

**Court File No. CV-21-00655373-00CL**

**FIGR BRANDS, INC.,  
AND RELATED APPLICANTS**

**FIRST REPORT OF FTI CONSULTING CANADA INC., AS MONITOR**

**January 27, 2021**

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

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 FIGR  
BRANDS, INC., FIGR NORFOLK INC. AND CANADA'S ISLAND GARDEN INC.  
(collectively, the "**Applicants**")

**FIRST REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**A. INTRODUCTION**

1. On January 21, 2021, FIGR Brands, Inc. ("**FIGR Brands**"), FIGR Norfolk Inc. ("**FIGR Norfolk**") and Canada's Island Garden Inc. ("**CIG**" and together with FIGR Brands and FIGR Norfolk, the "**FIGR Group**") sought and obtained an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The proceedings commenced under the CCAA by the FIGR Group are referred to herein as the "**CCAA Proceedings**".
2. The Initial Order, among other things:
  - (a) appointed FTI Consulting Canada Inc. as monitor of the FIGR Group (in such capacity, the "**Monitor**") in the CCAA Proceedings;
  - (b) granted a stay of proceedings against the FIGR Group until January 31, 2021 (the "**Stay Period**");

- (c) granted the Administration Charge, the Directors' Charge, the DIP Lender's Charge and the Intercompany Charge (collectively, the "**CCAA Charges**"); and
  - (d) authorized the FIGR Group to enter into the DIP Facility (as defined in the Initial Order).
3. A comeback hearing was scheduled for January 29, 2021 (the "**Comeback Hearing**").
4. The purpose of this First Report of the Monitor (the "**First Report**") is to provide the Court with the Monitor's comments and recommendations, regarding the following:
- (a) the activities of the Monitor since the issuance of the Initial Order; and
  - (b) the FIGR Group's motion returnable at the Comeback Hearing (the "**Comeback Motion**") seeking to:
    - (i) approve the SISP (as defined below);
    - (ii) approve the amended and restated Initial Order (the "**Amended and Restated Initial Order**"), which, *inter alia*, seeks to increase the quantum of certain of the CCAA Charges and elevate the priority ascribed to the CCAA Charges over all Encumbrances (as defined in the Initial Order); and
    - (iii) extend the Stay Period to and including March 31, 2021.

**B. TERMS OF REFERENCE**

5. In preparing this First Report, the Monitor has relied upon audited and unaudited financial information of the FIGR Group, the FIGR Group's books and records, certain financial information and forecasts prepared by the FIGR Group, and discussions with various parties, including senior management ("**Management**") of, and advisors to, the FIGR Group (collectively, the "**Information**").
6. Except as otherwise described in this First Report:

- (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
  - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this First Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
7. Future-oriented financial information reported in, or relied on, in preparing this First Report is based on Management’s assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
  8. The Monitor has prepared this First Report in connection with the Comeback Hearing. The First Report should not be relied on for any other purpose.
  9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
  10. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the affidavit of Michael Devon (“**Mr. Devon**”), the Chief Financial Officer of FIGR Brands, sworn on January 21, 2021, the second affidavit of Mr. Devon sworn on January 25, 2021 (the “**Second Devon Affidavit**”), filed in support of the Comeback Motion, the Amended and Restated Initial Order or the pre-filing report of the Monitor dated January 21, 2021, as applicable.

## **C. ACTIVITIES OF THE MONITOR**

### *Notices and Communications*

11. The Monitor has established a website at <http://cfcanada.fticonsulting.com/figr/> (the “**Monitor’s Website**”) on which updates on the CCAA Proceedings will be posted periodically, together with all the Court materials filed in the CCAA Proceedings. In addition, the Monitor has established a dedicated email address ([figr@fticonsulting.com](mailto:figr@fticonsulting.com)) and hotlines (416-649-8128 or 1-844-669-6345) to allow stakeholders to communicate

directly with the Monitor in order to address any questions or concerns in respect of the CCAA Proceedings.

12. Pursuant to paragraph 46 of the Initial Order, the Monitor:
  - (a) has arranged for publication of the initial notice containing the information prescribed under the CCAA in the Globe and Mail (National Edition) on January 27, 2021 and February 3, 2021;
  - (b) made a copy of the Initial Order and the application materials publicly available by posting them on the Monitor's Website;
  - (c) sent, in the prescribed manner, a notice to every known creditor with a claim against the FIGR Group of more than \$1,000; and
  - (d) prepared a list of those creditors and the estimated amounts of those claims, and made such list publicly available on the Monitor's Website.

*Other Activities of the Monitor*

13. In addition to the activities listed above, the Monitor has also undertaken the following activities since the commencement of the CCAA Proceedings:
  - (a) maintained the current service list for these CCAA Proceedings and posted same on the Monitor's Website;
  - (b) engaged in discussions with the FIGR Group, its legal counsel, and its directors and Management regarding issues related to the FIGR Group's operations and borrowings under the DIP Facility;
  - (c) participated in discussions with Pyxus International, Inc. ("**Pyxus**") and related entities regarding services provided to the FIGR Group and matters related to the DIP Facility;

- (d) assisted the FIGR Group in discussions with suppliers, creditors and employees related to the CCAA Proceedings and responded to requests for information from certain of such parties;
- (e) engaged in discussions with the FIGR Group, its legal counsel and Pyxus regarding certain issues related to employees whose employment has been recently terminated including amounts owing to such individuals and the anticipated disclaimer of leases where such individuals had the benefit of using automobiles leased by the FIGR Group;
- (f) participated in preliminary discussions with Health Canada regarding the CCAA Proceedings and the FIGR Group's intention to remain in compliance with its licenses under the *Cannabis Act*, S.C. 2018, c. 16, as amended;
- (g) participated in discussions with certain provincial cannabis boards, which discussions are ongoing;
- (h) engaged with the Monitor's legal counsel, Cassels Brock & Blackwell LLP ("**Cassels**"), regarding matters related to the CCAA Proceedings;
- (i) participated in discussions, along with Cassels, with the FIGR Group and its legal advisors regarding the licensing of certain software owned by the FIGR Group to ensure uninterrupted access to necessary lighting at the CIG Facility;
- (j) continued, with FTI Capital Advisors – Canada ULC ("**FTI Capital Advisors**"), preparation of materials required for the SISP, including the NDA, Teaser Letter, Confidential Information Package (each as defined below), data room, and a list of potential bidders, and engaged with certain interested parties by sending the Teaser Letter and facilitating access to confidential information for those parties; and
- (k) reviewed advances under the DIP Facility and disbursements of the FIGR Group.

#### **D. REQUEST FOR APPROVAL OF THE SALE AND INVESTMENT SOLICITATION PROCESS**

14. At the commencement of the CCAA Proceedings, the FIGR Group advised that it intended to seek approval of a comprehensive and flexible sale and investment solicitation process (the “SISP”). A draft of the SISP filed in connection with the Comeback Motion is attached as Appendix “A” hereto. Capitalized terms in this section not otherwise defined herein have the meanings ascribed to them in the SISP.
15. The FIGR Group is now seeking an Order approving the SISP, and the actions of the FIGR Group, the Monitor and FTI Capital Advisors that may be necessary or desirable to carry out the SISP.
16. A summary of the SISP is set out below. The timing of key milestones relating to the SISP are as follows:

<b>Milestone</b>	<b>Deadline</b>
Commence solicitation of interest from parties, including delivering NDA and Teaser Letter, and upon execution of NDA, CIM and access to Phase 1 data room.	Preliminary solicitation efforts commenced on January 22, 2021.  The Monitor will send the Teaser Letter and the NDA to each Known Potential Bidder by no later than February 4, 2021
Phase 1 Bid Deadline	February 26, 2021 at 5:00 PM (Eastern Time)
Phase 2 Bid Deadline	To be specified in Phase 2 Bid Process Letter

#### Overview of the SISP

17. The FIGR Group has proposed a flexible SISP, designed to maximize opportunities for the sale of, or investment in, all or part of the FIGR Group’s assets and business (the “**Opportunity**”). A potential transaction may include one or more of a restructuring, recapitalization or other form of reorganization of the business and affairs of the FIGR Group as a going concern, or a sale of all, substantially all or one or more components of the Property and the Business as a going concern or otherwise.



18. The Monitor, with the assistance of the FIGR Group, and in consultation with the DIP Lender, will develop a list of potential bidders. This list will include parties that have approached the Monitor or the FIGR Group and advised that they have an interest in the Opportunity, local and international strategic and financial parties who the Monitor and/or the FIGR Group, in consultation with the DIP Lender, believe may be interested in the Opportunity, and any other parties suggested by a stakeholder as a potential bidder.
19. To advertise of the Opportunity, the Monitor will publish notice of the SISP (the “**Notice**”) in the *Globe and Mail (National Edition)*, HortiDaily.com, and any other newspaper or journal the Monitor considers appropriate, if any, as soon as practically possible after the Comeback Hearing. In addition, the FIGR Group will issue a press release with similar information as provided in the Notice.
20. The Monitor, with the assistance of the FIGR Group, and in consultation with the DIP Lender, will prepare a process summary (the “**Teaser Letter**”) describing the Opportunity and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP.
21. The FIGR Group will prepare a non-disclosure agreement in form and substance satisfactory to the Monitor (an “**NDA**”).
22. The Monitor will post the Notice, the Press Release, the Teaser Letter and the form of NDA on the Monitor’s Website.

### Phase 1

23. Potential bidders will be required to submit an executed NDA in order to be deemed to be a “**Phase 1 Qualified Bidder**”.
24. The Monitor, in consultation with the FIGR Group, will prepare and send to each Phase 1 Qualified Bidder a confidential information package providing additional information considered relevant to the Opportunity (the “**Confidential Information Package**”).
25. The FIGR Group, with the consent of the Monitor, reserves the right to limit any Phase 1 Qualified Bidder’s access to any confidential information (including any information

contained in the Confidential Information Package or a data room) and to customers and suppliers of the FIGR Group, where, in the FIGR Group's opinion after consultation with the Monitor, such access could negatively impact the SISP, the ability to maintain the confidentiality of the confidential information, the Business or the Property.

26. A Phase 1 Qualified Bidder that wishes to pursue the Opportunity further must deliver a non-binding letter of interest to the Monitor and the FIGR Group by the Phase 1 Bid Deadline, which, to be considered a qualified letter of interest (a "**Qualified LOI**"), must, in addition to other criteria which are detailed in the SISP:

(a) in the case of a proposal to acquire all, substantially all or a portion of the Property (a "**Sale Proposal**"):

- (i) contain a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
- (ii) indicate the purchase price or price range in Canadian Dollars; and
- (iii) contain the information as outlined in the SISP that is relevant to the bidder's Sale Proposal;

(b) in the case of a proposal to make an investment in, restructure, recapitalize, reorganize or refinance the Business or the FIGR Group (each an "**Investment Proposal**"):

- (i) contain a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;
- (ii) indicate the aggregate amount of the equity and/or debt investment to be made in the Business and/or the FIGR Group in Canadian Dollars; and
- (iii) contain the information as outlined in the SISP that is relevant to the Phase 1 Qualified Bidder's Investment Proposal.

27. The Monitor, with the consent of the FIGR Group, and in consultation with the DIP Lender, may waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified LOI.

Phase 2

28. Following the Phase 1 Bid Deadline, the Monitor, in consultation with the FIGR Group and the DIP Lender, will assess each Qualified LOI to determine if it should be deemed a “**Phase 2 Qualified Bidder**”. The Monitor, in its reasonable business judgment, and with the consent of the FIGR Group, may limit the number of Phase 2 Qualified Bidders taking into account the factors identified in the SISP and any material adverse impact on the operations and performance of the FIGR Group. Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.
29. Notwithstanding the process and deadlines outlined above with respect to Phase 1 of the SISP and the process to supplement Phase 2 by way of the Bid Process Letter (as defined below):
- (a) the Monitor may, with the consent of the FIGR Group and in consultation with the DIP Lender, at any time: (i) pause or terminate the SISP; (ii) remove any portion of the Business and the Property from the SISP; or (iii) establish further or other procedures for Phase 2.
  - (b) the FIGR Group may, with the consent of the Monitor and in consultation with the DIP Lender, at any time bring a motion to the Court to seek approval of:
    - (i) a sale of, or investment in, all or part of the Property or the Business whether or not such sale or investment is in accordance with the terms or timelines set out in this SISP Procedure or the Bid Process Letter; or
    - (ii) a stalking horse agreement in respect of some or all of the Property or Business and related bid procedures in respect of such Property.
30. Upon the determination by the Monitor and the FIGR Group, in consultation with the DIP Lender, of the manner in which to proceed to Phase 2 of the SISP, the Monitor and

the FIGR Group, in consultation the DIP Lender, will prepare a bid process letter for Phase 2 (the “**Bid Process Letter**”), and the Bid Process Letter will be: (i) sent by the Monitor to all Phase 2 Qualified Bidders as soon as reasonably practicable following the Phase 1 Bid Deadline; and (ii) posted by the Monitor on the Monitor’s Website.

31. Phase 2 Qualified Bidders that wish to make a formal offer to purchase or make an investment in the FIGR Group or their Property or Business shall submit a binding offer (a “**Phase 2 Bid**”) that complies with all of the requirements indicated in the SISP prior to the date set out in the Bid Process Letter (the “**Phase 2 Bid Deadline**”).

*Formal Binding Offers and Selection of the Successful Bid*

32. Following the Phase 2 Bid Deadline, the Monitor and the FIGR Group will assess the Phase 2 Bids received. The Monitor, in consultation with the FIGR Group and the DIP Lender, will designate the most competitive bids that comply with the foregoing requirements to be “**Qualified Bids**”. Only Phase 2 Qualified Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s). All Phase 2 Qualified Bidders which have submitted a formal bid by the Phase 2 Bid Deadline will receive notice in writing as to whether their bid is a Qualified Bid within ten (10) business days of the Phase 2 Bid Deadline.
33. The Monitor and the FIGR Group, in consultation with the DIP Lender, will: (a) review and evaluate each Qualified Bid to identify the highest or otherwise best bid (the “**Successful Bid**”, and the Phase 2 Qualified Bidder making such Successful Bid, the “**Successful Bidder**”) for any particular Property or the Business in whole or part. The determination of any Successful Bid by the FIGR Group, with the assistance and approval of the Monitor, and in consultation with the DIP Lender, shall be subject to approval by the Court.
34. The FIGR Group shall have no obligation to enter into an agreement with the Successful Bidder, and reserves the right, in consultation with the Monitor and the DIP Lender, to reject any or all Phase 2 Qualified Bids.

Monitor's Involvement in the SISP

35. As noted above, the Monitor was consulted in designing the SISP and will be involved throughout the SISP, including having certain approval rights in respect of key steps taken therein.
36. The Monitor, together with its affiliate, FTI Capital Advisors, shall oversee, in all respects, the conduct of the SISP and, without limitation to that role, the Monitor, together with FTI Capital Advisors, will carry out the SISP in the manner set out in the SISP. The Monitor is entitled to receive all information in relation to the SISP.
37. If any member of Management or any other employee of any of the FIGR Group receives any inbound communications with respect to the SISP from any person, the terms of the SISP provide that they will not engage in discussions with such persons and shall instead refer all such persons to the Monitor. The SISP also provides that under no circumstances will any participant or prospective participant in the SISP contact or engage directly or indirectly with Management without the prior consent of the Monitor during any phase of the SISP. All discussions with participants or prospective participants with respect to the SISP must involve the Monitor unless the Monitor agrees otherwise. Any unauthorized contact or communication that is not in compliance with the SISP could result in the exclusion of the interested party from the SISP process.
38. The DIP Lender has provided notice to the Monitor that it will not participate in the SISP as a bidder. As such, the DIP Lender will be entitled to be consulted throughout the SISP and will have access to copies of all bidder information together with weekly updates from the Monitor on the SISP, provided that the DIP Lender has entered into confidentiality arrangements satisfactory to the FIGR Group and the Monitor.

Monitor's Comments and Recommendation

39. The Monitor believes that the SISP provides:
- (a) the flexibility necessary for the FIGR Group to consider the broad range of potential transactions that may be available to generate value from the business and assets of the FIGR Group;
  - (b) appropriate oversight by the Monitor and a process that should encourage and facilitate bidding by interested parties; and
  - (c) a process that is reasonable in the circumstances.
40. The Monitor is of the view that the SISP is the best viable alternative for the FIGR Group at this time and provides an opportunity to identify transactions that would benefit all stakeholders of the FIGR Group.

**E. AMENDED AND RESTATED INITIAL ORDER**

Amendments to the CCAA Charges

41. The FIGR Group proposes an increase to the Directors' Charge and the DIP Lender's Charge. No increase to the Administration Charge is being sought.
42. The FIGR Group proposes to increase the maximum amount of the Directors' Charge from \$2,000,000 to \$2,700,000. The amount requested and approved in the Initial Order was relative to the potential exposure of the directors and officers of the FIGR Group during the initial Stay Period to and including January 31, 2020. The proposed increase is to address the potential exposure of the directors and officers of the FIGR Group over the proposed extension of the Stay Period.
43. The amount of potential exposure is based on:
- (a) one two-week cycle gross payroll amount plus accrual for a stub period;
  - (b) estimated vacation pay accrual; and

- (c) one cycle of monthly sales and monthly excise taxes.
- 44. The Monitor is of the view that the requested increase to the Directors' Charge is necessary and reasonable under the circumstances.
- 45. The FIGR Group proposes to increase the maximum amount of the DIP Lender's Charge from \$2,500,000 to \$8,000,000 (plus interest and costs). The amount of the DIP Lender's Charge requested and approved in the Initial Order was relative to the maximum amount necessary under the DIP Facility over the initial 10-day Stay Period. The proposed increase is to reflect the maximum amount available to the FIGR Group under the DIP Facility of \$8,000,000.

Ranking of Encumbrances

- 46. The following is a summary of the creditors that have registered a security interest or lien against the FIGR Group or its real property pursuant to the personal and real property registration systems in Ontario and PEI (collectively, the "**Secured Registrants**"):
  - (a) Compaction Credit Ltd. has filed a financing statement against CIG in respect of an extraction unit and all present and after acquired attachments, accessories, repair parts and other goods related thereto. The FIGR Group has advised the Monitor that no amounts are owed in respect of this registration;
  - (b) Jim Pattison Industries Ltd. has filed financing statements against FIGR Inc. in respect of certain leased motor vehicles; and
  - (c) Rexel Canada Electrical Inc. has registered a claim for a mechanic's lien on title to the CIG Facility in the amount of \$81,627.
- 47. The Secured Registrants were not served prior to the Initial Application nor were they primed by the CCAA Charges.
- 48. The Secured Registrants were served by the FIGR Group in connection with the Comeback Motion on or around January 25, 2021 to apprise them of the FIGR Group's intention to seek relief priming their registered interest.

49. This change in ranking does not constitute validation or acceptance by the FIGR Group or the Monitor as to the validity or valuation of the claims or security of the Secured Registrants, however even if valid, the CCAA Charges would rank ahead of the Secured Registrant's Encumbrance, as the case may be.
50. The Monitor is of the view that the ranking of the CCAA Charges in priority to the Encumbrances is reasonable and consistent with the model Initial Order, which was modified to accommodate the lack of service that would have otherwise prejudiced the Secured Registrants. Now that the Secured Registrants have been served and provided reasonable notice in advance of the Comeback Hearing, it is appropriate to grant priority for the CCAA Charges over the Encumbrances.

**F. REQUEST FOR AN EXTENSION OF THE STAY PERIOD**

51. The Stay Period currently expires on January 31, 2021. The FIGR Group is requesting an extension of the Stay Period to March 31, 2021. The FIGR Group requires additional time to implement and complete Phase 1 of the SISP as well as a short period of time to consider the results thereof and report accordingly on next steps required in the SISP.
52. The Cash Flow Projection demonstrates that, subject to the underlying assumptions thereof, the FIGR Group has sufficient liquidity to fund the FIGR Group's operations and the CCAA Proceedings during the proposed extension of the Stay Period.
53. The Monitor believes that the FIGR Group has acted and continues to act in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
54. The Monitor understands that the FIGR Group currently intends to return to Court in advance of the expiry of the proposed extension to the Stay Period to seek, among other things, approval of a claims process.
55. Based on the information currently available, the Monitor also believes that creditors of the FIGR Group would not be materially prejudiced by an extension of the Stay Period to March 31, 2021.



56. The Monitor supports the FIGR Group's request for an extension of the Stay Period to March 31, 2021.

**G. CONCLUSION**

57. For the reasons stated in this First Report, the Monitor supports the relief sought by the FIGR Group in connection with the Comeback Motion.

The Monitor respectfully submits to the Court this, its First Report.

Dated this 27<sup>th</sup> day of January, 2021.

FTI Consulting Canada Inc.  
In its capacity as Monitor of  
FIGR Brands, Inc. and the other corporations in the FIGR Group

A handwritten signature in black ink, appearing to read "Jeffrey Rosenberg". The signature is stylized and slanted downwards to the right.

Jeffrey Rosenberg  
Senior Managing Director

A handwritten signature in black ink, appearing to read "J. Porepa". The signature is written in a cursive, flowing style.

Jodi Porepa  
Managing Director

**APPENDIX “A”**

**[ATTACHED]**

## SALE AND INVESTMENT SOLICITATION PROCESS

On January 21, 2021, FIGR Brands, Inc., FIGR Norfolk Inc. and Canada's Island Garden Inc. (collectively, the “**Applicants**”) were granted an initial order (as amended and restated from time to time, the “**Initial Order**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**” and the Applicants' proceedings thereunder, the “**CCAA Proceedings**”), by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). All capitalized terms utilized herein and not otherwise defined shall have the meaning ascribed to them in the Initial Order.

Pursuant to an order dated January 29, 2021 (the “**SISP Approval Order**”) the Court approved, among other things, the sale and investment solicitation process (the “**SISP**”) described herein. In accordance with the SISP Approval Order, FTI Consulting Canada Inc., with the assistance of its affiliate FTI Capital Advisors Canada ULC (the “**Monitor**”), with the assistance of the Applicants, will conduct the SISP. The SISP is intended to solicit interest from qualified parties in an acquisition or refinancing of the business or a sale of a portion of or all the assets and/or the business of the Applicants by way of merger, reorganization, recapitalization, sale or other similar transaction.

This document (the “**SISP Procedure**”) outlines the SISP, which will include a notification process followed by two (2) phases of activity for qualified interested bidders (“**Phase 1**” and “**Phase 2**”, respectively).

### Opportunity

1. The SISP is intended to solicit interest in, and opportunities for, a sale of all or part of the Property and/or an investment in the Business (the “**Opportunity**”). The Opportunity may include one or more of a restructuring, recapitalization or other form of reorganization of the business and affairs of the Applicants as a going concern or a sale of all, substantially all or one or more components of the Property and the Business as a going concern or otherwise.
2. Except to the extent otherwise set forth in a definitive agreement with a successful bidder, any sale of the Property or an investment in the Business will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Monitor or the Applicants, or any of their respective agents or advisors, and, in the event of a sale, all of the right, title and interest of the Applicants 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 therein and thereon pursuant to Court orders, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.

### Timeline

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

<b>Milestone</b>	<b>Deadline</b>
Commence solicitation of interest from parties, including delivering NDA and Teaser Letter, and upon execution of NDA, CIM and Phase 1 data room.	Preliminary solicitation efforts commenced on January 22, 2021  The Monitor will send the Teaser Letter and the NDA to each Known Potential Bidder by no later than February 4, 2021
Phase 1 Bid Deadline	February 26, 2021 at 5:00 PM (Eastern Time)
Phase 2 Bid Deadline	To be Specified in Phase 2 Bid Process Letter

Any extensions or amendments to the deadlines above will be communicated to Phase 1 Qualified Bidders or Phase 2 Qualified Bidders (each as defined below), as applicable, in writing and such extensions or amendments shall be posted on the website the Monitor maintains in respect of the CCAA Proceedings at <http://cfcanada.fticonsulting.com/figr> (the “**Monitor’s Website**”).

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

4. As soon as reasonably practicable, but in any event by no later than February 4, 2021:
  - (a) the Monitor, with the assistance of the Applicants and in consultation with Alliance One Tobacco Canada, Inc. (the “**DIP Lender**”), will prepare a list of potential bidders, including: (i) parties that have approached the Monitor or the Applicants and advised that they have an interest in the Opportunity; (ii) local and international strategic and financial parties who the Monitor and/or the Applicants, in consultation with the DIP Lender, believe may be interested in purchasing all or part of the Business and Property or investing in the Applicants pursuant to the SISP; and (iii) any other credible parties as determined by the Monitor and/or Applicant, in consultation of the DIP Lender suggested in writing by a stakeholder as a potential bidder who may be interested in the Opportunity (collectively, the “**Known Potential Bidders**”);
  - (b) the Monitor will arrange for a notice of the SISP (and such other relevant information which the Monitor in consultation with the Applicants and the DIP Lender, consider appropriate) (the “**Notice**”) to be published as soon as reasonably practicable after the date hereof in *The Globe and Mail (National Edition)*, HortiDaily.com and any other newspaper or journal the Monitor considers appropriate, if any;
  - (c) the Applicants will issue a press release setting out the information contained in the Notice and such other relevant information which the Applicants and the Monitor,

in consultation with the DIP Lender, consider appropriate, for dissemination in Canada and major financial centres in the United States;

- (d) the Monitor, with the assistance of the Applicants and in consultation with the DIP Lender, will prepare a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under this SISP Procedure and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and
  - (e) the Applicants will prepare a non-disclosure agreement in form and substance satisfactory to the Monitor (an “**NDA**”).
5. The Monitor will send the Teaser Letter and NDA to each Known Potential Bidder by no later than February 4, 2021 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Monitor or the Applicants as a potential bidder, if deemed a credible bidder by the Monitor and the Applicants as soon as reasonably practicable after such request or identification, as applicable.

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

### **Qualified Bidders and Delivery of Confidential Information Package**

6. Any party who wishes to participate in the SISP (a “**Potential Bidder**”) must provide to the Monitor and the Applicants, an NDA executed by it, which shall enure to the benefit of any purchaser of or investor in the Business or Property, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, and the contact information for such Potential Bidder (each a “**Phase 1 Qualified Bidder**”).
7. The Monitor, in consultation with the Applicants, will prepare and send to each Phase 1 Qualified Bidder a confidential information package providing additional information considered relevant to the Opportunity (the “**Confidential Information Package**”).
8. The Applicants, with the consent of the Monitor, reserve the right to limit any Phase 1 Qualified Bidder’s access to any confidential information (including any information in the Confidential Information Package or a data room) and to customers and suppliers of the Applicants, where, in the Applicants' opinion after consultation with the Monitor, such access could negatively impact the SISP, the ability to maintain the confidentiality of the confidential information, the Business or the Property.

### **Due Diligence**

9. The Monitor, in consultation with the Applicants, shall in its reasonable business judgment and subject to the Applicants' competitive and other business considerations, afford each Phase 1 Qualified Bidder such access to due diligence material and information relating to the Property and Business as they deem appropriate. Due diligence access may include access to electronic data rooms, on-site inspections, and other matters, which a Phase 1 Qualified Bidder may reasonably request and as to which the Applicants in consultation with the Monitor, may agree. The Monitor will designate a representative to coordinate all

reasonable requests for additional information and due diligence access from Phase 1 Qualified Bidders and the manner in which such requests must be communicated.

10. 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 may enter into with the Applicants.

#### **Non-Binding Letters of Intent from Phase 1 Qualified Bidders**

11. A Phase 1 Qualified Bidder that wishes to pursue the Opportunity further must deliver a non-binding letter of interest (an “**LOI**”) to the Monitor and the Applicants in accordance with this SISP Procedure at the addresses specified in Schedule “A” hereto (including by email) so as to be received by them no later than 5:00 PM (Eastern Time) on February 26, 2021, or such later date or time as may be agreed to by the Monitor, with the consent of the Applicants (the “**Phase 1 Bid Deadline**”).
12. Subject to paragraph 13, an LOI so submitted will be considered a qualified LOI (each a “**Qualified LOI**”) only if:
  - (a) in the case of a proposal to acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”), it identifies or contains the following:
    - (i) 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 transaction;
    - (ii) the identity of each entity or person that will be sponsoring or participating in or benefiting from the transaction contemplated by the LOI;
    - (iii) the purchase price or price range in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation;
    - (iv) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
    - (v) evidence of the financial capability of the Phase 1 Qualified Bidder to consummate the transaction and the expected structure and financing of the transaction;
    - (vi) a description of the liabilities and obligations to be assumed by the Phase 1 Qualified Bidder along with information sufficient for the Monitor and the Applicants to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations to be assumed;
    - (vii) a description of the conditions and approvals required for the Phase 1 Qualified Bidder to be in a position to submit a final and binding offer,

- including any anticipated corporate, securityholder or other internal approvals and any anticipated impediments for obtaining such approvals;
- (viii) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
  - (ix) a description of all conditions to closing that the Phase 1 Qualified Bidder expects to include in its final and binding offer, including without limitation any regulatory approvals and any form of agreement required from a government body, stakeholder or other third party (“**Third Party Agreement**”) and an outline of the principal terms thereof; and
  - (x) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (b) in the case of a proposal to make an investment in, restructure, recapitalize, reorganize or refinance the Business or the Applicants (each an “**Investment Proposal**”), it identifies or contains the following:
- (i) 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 transaction;
  - (ii) the identity of each entity or person that will be sponsoring or participating in or benefiting from the transaction contemplated by the LOI;
  - (iii) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;
  - (iv) the aggregate amount of the equity and/or debt investment to be made in the Business and/or the Applicants in Canadian dollars;
  - (v) key assumptions supporting the Phase 1 Qualified Bidder’s valuation;
  - (vi) a description of the Phase 1 Qualified Bidder’s proposed treatment of any obligations or liabilities, including, without limitation, material contracts and employees;
  - (vii) information sufficient for the Monitor and the Applicants to determine that the Phase 1 Qualified Bidder has the ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;
  - (viii) the underlying assumptions regarding the pro forma capital structure (including the form and amount of anticipated equity and/or debt levels, debt service fees, interests 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);



- (ix) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction;
  - (x) a description of the conditions and approvals required for the Phase 1 Qualified Bidder to be in a position to submit a final and binding offer, including any anticipated corporate, securityholder or other internal approvals and any anticipated impediments for obtaining such approvals;
  - (xi) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
  - (xii) a description of all conditions to closing that the Phase 1 Qualified Bidder expects to include in its final and binding offer, including without limitation, any regulatory approvals and any Third Party Agreement required and an outline of the principal terms thereof; and
  - (xiii) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction; and
- (c) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Monitor after consultation with the Applicants.
13. The Monitor, with the consent of the Applicants, and in consultation with the DIP Lender, may waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified LOI.

#### **Preliminary Assessment of Phase 1 Bids and Subsequent Process**

14. Following the Phase 1 Bid Deadline, the Monitor in consultation with the Applicants and the DIP Lender will assess the Qualified LOIs. If it is determined by the Monitor, in consultation with the Applicants and the DIP Lender, that a Phase 1 Qualified Bidder that has submitted a Qualified LOI: (i) has a bona fide interest in completing a Sale Proposal or Investment Proposal (as the case may be); and (ii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then such Phase 1 Qualified Bidder will be deemed a “**Phase 2 Qualified Bidder**”, provided that the Monitor may, in its reasonable business judgment and with the consent of the Applicants, limit the number of Phase 2 Qualified Bidders (and thereby eliminate any bidders from the process) taking into account the factors identified in paragraph 15 below and any material adverse impact on the operations and performance of the Applicants. Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISF. No Phase 1 Qualified Bidder that has submitted a Qualified LOI shall be deemed not to be a Phase 2 Qualified Bidder without the approval of the Monitor.
15. As part of the assessment of Qualified LOIs and the determination of the process subsequent thereto, the Monitor and the Applicants, in consultation with the DIP Lender, shall determine the process and timing to be followed in pursuing Qualified LOIs based on

such factors and circumstances as they consider appropriate in the circumstances including, but not limited to: (i) the number of Qualified LOIs received; (ii) the extent to which the Qualified LOIs relate to the same Property or Business or involve Investment Proposals predicated on certain Property or Business; (iii) the scope of the Property or Business to which any Qualified LOIs may relate; (iv) the conditions to closing contained in the Qualified LOIs; and (v) whether to proceed by way of sealed bid or auction (with or without a stalking horse bidder) with respect to some or all of the Property.

16. Upon the determination by the Monitor and the Applicants, in consultation with the DIP Lender, of the manner in which to proceed to Phase 2 of the SISP, the Monitor and the Applicants, in consultation the DIP Lender, will prepare a bid process letter for Phase 2 (the “**Bid Process Letter**”), and the Bid Process Letter will be: (i) sent by the Monitor to all Phase 2 Qualified Bidders as soon as practically possible following the Phase 1 Bid Deadline; and (ii) posted by the Monitor on the Monitor’s Website.
17. Notwithstanding the process and deadlines outlined above with respect to Phase 1 of the SISP and the process to supplement Phase 2 by way of the Bid Process Letter,
  - (a) the Monitor may, with the consent of the Applicants and in consultation with the DIP Lender, at any time:
    - (i) in accordance with paragraph 39 herein, pause, terminate, amend or modify the SISP or this SISP Procedure;
    - (ii) remove any portion of the Business and the Property from the SISP;
    - (iii) establish further or other procedures for Phase 1;
  - (b) the Applicants may, with the consent of the Monitor and in consultation with the DIP Lender, at any time bring a motion to the Court to seek approval of:
    - (i) a sale of, or investment in, all or part of the Property or the Business whether or not such sale or investment is in accordance with the terms or timelines set out in this SISP Procedure or the Bid Process Letter; or
    - (ii) a stalking horse agreement in respect of some or all of the Property or Business and related bid procedures in respect of such Property.

## **PHASE 2: FORMAL OFFERS AND SELECTION OF SUCCESSFUL BIDDER**

18. Paragraphs 19 to 34 below and the conduct of Phase 2 are subject to paragraphs 14 to 17, above, any adjustments made to Phase 2 in accordance with the Bid Process Letter and any further Court order regarding the SISP.

### ***Formal Binding Offers***

19. Phase 2 Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Applicants or their Property or Business shall submit a binding offer (a

**“Phase 2 Bid”**) that complies with all of the following requirements to the Monitor and the Applicants at the addresses specified in Schedule “A” hereto (including by email), so as to be received by them no later than the date set out in the Bid Process Letter (the **“Phase 2 Bid Deadline”**):

- (a) the bid shall comply with all of the requirements set forth in paragraph 12 above in respect of Phase 1 Qualified LOIs;
- (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 Applicants or their Property or Business and is consistent with any necessary terms and conditions established by the Applicants and the Monitor and communicated to Phase 2 Qualified Bidders;
- (c) the bid includes a letter stating that the Phase 2 Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, 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, including the purchase price (in an exact figure and not expressed as a range), investment amount and any other key economic terms expressed in Canadian dollars (the **“Purchase Price”**), together with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements), and proposed order to approve the transaction by the Court;
- (e) the bid include a blackline comparison between the transaction agreements submitted and the template provided to Phase 2 Qualified Bidder in the data room;
- (f) 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 Applicants and the Monitor to make a determination as to the Phase 2 Qualified Bidder’s financial and other capabilities to consummate the proposed transaction;
- (g) the bid is not conditioned on: (i) the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld in Phase 1 from the Phase 2 Qualified Bidder; or (ii) obtaining financing, but may be conditioned upon the Applicants receiving the required approvals or amendments relating to the licenses required to operate its business, if necessary;
- (h) the bid fully discloses the identity of each entity that will be (directly or indirectly) entering into the transaction or the financing (including through the issuance of debt in connection with such bid), or that is participating or benefiting from such bid, and such disclosure shall include, without limitation: (i) in the case of a Phase 2 Qualified Bidder formed for the purposes of entering into the proposed transaction,

the identity of each of the actual or proposed direct or indirect equity holders of such Phase 2 Qualified Bidder and the terms and participation percentage of such equity holder's interest in such bid; and (ii) the identity of each entity that has or will receive a benefit from such bid from or through the Phase 2 Qualified Bidder or any of its equity holders and the terms of such benefit;

- (i) for a Sale Proposal, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a deposit in the amount of not less than 10% of the Purchase Price offered upon the Phase 2 Qualified Bidder being selected as the Successful Bidder;
  - (j) for an Investment Proposal, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a deposit in the amount of not less than 10% of the total new investment contemplated in the bid upon the Phase 2 Qualified Bidder being selected as the Successful Bidder;
  - (k) the bid includes acknowledgements and representations of the Phase 2 Qualified Bidder that the Phase 2 Qualified Bidder: (i) confirms that the transaction is on an "as is, where is" basis; (ii) has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Applicants prior to making its offer (apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which were withheld in Phase 1 from the Phase 2 Qualified Bidder); (iii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and (iv) it 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 Applicants or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the applicable Applicants;
  - (l) the bid contains other information required by the Monitor in consultation with the Applicants including, without limitation, such additional information as may be required in the event Phase 2 is supplemented in accordance with paragraph 16 to contemplate that an auction of certain Property be conducted; and
  - (m) the bid is received by the Phase 2 Bid Deadline.
20. Following the Phase 2 Bid Deadline, the Monitor and the Applicants will assess the Phase 2 Bids received. The Monitor, in consultation with the Applicants and the DIP Lender, will designate the most competitive bids that comply with the foregoing requirements to be "**Qualified Bids**". Only Phase 2 Qualified Bidders whose bids have been designed as Qualified Bids are eligible to become the Successful Bidder(s).
21. The Monitor, with the consent of the Applicants and in consultation with the DIP Lender, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Phase 2 Bids to be a Qualified Bid.

22. The Monitor shall notify each Phase 2 Qualified Bidder in writing as to whether its Phase 2 Bid constituted a Qualified Bid within ten (10) business days of the Phase 2 Bid Deadline, or at such later time as the Monitor deems appropriate.
23. If the Applicants, in consultation with the Monitor and the DIP Lender, are not satisfied with the number or terms of the Qualified Bids, the Applicants may, in consultation with the DIP Lender and with the approval of the Monitor, extend the Phase 2 Bid Deadline, or the Applicants may amend the SISP or this SISP Procedure in accordance with the terms set out herein.
24. The Monitor and the Applicants may, in consultation with the DIP Lender, aggregate separate Phase 2 Bids from unaffiliated Phase 2 Qualified Bidders to create one Qualified Bid.

### **Evaluation of Competing Bids**

25. A Qualified Bid will be evaluated based upon several factors including, without limitation: (i) the Purchase Price and the value provided by such bid; (ii) the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transactions; (iii) the proposed transaction documents; (iv) factors affecting the speed, certainty and value of the transaction; (v) the assets or liabilities included or excluded from the bid; (vi) any related restructuring costs; and (vii) the likelihood and timing of consummating such transaction, each as determined by the Monitor and the Applicants, in consultation with the DIP Lender.

### **Selection of Successful Bid**

26. The Monitor and the Applicants, in consultation with the DIP Lender, will: (a) review and evaluate each Qualified Bid, provided that each Qualified Bid may be negotiated between the Applicants, the Monitor and the applicable Phase 2 Qualified Bidder, and may be amended, modified or varied to improve such Phase 2 Qualified Bid as a result of such negotiations; and (b) identify the highest or otherwise best bid (the “**Successful Bid**”, and the Phase 2 Qualified Bidder making such Successful Bid, the “**Successful Bidder**”) for any particular Property or the Business in whole or part. The determination of any Successful Bid by the Applicants, with the assistance and approval of the Monitor, and in consultation with the DIP Lender, shall be subject to approval by the Court.
27. The Applicants shall have no obligation to enter into a Successful Bid, and they reserve the right, in consultation with the Monitor and the DIP Lender, to reject any or all Phase 2 Qualified Bids.
28. Notwithstanding the process and deadlines outlined above with respect to Phase 2 of the SISP and the process to supplement Phase 2 by way of the Bid Process Letter
  - (a) the Monitor may, in consultation with the DIP Lender and with the consent of the Applicants, at any time:

- (i) in accordance with paragraph 39 herein, pause, terminate, amend or modify the SISP or this SISP Procedure;
  - (ii) remove any portion of the Business and the Property from the SISP;
  - (iii) establish further or other procedures for Phase 2;
- (b) the Applicants may, in consultation with the DIP Lender and with the consent of the Monitor, at any time bring a motion to the Court to seek approval of:
- (i) a sale of, or investment in, all or part of the Property or the Business whether or not such sale or investment is in accordance with the timelines set out in this SISP Procedure or the Bid Process Letter; or
  - (ii) a stalking horse agreement in respect of some or all of the Property or Business and related bid procedures in respect of such Property.

### **Sale Approval Motion Hearing**

29. At the hearing of any motion to approve any transaction with a Successful Bidder (the “**Sale Approval Motion**”), the Applicants shall seek, among other things, approval from the Court to consummate such Successful Bid. To the extent other Phase 2 Qualified Bids other than the Successful Bid are in respect of the same Property as such Successful Bid, such other Phase 2 Qualified Bids shall be deemed to be rejected on and as of the date of approval of the Successful Bid by the Court.
30. 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.

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

31. The Monitor and the Applicants and their respective advisors make no representation or warranty as to the information contained in the Confidential Information Package, data room or otherwise made available pursuant to the SISP, except in respect of the Applicants to the extent expressly contemplated in any definitive agreement with a Successful Bidder ultimately executed and delivered by the Applicants.
32. 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, Phase 1 Qualified Bidders, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Applicants, the Monitor and such other bidders or Potential Bidders in connection with the SISP, except to the extent the Applicants, with the approval of the Monitor and consent of the applicable participants, are seeking to combine separate bids from Phase 1 Qualified Bidders or Phase 2 Qualified Bidders.

33. Notwithstanding anything contained herein, forthwith following the Phase 1 Bid Deadline, the DIP Lender shall be entitled to receive all LOIs from the Applicants on a confidential basis pursuant to the DIP Term Sheet regardless of any confidentiality restrictions that may appear in any LOI. Further, the DIP Lender, having provided written notice to the Monitor that it will not participate in the SISP as a Potential Bidder, will be entitled to be consulted throughout the SISP and, will have access to copies of all bidder information including but not limited to, bidder solicitation materials, LOIs, Phase 2 Bids, Qualified Bids, Successful Bids and any definitive agreements in connection therewith, together with weekly updates from the Monitor on the SISP, provided that the DIP Lender has entered into confidentiality arrangements satisfactory to the Applicants and the Monitor. For greater certainty, nothing herein prevents the DIP Lender from participating in any transaction involving the Applicants should the SISP terminate or as permitted by the Bid Process Letter.
34. In addition to the consultation rights granted to the Monitor and the DIP Lender, herein, the Applicants and the Monitor may consult with any other parties with a material interest in the CCAA Proceedings regarding the status of and material information and developments relating to the SISP to the extent considered appropriate by such party (subject to paragraph 32 and taking into account, among other things, whether any particular party or any of its affiliates is a Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder or other participant or prospective participant in the SISP or involved in a bid), provided that such parties shall have entered into confidentiality arrangements satisfactory to the Applicants and the Monitor.

### **Supervision of the SISP**

35. The Monitor shall oversee, in all respects, the conduct of the SISP and, without limitation to that role, the Monitor will participate in the SISP in the manner set out in this SISP Procedure, the SISP Approval Order, the Initial Order and any other orders of the Court, and is entitled to receive all information in relation to the SISP.
36. This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between the Applicants or the Monitor and any Phase 1 Qualified Bidder, any Phase 2 Qualified Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Applicants.
37. Without limiting the preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, the Successful Bidder, the Applicants, the DIP Lender or any other creditor or other stakeholder of the Applicants, for any act or omission related to the process contemplated by this SISP Procedure, except to the extent such act or omission is the result from its gross negligence or wilful misconduct. By submitting a bid, each Phase 1 Qualified Bidder, Phase 2 Qualified 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.

38. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any LOI, Phase 2 Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.
39. The Monitor shall have the right to modify the SISP and this SISP Procedure (including, without limitation, pursuant to the Bid Process Letter) in consultation with the DIP Lender and with the prior approval of the Applicants, if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in the CCAA Proceedings shall be advised of any substantive modification to the procedures set forth herein.



**SCHEDULE “A”**

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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  
FIGR BRANDS, INC., *et al.*

Court File No: CV-21-00655373-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**FIRST REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA  
INC.,  
IN ITS CAPACITY AS MONITOR**

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