

District of Ontario
Division No. 9 - Toronto
Court File No.: BK-23-2946534-0031
Estate File No.: 31-2946534

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF NANOPAY CORPORATION**

**MOTION RECORD
(Returnable June 16, 2023)**

June 15, 2023

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Tab 1

District of Ontario
 Division No. 9 - Toronto
 Court File No.: BK-23-2946534-0031
 Estate File No.: 31-2946534

**ONTARIO
 SUPERIOR COURT OF JUSTICE
 (COMMERCIAL LIST)
 (IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
 R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION
 TO MAKE A PROPOSAL OF NANOPAY CORPORATION**

NOTICE OF MOTION

Nanopay Corporation (the “**Company**”), will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), on June 16, 2023 at 10:00 a.m., or as soon after that time as the motion can be heard.

THE PROPOSED METHOD OF HEARING: The motion is to be heard

- ☐ In writing under subrule 37.12.1 (1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location

330 University Ave, Toronto, Ontario, via Zoom (the details of which will be provided by the Court at a later date).

THE MOTION IS FOR:

1. An Order, substantially in the form attached at **Tab 3** of the Motion Record:

- (a) abridging the time for service of this Notice of Motion and the Motion Record so that the motion is properly returnable on June 16, 2023, and dispensing with service on any persons other than those served;
 - (b) pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), extending the time for the Company to file a proposal to August 2, 2023;
 - (c) authorizing the Company to borrow under a credit facility from Nephesh Partners, LLC and/or its affiliate (the “**DIP Lender**”) on the terms and subject to the conditions set forth in the DIP Term Sheet (defined below);
 - (d) pursuant to Section 50.6 of the BIA and upon execution of the DIP Term Sheet, granting the DIP Lender’s Charge (as defined below) on all of the Company’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), up to the maximum amount of \$2,000,000, plus interest, fees and costs; and
 - (e) authorizing the Company to engage David Kay, in his capacity as CEO of Ao8 Strategic Advisors, as Chief Restructuring Officer (“**CRO**”).
2. Such other and further relief as counsel may request and this Honourable Court may allow.

THE GROUNDS FOR THE MOTION ARE:

Background

3. On May 19, 2023, the Company filed a Notice of Intention to Make a Proposal pursuant to Section 50.4 of the BIA (the “**NOI**”) and appointed Dodick Landau Inc. as proposal trustee (the “**Proposal Trustee**”) in respect of its proposal proceedings (the “**NOI Proceedings**”).

4. The Company is incorporated pursuant to the *Canada Business Corporations Act* and it operates out of leased premises at 905 King Street, Suite 300, Toronto, Ontario, however most employees work remotely.
5. The Company offers embedded payments solutions for businesses and banks. This technology allows the Company's clients to collect payments from customers more easily.
6. The Company's principal assets consist of payments industry know-how, a software platform for digital payments, contractual and commercial relationships to provide payment and liquidity management products, the hardware and software to provide such products and related intellectual property.
7. The Company is a start up. Its cash from operations is insufficient to fund its liabilities as they fall due. Accordingly, it relies on regular equity injections and loans from its investors to fund its cash flow needs. The NOI was prompted due to changes in market conditions which resulted in a longer timeline required for the Company to reach profitability.
8. The purpose of the NOI Proceedings is to create a stabilized environment for the Company to consider and pursue its restructuring options.

DIP Loan Facility and DIP Lender's Charge

9. The term sheet (the "**DIP Term Sheet**") between the Company and the DIP Lender, is attached, unexecuted, as Exhibit "D" to the Affidavit of Laurence Cooke, sworn June 15, 2023 (the "**Cooke Affidavit**"). It provides for a non-revolving demand credit facility up to an aggregate principal amount of \$2,000,000 (the "**DIP Loan Facility**"), available by way of advances in the minimum amount of \$250,000.
10. Initial advances in the aggregate maximum amount of \$600,000 (the "**Initial Advance**") will be available to the Company upon satisfaction of the Conditions Precedent to the Initial Advances (as defined in the DIP Term Sheet). Any subsequent advances are at the Lender's sole discretion and will depend on, among other things, whether there is a reasonable prospect of a viable restructuring or a viable proposal in respect of the Company.

11. The amounts drawn and outstanding under the DIP Loan Facility will bear interest at a rate per annum equal to 15% and will be used during these NOI Proceedings to fund the Company's working capital needs and professional fees, including fees incurred by the DIP Lender.
12. The DIP Term Sheet requires a mandatory prepayment of the Initial Advance, interest and fees (including fees of the CRO) in the event of receipt of, (a) a refund due from the Government of Canada and the Government of Ontario with respect to Scientific Research and Experimental Development (SRED) for the taxation year ending December 31, 2022, and/or (b) the net cash proceeds of any asset sale by the Company out of the ordinary course of business.
13. A facility fee equal to 5% of the total DIP Loan Facility is payable on the earlier of the Mandatory Prepayment Date and Maturity Date (each as defined in the DIP Term Sheet).
14. The DIP Lender is an investment vehicle used as an aggregator for the funds advanced by various lenders participating in the DIP Loan Facility. The DIP Lender is in the process of completing the administrative steps of aggregating the individual commitments to fund the DIP Loan Facility and this process is expected to be completed by Tuesday, June 20, 2023, at which time it will be in a position to sign the DIP Term Sheet and fund. The DIP Term Sheet provides for an execution deadline of June 20, 2023 and that the first advance will be made within two business days following execution.
15. The Company is unable to generate sufficient cash from its operations to meet its liabilities as they fall due. The Company's cash flow forecast indicates that the Company urgently requires the DIP Loan Facility to ensure that it has the liquidity required to pay its employees, pay professional fees and continue its business operations during the NOI Proceedings.
16. The DIP Term Sheet provides, among other things, that the DIP Loan Facility is contingent upon the granting of a priority charge over the Property in favour of the DIP Lender, to secure the amounts borrowed under the DIP Loan Facility (the "**DIP Lender's Charge**").

17. The proposed DIP Lender's Charge, up to the maximum amount of \$2,000,000, plus interest, fees and costs, will secure all amounts advanced under the DIP Loan Facility and will not secure obligations incurred prior to the issuance of the Order.
18. The DIP Lender's Charge is proposed to rank ahead of and have priority over all other security interests.

Chief Restructuring Officer

19. The DIP Term Sheet requires the engagement of David Kay, in his capacity as CEO of Ao8 Strategic Advisors, LLC, as CRO of the Company.
20. Mr. Kay has significant experience as a restructuring lawyer, restructuring banker, principal in major restructuring situations, board advisor and CRO.
21. The terms of the engagement of the CRO are set out in the engagement agreement (the "**CRO Engagement Agreement**"), attached (unexecuted) as Exhibit "F" to the Cooke Affidavit.
22. The duties of the CRO will include, among other things, assisting with the development and implementation of a strategic plan to address the strategic, financial, and operational issues facing the Company, including a potential sale and investor solicitation process and obtaining further interim financing to execute a strategic plan and other business improvement and restructuring initiatives.
23. The CRO will be compensated at a rate of \$27,500 per month for the first three (3) months of the CRO's engagement. Pursuant to the DIP Term Sheet, the fees of the CRO will accrue and be paid to the CRO on the earlier of the Maturity Date and the Mandatory Prepayment Date.
24. The CRO Engagement Agreement discloses that the DIP Lender is an investment vehicle that is managed by Mr. Kay and wholly-owned by a party related to Mr. Kay. Mr. Kay does not have a monetary interest in the DIP Facility, and the function of the DIP Lender is to be used as an aggregator of funds that are to be advanced in connection with the DIP Loan Facility.

25. The CRO Engagement Agreement will be executed upon execution of the DIP Term Sheet.

Stay Extension

26. The current deadline by which the Company must file a proposal with the Official Receiver under the BIA is June 18, 2023.
27. The Company is seeking an extension of the deadline to file a proposal to August 2, 2023. The Company's cash flow forecast, which assumes the DIP Loan Facility is approved and the Initial Advance is funded, shows the Company will have sufficient liquidity to meet its obligations during the extension period.
28. The Company requires additional time to consider its options to restructure its affairs.
29. None of the Company's creditors will be materially prejudiced if the extension is granted.
30. The Company has acted and continues to act in good faith and with due diligence.
31. The Proposal Trustee supports the extension.

Other Grounds

32. Rules 1.04, 1.05, 2.01, 2.03, 16.04 and 37 of the *Rules of Civil Procedure* (Ontario).
33. Sections 50.4(9) and 50.6 of the BIA.
34. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

35. The Affidavit of Laurence Cooke, sworn June 15, 2023.
36. The First Report of the Proposal Trustee, dated June 15, 2023.

37. Such further and other material as counsel may advise and this Honourable Court may allow.

June 15, 2023

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TO: SERVICE LIST

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF NANOPAY CORPORATION

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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Tab 2

District of Ontario
Division No. 9 - Toronto
Court File No.: BK-23-2946534-0031
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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF NANOPAY CORPORATION

AFFIDAVIT OF LAURENCE COOKE
(Sworn June 15, 2023)

I, Laurence Cooke, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY:

1. This affidavit is made in support of the motion by Nanopay Corporation (the “**Company**”) returnable June 16, 2023.

2. I am the sole director of the Company. As such I have personal knowledge of the Company and the matters to which I depose in this affidavit. Where I have relied on other sources for information, I have so stated and I believe them to be true.

3. All references to currency in this affidavit are in Canadian dollars unless noted otherwise.

I. RELIEF REQUESTED

4. I swear this affidavit in support of the motion by the Company for an Order:

-2-

- (a) pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), extending the time for the Company to file a proposal to August 2, 2023;
- (b) authorizing the Company to borrow under a credit facility from Nephesh Partners, LLC and/or its affiliate (the “**DIP Lender**”) to finance the Company’s working capital and professional fees;
- (c) pursuant to Section 50.6 of the BIA, granting the DIP Lender’s Charge (as defined below) in favour of the DIP Lender; and
- (d) authorizing the Company to engage David Kay, in his capacity as CEO of Ao8 Strategic Advisors, LLC, as Chief Restructuring Officer (“**CRO**”).

II. BACKGROUND

5. On May 19, 2023, the Company filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4(1) of the BIA. A copy of the NOI filed by the Company and the certificate of filing is attached hereto as **Exhibit “A”**. Dodick Landau Inc. was appointed as proposal trustee (the “**Proposal Trustee**”) in respect of the Company’s proposal proceedings (the “**NOI Proceedings**”).

6. The NOI filing was prompted due to the Company’s ongoing liquidity challenges and inability to meet its liabilities as they fall due.

7. The purpose of the NOI Proceedings is to create a stabilized environment for the Company to consider and pursue its restructuring options.

The Company's Business and Liquidity Issues

8. The Company was incorporated on December 12, 2015 pursuant to the *Canada Business Corporations Act*. A copy of the federal corporate profile for the Company is attached hereto as **Exhibit "B"**. The Company is wholly-owned by Nanopay Holdings Inc. ("**NHI**").

9. The Company operates out of leased premises at 905 King Street, Suite 300, Toronto, Ontario, however most of its employees work remotely. The Company does not own any real property.

10. The Company offers embedded payments solutions for businesses and banks that allows its clients to: (i) set up accounts; (ii) link those accounts to verified bank accounts; (iii) send and receive invoices to the customers of its clients; and (iv) receive and make payments against those invoices. This technology allows the Company's clients to collect payments from customers more easily.

11. The Company currently has 24 employees and 1 contractor. Most of the Company's employees are located in Ontario, and two are located in British Columbia. The contractor is temporarily located in Ukraine.

12. The Company does not provide any company funded pension plans for its employees.

13. Company's principal assets consist of payments industry know-how, a software platform for digital payments, contractual and commercial relationships to provide payment and liquidity management products, the hardware and software to provide such products and related intellectual property.

14. The Company is a start up. Its cash from operations is insufficient to fund its liabilities as they fall due. Accordingly, it relies on regular equity injections and loans from its investors to fund its cash flow needs.

15. The NOI filing was prompted by changes in market conditions which resulted in a longer timeline required for the Company to reach profitability.

III. FINANCIAL POSITION OF THE COMPANIES

(A) Secured Obligations and Taxes

16. As of the date of filing the NOI, the Company was in arrears of pre-filing source deductions with approximately \$192,000 owing. The Company's most recent HST refund was applied against all outstanding source deductions. According to a CRA statement of account issued to the Company on June 5, 2023, there are amounts owing of \$3,584.17 representing late remittance penalties for the remittance period ended May 30, 2023. There are no pre-filing unremitted source deductions payable to CRA. To date, all post-filing source deductions have been remitted when due.

17. The Company remains in a refund position with respect to HST. Once the Company files its 2023 HST returns which it expects will result in a further refund, consistent with all previous quarters, it estimates the pre-filing HST refund will offset the late remittance penalties owing to CRA in full.

18. A copy of the PPSA search in Ontario against the Company with a file currency date of June 5, 2023 is attached hereto as **Exhibit "C"**. There is only one registration against the Company which is in favour of Her Majesty in Right of Ontario as represented by the Minister of Finance,

dated July 15, 2021, over all collateral classifications except “consumer goods” and “motor vehicles”. The registration in respect of unpaid employer health taxes. The Company did not remit employer health tax for a number of years as it was not aware of its obligation to do so and an audit assessed amounts owing. The Company currently owes approximately \$760,322 in respect of employer health tax arrears, of which approximately \$375,000 is secured.

(B) Employee Liabilities

19. The Company is current in respect of employee wages and source deductions for its current employees. The Company owes approximately \$80,000 in wages and vacation pay to former employees, plus amounts for termination and severance. The Company’s payroll is paid twice a month. The Company provides employee benefits, including a health plan.

(C) Rent Arrears

20. The Company is in arrears of rent for the 905 King Street premises. It owes an estimated \$2.4 million to the landlord, Allied Properties in respect of rent arrears.

(D) Amounts owing to NHI

21. Over a period of 8 years, shareholder investments have been made in NHI totaling approximately \$35.8 million. NHI has no operations of its own and no bank account. As such, the shareholder investments were deposited into the bank account of the Company to fund the operations of the Company, which was the intended use of the funds. The Company’s external accountant recorded a year-end related party adjustment on the balance sheets of the Company and NHI to reflect a payable from the Company to NHI totaling the cumulative shareholder investments of \$35 million.

(E) Other Loans

22. The Company owes unsecured loans to certain investors totaling approximately \$1,308,000.

III. PROPOSED DIP FINANCING AND CHARGE**(A) DIP Term Sheet**

23. The Company and the DIP Lender negotiated a term sheet (the “**DIP Term Sheet**”) setting out the terms of funding for the Company’s within NOI Proceedings. A copy of the DIP Term Sheet, which is not executed, is attached hereto as **Exhibit “D”**.

24. The DIP Term Sheet provides for a non-revolving loan up to an aggregate principal amount of \$2,000,000 (the “**DIP Loan Facility**”), available by way of advances in the minimum amount of \$250,000. In accordance with the DIP Term Sheet, the DIP Loan Facility is to be used during these NOI Proceedings to fund the Company’s working capital needs and professional fees, including fees incurred by the DIP Lender.

25. Initial advances in the aggregate maximum amount of \$600,000 (the “**Initial Advance**”), will be available to the Company in two advances upon satisfaction of the Conditions Precedent to the Initial Advance (as defined in the DIP Term Sheet). Any subsequent advances are at the Lender’s sole discretion and will depend on, among other things, whether there is a reasonable prospect of a viable restructuring or a viable proposal in respect of the Company.

26. The Conditions Precedent to the Initial Advance include, among other things, the filing by the Company of the Scientific Research and Experimental Development (“**SR&ED**”) claim for

the taxation year ending December 31, 2022. The Company is in the process of finalizing the necessary documentation and expects to file its claim today or tomorrow.

27. Pursuant to the DIP Term Sheet, the Proposal Trustee shall, upon receipt of the funds from the DIP Lender, administer the DIP Loan Facility by making the Initial Advance and all other advances to the Lender, upon receipt of written instructions from the CRO, and in accordance with all of the terms and conditions of the DIP Term Sheet.

28. The amounts drawn and outstanding under the DIP Loan Facility will bear interest at a rate per annum equal to 15%.

29. The DIP Term Sheet requires a mandatory prepayment of the Initial Advance, interest and fees (including fees of the CRO) in the event of receipt of, (a) the SR&ED refund due from the Government of Canada and the Government of Ontario for the taxation year ending December 31, 2022, and/or (b) the net cash proceeds of any asset sale by the Company out of the ordinary course of business.

30. A facility fee equal to 5% of the total DIP Loan Facility is payable on the earlier of the Mandatory Prepayment Date and Maturity Date (each as defined in the DIP Term Sheet).

31. I understand that the DIP Lender is an investment vehicle used as an aggregator for the funds that are to be advanced by various lenders participating in the DIP Loan Facility. According to the DIP Lender, it is in the process of completing the administrative steps of aggregating the individual commitments to fund the DIP Loan Facility and this process is expected to be completed by Tuesday, June 20, 2023, at which time it will be in a position to sign the DIP Term Sheet and

fund. The DIP Term Sheet provides for an execution deadline of June 20, 2023 and that the first advance will be made within two business days following execution.

32. With the assistance of the Proposed Trustee, the Company has undertaken a cash flow analysis to determine the quantum of funding required to finance its operations, over the 13-week period from the week ending June 25, 2023, to the week ending September 17, 2023 (the “**Cash Flow Forecast**”). A copy of the Company’s Cash Flow Forecast is attached hereto as **Exhibit “E”**.

33. The Company is unable to generate sufficient cash from its operations to meet its liabilities as they fall due. The Cash Flow Forecast indicates that the Company urgently requires the DIP Loan Facility to ensure that it has the liquidity required to pay its employees, pay professional fees and continue its business operations during the NOI Proceedings.

34. The Company’s immediate payments that are critical to the ongoing business operations and must be paid over the period from today to July 3, 2023, total \$230,513 and include payroll, source deductions, employee benefits and Amex subscriptions. The Company’s next source deduction remittance must be made by June 23, 2023.

35. There is currently no other viable financing option available to the Company. Without the funding to be provided by the DIP Loan Facility the Company will cease operations and be forced into bankruptcy. While the Company did seek out other proposals none were forthcoming.

(B) DIP Lender’s Charge

36. The DIP Term Sheet provides, among other things, that the DIP Loan Facility is contingent on the granting of a charge in favour of the DIP Lender over all of the assets, properties and

undertaking of the Company, including the Company's intellectual property, the SR&ED refund, and other tax refunds.

37. The DIP Lender's Charge, up to the maximum amount of \$2,000,000, plus interest, fees, and costs is proposed to rank in priority to all existing security interests and will secure all amounts advanced under the DIP Loan Facility. The DIP Lender's Charge will not secure obligations incurred prior to issuance of the Order approving the DIP Lender's Charge.

IV. CRO

38. The DIP Term Sheet requires, as one of the Conditions Precedent to the Initial Advance, the engagement of David Kay, in his capacity as CEO of Ao8 Strategic Advisors, LLC, as CRO of the Company and Court approval of such engagement.

39. The terms of engagement of the CRO by the Company are set out in the engagement agreement (the "**CRO Engagement Agreement**"), a copy of which is attached hereto as **Exhibit "F"**. The CRO Engagement Agreement has not been executed.

40. Pursuant to the CRO Engagement Agreement, the responsibilities of the CRO will include, among other things:

- (a) working with the Company's management to conduct and control the financial affairs and operations of the Company;
- (b) monitoring the Company's cash flow and approving all disbursements of the Company in amounts greater than \$1000;

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- (c) together with the Proposal Trustee and the officers of the Company, developing, evaluating, and subject to Board approval, implementing a strategic plan to address the strategic, financial, and operational issues facing the Company, including a potential sale and investor solicitation process and obtaining further interim financing to execute a strategic plan and other business improvement and restructuring initiatives;
- (d) providing advice to the Company's board, and management on the strategic, financial and operational issues and options of the Company; and
- (e) assisting the Company's board and management in managing the Company's relations, and where appropriate, leading and representing the Company in discussions and negotiations with the Company's commercial counterparties, stakeholders and potential purchasers or investors.

41. The CRO will be compensated at a rate of \$27,500 per month for a minimum of three (3) months. The Company will pay reasonable out of pocket expenses incurred by the CRO in conjunction with the provision of services. Pursuant to the DIP Term Sheet, the fees of the CRO will be accrued and paid on the earlier of the Maturity Date and the Mandatory Prepayment Date.

42. The CRO Engagement Agreement discloses that the DIP Lender is an investment vehicle that is managed by David Kay and wholly-owned by a party related to David Kay. It also states that David Kay does not have a monetary interest in the DIP Facility, and the function of the DIP Lender is to be used as an aggregator of funds that are to be advanced in connection with the DIP Loan Facility.

43. In the event that the DIP Lender under the DIP Term Sheet enforces any of its rights and remedies against the Company or the Company's property, pursuant to the CRO Engagement Agreement, the CRO shall forthwith resign as CRO of the Company and the Engagement Agreement shall be terminated.

44. A copy of Mr. Kay's curriculum vitae ("CV") is attached hereto as **Exhibit "G"**. Based on my review of Mr. Kay's CV and his correspondence to my counsel, I understand that Mr. Kay has significant experience as a restructuring lawyer, restructuring banker, principal in major restructuring situations, board advisor and CRO. I understand and have been advised that his experience includes the following:

- (a) he was a bankruptcy attorney at Akin Gump in the U.S. and a restructuring banker at Jefferies Group LLC, a large U.S. bank;
- (b) he ran a private equity firm that led a number of companies through the restructuring process, both in the United States and Canada. This included a material role in Nortel Networks and Crystallex proceedings in Canada;
- (c) most recently he completed a CRO mandate during a Chapter 11 proceeding that included a successful DIP financing, exit financing and plan confirmation process in the United States for a company called Hoyos Integrity; and
- (d) he has significant operational experience with technology and payments companies.

45. Immediate action items that Mr. Kay will assist with include helping the Company, which is materially understaffed, to quickly identify which businesses/contracts to retain and which to

potentially sell and/or abandon, create a medium and long-term plan for reorganization, assist with negotiations with creditors and seek additional financing.

46. Mr. Kay has advised that he has familiarity with the Company and its current issues and need for financing as he was recently put up for appointment to the board of directors of NHI by one of its shareholders. He has been working with the Company and its shareholders to try to organize financing to ensure the survival of the Company and the jobs it provides.

47. Mr. Kay has advised that it is his intention to either resign and/or not serve as a board member of NHI upon Court approval of his engagement.

48. The Company requests authorization to execute the CRO Engagement Agreement, and it will only enter into such agreement in the event the DIP Term Sheet is executed.

V. STAY EXTENSION

49. The current deadline by which the Company must file a proposal with the Official Receiver under the BIA is June 18, 2023.

50. The Company is seeking an extension of the deadline to file a proposal to August 2, 2023. The Cash Flow Forecast, which assumes the DIP Loan Facility is approved and the Initial Advance is funded, shows the Company will have sufficient liquidity to meet its obligations during the extension period.

51. The Company requires additional time to consider its options to restructure its affairs.

52. None of the Company's creditors will be materially prejudiced if the extension is granted.

53. The Company has acted and continues to act in good faith and with due diligence.

-13-

SWORN by Laurence Cooke of the City of Toronto in the Province of Ontario, before Sara-Ann Wilson at the Town of Oakville in the Province of Ontario on June 15, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Sara-Ann Wilson

14765F6D06F543D...

Commissioner for Taking Affidavits
SARA-ANN WILSON (LSO # 56016C)

DocuSigned by:



3819396A23D34AE...

LAURENCE COOKE

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF LAURENCE COOKE SWORN
BEFORE ME THIS 15th DAY OF JUNE, 2023.

DocuSigned by:
Sara-Ann Wilson
14765F6D06F543D...

A Commissioner for Taking Affidavits, etc.

District of:
Division No. -
Court No.
Estate No.

- FORM 33 -

**Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)**

**In the Matter of the Proposal of
Nanopay Corporation
of the city of Toronto, in the Province of Ontario**

Take notice that:

1. I, Nanopay Corporation, an insolvent person, state, pursuant to subsection 50.4(1) of the Act, that I intend to make a proposal to my creditors.
2. Dodick Landau Inc. of 951 Wilson Ave., Unit 15L, Toronto, ON, M3K 2A7, a licensed trustee, has consented to act as trustee under the proposal. A copy of the consent is attached.
3. A list of the names of the known creditors with claims of \$250 or more and the amounts of their claims is also attached.
4. Pursuant to section 69 of the Act, all proceedings against me are stayed as of the date of filing of this notice with the official receiver in my locality.

Dated at the city of Toronto in the Province of Ontario, this 19th day of May 2023.



**Nanopay Corporation
Insolvent Person**

District of:
 Division No. -
 Court No. -
 Estate No.

- FORM 33 -

**Notice of Intention To Make a Proposal
 (Subsection 50.4(1) of the Act)**

**In the Matter of the Proposal of
 Nanopay Corporation
 of the city of Toronto, in the Province of Ontario**

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
Agarwal			13,583.96
Allied Properties Accounts Receivable	134 Peter Street, Suite 1700 Toronto ON M5V 2H2		2,400,000.00
Ardece Holdings Inc.			850,000.00
Choura			11,542.49
ConnectCPA LLP Tom Sen	140 Yonge Street, Suite 220 Toronto ON M5C 1X6		23,730.00
Conway			9,830.31
CRA - Tax - Ontario	Shawinigan-Sud National Verification and Collection Centre 4695 Shawinigan-Sud Blvd Shawinigan-Sud QC G9P 5H9	793163890 RP Account	192,000.00
CRA - Tax - Ontario	Shawinigan-Sud National Verification and Collection Centre 4695 Shawinigan-Sud Blvd Shawinigan-Sud QC G9P 5H9	793163890 RC Account	250.00
CRA - Tax - Ontario	Shawinigan-Sud National Verification and Collection Centre 4695 Shawinigan-Sud Blvd Shawinigan-Sud QC G9P 5H9	793163890 RT account	250.00
Denton's LLP	77 King St. W., Suite 400, TD Centre Toronto ON M5K 0A1		35,003.00
Doulatshahi			17,381.34
Greer			6,123.37
Hara			8,091.14

District of:
Division No.
Court No.
Estate No.

- FORM 33 -

Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the Matter of the Proposal of
Nanopay Corporation
of the city of Toronto, in the Province of Ontario

List of Creditors with claims of \$250 or more.

Creditor	Address	Account#	Claim Amount
HP Financial	Morrison and Payne 505 Consumers Road, Suite 1005 Toronto ON M2J 4V9	HP Financial - File 5685	43,304.00
Jarmac Capital David Roffey			421,000.00
Karim			10,037.90
Kim			18,771.84
KPMG LLP Santino Mariani	333 Bay Street, Suite 4600 Toronto ON M5H 2S5	8004310428	67,881.00
Linnik			7,708.21
Lukose			3,539.65
Minister of Finance - EHT	300-1400 Blair Towers Place Ottawa ON K1J 9B8		600,000.00
Oh			9,836.47
Omoerah			4,583.34
Paciornik			7,356.69
Pena			13,295.03
Samji			24,896.50
Vrentzos			14,564.63
Total			4,815,560.87

District of:
Division No.
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the Matter of the Proposal of
Nanopay Corporation
of the city of Toronto, in the Province of Ontario



Nanopay Corporation
Insolvent Person

- Proposal Consent -
In the Matter of the Proposal of
Nanopay Corporation
of the city of Toronto, in the Province of Ontario

To whom it may concern,

This is to advise that we hereby consent to act as trustee under the Bankruptcy and Insolvency Act for the proposal of Nanopay Corporation.

Dated at the city of Toronto in the Province of Ontario, this 19th day of May 2023.

Dodick Landau Inc. - Licensed Insolvency Trustee



951 Wilson Ave., Unit 15L

Toronto ON M3K 2A7

Phone: (416) 736-4357 Fax: (866) 874-1791



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2946534
Estate No. 31-2946534

In the Matter of the Notice of Intention to make a proposal of:

Nanopay Corporation

Insolvent Person

DODICK LANDAU INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

May 19, 2023

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL

Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: May 23, 2023, 08:04

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF LAURENCE COOKE SWORN
BEFORE ME THIS 15th DAY OF JUNE, 2023.

DocuSigned by:

Sara-Ann Wilson

14765F6D06F543D...

A Commissioner for Taking Affidavits, etc.



Government of Canada

[Canada.ca](#) → [Innovation, Science and Economic Development Canada](#) → [Corporations Canada](#)
→ [Search for a Federal Corporation](#)

Federal Corporation Information - 954685-5

⚠ Beware of scams and other suspicious activities. See [Corporations Canada's alerts](#).

i Note

This information is available to the public in accordance with legislation (see [Public disclosure of corporate information](#)).

[Order copies of corporate documents](#)

Corporation Number

954685-5

Business Number (BN)

793163890RC0001

Corporate Name

NANOPAY CORPORATION

Status

Active

Governing Legislation

Canada Business Corporations Act - 2015-12-11

[Order a Corporate Profile](#) [[View PDF Sample](#)] [[View HTML Sample](#)].

[Find existing extra-provincial registrations of this corporation on Canada's Business registries](#) **i**

Registered Office Address

905 King Street West
Suite 300

Toronto ON M6K 3G9
Canada

Note

Active CBCA corporations are required to update this information within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

Directors

Minimum 1

Maximum 10

Laurence Cooke
115 Robinson Street
Toronto ON M6J 1M1
Canada

Note

Active CBCA corporations are required to update director information (names, addresses, etc.) within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

Annual Filings

Anniversary Date (MM-DD)

12-11

Date of Last Annual Meeting

2021-10-13

Annual Filing Period (MM-DD)

12-11 to 02-09

Type of Corporation

Non-distributing corporation with 50 or fewer shareholders

Status of Annual Filings

2023 - Not due

2022 - Overdue

2021 - Filed

Corporate History

Corporate Name History

2015-12-11 to 2015-12-15

9546855 Canada Inc.

2015-12-15 to Present

NANOPAY CORPORATION

Certificates and Filings

Certificate of Incorporation

2015-12-11

Certificate of Amendment *

2015-12-15

Amendment details: Corporate name

* Amendment details are only available for amendments effected after 2010-03-20. Some certificates issued prior to 2000 may not be listed. For more information, [contact Corporations Canada](#).

[Order copies of corporate documents](#)

[Start New Search](#)

[Return to Search Results](#)

Date Modified:

2023-06-02

THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF LAURENCE COOKE SWORN
BEFORE ME THIS 15th DAY OF JUNE, 2023.

DocuSigned by:

Sara-Ann Wilson

14765F6D06F543D...

A Commissioner for Taking Affidavits, etc.



Phone: (416) 599-4040

Ontario Search Results
ID 2237565
Search Type [BD] Business Debtor

Liens : 1 Pages : 1

Searched : 06JUN2023 11:45 AM
 Printed : 06JUN2023 11:51 AM

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 06/06/2023
 CCCL369 DISPLAY 1C REGISTRATION - SCREEN 1 11:44:51
 ACCOUNT : 009233-0001 FAMILY : 1 OF 1 ENQUIRY PAGE : 1 OF 1
 FILE CURRENCY : 05JUN 2023
 SEARCH : BD : NANOPAY CORPORATION

00 FILE NUMBER : 774435771 EXPIRY DATE : 15JUL 2026 STATUS :
 01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :
 REG NUM : 20210715 0942 1031 6032 REG TYP: P PPSA REG PERIOD: 05
 02 IND DOB : IND NAME:
 03 BUS NAME: NANOPAY CORPORATION

OCN :

04 ADDRESS : 05 KING ST W STE 300
 CITY : TORONTO PROV: ON POSTAL CODE: M6K 3G9
 05 IND DOB : IND NAME:
 06 BUS NAME:

OCN :

07 ADDRESS :
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
 HER MAJESTY IN RIGHT OF ONTARIO REPRESENTED BY THE MINISTER OF FINANCE

09 ADDRESS : 300-1400 BLAIR TOWERS PLACE
 CITY : OTTAWA PROV: ON POSTAL CODE: K1J 9B8
 CONS. MV DATE OF OR NO FIXED
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
 10 X X X X 375036 15JUL2026
 YEAR MAKE MODEL V.I.N.

11

12

GENERAL COLLATERAL DESCRIPTION

13

14

15

16 AGENT: MINISTRY OF FINANCE, AM & COLLECTIONS BRANCH (EHT) BN#793163890

17 ADDRESS : 300-1400 BLAIR TOWERS PLACE (333/187)

CITY : OTTAWA PROV: ON POSTAL CODE: K1J 9B8

END OF REPORT

THIS IS EXHIBIT "**D**" REFERRED TO IN THE
AFFIDAVIT OF LAURENCE COOKE SWORN
BEFORE ME THIS 15th DAY OF JUNE, 2023.

DocuSigned by:

Sara-Ann Wilson

14765F6D06F543D...

A Commissioner for Taking Affidavits, etc.

June 15, 2023

Nanopay Corporation
905 King St W Suite 300,
Toronto, ON M6K 3G9

Attention: Laurence Cooke

Re: Nephesh Partners, LLC and/or its affiliate (the “Lender”) interim financing credit facility in favour of Nanopay Corporation (the “Borrower”)

We understand that on May 19, 2023, the Borrower filed a notice of intention to make a proposal pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) naming Dodick Landau Inc. as proposal trustee (the “**Proposal Trustee**”), and that in connection with the BIA proceedings (the “**Proposal Proceedings**”) the Borrower requires interim financing and will be seeking an interim financing Order pursuant to section 50.6(1) of the BIA (the “**Interim Financing Order**”). The Lender is pleased to offer interim financing by way of the credit facility described in this term sheet (the “**Term Sheet**”) subject to the terms and conditions set forth herein. Unless otherwise indicated, all amounts are expressed in Canadian currency. All capitalized terms not otherwise defined in the body of this Term Sheet shall have the meanings ascribed thereto in **Schedule “A”**.

Borrower: Nanopay Corporation

Lender: Nephesh Partners, LLC (as initially identified on the signature page hereto) and/or its affiliate (the “**Lender**”). The Proposal Trustee shall, upon receipt of the funds from the Lender, administer the Facility by making the Initial Advance and all other Advances to the Lender, upon receipt of written instructions from the CRO, and in accordance with all of the terms and conditions of this DIP Term Sheet.

Facility: A super priority, debtor-in-possession non-revolving demand credit facility up to the maximum principal amount of two million dollars \$2,000,000 (the “**Facility**”), subject to the terms and conditions contained herein.

The Facility shall be available by multiple advances (each an “**Advance**”, and collectively, the “**Advances**”), at the Lender’s sole and absolute discretion with regard to timing, and each Advance shall be in the minimum amount of \$250,000 or such other amount approved by the Court.

The initial advances under the Facility shall be in the aggregate maximum amount of \$600,000, and will be made to the Borrower by two (2)

- 2 -

advances (together, the “**Initial Advance**”). The date of the second advance constituting the Initial Advance shall be no later than seven (7) calendar days following the date of the first advance.

There may be subsequent advances (each a “**Subsequent Advance**” and collectively, the “**Subsequent Advances**”) under the Facility. The Initial Advance together with all Subsequence Advances, the CRO Fee, the Lender’s Fees and Expenses, all other financing costs, fees, and expenses, and any other costs, fees and expenses contemplated by this Facility shall not exceed an aggregate maximum amount of \$2,000,000 (such amount being the “**Maximum Amount**”). Notwithstanding any provision to the contrary herein, the Lender shall not be obligated to fund any Advances which, in the aggregate, exceed the Maximum Amount and, accordingly, the total amount advanced under the Facility shall not exceed the Maximum Amount unless the Lender otherwise agrees.

The availability of the Initial Advance is subject to and conditional upon satisfaction of the Conditions Precedent to the Initial Advance (as defined herein).

All Subsequent Advances under the Facility following the Initial Advance shall be at the sole and absolute discretion of the Lender, and provided that the following conditions are met: (a) the Facility Availability (as herein defined) supports the increased amount at the sole and absolute discretion of the Lender; and (b) there has been no Event of Default.

Purpose:

The purpose of the Facility is to fund: (i) working capital needs in accordance with the cash flow projections approved by the Proposal Trustee, the Lender, and the CRO from time to time (the “**Cash Flow Projections**”); (ii) the Lender’s Fees and Expenses (as defined below); (iii) professional fees and expenses incurred by the Borrower and the Proposal Trustee in respect of the Proposal Proceedings, to the maximum amount of \$120,000 for the initial 45 days extension; (iv) the CRO Fee; and (v) such other costs and expenses of the Borrower as may be agreed to by the Lender, in writing.

**Facility
Availability:**

The maximum amount of each Subsequent Advance available under the Facility at any time and from time to time will, subject to the Maximum Amount, be determined and limited by the Lender in accordance with the following (the “**Facility Availability**”): (a) whether an Event of Default (as defined below) has occurred; (b) whether there has been any negative variance from the cash flow set forth in the Cash Flow Projections; and (c) the Lender’s view as to whether there is a reasonable prospect of a viable restructuring or a viable proposal in respect of the Borrower.

For greater certainty, any Subsequent Advance following the Initial Advance shall be at the sole and absolute discretion of the Lender.

Maturity:

The Borrower shall repay all principal, interest, fees and other amounts owing under the Facility on the earlier of (the “**Maturity Date**”): (i) demand; (ii) the occurrence of an Event of Default (as defined below); (iii) the date on which the period for the Borrower to file a proposal in the Proposal Proceedings is not extended or is terminated; (iv) the date on which the Borrower becomes bankrupt; (v) the date upon which a sale of all or substantially all of the business and assets of the Borrower is completed; and (vii) the date that is six (6) months from the date on which the Borrower filed a Notice of Intention to File a Proposal.

**Mandatory
Prepayment:**

Upon receipt of (each, a “**Prepayment Event**”):

- (i) the refund due from the Government of Canada and the Government of Ontario with respect to Scientific Research and Experimental Development for the taxation year ending December 31, 2022 (the “**SR&ED Refund**”); and/or
- (ii) the net cash proceeds of any asset sale by the Borrower out of the ordinary course of business;

the Borrower will be required to apply such amounts, and proceeds thereof, to prepay (i) the Initial Advance; (ii) outstanding interest on the principal amount of the Initial Advance as at the date of prepayment; (iii) outstanding Lender’s Fees and Expenses as at the date of prepayment; (iv) the CRO Fee owing as at the date of prepayment; and (v) the Facility Fee (collectively, the “**Mandatory Prepayment**”), and any surplus amounts remaining after the Mandatory Prepayment is fully satisfied shall be released into the Borrower’s Account (as defined below).

All moneys received by the Borrower in connection with a Prepayment Event shall be, and shall deemed to be, held in trust for the Lender and applied towards the Mandatory Prepayment no later than (each a “**Mandatory Prepayment Date**”):

- (i) two Business (2) Days following the date on which the SR&ED Refund is deposited into the Borrower’s Account; and
- (ii) ten (10) Business Days following the closing date of any asset sale by the Borrower out of the ordinary of business.

If, at any time following the date of the Interim Financing Order, the cash, certificates of deposit, bank deposits, commercial paper, treasury bills and other cash equivalents in the Borrower’s operating accounts (including the Borrower’s Account (defined below)) exceeds \$1,000,000

in the aggregate, then the amount in excess of \$1,000,000 shall be applied towards a Mandatory Prepayment.

**Facility
Advances:**

Each Advance shall be wire transferred to the current operating account of the Borrower (the “**Borrower’s Account**”). The Borrower’s Account shall be subject to the Interim Financing Charge.

Nothing in this Term Sheet creates a legally binding obligation on the Lender to advance any amount, other than the Initial Advance, under the Facility at any time unless the Lender is completely satisfied in its sole and absolute discretion, acting reasonably, that the Borrower is in compliance with every provision of this Term Sheet.

**Interest Rate
and Expenses:**

Interest: Interest on the principal amount of each Advance outstanding from time to time shall be calculated at a rate of fifteen percent (15%) per annum, which interest shall be calculated on the daily outstanding balance owing under the Facility, not in advance, and shall accrue and be paid on the earlier of: (i) the Mandatory Prepayment Date; and (ii) the Maturity Date.

Expenses: The Borrower shall pay all fees and expenses (collectively, the “**Lender’s Fees and Expenses**”) incurred by the Lender in connection with the preparation, registration and ongoing administration of this Term Sheet, the Facility, the Interim Financing Order, the Interim Financing Charge (as defined below) and with the enforcement of the Lender’s rights and remedies thereunder, at law or in equity, including, without limitation all reasonable legal fees and disbursements incurred by the Lender, on a full indemnity basis. For purposes of greater certainty, “Lender’s Fees and Expenses” shall include all reasonable fees and expenses incurred by the Lender in connection with the Proposal Proceedings and all court attendances in respect thereof. If the Lender has paid any expense for which the Lender is entitled to reimbursement from the Borrower, such expense shall be added to the Facility and shall accrue interest at the rate set out above. All such fees and expenses and interest thereon shall be secured by the Interim Financing Charge whether or not any funds under the Facility are advanced.

The Lender’s Fees and Expenses owing as at the date on which the Initial Advance is made shall not exceed \$25,000, and such amount of Lender’s Fees and Expenses shall be deducted by the Lender from the Initial Advance prior to the Lender making the Initial Advance to the Borrower.

Facility Fee:

A Facility fee equal to five percent (5%) of the Maximum Amount will be due and payable to the Lender, which shall be fully earned on execution of this Term Sheet, secured by the Interim Financing Charge, and paid on the earlier of: (i) the Mandatory Prepayment Date; and (ii) the Maturity Date.

Security: All debts, liabilities, and obligations of the Borrower under the Facility shall be secured by the Interim Financing Charge and such security agreements charging all present and future, real and personal, tangible and intangible, properties, assets and undertakings of the Borrower, including the Borrower's intellectual property, the SR&ED Refund, and other tax refunds, as may be reasonably requested by the Lender.

The Interim Financing Charge shall rank in priority to any and all security interests, mortgages, trusts, deemed trusts (statutory or otherwise), liens, charges and encumbrances, and claims of all other secured creditors, statutory or otherwise, in favour of any Person.

Chief Restructuring Officer: As part of the relief sought by the Borrower in connection with the Interim Financing Order, the Borrower shall seek the appointment of David Kay, in his capacity as CEO of Ao8 Strategic Advisors, LLC and not in his personal capacity, as Chief Restructuring Officer (the "**CRO**") of the Borrower on terms acceptable to the Lender.

The CRO will be compensated for his services on a monthly basis at a rate of \$27,500 per month (the "**CRO Fee**") for the first three (3) months of the CRO's engagement. The CRO Fee may be revised in consultation with the Lender and the Proposal Trustee. The CRO Fee shall accrue and be paid to the CRO on the earlier of: (i) the Mandatory Prepayment Date; and (ii) the Maturity Date.

The Order appointing David Kay as CRO shall provide, among other protections in favour of the CRO, that the CRO shall incur no liability or obligation as a result of his appointment, save and except for any gross negligence or wilful misconduct on his part.

Execution Deadline: This Term Sheet must be fully executed by the Lender and the Borrower by 5:00 p.m. (Toronto time) on Tuesday, June, 20, 2023, or such later date or time as may be agreed to by the Lender and the Borrower (the "**Execution Deadline**") in order to be binding and enforceable.

Conditions Precedent to the Initial Advance: The availability of the Initial Advance is subject to and conditional upon the following:

1. receipt of the entered Interim Financing Order in a form satisfactory to the Lender including:
 - (a) approving this Term Sheet and the Facility contemplated herein;
 - (b) granting the Lender a charge in and to all present and future, real and personal, tangible and intangible,

properties, assets and undertakings of the Borrower, including the Borrower's intellectual property, the SR&ED Refund, and other tax refunds (the "**Interim Financing Charge**"), which Interim Financing Charge shall rank in priority to any and all security interests, mortgages, trusts, deemed trusts (statutory or otherwise), liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise, in favour of any Person;

- (c) appointing the CRO;
- (d) providing, among other protections in favour of the CRO, that the CRO shall incur no liability or obligation as a result of his appointment, save and except for any gross negligence or wilful misconduct on his part;
- (e) granting the Lender the right, upon the occurrence of an Event of Default, to terminate the Facility and to enforce the rights and remedies available to it, with Court approval obtained on not more than three (3) Business Days' notice to the Borrower and the Proposal Trustee, pursuant to the Interim Financing Order, this Term Sheet, the Interim Financing Charge, and any additional rights and remedies available to it, at law or in equity;
- (f) declaring that the granting of the Interim Financing Charge, the execution and delivery of all other documents and instruments contemplated herein, and the payment of all amounts by the Borrower to the Lender, including any and all fees and interest, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any Applicable Law;
- (g) declaring the Interim Financing Order, including the Interim Financing Charge granted thereunder, binding upon a trustee in bankruptcy of the Borrower, the Proposal Trustee, a receiver, interim-receiver, receiver-manager or any other officer of the Court appointed in respect of the Borrower; and
- (h) declaring the Lender to be an "unaffected creditor" under any proposal made by the Borrower and that the indebtedness to the Lender under the Facility shall not be compromised under any such proposal;

- 7 -

2. the Interim Financing Order shall not have been amended or varied in a manner adverse to the Lender, or stayed, without the consent of the Lender, and shall continue to be in full force and effect;
3. execution of this Term Sheet by the Execution Deadline;
4. receipt of a duly executed copy of this Term Sheet;
5. completion by the Borrower of all steps necessary to file a Scientific Research and Experimental Development (“SR&ED”) claim for the taxation year ending December 31, 2022, in the minimum amount of \$888,226, and to qualify for and receive the SR&ED Refund, including, without limitation, filing all relevant returns, forms, applications, and any other related or relevant documents, and the Lender shall have received from the Borrower evidence thereof satisfactory to the Lender; and
6. delivery by the Borrower to the Lender of any such further security or documentation that the Lender and its lawyers may reasonably require to give effect to the foregoing.

Timing of Initial Advance:

Subject to the satisfaction of the Conditions Precedent to the Initial Advance (including, without limitation, the execution of this Term Sheet by the Execution Deadline), the first advance comprising the Initial Advance shall be made to the Borrower within two (2) Business Days following the Execution Deadline, or such later date as may be agreed to by the Lender and the Borrower.

Conditions Precedent to a Subsequent Advance:

Each of the following is a condition precedent to any Subsequent Advance to be made hereunder, in each case unless waived in writing by the Lender in its sole discretion:

1. all of the conditions contained in this Term Sheet shall have been satisfied and shall as at the time of the making of the Subsequent Advance in question continue to be satisfied;
2. no fact exists or event has occurred which materially changes the manner in which the Lender previously evaluated the risks inherent in advancing amounts to the Borrower under the Facility, whether or not the Lender was or should have been aware of such facts or events differently at any time; and
3. no Event of Default shall have occurred and be continuing.

No Waiver:

The making of an Advance hereunder without the fulfillment of one or more conditions set forth in this Term Sheet shall not constitute a waiver

of any such condition, unless expressly so waived in writing by the Lender, and the Lender reserves the right to require fulfillment of such condition in connection with any Advance.

Covenants:

The Borrower covenants and agrees with the Lender, so long as any amounts are outstanding by the Borrower to the Lender hereunder, to:

1. pay all sums of money when due hereunder;
2. not request, obtain or consent to a variation of the Interim Financing Order if, in the opinion of the Lender, such variation may be prejudicial to the Lender, without the prior written consent of the Lender, such consent not to be unreasonably withheld or delayed;
3. make all reasonable efforts to provide the Lender with at least three (3) Business Days' advance notice of all Court filings made by it, together with copies of, and an opportunity to comment on, all related Court materials;
4. provide the Lender with prompt written notice of any event which constitutes, or which, with notice, lapse of time, or both, would constitute an Event of Default, a breach of any covenant or other term or condition of this Term Sheet, or of any document given in connection therewith;
5. use the proceeds of the Facility solely for the purposes provided for herein;
6. keep and maintain books of account and other accounting records in accordance with generally accepted accounting principles;
7. upon reasonable notice, permit the Lender or its representatives, at any time and from time to time with such frequency as the Lender, in its sole discretion, may require, to visit and inspect the Borrower's premises, properties and assets and to examine and obtain copies of the Borrower's records or other information and discuss the Borrower's affairs with the auditors, counsel and other professional advisors of the Borrowers all at the reasonable expense of the Borrowers;
8. carry on the business of the Borrowers in the normal course, consistent with past practice and orders of the Court made in the Proposal Proceedings;

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9. not incur any expense other than as included in the Cash Flow Projections, without the prior written consent of the Lender, not to be unreasonably withheld;
10. obtain the Lender's approval for any amendment or extension of the Cash Flow Projections;
11. to pay all Priority Claims when due and payable from and after the commencement of the Proposal Proceedings, as and when such Priority Claims are due, and promptly provide proof of payment to the Lender; and
12. keep the Borrower's assets fully insured against such perils and in such manner as would be customarily insured by companies owning similar assets naming the Lender as first loss payee and to ensure all assets secured by the Interim Financing Charge are in existence and in the possession and control of the Borrower.

**Events
of Default:**

Without limiting the right of the Lender to demand payment at anytime, if any one or more of the following events (an "**Event of Default**") has occurred and is continuing:

1. the SR&ED Refund is not received within 90 days following receipt of the entered Interim Financing Order;
2. notice is given to the Borrower that the SR&ED Refund has been rejected as filed, or reduced by an amount greater than \$25,000 of the amount claimed;
3. the Borrower fails to pay when due and payable any principal, interest, fees or other amounts due under this Term Sheet;
4. the Borrower breaches any covenant, term, condition or other provision of this Term Sheet or any other document delivered to the Lender in respect thereof;
5. if the Interim Financing Order is stayed, set aside or varied in a manner adverse to the Lender, without the consent of the Lender, in its sole discretion, or any other order of the Court in the Proposal Proceedings is made, which is or may be prejudicial to the Lender's interests;
6. the stay of proceedings resulting from the Proposal Proceedings is terminated or lifted in whole or in part without the consent of the Lender;

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7. substantially all of the business or assets of the Borrower are sold, except as may be otherwise approved by the Lender in writing in advance;
8. any default or failure by the Borrower to make any payment when due of any Priority Claims due and payable arising from and after the commencement of the Proposal Proceedings;
9. the Borrower becomes bankrupt or the appointment of a receiver, receiver and manager, or other officer of the Court is made for, all or any significant part of the assets of any Borrower;
10. the Borrower incurs a negative variance of greater than ten percent (10%) from the "Net Cash Flow" line in the Cash Flow Projection, in each case, tested every two (2) weeks on a cumulative basis from the beginning of the period covered by the Cash Flow Projection;
11. the Borrower files a cash flow projection without the approval of the Lender;
12. the Borrower fails to obtain Lender approval prior to the filing a proposal to creditors in respect of the Borrower;
13. the Borrower fails to obtain Lender approval regarding any sale process in respect of the Borrower's assets or business; and
14. any failure of the Borrower's Board or the Borrower's management to fully cooperate with the CRO;

then, in such event, the Lender may, by written notice to the Borrower declare all monies outstanding under the Facility to be immediately due and payable and upon seeking an Order of the Court on not more than three (3) Business Days notice, enforce, without further notice, demand or delay, all of its rights and remedies against the Borrower and their respective property, assets and undertaking including, without limitation, the enforcement of the Interim Financing Charge.

Nothing contained in this section shall limit any right of the Lender under this Term Sheet to demand payment of the Facility. On demand or the occurrence of an Event of Default, at the discretion of the Lender, the Borrower shall not be entitled to any further advance under this Facility. Any advance made by the Lender after the occurrence of an Event of Default shall not oblige the Lender to make further advances thereafter.

Evidence of

The Lender shall maintain records evidencing the Facility. The Lender's

Indebtedness: accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Lender pursuant to this Term Sheet.

Representations and Warranties: The Borrower represents and warrants to the Lender that:

1. it is a corporation duly incorporated, validly existing and duly registered or qualified to carry on business in the Province of Ontario or any other jurisdiction where they may carry on business;
2. subject to the issuance of the Interim Financing Order, the execution, delivery and performance by the Borrower of this Term Sheet has been duly authorized by all necessary actions and do not violate the constating documents or any Applicable Laws or agreements to which any Borrower is subject or by which it is bound;
3. there are no liens or encumbrances on the assets of the Borrower except as set forth in **Schedule "B"** hereto;
4. no event has occurred which constitutes, or which, with notice, lapse of time, or both, would constitute, an Event of Default, a breach of any covenant or other term or condition of this Term Sheet or any document given in connection therewith; and
5. the Borrower has good and marketable title to all of its properties, assets and undertakings.

General: Non-Merger: The provisions of this Term Sheet shall not merge on the first advance hereunder but shall continue in full force and effect for the benefit of the parties hereto.

Further Assurances and Documentation: The Borrower shall do all things and execute all documents deemed necessary or appropriate by the Lender for the purposes of giving full force and effect to the terms, conditions, undertakings hereof and the Interim Financing Charge to be granted pursuant to the Interim Financing Order.

Severability: If any provision of this Term Sheet is or becomes prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor shall it invalidate, affect or impair any of the remaining provisions of this Term Sheet.

Governing Law: This Term Sheet shall be construed in accordance with and be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Counterparts: This Term Sheet may be executed in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Term Sheet by email, PDF or by other electronic means shall be as effective as delivery of a manually executed counterpart.

Assignment: The Lender may assign all or part of its rights and obligations under this Term Sheet without notice to and without the Borrower's consent. The Borrower may not assign or transfer all or any part of its rights or obligations under this Term Sheet, any such transfer or assignment being null and void and of no force or effect. This Term Sheet shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

Time: Time shall be of the essence in all provisions of this Term Sheet.

Termination by Borrower: At any time following the indefeasible payment in full in immediately available funds of all of the amounts owing under the Facility, including, without limitation, principal, interest, costs and expenses contemplated hereunder, the Borrower shall be entitled to terminate this Term Sheet upon written notice to the Lender.

Whole Agreement, Amendments and Waiver: This Term Sheet and any other written agreement delivered pursuant to or referred to in this Term Sheet constitute the whole and entire agreement between the parties in respect of the Facility. There are no verbal agreements, undertakings or representations in connection with the Facility. No amendment or waiver of any provision of this Term Sheet will be effective unless it is in writing signed by the Borrower and the Lender. No failure or delay on the part of the Lender in exercising any right or power hereunder or under the Interim Financing Charge shall operate as a waiver thereon. No course of conduct by the Lender will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Term Sheet and the Interim Financing Charge or the Lender's rights thereunder.

Best Efforts:

Upon the Borrower's acceptance of this Term Sheet, the Borrower will use its best efforts to obtain the Interim Financing Order. In the event that the Interim Financing Order is not obtained on or before 5:00 pm on June 16, 2023, this Term Sheet will expire and be of no force or effect.

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[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

If the terms and conditions of this Term Sheet are acceptable to you, please sign in the space indicated below and return the signed copy of this Term Sheet to us. Acceptance may also be effected by scanned transmission and in counterpart.

We thank you for allowing us the opportunity to provide you with this Term Sheet.

Yours truly,

NEPHESH PARTNERS, LLC

Per: _____

Name:

Title:

Per: _____

Name:

Title:

We have authority to bind the corporation.

ACCEPTANCE

The undersigned hereby accepts this Term Sheet this day of June.

NANOPAY CORPORATION

Per: _____

Name:

Title:

I have authority to bind the corporation.

SCHEDULE “A”

In addition to terms defined elsewhere in this Term Sheet, the following terms shall have the following meanings:

- (a) **“Applicable Laws”** means, with respect to any person, property, transaction or event, all present or future statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction, in each case, having the force of law in any applicable jurisdiction.
- (b) **“Business Day”** means a day on which chartered banks are open for over-the-counter business in Toronto and excludes Saturday, Sunday and any other day which is a statutory holiday in Toronto.
- (c) **“Priority Claims”** means the aggregate of any amounts accrued or payable by any Borrower which under any law may rank prior to or *pari passu* with the Interim Financing Charge or otherwise in priority to any claim by the Lender for payment or repayment of any amounts owing under this Term Sheet, including: (i) wages, salaries, commissions or other remuneration; (ii) vacation pay; (iii) pension plan contributions; (iv) amounts required to be withheld from payments to employees or other persons for federal and provincial income taxes, employee Canadian Pension Plan contributions and employee Employment Insurance premiums, additional amounts payable on account of employer Canada Pension Plan contributions and employer Employment Insurance premiums; (v) harmonized sales tax; (vi) provincial sales or other consumption taxes; (vii) Workers’ Compensation Board and Workplace Safety and Insurance Board premiums or similar premiums; (viii) real property taxes; (ix) rent and other amounts payable in respect of the use of real property; (x) amounts payable for repair, storage, transportation or construction or other services which may give rise to a possessory or registerable lien; and (xi) claims which suppliers could assert pursuant to Section 81.1 or Section 81.2 of the BIA; and (xii) WEPPA Claims.
- (d) **“WEPPA Claims”** means any claims made against the Borrower pursuant to the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s.1, as the same may be amended, restated or replaced from time to time.

Words importing the singular include the plural thereof and vice versa and words importing gender include the masculine, feminine and neuter genders.

SCHEDULE “B”

1. Security interest in favour of HER MAJESTY IN RIGHT ONTARIO REPRESENTED BY THE MINISTER OF FINANCE.

THIS IS EXHIBIT "E" REFERRED TO IN THE
AFFIDAVIT OF LAURENCE COOKE SWORN
BEFORE ME THIS 15th DAY OF JUNE, 2023.

DocuSigned by:
Sara-Ann Wilson
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A Commissioner for Taking Affidavits, etc.

Nanopay Corporation
Cash Flow Forecast
For the period from June 18, 2023
to September 17, 2023

Weeks Ending	Notes	1 25-Jun-23	2 02-Jul-23	3 09-Jul-23	4 16-Jul-23	5 23-Jul-23	6 30-Jul-23
Receipts							
Customer Receipts	2	2,143	2,357	2,593	2,800	3,024	4,729
Other	3	-	-	-	-	-	80,000
Total Receipts		2,143	2,357	2,593	2,800	3,024	84,729
Disbursements							
Payroll	4	(37,500)	(96,349)	(48,751)	(84,349)	(48,751)	(96,349)
Direct Costs	5	(45,913)	(3,000)	(24,000)	-	(35,913)	(13,000)
Total Disbursements		(83,413)	(99,349)	(72,751)	(84,349)	(84,665)	(109,349)
Cash Flow from Operations		(81,271)	(96,992)	(70,159)	(81,549)	(81,641)	(24,620)
Deduct: Professional Fees and Expenses	6	(60,000)	-	-	-	(60,000)	-
Deduct: CRO Fees and Expenses	7						
Add/(Deduct): DIP Loan Advances/(Repayments)	8	275,000	300,000	-	-	-	-
Net Cash Flow		133,729	203,008	(70,159)	(81,549)	(141,641)	(24,620)
Opening Bank Balance		5,295	139,024	342,033	271,874	190,325	48,684
Add: Net Cash Flow		133,729	203,008	(70,159)	(81,549)	(141,641)	(24,620)
Closing Bank Balance		139,024	342,033	271,874	190,325	48,684	24,064

Nanopay Corporation
Cash Flow Forecast
For the period from June 18, 2023
to September 17, 2023

Weeks Ending	Notes	7 06-Aug-23	8 13-Aug-23	9 20-Aug-23	10 27-Aug-23	11 03-Sep-23	12 10-Sep-23
Receipts							
Customer Receipts	2	5,054	5,399	5,895	7,369	7,851	8,362
Other	3	820,426	-	-	-	-	-
Total Receipts		825,480	5,399	5,895	7,369	7,851	8,362
Disbursements							
Payroll	4	(48,751)	(84,349)	(48,751)	(84,349)	(60,751)	(84,349)
Direct Costs	5	-	(24,000)	(35,913)	(13,000)	-	(24,000)
Total Disbursements		(48,751)	(108,349)	(84,665)	(97,349)	(60,751)	(108,349)
Cash Flow from Operations		776,728	(102,949)	(78,770)	(89,980)	(52,900)	(99,986)
Deduct: Professional Fees and Expenses	6	-	-	(60,000)	-	-	-
Deduct: CRO Fees and Expenses	7	(81,000)					
Add/(Deduct): DIP Loan Advances/(Repayments)	8	(709,254)	250,000	-	250,000	-	-
Net Cash Flow		(13,526)	147,051	(138,770)	160,020	(52,900)	(99,986)
Opening Bank Balance		24,064	10,539	157,590	18,820	178,840	125,940
Add: Net Cash Flow		(13,526)	147,051	(138,770)	160,020	(52,900)	(99,986)
Closing Bank Balance		10,539	157,590	18,820	178,840	125,940	25,954

Nanopay Corporation
Cash Flow Forecast
For the period from June 18, 2023
to September 17, 2023

Weeks Ending	<u>Notes</u>	<u>13</u>	<u>Total</u>
		<u>17-Sep-23</u>	
Receipts			
Customer Receipts	2	9,159	66,734
Other	3	-	900,426
Total Receipts		9,159	967,160
Disbursements			
Payroll	4	(48,751)	(872,100)
Direct Costs	5	(35,913)	(254,653)
Total Disbursements		(84,665)	(1,126,753)
Cash Flow from Operations		(75,506)	(159,594)
Deduct: Professional Fees and Expenses	6	(60,000)	(240,000)
Deduct: CRO Fees and Expenses	7		(81,000)
Add/(Deduct): DIP Loan Advances/(Repayments)	8	250,000	615,746
Net Cash Flow		114,494	135,152
Opening Bank Balance		25,954	5,295
Add: Net Cash Flow		114,494	135,152
Closing Bank Balance		140,447	140,447

Nanopay Corporation (“nanopay” or the “Company”)
Major Assumptions
Cash Flow Forecast
For the Period June 18, 2023, to September 17, 2023 (the “**Period**”)

1. Nanopay’s financial projections have been prepared for the purpose of meeting the requirements of the Bankruptcy and Insolvency Act. The Projection is based on the hypotheses that nanopay will continue operations in the normal course, will generate cash flow to meet its ongoing operational needs and where there is a cash flow deficiency such deficiency will be funded by way of external financing.

Receipts:

2. Customer receipts are projected based on existing customers as well as certain new customers that are anticipated to begin doing business with nanopay in the period. It’s primary customers are Intuit and National Bank of Pakistan.
3. Other receipts include SR&ED credits relating to the 2022 fiscal year which application is in the process of being prepared by the Company’s advisors. The 2022 SR&ED credits are estimated to total approximately \$820,000. As well, included are estimated HST refunds relating to the first and second quarters of 2023 yet to be filed and collected by the Company and estimated to total \$80,000.

Disbursements:

4. Payroll includes amounts for approximately twenty-four salaried employees and one independent contractor. Other payroll costs include source deduction remittances and employee benefits payable in the Period.
5. Direct costs include infrastructure costs such as network, data center, VPN and security, as well as subscription expenses for Amazon Web Services, Google, certain developer tools, marketing costs and bank fees. A portion of these expenses are paid through a corporate American Express credit card.
6. Professional fees include fees for the Proposal Trustee, the Company’s legal counsel and counsel to the Proposal Trustee for the Period.
7. Chief Restructuring Officer (“**CRO**”) fees and expenses include \$27,000 per month. The CRO is a requirement of the Debtor in Possession (“**DIP**”) lender. According to the DIP loan agreement, the CRO fees and expenses for the first three months (June to August 2023) are accrued and are required to be paid when the SR&ED credits are received.
8. The DIP loan agreement provides for an initial advance of \$600,000 (“**Initial Advance**”) which shall be reduced by the DIP lender’s legal fees estimated to be \$25,000 resulting in a net advance of \$575,000 following approval of a DIP loan charge by the Court. According to the Company’s cash flow forecast, a DIP loan advance of

\$575,000 will be required during the week-ending June 25, 2023, in order that the Company's payroll obligations are paid when due.

According to the DIP loan agreement, the Initial Advance, including accrued interest, DIP lender facility fee and CRO accrued fees for three months, must be repaid when the 2022 SR&ED credits are forecast to be received in the week-ending August 6, 2023. The repayment is estimated to be approximately \$790,000 and will deplete almost all of the SR&ED credits received. As a result, the Company will require a further DIP loan advance to be made immediately in the following week-ending August 13, 2023.

During the 13-week cash flow forecast period, it is estimated that the Company will receive DIP loan advances, and make repayments, totaling approximately \$1.3 million and \$710,000, respectively. However, according to the DIP loan agreement, any advances made beyond the Initial Advance is at the discretion of the DIP lender. It is estimated that during the Period, the DIP loan, if fully advanced when required, will not exceed \$863,000, including accrued interest, facility fee, lender legal fees, and CRO fees.

THIS IS EXHIBIT "F" REFERRED TO IN THE
AFFIDAVIT OF LAURENCE COOKE SWORN
BEFORE ME THIS 15th DAY OF JUNE, 2023.

DocuSigned by:

Sara-Ann Wilson

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A Commissioner for Taking Affidavits, etc.

ENGAGEMENT AGREEMENT

BY AND BETWEEN:

NANOPAY CORPORATION

-and-

AO8 STRATEGIC ADVISORS, LLC

RECITALS:

A. On May 19, 2023, Nanopay Corporation (the “**Company**”) filed a Notice of Intention to make a Proposal (the “**NOI**”) under Section 50.4 of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”). Dodick Landau Inc. was named as proposal trustee in the NOI filed by the Company (the “**Proposal Trustee**”);

B. The Company wishes to engage Ao8 Strategic Advisors, LLC (“**Ao8 Advisors**”) as chief restructuring officer of the Company (“**CRO**”) to assist with the proposal proceedings commenced by the Company under Section 50.4 of BIA (the “**Proposal Proceeding**”);

C. The services of Ao8 Advisors will be provided by David Kay, in his capacity as CEO of Ao8 Strategic Advisors and not in his personal capacity;

D. Nephesh Partners, LLC and/or its affiliates (the “**DIP Lender**”) has agreed to provide interim financing to the Company for the purposes of, *inter alia*, funding the proposal proceedings (the “**DIP Facility**”), pursuant to a term sheet dated June 15, 2023 (the “**DIP Term Sheet**”);

E. The DIP Lender is an investment vehicle that is managed by David Kay and which is wholly-owned by a party related to David Kay;

F. David Kay does not have a monetary interest in the DIP Facility, and the function of the DIP Lender is to be used as an aggregator of funds that are to be advanced in connection with the Facility; and

G. The Proposal Trustee shall, upon receipt of the funds from the DIP Lender, administer the DIP Facility, by making advances to the Borrower under the DIP Facility upon receipt of written instructions from the CRO, and in accordance with all of the terms and conditions of the DIP Term Sheet;

NOW THEREFORE in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. RESPONSIBILITIES OF THE CRO

During the term of the CRO's engagement (the "**Engagement**"), the CRO will have the following responsibilities:

- (a) work with the Company's current CEO to conduct and control the financial affairs and operations of the Company;
- (b) in cooperation with the officers of the Company, perform a review of the Company, including, but not limited to, a review and assessment of the Company's business, assets, liabilities and operations with respect to the Company's strategic alternatives;
- (c) monitor the Company's cash flow and approve all disbursements of the Company in amounts greater than \$1000;
- (d) reviewing the financial and operational challenges facing the Company;
- (e) together with the Proposal Trustee and the officers of the Company, developing, evaluating, and subject to Board approval, implementing a strategic plan ("**Strategic Plan**") to address the strategic, financial, and operational issues facing the Company, including a potential sale and investor solicitation process and obtaining further interim financing to execute a strategic plan and other business improvement and restructuring initiatives ("**Restructuring**");
- (f) providing advice to the Company's Board, and management on the strategic, financial and operational issues and options of the Company;
- (g) assisting the Company's Board and management in managing the Company's relations, and where appropriate, leading and representing the Company in discussions and negotiations with the Company's commercial counterparties, stakeholders and potential purchasers or investors;
- (h) take steps as in the opinion of the CRO are necessary or appropriate to for the preservation, protection and/or realization of the undertaking, property and assets of Company (the "**Property**") including without limitation the recovery of the Company's Scientific Research and Experimental Development refund for the taxation year ending December 31, 2022, and other tax refunds;

- (i) providing information to the Proposal Trustee and the lender (the “**DIP Lender**”) under the debtor-in-possession term sheet dated June 15, 2023 with the Company (the “**DIP Term Sheet**”) regarding the business and affairs of the Company; and
- (j) providing such other services, and having authority to take any other such actions reasonably relating to any of the responsibilities in this section or to otherwise facilitate the Restructuring and the above matters as appropriate.

The Engagement is subject to approval of the Ontario Superior Court of Justice (the “**Court**”). The Company will make a motion to the Court for an Order appointing the CRO (the “**Order**”) as soon as possible, and the terms of such Order are subject to the CRO’s approval. Upon Court approval, the CRO will begin the Engagement and will continue until the engagement is terminated.

2. FEES

The CRO will be compensated at a rate \$27,500 per month for a minimum of three (3) months. The Company will pay reasonable out of pocket expenses incurred by the CRO in conjunction with the provision of services. Expenses will be billed weekly and paid within five (5) business days of receipt.

3. INFORMATION PROVIDED BY COMPANY

The Company shall: (i) provide the CRO with access to management and other representative of the Company; (ii) furnish all data, material and other information concerning the business, assets, liabilities, operations, cash flows, properties, financial condition and prospects of the Company that the CRO reasonably requests.

The CRO shall rely, without further independent verification, on the accuracy and completeness of all publicly available information and information that is furnished by or on behalf of the Company and otherwise and otherwise reviewed by the CRO in connection with the Company. The Company acknowledges and agrees that the CRO is not responsible for the accuracy or completeness of such information and shall not be responsible for any inaccuracies or omissions therein.

4. LIMITATION OF DUTIES

The CRO makes no representations or guarantees that, inter alia, (i) an appropriate restructuring proposal or strategic alternative can be formulated for the Company, (ii) any restructuring proposal or strategic alternative presented to the Company’s management will be more successful than all other possible restructuring proposals or strategic alternatives, (iii) a restructuring is the best course of action for the Company, or (iv) if formulated, that any proposal or strategic alternative will be accepted by the Company’s creditors, shareholders and other constituents. Further, the CRO will not assume any

responsibility for the Company's decision to pursue, or not pursue any business strategy, or to effect, or not to effect any transaction.

5. TERMINATION

(a) This Agreement shall automatically terminate if it is not approved by the Court in a form satisfactory to the CRO.

(b) This Agreement may be terminated by the CRO upon ten (10) days' advance written notice to the Company, provided that the obligation of the Company to indemnify the CRO, to pay any amounts due to the CRO pursuant to this Agreement, including fees, expenses and tax, and the representations and warranties provided by the Company in connection with this Agreement shall survive the completion of the CRO engagement hereunder or other termination of this Agreement.

(c) If, at any time that is three (3) months following the date of this Agreement,

(i) the DIP Facility provided under the DIP Term Sheet is terminated; and

(ii) the Company receives written notice from the DIP Lender that no further Subsequent Advances (as such term is defined in the DIP Term Sheet) shall be made available to the Company under the DIP Facility,

this Agreement may be terminated by the Company upon ten (10) days' advance written notice to the CRO, provided that the obligation of the Company to indemnify the CRO, to pay any amounts due to the CRO pursuant to this Agreement, including fees, expenses and tax, and the representations and warranties provided by the Company in connection with this Agreement shall survive the completion of the CRO engagement hereunder or other termination of this Agreement.

6. RESIGNATION UPON ENFORCEMENT

In the event that the DIP Lender under the DIP Term Sheet enforces any of its rights and remedies against the Company or the Company's property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge (as such terms are defined in the Interim Financing Order dated June 16, 2023), the CRO shall forthwith resign as CRO of the Company and this Engagement Agreement shall be terminated.

7. LIMITATION OF LIABILITY AND INDEMNITY

The CRO is not serving as a director of the Company and shall not assume management, care or control of any real property owned, leased, subleased or otherwise occupied by the Company.

The CRO shall not have any liability for losses, claims, damages or liabilities arising from the Restructuring, the Strategic Plan, the business and affairs of the Company, or

any other matter contemplated in this Engagement Agreement, except arising as a result of gross negligence or wilful misconduct, and in no event shall the quantum of any liability of the CRO exceed the quantum of the fees paid to the CRO in connection with this engagement.

In the event of a claim by any third party against the CRO and/or the Company that arises out of or that relates to the services performed by the CRO under or in connection with this Engagement Agreement, the Company shall indemnify and hold harmless the CRO from and against all losses, claims, damages, liabilities, costs and expenses (including, without limitation, reasonable legal fees on a full indemnity basis) incurred by either of them in connection with any such claim, except to the extent finally determined to have resulted from the gross negligence or wilful misconduct of the CRO. This indemnity shall be in addition to and not in substitution for any other indemnification right that the CRO may have.

The foregoing provisions shall survive termination of this Engagement Agreement.

8. GENERAL PROVISIONS

(a) **Independent Contractor.** Nothing contained in this Agreement shall be construed as creating a relationship between the Company or any of its subsidiaries and the CRO, other than that of an independent contractor. The CRO and any of its employees, agents or representatives, including David Kay, shall not be deemed a partner, employee or agent of the Company or any of its subsidiaries by virtue of this Agreement.

(b) **Amendment; Waiver; Assignment.** No provision of this Agreement may be amended, modified, waived or discharged unless such amendment, modification, waiver or discharge is agreed to in writing and signed by the parties. No waiver by either party hereto, at any time, of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. Neither party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the other. Any purported assignment made in contravention of this section shall be null and void and have no legal effect.

(c) **Severability.** The parties have carefully reviewed the provisions of this Agreement and agree that they are fair and equitable. However, in light of the possibility of differing interpretations of law and changes in circumstances, the parties agree that if any or more of the provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall, to the extent permitted by law, remain in full force and effect and shall in no way be affected, impaired or invalidated.

(d) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

(e) **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto, and any predecessors or affiliates thereof with respect to the subject matter hereof, and supersedes all prior agreements, understandings and arrangements, oral and written between the parties either jointly or individually, with respect to the subject matter hereof.

(f) **Counterparts.** This Agreement may be executed by the parties hereto in counterparts, each of which shall be deemed an original, but both such counterparts shall together constitute one and the same document.

(g) **Currency.** All financial references in this Agreement are to Canadian dollars unless otherwise indicated.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of this 15th day of June 2023.

NANOPAY CORPORATION

Per: _____
Name:
Title:

I have authority to bind the corporation.

Ao8 STRATEGIC ADVISORS, LLC

Per: _____
Name:
Title:

I have authority to bind the corporation.

THIS IS EXHIBIT "G" REFERRED TO IN THE
AFFIDAVIT OF LAURENCE COOKE SWORN
BEFORE ME THIS 15th DAY OF JUNE, 2023.

DocuSigned by:
Sara-Ann Wilson
14765F6D06F543D...

A Commissioner for Taking Affidavits, etc.

Ao8 STRATEGIC ADVISORS, LLC

David Kay, Chairman & CEO

983 Park Avenue, New York, NY 10028 | (917) 991-2592 | Dkay@Ao8Advisors.com

OVERVIEW

- *Ao8 Strategic Advisors, LLC ("Ao8 Advisors") is a privately-held firm with a proven expertise in board and strategic services, complex conflict management and enforcement services, and corporate restructurings across various situations.*
- *Most assignments are designed to be one-person projects with Mr. Kay serving on Boards of Directors or providing fiduciary, CRO, management and/or advisory services directly, in conjunction with the entity's existing Board of Directors and management.*
- *Representative clients typically include companies, partnerships, boards of directors, private equity sponsors, banks, bondholders, trade creditors, venture capital sponsors, law firms and investment banks.*

REPRESENTATIVE BOARD & STRATEGIC ADVISORY EXPERIENCE

Hoyos Integrity Corporation, Private Company **2022 – Present**
Chief Restructuring Officer, Interim CEO & Advisor to the Board of Directors

- Led the successful restructuring of the Company's capital structure and raised both Debtor in Possession financing and an exit facility for the Company's creditors
- Managed the final development of the Company's secured phone and biometrics products and effectuated the first market adoption of both products
- Restructuring the senior management of the Company and leading a complete re-branding of the Company's products and go-to-market strategy
- Managing all aspects (internal and external) of the investigation and prosecution of a number of defendant's that harmed the Company interests

Private Equity Company #1, Private Company **2020 – Present**
Manager of the Board of Managers

- Developed the strategy for an international, multi-jurisdictional investigation of various parties for violating property rights of the Company and actively manage the implementation of that strategy
- Organized and worked with a team of experts and advisors to analyze the information collected to determine the risk and time adjusted value of bringing an action against those parties to recover more than US\$1.0 billion - which represented the only source of potential recovery for the Company's stakeholders
- Managing all aspects of the prosecution against the identified defendants and coordinating with teams (internal and external) to run the process and the potential monetization and distribution of proceeds

Private Equity Company #2, Private Company **2020 – Present**
Manager of the Board of Managers

- Managing the transition of the Company out of a public company restructuring and into its new role as a private holding company
- Working with management to restructure an M&A transaction that was not able to be completed with its intended effect, including restructuring a preferred debt instrument issued pursuant to that transaction
- Guiding interactions with strategic partners, competitors, and counterparties to maximize expected outcomes

RBS Holdings, LLC, Private Entity **2020 – Present**
Special Advisor and Limited Partner to the Company

- Lead the successful restructuring of all of the European Wax Centers in New York City south of 57th Street
- Managed negotiations with more than 12 different landlord groups, a major bank, and the national corporate office to implement operational and capital structure improvements to allow the stores to successfully navigate the current economic environment
- Drove a successful capital raising process for both debt and equity to (i) stabilize the underlying business and (ii) allow for potential expansion to maximize the exclusivity area owned by the Company
- Continuing to work with the Company to define and lead/implement their strategic direction, as the Company has now firmly begun an expansion process that is expected to more than double its size over the next 3 years

Private Equity Company #3, Private Entity **2019 – Present**
Special Advisor to the Company

- Analyzed viability and attractiveness of underlying multi-jurisdictional claim with a potential value of in excess of US\$500 million
- Leading the effort to build out the team that will manage this process for the Company, including hiring lawyers, experts, advisors, and sourcing witnesses
- Developed a model to determine risk and time adjusted value of the claim as well as the amount and structure of the investment
- Managing all aspects of the process on behalf of the Company, including strategic decisions, day-to-day interactions with professionals, and budget/cash flows

Private Company #1, Private Company**2020 – 2022***Member of the Board of Managers*

- Leading the effort to prosecute and monetize a commercial arbitration claim with a potential value of more than US\$1.0 billion
- Working with various stakeholders to finance and enforce an arbitration of the underlying claim
- Defining and implementing the legal and enforcement strategy with outside lawyers and other outside advisors to maximize value
- Successfully lead a process that resulted in a positive ruling from the arbitration panel on a key legal issue for the claim to be resolved in favor of the Company

Liti Capital, S.A., Public Blockchain Company**2021 – 2022***Executive Chairman and CIO*

- Provided senior level expertise and guidance to a litigation finance start-up company
- Sourced and closed initial litigation financing opportunities
- Actively worked with third party seed investors to raise capital for the Company's successful initial launch and early investments
- Continue to work with the Company on financing opportunities

Kenon Holdings Ltd., Public Company**2019 – 2021***Special Advisor to the Board of Directors*

- Actively worked with senior management and service providers on various disputes worth hundreds of millions of dollars
- Advised the relevant parties on the process and material decisions related to those disputes
- Guided interactions with various experts and third parties to minimize costs and maximize risk and time adjusted cash proceeds
- Successfully aided the enforcement and settlement of a large and contested insurance claim that resulted in a payout in excess of 95% of the policy value

Cyrq Energy, Public & Private Company**2011 – 2019***Member of the Board of Directors & Executive Director*

- Defined the strategic direction of the Company
- Led the U.S. Chapter 11 restructuring of the Company, which included negotiating, and reach agreements with, project level secured debt, unsecured creditors committee, and trade debt while simultaneously spearheaded an effort to bring and ultimately settle litigation with Pratt & Whitney
- Worked directly with management on a day-to-day basis to build a company from a non-revenue generating, single resource entity to a 150 MWH generation Company with approximately US\$45 million of EBITDA
- Led the outside capital raise of approximately US\$200 million of long-term project financing with insurance companies and large money-market banks

Crystallex International Corporation, Public Company**2012 – 2019***Member of the Board of Directors*

- Defined the strategic direction of the Company and guided negotiations with the Venezuelan Government, the World Bank dispute resolution process, and the corporate restructuring process (including leading multiple capital raises) with public bondholders, equity holders and trade creditors
- Developed and implemented the strategy that led to a US\$1.4 billion arbitration award issued by the World Bank in favor of the Company (which was the largest arbitration award in the history of the World Bank at the time it was issued)
- Architect of enforcement strategy to pursue CITGO Petroleum's holding company as an alter ego of the Venezuelan Government resulting in the imposition of a judicial lien on the shares of CITGO; with an estimated TEV between US\$8.0 billion and US\$10 billion – the lien on the CITGO shares is one of the largest attachments in United States history
- Worked with management on a day-to-day basis to implement enforcement and recovery efforts that have already resulted in the payment of in excess of US\$1.0 billion of cash and nominal securities to the Company

Eco Oro Minerals Corp., Public Company**2016 – 2019***Co-Executive Chairman of the Board of Directors*

- Defined the strategic direction of the Company and guided interactions with the Colombian Government, the World Bank dispute resolution process, and negotiations with creditors, strategic partners and competitors
- Led the Board through three financing processes with outside third parties and major institutional equity investors
- Guided the Board through a contested proxy fight with activist investors and brokered a consensual solution with all parties

Gabriel Resources Ltd., Public Company**2016 – 2019***Member of the Board of Directors*

- Had direct responsibility for the day-to-day oversight of managements' material decisions with respect to the Company's primary asset, a US\$5.0 billion arbitration against the Romanian Government, including guiding interactions with key advisors, third party experts, witnesses, and negotiations with various governments (including the United States government)
- Worked with the Board and all five of the major institutional shareholders to effectuate multiple consensual financing processes and equity raises
- Collaborated with a small group of Board members to craft a transition plan for Senior Management as well as a footprint and expense rationalization plan

OTHER RELEVANT BOARD & ADVISORY COMMITTEE EXPERIENCE

Royal Realty Group , Private Company <i>Member of the Advisory Committee</i>	2018 – 2019
IC Power Ltd. , Private Company <i>Member of the Advisory Committee</i>	2018 – 2019
Israel Chemicals Ltd. , Public Company <i>Member of the Advisory Committee</i>	2017 – 2019
Lodestar International , Private Company <i>Member of the Board of Directors</i>	2017 – 2019
Next Investments, LLC. , Private Company <i>Member of the Board of Directors</i>	2016 – 2019
WalAm Energy Inc. , Private Company <i>Member of the Board of Directors</i>	2016 – 2019
Latin American Regional Aviation Holding Corp. , Private Company <i>Member of the Advisory Committee</i>	2016 – 2019
Amlyn Holding B.V. , Private Company <i>Board Observer and Advisor to the Board of Directors</i>	2016 – 2019
Bursel Tekstil Sanayi Ve Diş Ticaret A.Ş. , Private Company <i>Member of the Board of Directors</i>	2016 – 2019
Empower Energies Corp. , Public & Private Company <i>Chairman of the Board of Directors</i>	2012 – 2017
Nortel Networks , Public Company in Restructuring <i>Authorized Negotiating Member of the United States Unsecured Bondholder Committee</i>	2012 – 2015
Colonial BancGroup , Public Company in Restructuring <i>Secured Lender and Member of Negotiating Committee with Trustee against the FDIC</i>	2012 – 2015

EMPLOYMENT EXPERIENCE

Tenor Capital Management Company, L.P. , New York, NY <i>Founding Partner and Portfolio Manager of the TICAF Funds</i>	2009 – 2019
<ul style="list-style-type: none"> Conceived of and developed the private equity arm of Tenor with an investment strategy focused on investing in complex special situations and large-scale international disputes Successfully raised two funds, providing the opportunity to create outsized, non-market correlated returns by making strategic investments where there was both (i) a strong risk-adjusted return and (ii) an ability to directly and positively impact the outcome Led the deployment of capital, built out the investment team, and executed the strategy across approximately 40 investments in more than 17 countries on every habitable continent in the world 	
Jefferies Group LLC , Recapitalization and Restructuring Group, New York, NY <i>Associate and Senior Analyst</i>	2008 – 2009
<ul style="list-style-type: none"> Managed, analyzed, and advised on corporate restructurings, with an emphasis on debtors and creditors' committees in large, multifaceted transactions, both out of court and in Chapter 11 Negotiated complex multi-party transactions between multiple stakeholders with divergent economic interests in order to maximize value for clients Representative engagements: Nortel Networks, The Trump Organization, Verasun Energy Corporation, Delphi Corporation and Hard Rock Park 	
Akin Gump Strauss Hauer & Feld LLP , Financial Restructuring Group, New York, NY <i>Associate and Summer Associate</i>	2005 – 2008
<ul style="list-style-type: none"> Participated in the representation of creditors' committees and bondholder committees in large, complex out-of-court restructurings and Chapter 11 cases Representative cases: Delta Airlines, Loral Space & Communications, Calpine Corporation, Anchor Glass Container Corporation and Vertis Communications 	

EDUCATION

Fordham University School of Law, New York, NY

Juris Doctor, *Cum Laude*, May 2006

- Honors: Dean's List 2003-2004, Dean's List 2004-2005, Urban Law Journal

University of Pennsylvania, Philadelphia, PA

Bachelor of Arts in International Relations, May 2001

- Senior Thesis: *Globalization and its Effect on the International Economy*

District of Ontario
Division No. 9 - Toronto
Court File No.: BK-23-2946534-0031
Estate File No.: 31-2946534

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF NANOPAY CORPORATION

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF LAURENCE COOKE
(sworn June 15, 2023)

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

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Sara-Ann Wilson (LSO #56016C)
Tel: 416-863-4402
sara.wilson@dentons.com

Lawyers for Nanopay Corporation

Tab 3

District of Ontario
 Division No. 9 - Toronto
 Court File No.: BK-23-2946534-0031
 Estate File No.: 31-2946534

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

THE HONOURABLE)	FRIDAY, THE 16TH
)	
JUSTICE OSBORNE)	DAY OF JUNE, 2023

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
 R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
 OF NANOPAY CORPORATION**

ORDER

THIS MOTION, made by Nanopay Corporation (the “**Company**”) pursuant to Sections 50.4(9) and 50.6 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), for an order extending the time for the Company to file a proposal, approving the DIP Term Sheet (as defined herein), granting the DIP Lender’s Charge (as defined herein and pursuant to the terms hereof), and authorizing the Company to engage David Kay as Chief Restructuring Officer of the Company, and granting certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario by video conference.

ON READING the Affidavit of Laurence Cooke, sworn June 15, 2023 (the “**Cooke Affidavit**”), the First Report of Dodick Landau Inc., in its capacity as proposal trustee of the Company (the “**Proposal Trustee**”), dated June 15, 2023 (the “**First Report**”), and on hearing the submissions of counsel for the Company, the Proposal Trustee, the DIP Lender (as defined herein)

and such other counsel as were present, no one else appearing for any other person although duly served as appears from the Affidavit of Service of Amanda Campbell sworn June 15, 2023, filed.

SERVICE

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

EXTENSION OF TIME TO FILE PROPOSAL

2. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for the Company to file its proposal be and is hereby extended to August 2, 2023.

DIP FINANCING

3. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to obtain and borrow under a credit facility (the “**DIP Loan Facility**”) from Nephesh Partners, LLC and/or its affiliate (the “**DIP Lender**”), provided that borrowings under the DIP Loan Facility shall not exceed \$2,000,000 unless permitted by further Order of this Court.

4. **THIS COURT ORDERS** that the DIP Loan Facility shall be on the terms and subject to the conditions set forth in the term sheet between the Company and the DIP Lender, substantially in the form attached as Exhibit “D” to the Cooke Affidavit (the “**DIP Term Sheet**”). The DIP Term Sheet, subject to such minor amendments as may be acceptable to the Company and the DIP Lender, and approved by the Proposal Trustee, be and is hereby approved.

5. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Company is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, costs, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents (the “**Obligations**”) as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

PROPOSAL TRUSTEE TO ADMINISTER DIP LOAN ADVANCES

6. **THE COURTS ORDERS** that, as contemplated by the DIP Term Sheet, the Proposal Trustee be and is hereby authorized to administer the advances under the DIP Loan Facility, for the benefit of the Company and the DIP Lender by: (a) receiving funds advanced under the DIP Loan Facility into a separate account maintained by the Proposal Trustee solely for such purpose; and (b) disbursing such funds in accordance with the directions of the Company, as evidenced by written directions of the CRO (as defined below).

7. **THIS COURT ORDERS** that in carrying out the administrative functions set out in paragraph 6 hereof, the Proposal Trustee shall not have or incur any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person (as defined below) from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the Proposal Trustee.

DIP LENDER'S CHARGE

8. **THIS COURT ORDERS** that, upon execution of the DIP Term Sheet, the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on all of the Company’s current and future, real and personal, tangible and intangible assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, including the Company’s intellectual property, the refund due from the Government of Canada and the Government of Ontario with respect to Scientific Research and Experimental Development for the taxation year ending December 31, 2022, and other tax refunds (the “**Property**”) as security for the Obligations. The DIP Lender’s Charge shall not exceed an aggregate amount of \$2,000,000, plus interest, fees, and costs and shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraph 12 hereof.

9. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, or Section 69 of the BIA:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon 3 Business Days’ (as defined in the DIP Term Sheet) notice to the Company and the Proposal Trustee, may exercise any and all of its rights and remedies against the Company or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender’s

Charge, and any additional rights and remedies available to it, at law or in equity, including without limitation, to cease making advances to the Company and set off and/or consolidate any amounts owing by the DIP Lender to the Company against the obligations of the Company to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Company and for the appointment of a trustee in bankruptcy of the Company; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Company or the Property.

10. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by the Company under the BIA or any plan of arrangement or compromise filed by the Company under the *Companies' Creditors Arrangement Act*, with respect to any advances made under the Definitive Documents or the DIP Term Sheet.

VALIDITY OF CHARGE CREATED BY THIS ORDER

11. **THIS COURT ORDERS** that the filing, registration or perfection of the DIP Lender's Charge shall not be required, and that, upon execution of the DIP Term Sheet, the DIP Lender's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the DIP Lender's Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

12. **THIS COURT ORDERS** that, upon execution of the DIP Term Sheet, the DIP Lender's Charge shall constitute a charge on the Property and the DIP Lender's Charge shall rank in priority to all other security interests, mortgages, deemed trusts (statutory or otherwise), trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any individual, firm, corporation, governmental agency, or any other entities (each and any, a "**Person**").

13. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the DIP Lender's Charge, unless the Company obtains the prior written consent of the Proposal Trustee, the DIP Lender or further Order of this Court.

14. **THIS COURT ORDERS** that the DIP Term Sheet, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Company, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the DIP Lender's Charge nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) the DIP Lender shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Company entering into the DIP Term Sheet, the creation of the DIP Lender's Charge, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Company pursuant to this Order, the DIP Term Sheet or the Definitive Documents (including any and all fees and interest), and the granting of the DIP Lender's Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

15. **THIS COURT ORDERS** that the DIP Lender's Charge created by this Order, insofar as it is a charge over leases of real property in Canada, shall only be a charge in the Company's interest in such real property leases.

CHIEF RESTRUCTURING OFFICER

16. **THIS COURT ORDERS** that the engagement agreement, attached as Exhibit "F" to the Cooke Affidavit (the "**CRO Engagement Agreement**"), providing for the engagement of David Kay, in his capacity as chief executive officer of Ao8 Strategic Advisors, LLC and not in his personal capacity, to act as Chief Restructuring Officer ("**CRO**") of the Company, and the payment

of the fees and expenses contemplated thereby be and is hereby approved. The Company be and is hereby authorized to execute the CRO Engagement Agreement, with such minor amendments as may be agreed to by the Company and the CRO and approved by the Proposal Trustee.

17. **THIS COURT ORDERS** that the CRO shall not be or be deemed to be a director, *de facto* director or employee of the Company.

18. **THIS COURT ORDERS** that, upon the execution of the CRO Engagement Agreement, the CRO is hereby directed and empowered to exercise and perform all of the powers, responsibilities and duties described in the CRO Engagement Agreement, as well as all other ancillary powers, responsibilities or duties as may be necessary or useful in order to give full and proper effect to the terms and conditions of the CRO Engagement Agreement or this Order.

19. **THIS COURT ORDERS** that, upon the execution of the CRO Engagement Agreement, the Company and its shareholders, directors, officers, employees, agents and representatives shall co-operate fully with the CRO in the exercise of his powers and the discharge of his obligations, including providing the CRO with access to the Company's books, records, assets and premises as the CRO requires.

20. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO.

21. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, or otherwise, against or in respect of the CRO, and all rights and

remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Company, the Proposal Trustee and the CRO. Notice of any such motion seeking leave shall be served upon the Company, the Proposal Trustee and the CRO at least seven (7) days prior to the presentation date of any such motion for leave.

22. **THIS COURT ORDERS** that the obligations of the Company to the CRO pursuant to the CRO Engagement Agreement, the DIP Term Sheet, and this Order, including, without limitation, the CRO Fee (as defined in the DIP Term Sheet), shall be treated as unaffected and may not be compromised in any plan of arrangement or proposal under the BIA, or any other restructuring and no such plan or arrangement, proposal or restructuring shall be approved that does not provide for the payment in full of all amounts due to the CRO pursuant to the terms of the CRO Engagement Agreement, the DIP Term Sheet, and this Order.

SERVICE

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

Case Website shall be established in accordance with the Protocol with the following URL
[‘https://dodick.ca/public_documents/nanopay-corporation/’](https://dodick.ca/public_documents/nanopay-corporation/).

GENERAL

24. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or elsewhere to give effect to this Order and to assist the Company, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Company and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

25. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order, and this Order is enforceable without the need for entry and filing.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF NANOPAY CORPORATION

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

PROCEEDING COMMENCED AT TORONTO

ORDER

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77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

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Sara-Ann Wilson (LSO #56016C)
Tel: 416-863-4402
sara.wilson@dentons.com

Lawyers for Nanopay Corporation

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF NANOPAY CORPORATION

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

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