

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
NANOPAY CORPORATION
OF THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

SUPPLEMENT TO FIRST REPORT TO COURT OF THE PROPOSAL TRUSTEE

June 22, 2023

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DATED JUNE 22, 2023

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INTRODUCTION

1. On May 19, 2022 (the “**Filing Date**”), Nanopay Corporation (“**Debtor**” or the “**Company**”) filed with the Official Receiver a Notice of Intention to Make a Proposal (“**NOI**”) to its creditors pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and named Dodick Landau Inc. as Proposal Trustee (the “**Proposal Trustee**”).
2. On June 15, 2023, in support of the Debtor’s motion, the Proposal Trustee served and filed with the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) its first report to this Court (“**First Report**”), which provided an update since the commencement of these proceedings. A copy of the First Report (without appendices) is attached hereto as **Appendix “A”**. The purpose of the First Report of the Proposal Trustee was, *inter alia*, to provide the Court with information pertaining to the following: (i) the Debtor’s request for an extension of the time for filing a proposal to August 2, 2023; (ii) the Debtor’s projected cash flow for the period from June 18, 2023, to September 17, 2023; and (iii) the Debtor’s request that it be authorized to obtain and borrow interim financing.
3. The First Report also included the Proposal Trustee’s recommendation that this Court make an order, as requested by the Debtor, to:
 - a) pursuant to Section 50.4(9) of the BIA, extend the time for the Debtor to file a proposal to August 2, 2023;
 - b) authorize the Debtor to borrow under a credit facility (the “**DIP Loan Facility**”) from Nephesh Partners, LLC (the “**DIP Lender**”) in order to finance the Debtor’s working capital requirements and professional fees;
 - c) pursuant to Section 50.6 of the BIA, grant the DIP Charge (as defined in the First Report) in favour of the DIP Lender; and
 - d) appoint David Kay, in his capacity as CEO of Ao8 Strategic Advisors, as Chief Restructuring Officer of the Company.
4. Pursuant to the Order of the Court, dated June 16, 2023 the relief sought by the Debtor

described above was granted. However, as service of the Debtor's motion material was short, pursuant to the endorsement of the Honourable Justice Osborne, dated June 16, 2023, the Court directed the matter return to Court for a case conference on June 23, 2023, to advise the Court whether any parties served object to any of the relief sought by the Debtor. In the interim, the Court ordered that advance under the DIP Loan Facility be limited to \$275,000 in the aggregate. Copies of the June 16, 2023, Order and Endorsement are attached hereto as **Appendix "B"**.

5. The purpose of this report ("**Supplemental Report**") is to update the Court on developments since the issuance of the First Report and recommend that the Company be authorized to borrow the full amount under the DIP Loan Facility, up to the maximum principal amount of \$2,000,000, pursuant to the terms of the DIP Commitment Letter.
6. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Report.

TERMS OF REFERENCE

7. In preparing this Report, the Proposal Trustee has relied upon certain unaudited, draft and/or internal financial information, the Debtor's books and records, discussions with the management of the Debtor ("**Management**") and information from other third-party sources (collectively, the "**Information**").
8. Except as described in this Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Canadian Institute of Chartered Accountants Handbook (the "**CPA Handbook**") and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
9. The Proposal Trustee has prepared this Supplemental Report in its capacity as a Court appointed officer and has made a copy of this Report available on the Proposal Trustee's website at www.dodick.ca for purposes of this matter returnable June 23, 2023. Parties using this Supplemental Report, other than for the purpose of the

motion, are cautioned that it may not be appropriate for their purposes.

10. All references to dollars are in Canadian currency unless otherwise noted.

CREDITORS

11. As was outlined in the First Report, approximately \$760,322 is owing by the Debtor to the Ministry of Finance of Ontario ("**Ministry**") in respect of Employer Health Tax ("**EHT**"). Of the balance outstanding, approximately \$375,000 is registered as secured under the PPSA registry. On June 15, 2023, the Province of Ontario Department of Finance, in respect of the EHT obligations, was served with Debtor's motion materials including the First Report.
12. As of the date of this Supplemental Report, the Ministry has not contacted the Proposal Trustee, the Debtor or their legal counsels, except to request the removal of the collections officer from the service list.
13. The Proposal Trustee was in contact with a former employee requiring assistance with amending her Record of Employment in order that she may complete her Employment Insurance application.
14. In addition, the Proposal Trustee was in contact with the legal counsel of the lender who loaned the Company \$37,500 and is referenced in the Court's endorsement. He advised that his client does not oppose the relief sought on June 16, 2023.

INTERIM FINANCING

15. As was detailed in the First Report, a shareholder group, represented by Mr. David Kay, expressed interest in making a DIP loan to the Debtor and agreed to advance a DIP loan up to a maximum principal amount totaling \$2,000,000 in the timeline required by the Company to fund its working capital needs. The form of DIP Commitment Letter was negotiated and accepted by the Company on June 15, 2023, subject to this Court's approval. The DIP Lender advised the Proposal Trustee that it is an aggregator of funds and as of the date of the First Report was not in a position to execute the DIP Commitment Letter as the underlying loan commitments from the individual investors were in the process of being negotiated and executed. Accordingly, the form of DIP Commitment Letter attached to the First Report and the

Company's motion record was unsigned.

16. On June 20, 2023, the DIP Lender and the Debtor executed the DIP Commitment Letter, and the Debtor and the CRO executed the CRO engagement agreement. A copy of the executed DIP Commitment Letter is attached hereto as **Appendix "C"**. No substantive changes were made to the form DIP Commitment Letter prior to its execution.
17. The Proposal Trustee opened a separate trust account and agreed to act as the recipient of the various advances in connection with the DIP Loan Facility. As of the filing of this Supplemental Report, the Proposal Trustee has received \$180,000 in respect of the total initial advance contemplated in the DIP Commitment Letter of \$600,000 ("**Initial Advance**"). The Proposal Trustee has been advised by the DIP Lender that should the Court authorize advances under the DIP Loan up to maximum amount set out in the DIP Term Sheet of \$2,000,000, the Proposal Trustee will be in receipt of the balance of the Initial Advance during the week of Monday, June 26, 2023. On June 22, 2023, the Proposal Trustee transferred the \$180,000 to the Debtor.
18. As set out in the Cash Flow Forecast, further advances under the DIP Loan Facility will be required next week for the Company to pay its post-filing obligations, including payroll.

CONCLUSION AND RECOMMENDATION

19. Based on the foregoing, the Proposal Trustee respectfully recommends that the Court authorize advances under the DIP Loan Facility up to the maximum principal amount totaling \$2,000,000.

All of which is respectfully submitted this 22nd day of June, 2023.

DODICK LANDAU INC.

In its capacity as the Proposal Trustee of
Nanopay Corporation and not
in its personal or corporate capacity.

Per:

A handwritten signature in black ink, appearing to be 'R. Dodick', written over a horizontal line.

Rahn Dodick, CPA, CA, CIRP, LIT
President

APPENDIX “A”

Court File No. 31-2946534

Estate File No. 31-2946534

**ONTARIO
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FIRST REPORT TO COURT OF THE PROPOSAL TRUSTEE

DATED JUNE 15, 2023

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INTRODUCTION

1. On May 19, 2022 (the “**Filing Date**”), Nanopay Corporation (“**Debtor**” or the “**Company**”) filed with the Official Receiver a Notice of Intention to Make a Proposal (“**NOI**”) to its creditors pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and named Dodick Landau Inc. (“**DLI**”) as Proposal Trustee (the “**Proposal Trustee**”). Attached as **Appendix “A”** is the Certificate of Filing of the NOI.
2. An overview of the Debtor’s business operations, corporate structure and financial difficulties which led to the filing of the NOI is set out in the Affidavit of Laurence Cooke sworn June 15, 2023 (the “**Cooke Affidavit**”), served, and filed with the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) in support of the Debtor’s motion for the relief set out herein.
3. All capitalized terms used in this report (the “**First Report**”), but not otherwise defined, shall have the meaning ascribed to such terms in the Cooke Affidavit.
4. The purpose of this First Report of the Proposal Trustee is to provide the Court with information pertaining to the following:
 - i) limited background information about the Company;
 - ii) the Debtor’s request for an extension of the time for filing a proposal to August 2, 2023;
 - iii) the Debtor’s projected cash flow for the period from June 18, 2023, to September 17, 2023 (the “**Cash Flow Forecast**”);
 - iv) the Debtor’s request that it be authorized to obtain and borrow interim financing, including the terms of the debtor in possession (“**DIP**”) facility and DIP charge; and
 - v) the Proposal Trustee’s recommendation that this Court make an order, as requested by the Debtor, to:
 - a) pursuant to Section 50.4(9) of the BIA, extend the time for the Debtor to file a proposal to August 2, 2023;

- b) authorize the Debtor to borrow under a credit facility from Nephesh Partners, LLC (the “**DIP Lender**”) in order to finance the Debtor’s working capital requirements and professional fees;
- c) pursuant to Section 50.6 of the BIA, grant the DIP Charge (as defined below) in favour of the DIP Lender; and
- d) appoint David Kay, in his capacity as CEO of Ao8 Strategic Advisors, as Chief Restructuring Officer (“**CRO**”) of the Company.

TERMS OF REFERENCE

- 5. In preparing this Report, the Proposal Trustee has relied upon certain unaudited, draft and/or internal financial information, the Debtor’s books and records, discussions with the management of the Debtor (“**Management**”) and information from other third-party sources (collectively, the “**Information**”).
- 6. Except as described in this Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards (“**GAAS**”) pursuant to the Canadian Institute of Chartered Accountants Handbook (the “**CPA Handbook**”) and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
- 7. Some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the CPA Handbook, has not been performed. Future oriented financial information referred to in this Report was prepared based on Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations may be material.
- 8. The Proposal Trustee has prepared this Report in its capacity as a Court appointed

officer and has made a copy of this Report available on the Proposal Trustee's website at www.dodick.ca for purposes of the Debtor's motion returnable June 16, 2023. Parties using this Report, other than for the purpose of the motion, are cautioned that it may not be appropriate for their purposes.

9. All references to dollars are in Canadian currency unless otherwise noted.

BACKGROUND

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 much quicker and easier.
11. 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.

CREDITORS

Source Deduction Remittances

12. As at the Date of Filing, the Company estimated that it owed approximately \$192,000 to the Canada Revenue Agency ("**CRA**") in respect of unremitted source deductions. Since the Date of Filing, the Proposal Trustee has been working with the Company to review statements of account issued by CRA in May and June 2023. These statements of account indicate that CRA has been applying the Company's HST refunds to offset against the unpaid source deduction arrears. According to a CRA statement of account issued to the Company on June 5, 2023, there are late remittance penalties owing of \$3,584.17 for the remittance period ended May 30, 2023, otherwise, there are no pre-filing unremitted source deductions payable to CRA.
13. 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.

Employer Health Tax

14. As at the Date of Filing, according to Management, there was approximately \$600,000 owing to the Ministry of Finance of Ontario in respect of Employer Health Tax ("**EHT**"). On June 14, 2023, Management obtained access to its online EHT account which currently states an amount owing by the Company of \$760,322.
15. Of the balance outstanding, approximately \$375,000 is registered as secured on the PPSA registry. As a result, the remaining balance owing in respect of EHT would be an unsecured claim.

Unsecured Debt

16. According to Management, at the Filing Date, the Debtor's unsecured third-party debt totals \$4.5 million and is comprised of the following:
 - i) Landlord - \$2.4 million (represents approximately two years of pre-filing unpaid rent);
 - ii) Two Lenders/Investors - \$1.3 million;
 - iii) Four Trade Creditors - \$170,000;
 - iv) EHT - \$385,000; and
 - v) Sixteen Former Employees - \$181,000 (approximately \$80,000 relates to wages and vacation pay, of which approximately \$32,000 are employee preferred claims).
17. According to Management, over a period of eight years, shareholder investments have been made in Nanopay Holdings Inc. ("**NHI**") totaling approximately \$35.8 million ("**Investments**"). The Debtor is a wholly owned subsidiary of NHI. NHI has no operations of its own and no bank account. As such, the Investments were deposited into the bank account of the Debtor to fund the operations of the Debtor, which Management advised was the intended use for the Investments. As a result, the external accountant of the Debtor recorded a year-end related party adjustment on the balance sheets of the Debtor and NHI to reflect a payable from the Debtor to NHI totaling the cumulative Investments of \$35.8 million. The Proposal Trustee has

requested documentation from the Debtor in respect of this related party debt obligation.

INTERIM FINANCING

18. As described in the Cooke Affidavit, the Debtor's liquidity constraints have resulted in it not having sufficient funds to continue operating its business. The Company is a start-up and does not yet have sufficient revenue to fund its working capital needs. It only began earning revenue in the first quarter of 2023, and the adoption of its technology by the market has been slower than initially anticipated. However, there has been a steady increase in the use of its technology which has resulted in it earning revenue at a gradually increasing rate. As such, the Company has had to rely on equity investments received through NHI, and loans from two individual lenders/shareholders, to continue to fund its working capital needs until the Filing Date.
19. Before and after the Filing Date, the Company contacted parties who had previously funded the Company, to request further loans to finance the Company's operations while it continues to build its customer base. The Proposal Trustee is aware of the Debtor speaking to two shareholder groups that expressed interest in making a DIP loan. One group, represented by two creditors and investors in NHI, considered whether to make further loans but ultimately did not submit a DIP loan term sheet to the Debtor.
20. A second shareholder group, represented by Mr. David Kay, expressed interest in making a DIP loan and carried out financing due diligence over a short period of time. Upon completion of its due diligence, the DIP Lender agreed to advance a DIP loan up to a maximum principal amount totaling \$2,000,000 in the timeline required by the Company to fund its working capital needs. The DIP Lender's term sheet was negotiated and accepted by the Company by June 15, 2023, subject to this Court's approval. A copy of the unsigned commitment letter for the DIP loan ("**DIP Commitment Letter**") is attached hereto as **Appendix "B"**.
21. The Proposal Trustee understands that the DIP Lender is to be used as an aggregator of funds that are to be advanced in connection with the DIP loan by a group of individuals and corporations. According to the DIP Lender, it is in the process of

completing the administrative steps of aggregating the individual commitments to fund the Company's DIP loan and expects this process will be completed by Tuesday, June 20, 2023, at which time it will be in a position to sign the DIP Commitment Letter and fund. If for any reason the DIP Loan Commitment Letter is not signed and funded by Thursday, June 22, 2023, the Company's funding deadline, the Proposal Trustee will report back to Court.

22. The terms of the DIP Loan are contained in the DIP Commitment Letter between the Debtor and the DIP Lender dated June 15, 2023 and include, among other things, the following terms:
- i) the total available funds under the DIP facility are \$2,000,000 (the “**Interim Facility**”);
 - ii) the Interim Facility is available on a draw basis, with an initial draw in the aggregate amount of \$600,000 (“**Initial Advance**”) that will be made to the Debtor by way of two advances following issuance of the Order approving the Interim Facility and subsequent draws of not less than \$250,000 each;
 - iii) the Interim Facility may only be used for the purposes contemplated by DIP Commitment Letter and reflected in the Cash Flow Forecast namely: funding operating costs and these restructuring proceedings;
 - iv) the DIP Lender's fees and expenses deducted from the Initial Advance shall not exceed \$25,000;
 - v) a facility fee equal to 5% of the Interim Facility, which is fully earned on execution of the DIP Commitment Letter and paid on the earlier of: (a) the Mandatory Prepayment (defined below) and (b) the Maturity Date (defined below);
 - vi) interest shall be calculated daily at the rate of 15% per annum;
 - vii) the appointment of a CRO who will be compensated on a monthly basis at a rate of \$27,500 per month for a minimum of three months of the CRO's engagement plus reasonable expenses. The Order appointing the CRO shall confirm that the CRO shall have no liability or obligation as a result of this appointment, except for any gross negligence or willful misconduct;

- viii) the requirement for the Company to file the Scientific Research and Experimental Development (“**SR&ED**”) claim for the taxation year ending December 31, 2022;
 - ix) the Interim Facility matures on the earliest of (“**Maturity Date**”): a) demand; b) six months following the Filing Date; c) the date on which the Debtor becomes bankrupt; d) the date on which the stay of proceedings ordered in the BIA Proceedings expires or is terminated or lifted; e) the occurrence of an event of default; or f) the sale of all or substantially all the assets of the Debtor; and

upon receipt of (a) the SR&ED refund due in respect of the 2022 taxation year end, and/or (b) net proceeds of any asset sale by the Company out of the ordinary course, the Company will be required to apply such amounts to repay the Initial Advance, outstanding interest and fees (collectively, the “**Mandatory Prepayment**”) and surplus amounts, if any, remaining after the Mandatory Prepayment would be available to the Debtor;
23. It is a fundamental condition of the DIP Commitment Letter that (i) the Court grant a charge in favour of the DIP Lender against the assets of the Debtor (the “**DIP Charge**”) securing all amounts owing under the DIP Commitment Letter; and (ii) the Interim Facility shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise in favour of any person.
24. The Proposal Trustee is of the view that acceptance of the DIP Commitment Letter and the Interim Facility contemplated therein:
- i) is required to fund the operations of the Debtor while it carries out its restructuring;
 - ii) will enhance the prospects of a viable proposal being made by the Debtor; and
 - iii) is in the overall best interests of the Company and its stakeholders.
25. Furthermore, the Proposal Trustee is of the view that the fees, terms and costs associated with the Interim Facility, while significant, are still commercially reasonable for a business in circumstances similar to those of the Debtor.
26. Without access to financing under the Interim Facility, the Company will: (i) not be able to maintain its operations, preserve asset value or implement restructuring steps; (ii) be forced to wind down its operations immediately, resulting in the loss of value, and

twenty-four jobs, to the material detriment of its creditors and stakeholders; and (iii) will become bankrupt.

Appointment of CRO

27. The DIP Commitment Letter includes as a condition to the Initial Advance the engagement of David Kay, in his capacity as CEO of Ao8 Strategic Advisors, as CRO of the Company and Court approval of such engagement.
28. The Proposal Trustee reviewed Mr. Kay's curriculum vitae ("**CV**"), and had several discussions with him, and agrees that he is well qualified to act as a CRO.
29. The Proposal Trustee understands that the DIP Lender, or parties connected to the DIP Lender, could become parties interested in sponsoring the Debtor's restructuring plan. The Proposal Trustee also understands that the DIP Lender is wholly-owned by a party related to the CRO. However, the CRO is not participating directly or indirectly in funding the DIP loan.
30. Even though, Mr. Kay is the nominee CRO of the DIP Lender, and related to the DIP Lender, the Proposal Trustee expects he will be acting in the best interests of the Debtor and its restructuring plan, whether the Debtor's plan includes a sale to, or investment from, interested parties connected to the DIP Lender, or not. Mr. Kay advised the Proposal Trustee that he will be working diligently to assist the Company in formulating a restructuring plan. The Proposal Trustee will, as required under the BIA, be monitoring the activities of the Company and, by extension, its CRO during these proceedings. The CRO advised the Proposal Trustee that should the DIP Lender need to enforce its security he will immediately resign as CRO due to his relationship with the DIP Lender.

DIP Loan Administration

31. The DIP Commitment Letter requires the Proposal Trustee to assist with the administration of the advances under the DIP loan, for the benefit of the Debtor and the DIP Lender by (a) receiving funds advanced under the DIP Loan into a separate account maintained by the Proposal Trustee solely for such purpose; and, (b) disbursing such funds in accordance with the direction of the Debtor, as evidenced by written direction of the CRO.

DIP CHARGE

32. As described above, the Debtor requires immediate funding to maintain their existing operations and to pursue a restructuring plan, as evidenced by the Cash Flow Forecast.
33. As noted above, a condition of the DIP Commitment Letter is that the DIP Lender receives the benefit of a DIP Charge to the maximum amount of the aggregate of all advances by the DIP Lender to the Debtor pursuant to the DIP Commitment Letter. Additionally, as set out above, the Debtor is entitled to access the Interim Facility to fund post-filing operating and restructuring fees and costs. The Proposal Trustee supports the Debtor's request for the DIP Charge in priority to all other encumbrances.
34. For the reasons set out above, in the view of the Proposal Trustee, the proposed priority of the DIP Charge is reasonable and appropriate and is typical in similar proceedings, as set out in the form of draft order filed with the Court and, therefore, should be granted by the Court.

EXTENSION OF STAY OF PROCEEDINGS

35. The Debtor is seeking an extension of the time for the filing of the proposal up to and including August 2, 2023, for a total of 45 days following the expiration of the initial 30-day stay of proceedings.
36. The stay extension is required to provide the Debtor with the necessary time to preserve its business on a going concern basis for the benefit of its stakeholders and to formulate a restructuring plan to present to its creditors. The Proposal Trustee is of the view that the Debtor is acting in good faith and with due diligence in formulating and implementing a restructuring plan that would preserve its business for the benefit of its stakeholders.
37. Without the requested extension of the stay period being granted, the Debtor is not able to make a viable proposal to its creditors and will then become bankrupt to the detriment of its stakeholders.
38. In contrast, no creditor will be materially prejudiced if the extension applied for is granted. If the extension applied for is granted, following the completion of its

restructuring, the Debtor would likely be able to make a viable proposal to its creditors.

NANOPAY'S WEEKLY CASH FLOW FORECAST

39. The Debtor, with the assistance of the Proposal Trustee, has prepared a weekly cash flow forecast for the period from June 18, 2023, to September 17, 2023. A copy of the Cash Flow Forecast is attached hereto as **Appendix "C"** to this Report. The Cash Flow Forecast has been prepared by Management of the Debtor for the purpose of this motion, using probable and hypothetical assumptions set out in notes 1 to 8 attached to the Cash Flow Forecast. The Cash Flow Forecast reflects receipts and disbursements to be received or paid over a thirteen-week forecast period in Canadian dollars.
40. The Cash Flow Forecast projects that the Debtor will have sufficient liquidity, following receipt of the Initial Advance, to fund the Company's expenses and the Proposal proceeding throughout the proposed extension of the stay of proceedings.
41. The Cash Flow Forecast projects that the Debtor will require the use of the Interim Facility immediately upon Court approval to fund its payroll.
42. Should the DIP Lender choose not to advance any further funds after the required repayment of the Initial Advance following the receipt of the 2022 SR&ED refund in early August 2023, the Debtor will immediately enter a liquidity crisis and be unable to fund its payroll the following week. As such, during the stay period, the Debtor and its CRO will need to work diligently to formulate a restructuring plan while there remains sufficient cash to fund operations.
43. The Proposal Trustee's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussion related to information supplied to the Proposal Trustee by certain of the Management and employees of the Debtor. Since hypothetical assumptions need not be supported, the Proposal Trustee's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Proposal Trustee has also reviewed the support provided by Management of the Debtor for the probable assumptions, and the preparation and presentation of the Cash Flow Forecast.

44. Based on the Proposal Trustee's review, nothing has come to its attention to cause it to believe that, in all material respects:
- i) the hypothetical assumptions are not consistent with the purpose of the Cash Flow Forecast;
 - ii) as at the date of this Report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Debtor or do not provide a reasonable basis for the Cash Flow Forecast, given the hypothetical assumptions; or
 - iii) the Cash Flow Forecast does not reflect the probable and hypothetical Assumptions.
45. As described in the Disclaimer above, since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented, even if the hypothetical assumptions occur, and the variations may be material.
46. The Cash Flow Forecast has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.

CONCLUSION AND RECOMMENDATION

47. Based on all the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief requested by the Debtor in the Order requested, as summarized in paragraph 4 of this Report.

All of which is respectfully submitted this 15th day of June, 2023.

DODICK LANDAU INC.

In its capacity as the Proposal Trustee of
nanopay Corporation and not
in its personal or corporate capacity.

Per:



Rahn Dodick, CPA, CA, CIRP, LIT
President

APPENDIX “B”



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: BK-23-02946534-0031 DATE: 16 June 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: *Intention to Make a Proposal of Nanopay Corporation*

BEFORE JUSTICE: **P. Osborne**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Kenneth Kraft	Counsel for the Debtor, Nanopay Corporation	Kenneth.kraft@dentons.com
Sara-Ann Wilson	Counsel for the Debtor, Nanopay Corporation	

For Defendant, Respondent, Responding Party, Defence:

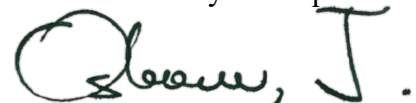
Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Rahn Dodick	The Proposal Trustee (Dodick Landau Inc.)	Rahn.dodick@dodick.ca
Shahrazad Hamraz	Counsel for the Proposal Trustee (Dodick Landau Inc.)	shamraz@loonix.com
Danish Afroz	DIP Lender	dafroz@chaitons.com

ENDORSEMENT OF JUSTICE P. OSBORNE:

1. The Company moves pursuant to section 50.4(9) of the BIA for an extension of the time to file a proposal to August 2, 2023, authority to borrow under a credit facility as described in the DIP Term Sheet, authority to engage a Chief Restructuring Officer and the granting of a DIP Lender's Charge up to the maximum amount of \$2 million plus interest, fees and costs pursuant to section 50.6 of the BIA.
2. A Notice of Intention to Make a Proposal was filed on May 19, 2023. The Company is a CBCA company involved in that provision of embedded payments solutions for businesses and banks. It is a startup and cash from operations is insufficient to fund liabilities as they come due, with the result that it relies on regular equity injections and loans from investors to fund the cash flow needs. The And OI was prompted by changes in market conditions resulting in a longer timeline being wired for the Company to reach profitability. The purpose of the Proceedings is the creation of a stabilized environment for the Company to consider and pursue restructuring options.
3. The Company relies upon the affidavit of Laurence Cooke sworn June 15, 2023 and exhibits thereto.
4. Motion materials have been served, although service was short. In particular, motion materials were delivered to the Government of Canada Department of Justice (Canada Revenue Agency in respect of HST remittances primarily) and the Province of Ontario Department of Finance (in respect of the HT obligations primarily), as well as the lender on a prior loan in respect of a facility of approximately \$37,500.
5. The DIP Loan Facility provided for in the DIP Term Sheet provides for a non-revolving demand credit facility up to an aggregate principal amount of \$2 million. Initial advances up to the aggregate amount of \$600,000 will be available to the Company upon satisfaction of the Conditions Precedent to the Initial Advances. Subsequent advances are in the Lender's discretion.
6. The cash flow forecast shows that the Company urgently requires the DIP Loan Facility to provide liquidity required to pay its employees, professional fees and continue operations during the Proceedings.
7. I am satisfied that the DIP Term Sheet should be, and is approved. It is fully supported and recommended by the Proposal Trustee.
8. However, I am directing that this matter be returnable before me next week on **Friday, June 23, 2023 at 10 AM via Zoom**. In the interim period until the return of this matter, advances under the DIP Loan Facility cannot exceed \$275,000 in the aggregate, which is the amount necessary to sustain operations in this interim period in satisfy obligations for payroll and source deductions.
9. I note the assurance of counsel for the Applicant that the lender in respect of the \$37,500 post filing loan facility referred to above is aware of, and does not oppose, any of the relief sought today.
10. I am also satisfied that Mr. David Kay should be appointed as Chief Restructuring Officer pursuant to the terms of the CRO Engagement Agreement. His involvement will enure to the benefit of the relevant economically affected stakeholders and maximize the efficiency of the operations of the Company during this restructuring period.
11. Finally, it is appropriate to extend to August 2, 2023 the time for the Company to file its proposal pursuant to section 50.4(9) of the BIA. The Company has acted, and is acting, in good faith and with due diligence, would likely be able to make a viable proposal if the extension were granted, and no creditor would be materially prejudiced.
12. Order to go in the form signed by me today, which is effective immediately and without the necessity of issuing and entering. This endorsement and the order should be served immediately on all parties.

Osborne, J.



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

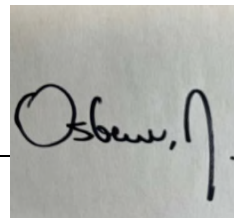
23. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) 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.



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ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) (IN BANKRUPTCY AND INSOLVENCY)	
PROCEEDING COMMENCED AT TORONTO	
ORDER	
DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1 Kenneth Kraft (LSO #31919P) Tel: 416-863-4374 kenneth.kraft@dentons.com Sara-Ann Wilson (LSO #56016C) Tel: 416-863-4402 sara.wilson@dentons.com <i>Lawyers for Nanopay Corporation</i>	

APPENDIX “C”

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) 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 be 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;

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;
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 of 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;
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
Indebtedness:**

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

[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

DocuSigned by:

DAVID KAY

Per: _____

Name: DAVID KAY

Title: Manager

I have authority to bind the corporation.

ACCEPTANCE

The undersigned hereby accepts this Term Sheet this 20th day of June.

NANOPAY CORPORATION

DocuSigned by:



Per: _____

Name: Laurence Cooke

Title: Founder & CEO

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.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
NANOPAY CORPORATION OF THE CITY OF TORONTO IN THE PROVINCE OF
ONTARIO**

Court File No.: 31-2946534
Estate File No.: 31-2946534

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

Proceeding commenced at **TORONTO**

**SUPPLEMENT TO FIRST REPORT TO COURT OF THE
PROPOSAL TRUSTEE**

LOOPSTRA NIXON LLP

135 Queens Plate Drive – Suite 600
Toronto, ON M9W 6V7

**R. Graham Phoenix (LSUC No. 52650N)
&
Shahrazad Hamraz (LSUC No. 85218H)**

Tel: (416) 746-4710

Email: gphoenix@loonix.com /
shamraz@loonix.com

Lawyers for the Proposal Trustee