

Court File No. CV-19-00614629-00CL

**PAYLESS SHOESOURCE CANADA INC. and PAYLESS SHOESOURCE CANADA GP
INC.**

FIRST REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

February 20, 2019

**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
PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA
GP INC.**

(the "**Applicants**")

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

A. INTRODUCTION

1. On February 18, 2019, Payless Holdings LLC and certain of its subsidiaries and affiliates (collectively, the "**U.S. Debtors**") commenced cases (collectively, the "**U.S. Proceedings**") under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Eastern District of Missouri (the "**U.S. Bankruptcy Court**").
2. On February 19, 2019, Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (the "**Applicants**"), which are debtors in the U.S. Proceedings, 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 benefits, protections, authorizations and restrictions of the Initial Order were also extended to Payless ShoeSource Canada LP ("**Payless Canada LP**", and together with the Applicants, the "**Payless Canada Entities**"). The proceedings commenced under the CCAA by the Payless Canada Entities are referred to herein as the "**CCAA Proceedings**".

3. The Initial Order, among other things:
 - (a) appointed FTI Consulting Canada Inc. as monitor of the Payless Canada Entities (in such capacity, the "**Monitor**") in the CCAA Proceedings;
 - (b) granted a stay of proceedings against the Payless Canada Entities until March 21, 2019;
 - (c) approved the engagement of Ankura Consulting Group, LLC ("**Ankura**") as Chief Restructuring Organization ("**CRO**") of the Payless Canada Entities;
 - (d) approved a cross-border protocol (the "**Cross-Border Protocol**"); and
 - (e) scheduled a comeback hearing for February 21, 2019 (the "**Comeback Hearing**").

4. The purpose of this first report of the Monitor (the "**First Report**") is to provide the Court with:
 - (a) an update with respect to the "First Day" hearing in the U.S Proceedings that was held on February 19, 2019;
 - (b) an update with respect to discussions that have taken place with certain landlord counsel since the granting of the Initial Order; and
 - (c) a copy of the engagement letter dated as of January 24, 2019 pursuant to which Payless Holdings LLC (collectively, with its subsidiaries and affiliates, "**Payless**"), engaged Ankura to act as an advisor to Payless regarding a possible restructuring of the Company and to provide interim services (the "**U.S. Ankura Engagement Letter**").

B. TERMS OF REFERENCE

5. The Monitor has prepared the First Report in connection with the Comeback Hearing, and it should not be relied on for any other purpose.

C. UPDATE ON THE U.S. PROCEEDINGS

6. As provided above, the U.S. Debtors commenced the U.S. Proceedings under Chapter 11 of Title 11 of the Bankruptcy Code.
7. The "First Day" hearing was held on the afternoon of February 19, 2019, and the Monitor understands that Judge Surratt-States of the U.S. Bankruptcy Court approved each of the U.S. Orders that was sought (the "**First Day Orders**").¹ All materials filed in the U.S. Proceedings, including the First Day Orders as they are signed and uploaded, are available on the website of the U.S. Debtors' Claims and Noticing Agent, Prime Clerk LLC, at <https://cases.primeclerk.com/pss/Home-Index>.
8. The First Day Orders included approval by the U.S. Bankruptcy Court of the Cross-Border Protocol.
9. The U.S. Bankruptcy Court scheduled the next hearing in the U.S. Proceedings for March 14, 2019 at 10:00am Central Time, subject to the parties' right to schedule an earlier appearance if necessary.

D. UPDATE ON DISCUSSIONS WITH VARIOUS LANDLORD COUNSEL

10. Following the granting of the Initial Order, counsel for the Payless Canada Entities organized a call with various landlord counsel, the Monitor and the Monitor's counsel to discuss the CCAA Proceedings generally, and the Order to be sought at the Comeback Hearing ("the **Liquidation Approval Order**") specifically.
11. The various landlord counsel worked quickly and collaboratively to provide collective comments to the Payless Canada Entities with respect to the Liquidation Approval Order, and the Monitor understands that changes are currently being made to the Liquidation Approval Order as a result.
12. The Monitor is hopeful that the Liquidation Approval Order will be unopposed at the Comeback Hearing.

¹ The Monitor understands that only certain of the First Day Orders have been signed at the time the First Report is being finalized.

E. U.S. ANKURA ENGAGEMENT LETTER

13. At the application for the Initial Order, the Court requested to see a copy of the U.S. Ankura Engagement Letter as it is referenced in the engagement letter pursuant to which Ankura was appointed CRO of the Payless Canada Entities. Attached as Appendix "A" is a copy of the U.S. Ankura Engagement Letter without schedules.

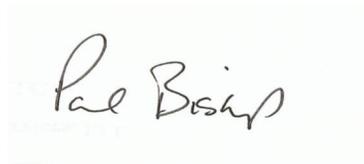
The Monitor respectfully submits to the Court the First Report.

Dated this 20th day of February, 2019.

FTI Consulting Canada Inc.,
solely in its capacity as Monitor of Payless ShoeSource Canada Inc.,
Payless ShoeSource Canada GP Inc. and Payless ShoeSource Canada LP,
and not in its personal capacity



Greg Watson
Senior Managing Director



Paul Bishop
Senior Managing Director

APPENDIX "A"

[ATTACHED]

January 24, 2019

Mr. Mario Zarazua - CFO
Payless Holdings LLC
3231 SE 6th Ave.
Topeka, Kansas 66607

Dear Mario:

This letter agreement (the “*Agreement*”), entered into as of January 3, 2019 (the “*Effective Date*”), confirms the terms of the agreement among Ankura Consulting Group, LLC (“*Ankura*”) and Payless Holdings LLC (collectively, with its subsidiaries and affiliates, the “*Company*”), reporting to the Company’s board of directors (the “*Board*”), pursuant to which the Company has engaged Ankura to act as an advisor to the Company regarding a possible restructuring of the Company and to provide interim management services.

1. Scope of Engagement: On the terms and subject to the conditions of this Agreement, Ankura will provide to the Company the following interim management and advisory services (the “*Services*”), as requested by the Company and agreed to by Ankura:
 - (a) Review and challenge the Company’s current 13-week cash forecast and identify opportunities to accelerate receipts, manage disbursements and improve the forecasting and reporting process;
 - (b) Gain an understanding of the Company’s current operations including those areas where the Company has underperformed to its original business plan and identify possible areas of improvement;
 - (c) Assist the Company with existing or future store closures and liquidations;
 - (d) Assist management with developing and implementing strategies regarding the Company’s vendors;
 - (e) Assist management in the development of a new strategic business plan including the analysis and possible sale of assets;
 - (f) Assist management in negotiations with stakeholders and their professional constituencies;
 - (g) Assist the Company in communications with vendors and suppliers;
 - (h) Commence contingency planning as may be required to affect a restructuring;
 - (i) In the event the Company elects to file under chapter 11 of title 11 of the United States Code (“*Chapter 11*”), evaluate the short-term Company-prepared cash flows and financing requirements of the Company as it relates to Chapter 11 proceedings;

- (j) Assist the Company in its planned Chapter 11 proceedings, including preparation and oversight of its financial statements and schedules related to the bankruptcy process, monthly operating reports, first day pleadings, and other information required in the bankruptcy;
- (k) Assist the Company in obtaining court approval for use of cash collateral or other financing including developing forecasts and information;
- (l) Assist the Company with respect to its bankruptcy-related claims management and reconciliation process;
- (m) Assist management, where appropriate, in communications and negotiations with other constituents critical to the successful execution of the Company's bankruptcy proceedings;
- (n) Work with the Company, as appropriate, and its retained professionals, to assess any offer(s) made pursuant to bankruptcy court-approved sale procedures;
- (o) Provide Stephen Marotta to serve as Chief Restructuring Officer and Adrian Frankum to serve as Restructuring Officer of the Company (individually and collectively, the "**CRO**") should the Board approve such action; and,
- (p) Provide other services the Company requests and Ankura agrees to provide.

As part of the Services, Ankura may be requested to assist the Company (and its legal or other advisors) in negotiating with the Company's creditors and equity holders and with other interested parties. In the event that we participate in such negotiations, the representations made and the positions advanced will be those of the Company and its management, not Ankura or its employees.

It is our intention to work closely with you and management throughout the course of our engagement. Regular discussions with you regarding our progress should provide you with an opportunity to confirm or request that we modify the scope of our engagement to best serve your needs. The Services and compensation arrangements set forth herein do not encompass other financial advisory services not set forth in this Section 1. If the Company and Ankura later determine to expand the scope of Services to include other services not otherwise set forth herein, such future agreement will be the subject of a further and separate written agreement of the parties.

Notwithstanding anything to the contrary in this Agreement but subject to the oversight and direction of the Board in accordance with the Company's organizational documents and applicable law, the CRO shall be authorized to make decisions with respect to the day to day aspects of the management and operations of the Company's business, including, without limitation, organization, human resources, marketing, sales, operations, supply chain, finance and administration, in such manner, as the CRO deems reasonably necessary and appropriate.

2. Company Information and Reports:

In order to fulfill the Services under this Agreement, it will be necessary for Ankura personnel to have access to the Company's facilities and certain books, records and reports of the Company. In addition, Ankura will need to have discussions with the Company's management and certain other personnel. Ankura will perform the Services in a manner that will permit the business operations of the Company to

proceed in an orderly fashion, subject to the requirements of this engagement. We understand that the Company has agreed it will furnish Ankura with such reasonable information as Ankura believes reasonably appropriate to its assignment (all such information so furnished being the “**Information**”). The Company recognizes and confirms that Ankura (i) will use and rely on the accuracy and completeness of the Information and on Information available from generally recognized public sources without independently verifying the same, (ii) does not assume responsibility for the accuracy, completeness or reasonableness of the Information and such other Information, and (iii) will not make an appraisal of any assets or liabilities (contingent or otherwise) of the Company. The Company shall advise Ankura promptly upon obtaining any actual knowledge of the occurrence of any event or any other change in fact or circumstance upon which Ankura formed part or all of its opinions, advice, or conclusions, or which could reasonably be expected to result in some or all of the Information being incorrect, inaccurate, or misleading. To the best of the Company’s knowledge, the Information to be furnished by or on behalf of the Company, when delivered, will be true and correct in all material respects and will not contain any material misstatement of fact or omit to state any material fact necessary to make the statements contained therein not misleading.

Ankura will submit reports highlighting our findings and observations based upon the Services we perform pursuant to this Agreement. Our reports will encompass only matters that come to our attention in the course of our work that we perceive to be significant in relation to the objectives of our engagement. The depth of our analyses and extent of our authentication of the information on which our advice to you will be based may be limited in some respects due to the extent and sufficiency of available Information, time constraints dictated by the circumstances of our engagement, and other factors. We do not contemplate examining any such Information in accordance with generally accepted auditing or attestation standards. It is understood that, in general, we are to rely on Information disclosed or supplied to us by employees and representatives of the Company without audit or other detailed verification of their accuracy and validity. Accordingly, we will be unable to and will not provide assurances in our reports concerning the integrity of the Information used in our analyses and on which our findings and advice to you may be based. In addition, we will state that we have no obligation to, and will not update our reports or extend our activities beyond the scope set forth herein unless you request, and we agree to do so.

3. Fees and Expenses: For Ankura’s Services hereunder, the Company agrees to pay to Ankura the following non-refundable fees (the “**Fees**”)

- (a) Advisory Fees: an hourly fee based on the actual hours expended at our standard hourly rates that are in effect when the Services are rendered. Our rates generally are revised annually. Our hourly rates, effective January 1, 2019 are as follows:

Professional	Rates per hour
Senior Managing Directors	\$965-1,045
Other professionals	\$390-940
Paraprofessionals	\$265-315

- (b) CRO Fee: Shall be hourly consistent with the Advisory Fees above unless otherwise negotiated to a monthly fee for the CRO plus a completion fee.

- (c) Expenses Reimbursement: Ankura shall be entitled to reimbursement of actual, reasonable and documented out-of-pocket and direct expenses (including external legal expenses) incurred in connection with the Services to be provided under this or the performance of this Agreement (collectively, “*Expenses*”). Notwithstanding the foregoing, expenses reimbursable under this section shall not exceed \$20,000 in the aggregate of expenses other than out-of-pocket travel expenses incurred by the Ankura professional staff without the Company’s consent, not to be unreasonably withheld.
- (a) Reasonableness of Fees: The Company acknowledges that it believes that Ankura’s general restructuring experience and expertise will inure to the benefit of the parties hereto, that the value to the parties hereto of Ankura’s Services derives in substantial part from that experience and expertise and that, accordingly, the structure and amount of the Fees to be paid to Ankura hereunder are reasonable. The Company acknowledges that a substantial professional commitment of time and effort will be required of Ankura and its professionals hereunder, and that such commitment may foreclose other opportunities for Ankura. Given the numerous issues which may arise in engagements such as this, Ankura’s commitment to the variable level of time and effort necessary to address such issues, the expertise and capabilities of Ankura that will be required in this engagement, and the market rate for Ankura’s services of this nature, the parties agree that the fee arrangement provided for herein is reasonable, fairly compensates Ankura, and provides the requisite certainty to the parties hereto.
- (b) Testimony; Subpoena Requests. The Company agrees that if any of the principals or professionals of Ankura are required to testify at the request of the Company, on the Company’s behalf or by legal, regulatory, administrative, arbitration or judicial order, at any proceeding related to the Services or this Agreement, Ankura will be compensated by the Company for our associated time charges at our regular hourly rates, in effect at the time and reimbursed for our reasonable out-of-pocket expenses, including counsel fees. In addition, Ankura will be compensated for any time and expense (including reasonable legal fees and expenses) that Ankura may incur in considering or responding to discovery requests or other requests for documents or information in any legal, regulatory, administrative, arbitration or other proceeding as a result of, or in connection with the Services or this Agreement.
2. Retainer. In connection with the foregoing, it is Ankura’s policy to receive an advance retainer for the Fees and Expenses. The Company shall provide Ankura with such retainer in the amount of \$250,000 (the “*Retainer*”). Ankura reserves the right to apply the Retainer to outstanding Fees and Expenses as Services are rendered and to Expenses as they are incurred. The Company understands and acknowledges that the Retainer is earned on a daily basis with respect to Fees and Expenses as they are incurred. The Company understands and acknowledges the Retainer will be placed in Ankura’s general account and will not be held in a client trust account, and the Company will not earn any interest on any Retainer. The Company further understands and acknowledges that the use of retainers is an integral condition of the engagement, is necessary to ensure that the Company continues to have access to Ankura’s Services and Ankura is compensated for the Services provided to the Company and that in light of the foregoing, the provision of the Retainer is in the Company’s best interests.
3. Payment Obligations and Billing
- (a) Payment Obligations: The obligations of the Company under this Agreement (including the indemnification, reimbursement and contribution obligations described in Schedule I) shall be joint and several obligations. The payment of the Fees and Expenses hereunder are the exclusive

obligations of the Company. The Company shall pay all invoiced amounts, whether for Fees or Expenses or otherwise, to Ankura by wire transfer of immediately available funds.

- (b) Billing: In addition to the Retainer, the Company agrees to pay all Fees and Expenses promptly upon receipt of an invoice to the Company for all Services rendered and Expenses incurred. Payment of the Fees, Expenses and Retainer (including any additional amounts to replenish the Retainer) shall be made via wire transfer to the following account:

Bank Name: Bank of America

Bank Address: 222 Broadway
New York, NY 10038

ABA No: 026009593

Account Name: Ankura Consulting Group LLC

Account No: 226005697768

4. Term of Agreement: The term of Ankura's engagement shall extend from the date hereof and shall continue thereafter until either (x) 5 business days after the date that the Company shall have notified Ankura in writing of the termination of this Agreement or (y) 30 days after such time as Ankura shall have notified the Company in writing of the termination of this Agreement, provided, however, that Ankura may terminate this Agreement immediately if continuing to perform Services under this Agreement violates law or regulation. Any termination of this Agreement shall not affect any provisions that survive the termination hereof, including, (i) the indemnification, reimbursement, contribution and other obligations set forth in this Agreement, including Schedule I, and (ii) Ankura's right to receive payment of Fees earned and Expenses incurred by Ankura through the date of termination, and the Company shall promptly pay or cause to be paid all such reasonable Fees and Expenses due and owing. Notwithstanding anything to the contrary herein, in the event that the Company terminates this Agreement after written notice and an opportunity to cure, to the extent curable, for reasons that are determined by a judgment of a court of competent jurisdiction, which judgment is no longer subject to appeal or further review finds Ankura's actual fraud, willful misconduct, or gross negligence was the result of such termination, a court of competent jurisdiction will determine loss damages on behalf of the Company but in no event shall the damages exceed the total fees owed to Ankura hereunder.
5. Nature of Services; Use of Advice:
- (a) Ankura shall act as an independent contractor under this Agreement, and not in any other capacity including as a fiduciary, and any obligations arising out of its engagement shall be owed solely to the Company. Any advice rendered pursuant to this Agreement is intended solely for the use of the Company in considering the matters to which this Agreement relates, and such advice may not be relied upon by any other person or used for any other purpose. Nothing in this Agreement, expressed or implied, is intended to confer or does confer on any person or entity, other than the parties hereto, the Indemnified Persons (as such term is defined in Schedule I) and each of their respective successors, heirs and assigns, any rights or remedies under or by reason of this Agreement or as a result of the services to be rendered by Ankura hereunder.
- (b) Any advice rendered by or other materials prepared by, or any communication from, Ankura (in each case, the "*Ankura Advice*") may not be disclosed, or used, in whole or in part, to or by, any third party,

or summarized, quoted from, or otherwise referred to in any manner, without the prior written consent of Ankura, such consent not to be unreasonably withheld, conditioned or delayed. Ankura Advice may only be used by the Company for the purposes set forth in this Agreement. The terms of this Agreement shall not be referred to without Ankura's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

- (c) At the direction of legal counsel, certain communications and correspondence between Ankura and reports and analyses prepared by Ankura, in connection with this Agreement and the matters contemplated hereby, will be considered in preparation for litigation, and accordingly, will be subject to the attorney-client privilege and work-product privilege between Ankura and the Company.

6. Confidentiality and Internal Use: In connection with this engagement, either party (the "**Receiving Party**") may come into the possession, whether orally or in writing, of Confidential Information of the other party (the "**Disclosing Party**"). The Receiving Party hereby agrees that it will not disclose, publish or distribute such Confidential Information to any third party without the Disclosing Party's consent, which consent shall not be unreasonably withheld. For purposes of this Agreement, "**Confidential Information**" means any and all non-public, confidential or proprietary knowledge, data, or information of or concerning the Disclosing Party. For the avoidance of doubt, Confidential Information includes without limitation, research, analyses, names, business plans, valuations, databases and management systems. Confidential Information shall not include information that: (i) was publicly known and made generally available in the public domain prior to the time of disclosure; (ii) is already in the lawful possession of the Receiving Party at the time of disclosure; (iii) is lawfully obtained from a third party lawfully in possession of such information and without a breach of such third party's obligations of confidentiality; (iv) is independently developed without use of or reference to any Confidential Information or (v) is required to be disclosed or is requested by governmental agencies having regulatory authority or other authority over the Receiving Party or (vi) is required by a court order or legal process to be disclosed, provided that the Receiving Party shall use its best efforts, to the extent permitted by law to do so, to promptly give Disclosing Party prior written notice to any disclosure under this clause (vi) so that Disclosing Party can seek a protective order at the Disclosing Party's expense. Nothing in this Section 8 or this Agreement shall prohibit Ankura from using the Company's name and logo as part of a general client listing and as a specific citation in proposals or similar directed marketing efforts.¹

7. Indemnification: The Company shall provide indemnification, contribution and reimbursement as set forth in Schedule I hereto. The terms and provisions of Schedule I are an integral part hereof, are hereby incorporated by reference, are subject in all respects to the provisions hereof and shall survive any termination or expiration of this Agreement. Further, if an Indemnified Person (as defined in Schedule I) is requested or required to appear as a witness in any Action (as defined in Schedule I) that is brought by or on behalf of or against the Company or that otherwise relates to this Agreement or the Services rendered by Ankura hereunder, the Company shall, jointly and severally, reimburse Ankura and the Indemnified Person for all reasonable and documented, actual out of pocket expenses incurred by them in connection with such Indemnified Person appearing or preparing to appear as such a witness, including without limitation, the reasonable and documented fees and disbursements of legal counsel.

8. Entire Agreement; Amendments: This Agreement (including Schedule I) represents the entire agreement between the parties, supersedes all previous agreements relating to the subject matter hereof (should they exist) and may not be modified or amended except in writing signed by all of the parties hereto.

¹ To be replaced with a separate, stand-alone confidentiality agreement.

9. Counterparts: This Agreement may be executed in counterparts (and by facsimile or other electronic means), each of which shall constitute an original and all of which together will be deemed to be one and the same document.

10. Severability: The invalidity or unenforceability of any provision of this Agreement (including Schedule I) shall not affect the validity or enforceability of any other provision.

11. Announcements: Ankura shall be entitled to identify the Company and use the Company's name and logo in connection with marketing and pitch materials upon conclusion of the Services. In addition, if requested by Ankura, the Company agrees that in any press release related to the Services or outcome of the Services provided hereunder, the Company will include in such press release a mutually acceptable reference to Ankura's role as advisor to the Company.

12. GOVERNING LAW; JURY TRIAL WAIVER; JURISDICTION: THIS AGREEMENT WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY IN SUCH STATE. ANKURA AND THE COMPANY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) RELATED TO OR ARISING OUT OF OR IN CONNECTION WITH THE ENGAGEMENT OF ANKURA PURSUANT TO, OR THE PERFORMANCE BY ANKURA OF THE SERVICES CONTEMPLATED BY, THIS AGREEMENT. REGARDLESS OF ANY PRESENT OR FUTURE DOMICILE OR PRINCIPAL PLACE OF BUSINESS OF THE PARTIES HERETO, EACH PARTY HEREBY IRREVOCABLY CONSENTS AND AGREES THAT ANY CLAIMS OR DISPUTES BETWEEN OR AMONG THE PARTIES HERETO ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN ANY FEDERAL COURTS SITTING IN THE SOUTHERN DISTRICT OF THE CITY OF NEW YORK, NEW YORK OR, IF SUCH COURTS DO NOT HAVE JURISDICTION, THEN THE COMMERCIAL DIVISION OF THE STATE COURTS SITTING IN THE COUNTY OF NEW YORK IN THE STATE OF NEW YORK, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION OVER THE ADJUDICATION OF SUCH MATTERS; PROVIDED HOWEVER, THAT IF ANY ENTITY COMPRISING THE COMPANY BECOMES A DEBTOR UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, AND IF A COMPANY ENTITY IS A PARTY TO SUCH DISPUTE WITH RESPECT TO THIS AGREEMENT, ANKURA AND THE COMPANY IRREVOCABLY AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION AND FORUM OF THE BANKRUPTCY COURT IN WHICH SUCH CHAPTER 11 CASE IS PENDING. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HERETO FURTHER IRREVOCABLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND HEREBY WAIVES IN ALL RESPECTS ANY CLAIM OR OBJECTION WHICH IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON-CONVENIENS. EACH PARTY HERETO AGREES THAT A FINAL NON-APPEALABLE JUDGMENT IN ANY SUCH ACTION BROUGHT IN ANY SUCH COURT SHALL BE CONCLUSIVE AND BINDING UPON IT AND MAY BE ENFORCED IN ANY OTHER COURT(S) HAVING JURISDICTION OVER IT BY SUIT UPON SUCH JUDGMENT. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN ALL SUCH DISPUTES BY THE MAILING OF COPIES OF SUCH PROCESS TO THE NOTICE ADDRESS FOR EACH SUCH PERSON AS SET FORTH IN SECTION 16 HEREOF. EACH OF THE PARTIES HERETO HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF ANY OTHER PARTY HERETO HAS REPRESENTED EXPRESSLY OR OTHERWISE THAT SUCH PARTY WOULD NOT SEEK TO ENFORCE THE PROVISIONS OF THIS WAIVER.

13. Notices: Notice given pursuant to any of the provisions of this Agreement shall be in writing and shall be mailed or delivered (including via email so long as the recipient acknowledges receipt) at the address set forth in the signature blocks of each such person below.

14. Miscellaneous:

(a) Conflicts:

- i) Ankura is involved in a wide range of other activities from which conflicting interests, or duties, may arise. We have undertaken an inquiry of our records in accordance with our standard business practices based on the parties identified to us and have determined that we may proceed. Due to the diversity of Ankura's experts and advisory services, Ankura cannot be certain all relationships have or will come to light. Should an actual conflict come to the attention of Ankura during the course of this engagement, we will notify you immediately and take appropriate actions, as necessary. The Company represents and warrants that it has informed Ankura of the parties-in-interest to this matter and agrees that it will inform Ankura of additions to, or name changes for, those parties-in-interest. Ankura is not restricted from working on other engagements unrelated to the Company involving the parties in this matter; however, during the course of this engagement, services of the nature described in this Agreement shall not be provided by Ankura for parties which are known by Ankura to be directly adverse to the Company without prior written consent of the Company.
- ii) The Company acknowledges that Ankura and its affiliates may have provided professional services to, may currently provide professional services to, or may in the future provide such services to other parties-in-interest. The Company agrees that Ankura, its affiliates, subsidiaries, subcontractors and their respective personnel will have no responsibility to the Company in relation to such professional services, nor any responsibility to use or disclose information Ankura possesses by reason of such services, whether or not such information might be considered material to the Company. Information which is held elsewhere within Ankura but is not publicly available will not for any purpose be taken into account in determining Ankura's responsibilities to the Company under this engagement. Ankura will not have any duty to disclose to the Company or any other party or utilize for the benefit of any such party's or any other party any non-public information, or the fact that Ankura is in possession of such information, acquired in the course of providing services to any other person, engaging in any transaction (on its own account or otherwise) or otherwise carrying on its business.

(b) Authority; Due Authorization; Enforceability: Each party hereto represents and warrants that it has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. Each party hereto further represents and warrants that this Agreement has been duly and validly authorized by all necessary corporate action and has been duly executed and delivered by each such party and constitutes the legal, valid and binding agreement of each such party, enforceable in accordance with its terms.

(c) Independent Contractors: In connection with the Services, Ankura may, with the prior written consent from the Company utilize agents or independent contractors or its own affiliates or its own agents or independent contractors. References in this Agreement to Ankura personnel shall apply equally to employees, agents or independent contractors of Ankura and its affiliates. The parties intend that an independent contractor relationship will be created by this Agreement. As an independent contractor, Ankura will have complete and exclusive charge of the management and

operations of its business, including hiring and paying the wages and other compensation of all its employees and agents, and paying all bills, expenses and other charges incurred or payable with respect to the operations of its business. Ankura employees will not be entitled to receive from the Company any vacation, sick pay, leave, retirement, pension or social security benefits, workers' compensation, disability, unemployment insurance benefits or any other employee benefits. Ankura will be responsible for all withholding, income and other taxes incurred in connection with the operation and conduct of its business. Nothing in this Agreement is intended to create, nor shall be deemed or construed to create a fiduciary or agency relationship between Ankura and the Company.

- (d) Limitations of Engagement: The Company acknowledges that Ankura is being retained solely to assist the Company as described in this Agreement. The Company agrees that it will be solely responsible implementing any advice or recommendations and for ensuring that any such implementation complies with applicable law. The Company understands that Ankura is not undertaking to provide any legal, regulatory, accounting, insurance, tax or other similar professional advice and the Company confirms that it is relying on its own counsel, accountants and similar advisors for such advice. This engagement shall not constitute an audit or review, or any other type of financial statement reporting engagement. It is expressly agreed that, other than as set forth above, Ankura will not evaluate or attest to the Company's internal controls, financial reporting, illegal acts or disclosure deficiencies and Ankura shall be under no obligation to provide formal fairness or solvency opinions with respect to any bankruptcy case or otherwise, or any transaction contemplated thereby or incidental thereto. In rendering its Services pursuant to this Agreement, and notwithstanding anything to the contrary herein, Ankura is not assuming any responsibility for any decision to pursue (or not to pursue) any business strategy or to effect (or not to effect) any transaction. Our engagement is to represent the Company and not its individual directors, officers, employees or shareholders. However, we anticipate that in the course of the engagement, we may provide information or advice to directors, officers or employees in their corporate capacities.
- (e) Counsel Representation: The terms of this Agreement have been negotiated by the parties hereto, who have each been represented by counsel, there shall be no presumption that any of the provisions of this Agreement shall be construed adverse to any party as "drafter" in the event of a contention of ambiguity in this Agreement, and the parties waive any statute or rule of law to such effect.
- (f) Assignment: This Agreement may not be assigned by any party hereto without the prior written consent of the other parties. Any attempted assignment of this Agreement made without such consent shall be void and of no effect, at the option of the non-assigning parties. This Agreement shall be binding on the parties hereto and their successors and permitted assigns.
- (g) Headings: Headings used herein are for convenience of reference only and shall not affect the interpretation or construction of this Agreement.
- (h) Survival: Upon any termination of this Agreement, the sections intended to survive such termination shall survive and remain in effect.
- (i) Force Majeure: Neither party shall be liable for any delays or nonperformance directly or indirectly resulting from circumstances or causes beyond its reasonable control, including but not limited to, fire, epidemic or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

- (j) Non-Solicitation: During the term of this engagement and for a period of one (1) year thereafter, the Company agrees that it will not directly or indirectly employ, solicit, engage, or retain the services of Ankura personnel whom they had substantive contact within the course of this engagement without the payment to Ankura of two (2) times the total direct compensation paid to such personnel in the preceding twelve (12) months, provided however that this section shall not apply to Ankura personnel who do not have substantive contact within the course of this engagement and who respond to a general solicitation or advertisement not specifically directed to Ankura personnel.

- (k) Insurance: The Company shall maintain directors, officers and corporate liability insurance policy (the "**Policy**"), with at least \$10.0 million in coverage to cover the CRO in addition to the existing officers and directors serving in such positions. The Company shall cause its insurance broker to send copies of all documentation and other communications regarding the Policy, including without limitation any renewal or cancellation thereof to the attention of the CRO. Upon any cancellation or nonrenewal of the Policy by the insurer, or in the event the Company enters Chapter 11 bankruptcy proceedings, the Company shall exercise its right to request from its insurer an offer for an extended six-year "discovery period" in which to report new claims. If the Company and CRO agree that the insurer's offer is reasonable, and that accepting the offer would be in the Company's best interests, the Company shall do so and shall promptly pay the premium required thereunder.

[Signature pages follow.]

If the foregoing correctly sets forth our understanding, please indicate your acceptance thereof in the space provided below, whereupon this Agreement and your acceptance shall constitute a binding agreement between us.

If you have any questions, please call Kevin Lavin or Stephen Marotta at (212) 818-1555. We look forward to working with you on this important matter.

Ankura Consulting Group, LLC

By: *Ankura Consulting Group, LLC*

[Additional signature pages follow.]



Accepted and agreed to as of the Effective Date:

Payless Holdings LLC

By: 
Name: Mario Zarazua
Title: CFO

[Signature page to Engagement Agreement]