and the Monitor and the Senior Secured Creditors will have five (5) business days to review same. The Monitor and the Debtors will use their best efforts to grant Vaxiron Inc. and/or its affiliate(s) access to the information and documentation needed to submit the Vaxiron Offer. If, within such delay, the Vaxiron Offer is deemed acceptable by each of the Debtors, the Monitor and the Senior Secured Creditors, taking into considerations the criteria set out in these Bidding Procedures (including at paragraph 28 hereof), then the Monitor may suspend the SISP so that the Debtors may submit such Vaxiron Offer to the Court for its approval. If there is a dispute between the Debtors and the Senior Secured Creditors as to whether or not the Vaxiron Offer is acceptable or if its appropriate to suspend the SISP, each party shall reserve their rights to submit such dispute to the Court or file a court application seeking the approval of the Vaxiron Offer. In such circumstances, the Monitor will provide its impartial observations and recommendations to the Court.

39. Secured Creditors shall be entitled to participate in the SISP in accordance with these Bidding Procedures and to submit a bid which may consist of or include: (i) a credit bid up to the maximum amount of the Secured Creditor's secured claim (each a "**Credit Bid**"), on any of the assets encumbered by its security (each a "**Credit Bidder**"), and (ii) any additional cash component or other consideration deemed appropriate by the relevant Secured Creditor, the whole subject to compliance with the Bidding Procedures provided that: (i) the Credit Bid portion of a Secured Creditor's bid cannot exceed the total value of the Credit Bidder's secured claim against any of the Debtors and (ii) the consideration for the Secured Creditor's bid (including any Credit Bid portion thereof) must be deemed sufficient by any creditor, including any Secured Creditor, having a secured claim against any of the Debtors taking rank before the Credit Bidder's secured claim against any of them (each a "**Prior Claim**"). Any creditor, including any Secured Creditor, with a Prior Claim cannot withhold its consent if its Prior Claim is paid or satisfied in full.
40. Nothing contained in this paragraph is intended to, or shall, alter or amend the rights, terms or obligations under any intercreditor, subordination, standstill or forbearance agreement or indenture.

#### **Additional Terms**

41. In addition to any other requirement of these Bidding Procedures:
- (a) The Debtors and the Monitor shall at all times prior to the selection of a Successful Bid use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without limitation, by actively soliciting participation by all persons who would be customarily identified as high potential bidders in a process of this kind or who may be reasonably proposed by any of the Debtors' stakeholders as a high potential bidder.
  - (b) Any consent, approval or confirmation to be provided by the Debtors or the Monitor is ineffective unless provided in writing and any approval required pursuant to the terms hereof is in addition to, and not in substitution for, any other approvals required by the CCAA or as otherwise required at law in order to implement a Successful Bid. For the avoidance of doubt, a consent, approval or confirmation provided by email shall be deemed to have been provided in writing for the purposes of this paragraph.
  - (c) The Court at all times retains the discretion to direct the clarification, termination, extension or modification of the SISP and Bidding Procedures on application of any interested party.
  - (d) Prior to the seeking of Court approval for any transaction or bid contemplated by the SISP, the Monitor will provide a report to the Court on the SISP process, parts of which may be filed under seal, including in respect of any and all bids received.
42. At the request of a Secured Creditor, the Monitor will be entitled to communicate and will communicate any and all information in respect of the SISP, including copies of all bids/offers received by the Monitor to Secured Creditors (i) who undertake in writing to keep such information confidential, (ii) who have confirmed in writing to the Monitor that they renounce to their right to submit a bid, including a Credit Bid (iii) who have not

submitted a bid at the Phase 1 Bid Deadline, or (iv) who have not been determined to be Phase 2 Qualified Bidders.

### **Participation Rights**

43. The Senior Secured Creditors and Members of Management (the **SISP Participants**) will participate in or otherwise be consulted during the SISP (the **Participation Rights**):

- (a) by receiving from the Monitor, on a confidential basis, any confidential information or document in connection with the SISP, including copies of any bid submitted in the context of the SISP and any other confidential information or document reasonably requested;
- (b) for the Senior Secured Creditors, by being consulted by the Monitor with respect to any approval, consent, confirmation, decision, waiver or determination to be given, made or taken by the Monitor in connection with the SISP;
- (c) for the Members of Management, by giving, making or taking, on behalf of the Debtors, the approvals, consents, confirmations, decisions, waivers and determinations in connection with the SISP provided for in the Bidding Procedures;

provided that:

- (d) the Participation Rights of a SISP Participant shall be suspended if such SISP Participant confirms to the Monitor in writing that: (i) it will be submitting or participating in a bid (including a Credit Bid), whether directly or indirectly, or (ii) it intends, further to the receipt from a Potential Bidder of an LOI or Binding Offer contemplating a participation of such SISP Participant in the resulting transaction, on negotiating its participation with such Potential Bidder in an LOI or Binding Offer. The Participation Rights of such SISP Participant shall be reinstated upon written confirmation that such negotiations have ended and that the SISP Participant will not be participating in such LOI or Binding Offer; and
  - (e) the SISP Participant undertakes to keep any confidential information received from the Monitor in connection with the SISP and not disclose such information to any person except a SISP Participant with effective Participation Rights.
44. Notwithstanding the provisions of paragraph 43, the suspension of the Participation Rights of the Senior Secured Creditors shall not apply if (i) none of the LOIs submitted by the Phase 1 Bid Deadline is qualified as a Phase 1 Satisfactory Bid or if (ii) none of the Phase 2 Qualified Bidder submits a Phase 2 Qualified Bid.
45. The approvals, consents, confirmations, decisions, waivers, information and determinations to be given, made, taken or received by the Debtors in connection with the SISP can only be given, made, taken or received through the Members of Management. and Should the Participation Rights of a Member of Management be suspended, any actions, approvals, consents, confirmations, decisions, waivers and determinations to be given, made or taken by the Debtors in connection with the SISP will be given, made or taken by the Monitor without consultation with such Members of Management.

46. Notwithstanding the provisions of paragraph 43, Members of Management will continue to be in control of the day-to-day management of the Debtors' operations, subject to the provisions of the Initial Order, and the Monitor will be entitled to seek the assistance of any Members of Management or of any other representative of the Debtors, as necessary, in order to obtain all necessary information and documents in order to adequately conduct the SISP.

**APPENDIX A**  
**DEFINED TERMS**

**“Approval Application”** shall have the meaning set forth in paragraph 33.

**“Approval Order(s)”** shall have the meaning set forth in paragraph 33.

**“Auction”** shall have the meaning set forth in paragraph 29.

**“Bidding Procedures”** shall have the meaning set forth in the preamble.

**“Bidding Procedures Order”** shall have the meaning set forth in the preamble.

**“Binding Offer”** shall have the meaning set forth in paragraph 24.

**“Business”** shall have the meaning set forth in the preamble.

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

**“CCA”** shall have the meaning set forth in the preamble.

**“CCA Proceedings”** shall have the meaning set forth in the preamble.

**“CCA Service List”** means the service list as posted on the Monitor’s website (<http://cfcanada.fticonsulting.com/MedXL/> ) as the same may be updated from time to time in the context of the CCA Proceedings.

**“CIM”** shall have the meaning set forth in paragraph 14.

**“Court”** shall have the meaning set forth in the preamble.

**“Credit Bid”** shall have the meaning set forth in paragraph 38.

**“Credit Bidder”** shall have the meaning set forth in paragraph 38.

**“Debtors”** shall have the meaning set forth in the preamble.

**“Deposit”** shall have the meaning set forth in paragraph 25(l).

**“Financing Party”** shall have the meaning set forth in paragraph 12.

**“Initial Order”** shall have the meaning set forth in the preamble.

**“Investment Proposal”** shall have the meaning set forth in paragraph 17(i)(ii).

**“Interim Lenders”** means Briva Finance (Équité) S.E.C. and Vaxiron Inc..

“**LOI**” shall have the meaning set forth in paragraph 16.

“**Members of Management**” means Mr. Paul Parisien and Mr. Alain Beaudoin.

“**Monitor**” shall have the meaning set forth in the preamble.

“**NDA**” shall have the meaning set forth in paragraph 11.

“**Opportunity**” shall have the meaning set forth in paragraph 2.

“**Outside Date**” shall have the meaning set forth in paragraph 25(m).

“**Participation Rights**” shall have the meaning set forth in paragraph 43.

“**Phase 1 Bid Deadline**” shall have the meaning set forth in paragraph 16.

“**Phase 1 Qualified Bid**” shall have the meaning set forth in paragraph 16.

“**Phase 1 Qualified Bidder**” shall have the meaning set forth in paragraph 13.

“**Phase 1 Satisfactory Bid**” shall have the meaning set forth in paragraph 20.

“**Phase 2 Bid Deadline**” shall have the meaning set forth in paragraph 24.

“**Phase 2 Qualified Bid**” shall have the meaning set forth in paragraph 20.

“**Phase 2 Qualified Bidder**” shall have the meaning set forth in paragraph 20.

“**Potential Bidder**” shall have the meaning set forth in paragraph 11.

“**Sale Proposal**” shall have the meaning set forth in paragraph 17(i)(i).

“**Senior Secured Creditors**” means Private Debt Partners Senior Opportunities Fund LP and Mitsubishi HC Capital Canada Inc.

“**Secured Creditors**” means Private Debt Partners Senior Opportunities Fund LP and Mitsubishi HC Capital Canada Inc., Business Development Bank of Canada, Investissement Québec, eCapital Commercial Finance (Canada) Corp. and On Deck Capital Canada Inc.

“**SISP**” shall have the meaning set forth in the preamble.

“**SISP Participants**” shall have the meaning set forth in paragraph 43.

“**Solicitation Letter**” shall have the meaning set forth in paragraph 9.

“**Successful Bid**” shall have the meaning set forth in paragraph 28.

“**Successful Bidder**” shall have the meaning set forth in paragraph 28.

“**Target Closing Date**” shall have the meaning set forth in paragraph 25(m).

“**VDR**” shall have the meaning set forth in paragraph 10.

**APPENDIX B**  
**MONITOR'S CONTACT INFORMATION**

| <b>Resources</b>  | <b>General Contact Information</b>  |
|---|---|
| <p><b>Martin Franco</b><br/>514.591.4486<br/><a href="mailto:martin.franco@fticonsulting.com">martin.franco@fticonsulting.com</a></p> <p><b>Patrick Fillion</b><br/>514.446.5141<br/><a href="mailto:patrick.fillion@fticonsulting.com">patrick.fillion@fticonsulting.com</a></p> <p><b>Jamie Belcher</b><br/>416.649.8081<br/><a href="mailto:Jamie.belcher@fticonsulting.com">Jamie.belcher@fticonsulting.com</a></p> | <p>FTI Consulting Canada Inc.<br/>1000, rue Sherbrooke Ouest, Bureau 915<br/>Montreal, Québec, H3A 3G4<br/><a href="mailto:medxl@fticonsulting.com">medxl@fticonsulting.com</a></p> |