

Court File No. BK-24-03044331-0033  
Estate File No. 33-044331

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

**IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF MAXSOLD INCORPORATED  
OF THE CITY OF KINGSTON  
IN THE PROVINCE OF ONTARIO**

**SECOND REPORT TO COURT OF THE PROPOSAL TRUSTEE**

April 23, 2024

**WEIRFOULDS LLP**

Barristers & Solicitors  
66 Wellington St. W., Suite 4100  
TD Bank Tower, PO Box 35  
Toronto, ON M5K 1B7

**Wojtek Jaskiewicz** (LSO # 49809L)  
[wjaskiewicz@weirfoulds.com](mailto:wjaskiewicz@weirfoulds.com)

Tel: (416) 365-1110  
Fax: (416) 365-1876

**Philip Cho** (LSO # 45615U)  
[pcho@weirfoulds.com](mailto:pcho@weirfoulds.com)

Tel: (416) 365-1110  
Fax: (416) 365-1876

**Lawyers for the Proposal Trustee,  
Dodick Landau Inc.**

TO: **SERVICE LIST**

## SERVICE LIST

<p><b>RECONSTRUCT LLP</b>          Royal Bank Plaza, South Tower          200 Bay Street          Suite 2305, P.O. Box 120          Toronto, ON M5J 2J3</p> <p><b>Sharon Kour</b> (LSO 58328D)  <a href="mailto:skour@reconllp.com">skour@reconllp.com</a>          Tel: 416.613.8283</p> <p><b>Jessica Wuthmann</b> (LSO 72442WS)  <a href="mailto:jwuthmann@reconllp.com">jwuthmann@reconllp.com</a>          Tel: 416.613.8288</p> <p><b>Jared Rosenbaum</b> (LSO 74769U)  <a href="mailto:jrosenbaum@reconllp.com">jrosenbaum@reconllp.com</a>          Tel: 416.613.8284</p> <p><b>Lawyers for the Applicant</b></p>	<p><b>DODICK LANDAU INC.</b>          951 Wilson Avenue          Unit 15L          Downsview, ON M3K 2A7</p> <p><b>Rahn Dodick</b>  <a href="mailto:rahn.dodick@dodick.ca">rahn.dodick@dodick.ca</a>          Tel: 416.736.4357</p> <p><b>The Proposal Trustee</b></p>
<p><b>CHAITONS LLP</b>          5000 Yonge Street, 10th Floor          Toronto, ON M2N 7E9</p> <p><b>Harvey Chaiton</b>  <a href="mailto:harvey@chaitons.com">harvey@chaitons.com</a>          Tel: 416.218.1129</p> <p><b>Counsel to National Bank of Canada</b></p>	<p><b>SPETTER ZEITZ KLAIMAN</b>          100 Sheppard Avenue East, Suite 850          Toronto, ON M2N 6N5</p> <p><b>Ian Klaiman</b>  <a href="mailto:iklaiman@szklaw.ca">iklaiman@szklaw.ca</a>          Tel : 416.789.0658</p>
<p><b>ROYAL BANK OF CANADA</b>          7101 Parc Avenue, 5th Floor          Montreal, QC H3N 1X9</p>	<p><b>ATTORNEY GENERAL OF CANADA</b>          Department of Justice Canada          Ontario Regional Office, Tax Law Section          120 Adelaide Street West, Suite 400          Toronto, ON</p> <p><a href="mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca">AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</a>          Fax: 416.973.0810</p>
<p><b>CANADA REVENUE AGENCY</b>          1 Front Street West          Toronto, ON M5J 2X6          Fax: 416.964.6411</p> <p><b>Pat Confalone</b>  <a href="mailto:pat.confalone@cra-arc.gc.ca">pat.confalone@cra-arc.gc.ca</a>          Tel: 416.954.6514</p>	<p><b>MINISTRY OF FINANCE (ONTARIO)</b>  <b>INSOLVENCY UNIT 33</b>          King Street West, 6th Floor          Oshawa, ON L1H 8H5</p> <p><a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a></p>

**MR OLIVER SALZMANN**

2-94 Queen Street South  
Hamilton, ON L8P 3R8

**Oliver Salzmnn**

[oliversalzmnn@icloud.com](mailto:oliversalzmnn@icloud.com)

**MS ZANE KANEPS**

2-94 Queen Street South  
Hamilton, ON L8P 3R8

**Zane Kaneps**

[zkaneps@yahoo.ca](mailto:zkaneps@yahoo.ca)

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**TAB 1**

**Court File No. BK-24-03044331-0033**

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**SECOND REPORT TO COURT OF THE PROPOSAL TRUSTEE**

**DATED APRIL 22, 2024**

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## INTRODUCTION

1. On February 15, 2024, MaxSold Incorporated ("**MaxSold**" or the "**Company**") filed with the Official Receiver a Notice of Intention to Make a Proposal ("**NOI**") to its creditors 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. On March 14, 2024, the Ontario Superior Court of Justice (In Bankruptcy and Insolvency) (the "**Court**") granted an order ("**SISP Approval Order**") which, among other things, approved the extension of time for filing a proposal up to April 30, 2024, the Company's sale and investor solicitation process ("**SISP**"), and an administration charge. A copy of the SISP Approval Order is attached as **Appendix "B"**.
3. The SISP included an Agreement of Purchase and Sale (the "**Stalking Horse Agreement**") between 1000822913 Ontario Inc. ("**Stalking Horse Bidder**") and MaxSold dated March 11, 2024, to purchase the assets ("**Assets**") of MaxSold solely for the purpose of being the "stalking horse bid" in the SISP.
4. All capitalized terms used in this report (the "**Second Report**") but not otherwise defined shall have the meaning ascribed to such terms in the Affidavit of Russ Patterson sworn April 19, 2024 (the "**Patterson Affidavit**").
5. The purpose of this Second Report of the Proposal Trustee is to provide the Court with information pertaining to the following:
  - i) MaxSold's projected cash flow for the period from April 19, 2024 to May 6, 2024 ("**Cash Flow Forecast**");
  - ii) MaxSold's request for an extension of the time for filing a Proposal to May 6, 2024;
  - iii) the results of the SISP process undertaken by the Proposal Trustee; and
  - iv) the Proposal Trustee's recommendation that this Court grant the following Orders, as requested by MaxSold approving:
    - a) the extension of the time for filing a Proposal to, and including, May 6, 2024; and
    - b) an Assignment, Approval and Vesting Order ("**AVO**"), which among other things:
      - i) approves the transaction as set out in the Stalking Horse Agreement

("Transaction");

- ii) vests in the Stalking Horse Bidder all of the Company's right, title, benefit and interest in and to the assets described in the Stalking Horse Agreement ("**Purchased Assets**") free and clear of all encumbrances upon delivery to the Purchaser of a Certificate by the Proposal Trustee; and
- iii) assigns the agreements listed in Schedule "B" to the AVO ("**Consent Required Contracts**") to the Stalking Horse Bidder.

## TERMS OF REFERENCE

6. In preparing this Second Report, the Proposal Trustee has relied upon certain unaudited, draft and/or internal financial information, MaxSold's books and records, discussions with the management of MaxSold ("**Management**") and information from other third-party sources (collectively, the "**Information**").
7. Except as described in this Second 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.
8. Some of the information referred to in this Second 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.
9. The Proposal Trustee has prepared this Second 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](http://www.dodick.ca) for purposes of MaxSold's motion returnable April 25, 2024.

Parties using this 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.

## **BACKGROUND**

11. As detailed in the Proposal Trustee's first report to Court dated March 12, 2024, MaxSold is in the business of providing streamlined and efficient online auction services for large volume content sales across Canada and the United States (the "**Business**"). The Company's mission is to minimize waste and increase sustainability by making the process of selling a large volume of pre-owned items seamless, easy and quick.
12. In late 2022, MaxSold began experiencing significant cash flow pressures due to decreasing revenues, caused by extrinsic conditions including a slower housing market and rising acquisition costs from online marketing channels.
13. In response to the Company's cash flow pressures, the Company implemented an extensive operational restructuring process to modernize the Company's technology, improve the Company's market position, enhance the user experience, and significantly decrease operating costs.
14. Throughout the Company's operational restructuring, it continued to suffer significant cash flow pressures given the Company's historical debt, overbroad legacy contracts and the increasing capital required to modernize the Business.
15. Based on the compounding financial pressures facing the Company, it determined it required a long-term solution to restructure its balance sheet and preserve its Business and accordingly the Company (i) in early February 2024, began a sale process with the purpose of canvassing the market for a possible sale or investment transaction; and (ii) it filed its NOI on February 15, 2024.
16. Since filing the NOI, the Company, in consultation with the Proposal Trustee, had continued to solicit interest in a sale of, or investment in, the Company. These efforts successfully led to the Stalking Horse Agreement. Several other parties advised the Company they were interested in exploring a sale or investment transaction, signed a Non-Disclosure Agreement with the Company and began due diligence. Those parties were asked to participate in the SISP.

## SALE AND INVESTOR SOLICITATION PROCESS

### Overview of the Proposed SISP

17. To complement the Company's prior and ongoing operational restructuring efforts, the Company, in consultation with the Proposal Trustee, its secured creditor National Bank of Canada ("NBC"), developed the SISP.
18. The SISP provided a mechanism to widely expose the Company's Business to the market and provide a structured and orderly process for interested parties to perform due diligence and submit offers for a potential transaction. A copy of the SISP is appended to the SISP Approval Order in Appendix "B".
19. The SISP involved a stalking horse bid in the form of the Stalking Horse Agreement (the "**Stalking Horse Bid**"). The Stalking Horse Bid was intended to stimulate market interest by setting a "floor" price that bidders must bid against. It also provided comfort to stakeholders, such as NBC, that a minimum value will be realized through the SISP. The details of the Stalking Horse Bid are outlined further herein.
20. The SISP contemplated a 30-day sale process managed by the Proposal Trustee, with a potential auction phase to be conducted if one or more qualified bids were received.
21. Interested parties, who executed non-disclosure agreements, had until 5:00 p.m. on April 15, 2024 ("**Bid Deadline**") to complete their due diligence and submit a binding offer that conformed with the requirements set forth in the SISP (the "**Bid Factors**"). The Bid Factors required the bid to, among other things:
  - i) provide for cash consideration sufficient to pay in full on closing of the transaction: (i) a minimum incremental amount of \$10,000 in excess of the aggregate purchase price contemplated by the Stalking Horse Agreement; (ii) a break fee in the amount of \$30,000; and (iii) an expense reimbursement fee in the amount of a maximum of \$20,000 (inclusive of HST) as contemplated by the Stalking Horse Agreement (the "**Consideration Value**");
  - ii) be accompanied by a deposit of at least 10% of the Consideration Value, to be retained by the Proposal Trustee in trust;
  - iii) contain an executed binding transaction document, including all exhibits and schedules contemplated thereby, together with a blackline against the Stalking Horse

Agreement;

- iv) state it is not conditional upon any condition or contingency relating to due diligence, financing or any other material conditions precedent;
- v) be submitted by the Bid Deadline; and
- vi) provide evidence satisfactory to the Proposal Trustee of the financial ability of the bidder to consummate the transaction.

22. After the Bid Deadline, the Proposal Trustee would consider the bids it received to determine if they complied with the Bid Factors and if they should otherwise be declared a compliant bid (a "**Qualified Bid**"). The SISP expressly stated that the Stalking Horse Bid constituted a Qualified Bid.

23. In the circumstances where there was more than one Qualified Bid, the Proposal Trustee would proceed with an auction to select the highest or otherwise best bid in the SISP (the "**Successful Bid**"). In the event that the Proposal Trustee, in consultation with the Company, determined that there was no Qualified Bid other than the Stalking Horse Bid, the Proposal Trustee would declare the Stalking Horse Bid as the Successful Bid.

#### **Conduct of the SISP**

24. Following the issuance of the SISP Approval Order, the activities of the Proposal Trustee undertaken with the assistance of MaxSold's management in relation to and in furtherance of the SISP, included:

- i) preparing a list of known interested parties, including those parties that previously expressed interest prior to March 14, 2024, and additional local and or international parties identified by the Company and the Proposal Trustee;
- ii) preparing a teaser detailing the opportunity ("**Teaser**");
- iii) preparing a non-disclosure agreement (the "**NDA**") to be executed by potential purchasers in order to conduct due diligence;
- iv) populating an electronic data room (the "**Data Room**") with due diligence documents, including, among other things, financial statements, key contracts, business performance data, forecasts with access to be provided to potential purchasers upon executing the NDA;

- v) placing notices of the SISP in the Insolvency Insider, an independent publication dedicated to the Canadian insolvency market, which remained active for the duration of the SISP;
  - vi) sending the teaser and NDA to 38 potentially interested parties, which included parties in the same industry, consolidators, venture capital firms, private equity firms and individual investors;
  - vii) providing access to the online dataroom to eight parties who executed the NDA and coordinated all requests for information and due diligence access; and
  - viii) attending numerous due diligence calls with management and potential bidders.
25. Several minutes after the Bid Deadline, the Proposal Trustee received a bid ("**Other Bid**") from a party that had been actively involved in the SISP ("**Other Bidder**"). The offer was not a qualified offer as: (i) it was subject to financing; (ii) it was not accompanied by a cash deposit; and (iii) it was received after the Bid Deadline. While the SISP permitted the Proposal Trustee to waive strict compliance and deem a non-compliant bid to be a Qualified Bid, on April 16, 2024, counsel for the Other Bidder advised that it was unable to secure financing and that it was withdrawing its offer. Consequently, the Other Bid was no longer an option for the Company.
26. Given the withdrawal of the Other Bid, the only Qualified Bid was the Stalking Horse Bid. On April 16, 2024, the Proposal Trustee declared the Stalking Horse Bid to be the Successful Bid under the SISP.

### **The Stalking Horse Agreement**

27. The Stalking Horse Agreement contemplates the Stalking Horse Bidder purchasing substantially all of the Company's assets for the cash sum of Seven Hundred and Fifty Thousand (\$750,000.00) plus the cash sum required to pay the cure costs for all of the Assumed Contracts (as defined below), if any. The Stalking Horse Agreement is attached hereto as **Appendix "C"**.
28. The Stalking Horse Agreement permits the Stalking Horse Bidder to continue to operate the Business as a going concern for the benefit of its stakeholders.

29. The Stalking Horse Purchaser is an arms-length company. However, after the commencement of the SISP, on or about March 7, 2024, the Company's Chief Financial Officer, Mr. Sath Dosanjh, advised that he would be investing in the Stalking Horse Bidder. To protect the integrity of the SISP, Mr. Dosanjh was excluded from participating in the SISP on behalf of the Company. The Company did not provide Mr. Dosanjh any information on the other potential bidders or the status of the SISP.
30. The key terms and conditions of the Stalking Horse Agreement are summarized below.
- i) **Purchaser:** 1000822913 Ontario Inc.
  - ii) **Purchased Assets:** all of the Company's assets, properties and undertakings other than the Excluded Assets. The Purchased Assets include, but are not limited to, intellectual property, the Company's software and technology, certain contracts ("**Assumed Contracts**"), equipment, and the Company's receivables.
  - iii) **Excluded Assets:** the purchase price, all cash and money in bank accounts other than the Merchant Account, and the auction proceeds of customers in the Trust Account (all as defined in the Stalking Horse Agreement).
  - iv) **Purchase Price:** the cash sum of \$750,000.00 plus the cash sum required to pay the cure costs for all the assumed contracts, if any.
  - v) **Treatment of Employees:** five business days before closing, the Stalking Horse Bidder will provide a list of the employees to whom it wishes to offer new employment. The Stalking Horse Bidder will assume and be responsible for all liabilities in respect of the transferred employees after the Closing Date (as defined below).
  - vi) **Representation and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an "as is, where is" basis, with limited representations and warranties.
  - vii) **Material Conditions:** the Stalking Horse Bidder being chosen as the Successful Bid and the granting of the Approval and Vesting Order and Assignment Order by the Court.
31. The "Closing Date" under the Stalking Horse Agreement is three business days following the issuance of AVO, or such later date as the Company and the Stalking Horse Bidder

may agree to in writing. The Company is currently anticipating a Closing Date of May 6, 2024.

### **Approval of the Stalking Horse Bid and Sale Transaction**

32. The Company seeks the Court's approval of the Stalking Horse Agreement and the proposed Transaction contemplation therein.
33. The proposed Transaction is the best offer and only Qualified Bid received following the completion of the SISP. The SISP was robust and thoroughly canvassed the market.
34. The SISP was conducted by the Proposal Trustee, with the assistance of the Company, in a transparent manner that treated all potential bidders in an even-handed and fair manner. In addition, the Company, as described herein, commenced an informal sales process at the start of February 2024, therefore, allowing for a longer period to canvass the market for prospective interested parties.
35. The Proposal Trustee believes that the proposed Transaction presents the best possible outcome for the stakeholders in the circumstances. Among other things, the Transaction:
  - i) ensures the continuation of the Business as a going concern, which is expected to preserve employment for many of the Company's 140 Canadian employees, provide continued and uninterrupted services to its customers, and preserve ongoing revenue for certain Company vendors;
  - ii) is a transaction that monetizes substantially all of the Company's assets for the benefit of the Company's secured creditors;
  - iii) protects a Business that provides tangible and intangible benefits to the Canadian market, including offering a service that minimizes waste and supports sustainability; and
  - iv) will conclude the NOI process resulting in a deemed assignment since there is no economic interest available over and above what is owing to secured creditors (\$3.1 million) to allow for a proposal to be made to the unsecured creditors of Maxsold.
36. Based on the results of the SISP, the Proposal Trustee is of the view that if the proposed Transaction does not proceed, there is uncertainty as to whether another purchaser would be willing to purchase the Business on a going-concern basis. Accordingly, the



Company would be forced to cease operations and liquidate its assets in a bankruptcy. This would be a suboptimal outcome as compared to the proposed Transaction as the Company's secured creditors would likely recover significantly less proceeds in a liquidation, the employees would be terminated, and customers and vendors may suffer additional losses.

#### **Assignment of Consent Required Contracts**

37. The Stalking Horse Agreement contemplates the assignment of the Assumed Contracts as part of the Transaction.
38. The Assumed Contracts must be preserved in the hands of the Stalking Horse Bidder following closing to permit the Stalking Horse Bidder to continue operating the Business in the ordinary course. As a result, it is a condition to closing the proposed Transaction that the Assumed Contracts be assigned to the Stalking Horse Bidder.
39. To date, the Proposal Trustee has been advised that MaxSold has worked diligently with the Stalking Horse Bidder to identify all of the counterparties to the Assumed Contracts that must consent or be provided with notice of this motion. The Proposal Trustee understands that the counterparties to the Consent Required Contracts have been served with the Company's Motion Record and are aware of the relief being sought. Although some of the Assumed Contracts can be assigned without the consent of the counterparty, the Company has identified several Assumed Contracts that require the consent of the counterparty to be assigned. The Consent Required Contracts are identified in Schedule "B" of the proposed AVO.
40. MaxSold advised that it intends to communicate directly with such counterparties to procure consents and waivers prior to the closing of the Proposed Transaction. However, it may not be possible for all consents and waivers relating to each Consent Required Contract to be obtained prior to the anticipated closing of the Transaction. Accordingly, in parallel with its ongoing efforts to secure consents and waivers, the Company is seeking the assignment of the Consent Required Contracts in the AVO.
41. According to Management, none of the Consent Required Contracts are agreements that cannot be assigned under the BIA, such as: (a) agreements that have been entered into after the commencement of these NOI proceedings, (b) eligible financial contracts, or (c) collective agreements.

42. The Stalking Horse Bidder has advised that it is essential to the proposed Transaction that the value of the Assumed Contracts be preserved in its hands following the closing of the Transaction. The only way to do so is through the AVO given some of the Assumed Contracts are not permitted to be assigned without the consent of the counterparty.
43. The assignment in the proposed AVO, is contingent upon the Stalking Horse Bidder paying any cure costs due and owing to the counterparties to the Consent Required Contracts as of the Closing Date. As such, the Proposal Trustee supports the relief sought by the Company with respect to the assignment of Consent Required Contracts.

#### **EXTENSION OF STAY OF PROCEEDINGS**

44. The stay of proceedings expires on April 30, 2024. MaxSold is seeking an extension of the stay of proceedings up to and including May 6, 2024, for a total of six days.
45. The stay extension is required to provide MaxSold with the necessary time to preserve its Business while it looks to close the Transaction for the purpose of maximizing realizations of the Business for the benefit of creditors and stakeholders. If the proposed extension is not granted, the Business will likely be forced to shut down, which would result in irreparable damage to asset value as the Company's primary asset is its online auction marketplace platform required to continue to operate its Business and service its customers.
46. The Proposal Trustee is of the view that MaxSold is acting in good faith and with due diligence towards maximizing realization for its stakeholders.
47. In contrast, no creditor will be materially prejudiced if the extension applied for is granted. If the extension applied for is granted, MaxSold would have the time to complete the Transaction for the benefit of creditors and stakeholders.

#### **WEEKLY CASH FLOW FORECAST**

48. MaxSold, with the assistance of the Proposal Trustee, has prepared a weekly cash flow forecast ("**Cash Flow Forecast**") for the period from April 19, 2024, to May 6, 2024. A copy of the Cash Flow Forecast is attached hereto as **Appendix "D"** to this Report. The Cash Flow Forecast has been prepared by Management of MaxSold for the purpose of this motion, using probable and hypothetical assumptions set out in notes 1 to 11 attached to the Cash Flow Forecast. The Cash Flow Forecast reflects receipts and

disbursements to be received or paid over the 18-day forecast period in Canadian dollars.

49. The Proposal Trustee notes that the Cash Flow Forecast projects that MaxSold will not have sufficient liquidity to fund its expenses and the NOI proceedings throughout the proposed extension of the stay of proceedings and will incur a shortfall of approximately \$30,000. The shortfall will affect the ability of the Company to pay the accrued professional fees forecast to close the Transaction. However, the professionals are entitled, and expect, to collect the accrued fee shortfall from the sales proceeds following closing of the Transaction pursuant to the Administration Charge. On this basis, the Proposal Trustee remains supportive of the short extension of the stay of proceedings to permit the Transaction to close.
50. 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 MaxSold. 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 MaxSold for the probable assumptions, and the preparation and presentation of the Cash Flow Forecast.
51. 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 MaxSold 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.
52. 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. Accordingly, the Proposal Trustee expresses no assurance as to whether the Cash Flow Forecast will be achieved. In addition, the Proposal Trustee expresses no opinion or other form of assurance with respect to the accuracy of financial information presented in the Cash Flow Forecast, or relied upon by the Proposal Trustee in preparing this Report.

53. The Cash Flow Forecast has been prepared solely for the purpose described above, and readers are cautioned that it may not be appropriate for other purposes.

#### **PROPOSAL PROCEEDING**

54. Following the closing of the proposed sale transaction (targeted for May 6, 2024), the Proposal Trustee does not expect the Company will be able to make a viable proposal to its unsecured creditors as all of its assets will have been sold, and the proceeds from the sale will only be sufficient to satisfy a portion of the Company's obligations to its secured creditor. As such, upon the expiration of the stay of proceedings on May 6, 2024, and in accordance with the *Bankruptcy and Insolvency Act*, the Company will be rendered automatically bankrupt, and the Proposal will be replaced by a bankruptcy. At that time, DLI will become the bankruptcy trustee ("**Bankruptcy Trustee**") of the Company, subject to affirmation by the creditors.
55. After May 6, 2024, subject to the rights of the secured creditor, the Bankruptcy Trustee will become responsible for fulfilling the obligations of the Proposal Trustee contemplated in the Stalking Horse Agreement, including monitoring the fulfilment of the terms of the Stalking Horse Agreement by the Stalking Horse Bidder and completing distributions of the proceeds of sale to creditors. The Proposal Trustee has discussed this expected change in appointment with NBC, and NBC agrees with this change in role and responsibilities.

#### **CONCLUSION AND RECOMMENDATION**

56. It is the Proposal Trustee's view that the SISF appropriately canvassed the market and that the highest and best price for the Assets was obtained. By completing the Transaction, the Company can preserve its Business and prevent any further loss of jobs and dissipation in asset value.
57. Based on all the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief requested by MaxSold in the Orders requested, as

summarized in paragraph 5 of this Second Report.

All of which is respectfully submitted this 22<sup>nd</sup> day of April 2024.

**DODICK LANDAU INC.**

In its capacity as the Proposal Trustee of  
MaxSold Incorporated and not  
in its personal or corporate capacity.

Per:

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

Rahn Dodick, CPA, CA, CIRP, LIT  
President

# APPENDIX "A"



Industry Canada

Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 11 - Kingston  
Court No. 33-3044331  
Estate No. 33-3044331

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

**MaxSold Incorporated**

Insolvent Person

**DODICK LANDAU INC.**

Licensed Insolvency Trustee

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Date of the Notice of Intention:

February 15, 2024

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**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: February 16, 2024, 10:12

E-File/Dépôt Electronique

Official Receiver

Place Bell Canada, 160 Elgin Street, 11th Floor, Suite B-100, Ottawa, Ontario, Canada, K2P2P7, (877)376-9902

**Canada**

# APPENDIX "B"



Bankruptcy Court File No. BK-24-03044331-0033  
Estate File No. 33-044331

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

THE HONOURABLE ) THURSDAY, THE 14<sup>TH</sup>  
 )  
JUSTICE KERSHMAN ) DAY OF MARCH, 2024

**IN THE MATTER OF THE BANKRUPTCY AND  
INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF MAXSOLD INCORPORATED OF THE CITY OF KINGSTON IN THE PROVINCE  
OF ONTARIO**

**ORDER  
(Approval of SISP, Administration Charge, and Stay Extension)**

**THIS MOTION**, made by MaxSold Incorporated (the "Company") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended (the "BIA") for an order, among other things: (i) extending the time to file a proposal pursuant to s. 50.4(9) of the BIA up to and including April 30, 2024; (ii) approving the sale and investment solicitation process substantially in the form attached hereto as Schedule "A"; and (iii) granting an Administration Charge (as defined herein), was heard on the 14<sup>th</sup> day of March, 2024.

**ON READING** the affidavit of Russ Patterson, sworn March 11, 2024 (the "Patterson Affidavit"), and the exhibits thereto, and the First Report of Dodick Landau Inc. in its capacity as proposal trustee of the Company (the "Proposal Trustee").

**ON HEARING** the submissions of counsel for the Company, the Proposal Trustee, and such other counsel that were present, no one else appearing for any other person although duly served:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the materials filed, as set out in the Affidavit of Service of Levi Rivers sworn March 12, 2024, is hereby deemed adequate notice so that this Motion is properly returnable today and hereby dispenses with further service thereof.

**STAY OF PROCEEDINGS**

2. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for the Company to file a proposal with the Official Receiver be and is hereby extended to and including April 30, 2024 (the "Stay Period").

**APPROVAL OF SALE AND INVESTMENT SOLICITATION PROCESS**

3. **THIS COURT ORDERS** that the terms of the Sale and Investment Solicitation Process ("SISP") attached as Schedule "A" to this Order (the "SISP Terms") are hereby approved and that the Proposal Trustee, with the assistance of the Company, is authorized and directed to immediately commence and perform the SISP in accordance with the SISP Terms.

4. **THIS COURT ORDERS** that the Company and Proposal Trustee are hereby authorized, empowered and directed to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with the SISP Terms and the terms of this Order.

5. **THIS COURT ORDERS** that the Company, the Proposal Trustee, and their respective affiliates, officers, directors, partners, employees, advisors, counsel and agents shall have no liability with respect to any and all losses, claims, damages or liability, of any nature or kind, to any person in connection with or as a result of performing their duties under the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Company and the Proposal Trustee, as applicable, as determined by this Court.

6. **THIS COURT ORDERS** that the Proposal Trustee or the Company may apply to

this Court for directions with respect to the SISP at any time during the term thereof.

7. **THIS COURT ORDERS** that, pursuant to section 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS), the Proposal Trustee and the Company are authorized and permitted to send, or cause or permit to be sent, commercial electronic messages to an electronic address of prospective bidders or offerors and to their advisors, but only to the extent required to provide information with respect to the SISP in these proceedings.

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Company and the Proposal Trustee are authorized and permitted to disclose personal information of identifiable individuals ("**Personal Information**") to prospective bidders or offerors and to their advisors, including human resources and payroll information, records pertaining to the Company's past and current employees, and information on specific customers, but only to the extent desired or required to negotiate or attempt to complete a transaction under the SISP. Each prospective bidder or offeror to whom any Personal Information is disclosed shall maintain and protect the privacy of such Personal Information with security safeguards appropriate to the sensitivity of the Personal Information and as may otherwise be required by applicable federal or provincial legislation. Each prospective bidder or offeror to whom any Personal Information is disclosed shall also limit the use of such Personal Information to its participation in the SISP.

#### **APPROVAL OF THE STALKING HORSE AGREEMENT**

9. **THIS COURT ORDERS** that the Stalking Horse Asset Purchase Agreement between the Company and 1000822913 Ontario Inc. (the "**Stalking Horse Agreement**"), which is attached as Exhibit "E" to the Patterson Affidavit, is hereby approved, including the break fee and expense reimbursement provisions set out therein, and the Company is hereby authorized and directed to execute the Stalking Horse Agreement for purposes of constituting the "stalking horse" bid in respect of the SISP. For the avoidance of doubt, nothing contained in this Order approves the sale or the vesting of the assets as contemplated in the Stalking Horse Agreement and it is understood that this Court's

approval of any transaction will be considered on a subsequent motion made to this Court in accordance with the SISP.

#### **CONTINUATION OF SERVICES**

10. **THIS COURT ORDERS** that during the Stay Period, all persons having oral or written agreements with the Company or statutory or regulatory mandates for the supply of goods and/or services are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Company, provided in each case that the normal prices or charges for such goods or services rendered after the date of this Order are paid by the Company in accordance with normal payment practices of the Company or other practices as may be agreed upon by the supplier or service provider and each of the Company and the Proposal Trustee, or as may be ordered by this Court.

11. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Company shall be entitled, but not required, to pay, with the written approval of the Proposal Trustee, amounts owing to its suppliers for goods or services actually supplied to the Company prior to February 15, 2024 if, in the opinion of the Company, such payment is necessary to maintain the uninterrupted operations of the business. For clarity, such payments will not exceed the cumulative maximum amount of \$272,000.00 unless otherwise ordered by the Court.

#### **ADMINISTRATION CHARGE**

12. **THIS COURT ORDERS** that the Proposal Trustee, counsel to Proposal Trustee and counsel to the Company shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and counsel for the Company as such accounts are rendered. The Proposal Trustee and its counsel shall be authorized to immediately apply any such payments made by the Company to their fees and disbursements and such amounts shall constitute advances against its remuneration and

disbursements when and as approved by this Court.

13. **THIS COURT ORDERS** that, pursuant to Section 64.2 of the BIA, the Proposal Trustee, counsel to the Proposal Trustee, the Company's counsel, and in the event of a bankruptcy, the trustee in bankruptcy and its counsel, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") 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**"), which charge shall not exceed an aggregate amount of \$75,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee, any trustee in bankruptcy, and such counsel, both before and after the making of this Order in respect of these proceedings.

14. **THIS COURT ORDERS** that the filing, registration, or perfection of the Administration Charge shall not be required, and that the Administration 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 Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

15. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on the Property and shall rank in priority to all other security interests, 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**").

16. **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 Administration Charge, unless the Company obtains the prior written consent of the Proposal Trustee and the beneficiaries of the Administration Charge, or further Order of this Court.

17. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the

benefit of the Administration Charge (the "**Chargees**") 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 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) the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and
- c) the payments made by the Company pursuant to this Order, and the granting of the Administration 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.

18. **THIS COURT ORDERS** that the Administration Charge created by this Order over leases of real property in Canada shall only be a charge in the Company's interests in such real property leases.

#### **GENERAL**

19. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada and as against all Persons against whom it may otherwise be enforced.

20. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal,

regulatory or administrative body having jurisdiction in Canada, the United States or in any other foreign jurisdiction 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 the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to recognize and give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Company, the Proposal Trustee and their respective agents in carrying out the terms of this Order.

21. **THIS COURT ORDERS** that each of the Company and the Proposal Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

22. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order.



A handwritten signature in black ink, appearing to be "Keshavam J.", is written above a horizontal line. The signature is enclosed within a hand-drawn oval shape.

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KESHAVAM J

**Schedule "A"**  
**Sale Process**



## Sale and Investment Solicitation Process for MaxSold Incorporated

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1. On February 15, 2024, MaxSold Incorporated (the "**Company**") filed a Notice of Intention to make a proposal (the "**NOI**") under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**"). Dodick Landau Inc. was appointed as proposal trustee of the Company (the "**Proposal Trustee**").
2. On March 14, 2024, the Court granted an order (the "**SISP Approval Order**") that, among other things, authorizes the Company to implement a sale, refinancing and investment solicitation process ("**SISP**") in accordance with the terms hereof. Capitalized terms that are not otherwise defined herein have the meanings ascribed to them in the SISP Approval Order.
3. This SISP sets out the manner in which: (a) binding bids for a sale or other strategic investment or transaction (a "**Transaction**") involving the business, assets and/or equity of the Company (the "**Opportunity**"), will be solicited from interested parties; (b) any such bids received will be addressed; (c) any Successful Bid (as defined below) will be selected; and (d) Court approval of a Successful Bid will be sought.
4. The Company has received a Transaction bid from 100822913 Ontario Inc. (the "**Stalking Horse Bidder**") pursuant to a purchase agreement in substantially the form attached to the Affidavit of Russ Patterson dated March 11, 2024 (the "**Stalking Horse Agreement**") which constitutes a Qualified Bid for all purposes and at all times under this SISP (the "**Stalking Horse Bid**"). The Stalking Horse Bid shall serve as the "stalking horse" bid for the purposes of the SISP.
5. Notwithstanding the receipt of the Stalking Horse Bid, all interested parties are encouraged to submit bids for a Transaction pursuant to this SISP.
6. The SISP shall be conducted by the Proposal Trustee in consultation with the Company.

### Commencement of the Sale Process

7. The Proposal Trustee, will:
  - (a) disseminate marketing materials and a copy of the SISP to potentially interested parties identified by the Company and the Proposal Trustee, or any other interested party who contacts the Company or the Proposal Trustee;
  - (b) arrange for notice of the SISP (and such other relevant information as the Proposal Trustee considers appropriate) (the "**Notice**") to be published in *Insolvency Insider* and other such newspaper(s), publication(s) or journal(s) as the Proposal Trustee may consider appropriate;
  - (c) solicit interest from interested parties with a view to such parties entering into non-disclosure agreements (each an "**NDA**"). Parties shall only obtain access to the virtual data room (the "**VDR**") and be permitted to participate in the SISP if they execute an NDA, in form and substance satisfactory to the Company and the Proposal Trustee; provided that those parties that have already executed an NDA

with the Company shall not be required to execute a further NDA provided that such prior NDA has not expired or will not expire during the SISP;

- (d) provide interested parties who have executed an NDA with access to the VDR containing diligence information in respect of the Opportunity; and
- (e) request that parties submit a binding offer that meets at least the requirements set forth in Section 9 below, as determined by the Proposal Trustee, in consultation with the Company (each a "Qualified Bid"), by the Qualified Bid Deadline (as defined below).

### Key Milestones

- 8. The SISP shall be conducted subject to the terms hereof and the following key milestones, each of which can be extended by up to seven (7) days by the Proposal Trustee, in consultation with the Company, or for a longer period with the consent of the Stalking Horse Bidder or by Court order:
  - (a) the Court issues the SISP Approval Order approving the SISP by no later than March 14, 2024;
  - (b) the Proposal Trustee, with the assistance of the Company, commences the solicitation process by no later than March 15, 2024, it being understood that the Company, in consultation with the Proposal Trustee, shall be at liberty to provide marketing materials and commence discussions with interested parties prior to such date as they consider appropriate;
  - (c) deadline to submit a Qualified Bid – by no later than 5:00 p.m. (Toronto time) on April 15, 2024 (the "Qualified Bid Deadline");
  - (d) date of the Auction (as defined below), if any – April 17, 2024;
  - (e) deadline to select a Qualified Bid as the Successful Bid (as defined below) if no Auction is required – by no later than 5:00 p.m. (Toronto time) on April 17, 2024;
  - (f) Approval Order (as defined below) hearing – by no later than April 25, 2024, subject to Court availability; and
  - (g) closing of the Successful Bid – as soon thereafter as possible and, in any event, by no later than April 30, 2024 (the "Outside Date").

### Qualified Bid Requirements

- 9. In order to constitute a Qualified Bid, a bid must comply with the following:
  - (a) it provides for cash consideration sufficient to pay in full on closing of the Transaction: (i) a minimum incremental amount of \$10,000 in excess of the aggregate purchase price contemplated by the Stalking Horse Agreement; (ii) a break fee in the amount of \$30,000; and (iii) an expense reimbursement fee in the amount of a maximum of \$20,000 (inclusive of HST) as contemplated by the Stalking Horse Agreement (the "Consideration Value");

- (b) it includes an executed binding Transaction document(s) (a "**Definitive Agreement**"), including all exhibits and schedules contemplated thereby, together with a blackline against the Stalking Horse Agreement (which shall be posted by the Company in Word format in the VDR), describing the terms and conditions of the proposed Transaction, including any liabilities proposed to be assumed, the Consideration Value, the structure and financing of the proposed Transaction, and any regulatory or other third-party approvals required;
- (c) it contains the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equity holder(s);
- (d) it discloses any past or current connections or agreements with the Company, any known, potential, prospective bidder participating in the SISP, or any current or former officer, manager, director, member or known current or former equity security holder of any of the Company;
- (e) it includes or is accompanied by evidence satisfactory to the Company and Proposal Trustee of the financial ability of the bidder to consummate the Transaction;
- (f) it includes full details of the bidder's intended treatment of the Company's stakeholders under or in connection with the proposed bid, including the Company's secured creditors, unsecured creditors, employees, customers, suppliers, contractual counterparties and equity holders;
- (g) it is binding and irrevocable until the earlier of (i) the approval of the Successful Bid by the Court, and (ii) thirty (30) calendar days following the Qualified Bid Deadline, provided that if such bid is selected as a Successful Bid, it shall remain irrevocable until the closing of the Transaction contemplated by the Successful Bid;
- (h) it is not conditional upon any condition or contingency relating to due diligence, financing or an other material conditions precedent to the bidder's obligation to complete the transaction;
- (i) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- (j) it includes an acknowledgment and representation that the bidder: (i) has had an opportunity to conduct any and all required due diligence prior to making its bid, and has relied solely upon its own independent review, investigation and inspection in making its bid; (ii) is not relying upon any written or oral statements, representations, promises, warranties, conditions, or guaranties whatsoever, whether express or implied (by operation of law or otherwise), made by any person or party, including the Company, the Proposal Trustee, and their respective employees, officers, directors, agents, advisors (including legal counsel) and other representatives, regarding the proposed Transaction, this SISP, or any information (or the completeness of any information) provided in connection therewith, except as expressly stated in the proposed Transaction documents; (iii) is making its bid on an "as is, where is" basis and without surviving representations or warranties of

any kind, nature, or description by the Company, the Proposal Trustee, or any of their respective employees, officers, directors, agents, advisors and other representatives, except to the extent set forth in the proposed Transaction documents; (iv) is bound by this SISP and the SISP Approval Order; and (v) is subject to the exclusive jurisdiction of the Court with respect to any disputes or other controversies arising under or in connection with the SISP or its bid;

- (k) it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds in an amount equal to at least 10% of the Consideration Value, which Deposit shall be retained by the Proposal Trustee in a non-interest-bearing trust account in accordance with the terms hereof;
- (l) it includes a statement that the bidder will bear its own costs and expenses (including all legal and advisor fees) in connection with the proposed Transaction;
- (m) it contemplates closing of the Transaction by not later than the Outside Date;
- (n) it includes such other information as may be reasonably requested by the Company or Proposal Trustee; and
- (o) it is received by the Proposal Trustee, with a copy to the Company, by the Qualified Bid Deadline at the email addresses specified on Schedule "A" hereto.

#### **Assessment of the Bids and Selection of the Successful Bid**

10. Following the Bid Deadline, the Proposal Trustee shall assess the bids received and determine whether such bids constitute a Qualified Bid (the "**Qualified Bidder**"). The Proposal Trustee may waive compliance with any one or more of the requirements specified in Section 9 above and deem a non-compliant bid to be a Qualified Bid.
11. Following the receipt of any bid, the Proposal Trustee may seek clarification with respect to any of the terms or conditions of such bid and/or request one or more amendments to such bid prior to determining if such bid should be considered a Qualified Bid. Each Qualified Bidder shall comply with all reasonable requests for additional information by the Proposal Trustee regarding the Qualified Bidder or the Qualified Bid. Failure of a Qualified Bidder to comply with such requests for additional information will be a basis for the Proposal Trustee to reject a Qualified Bid.
12. If one or more Qualified Bids has been received by the Proposal Trustee on or before the Qualified Bid Deadline, the Proposal Trustee, will consider and review each Qualified Bid based upon its consideration of the factors set out in Section 9 of the SISP and other factors including, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or release of liabilities not otherwise accounted for in (i) above, (iii) the likelihood of the bidder's ability to close a Transaction by not later than the Outside Date (including factors such as: the Transaction structure and execution risk; conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals), (iv) the likelihood of the Court's approval of the Successful Bid, and (v) the benefit to the Company and its stakeholders, (collectively, the "**Consideration Factors**").

13. In the event that the Proposal Trustee, in consultation with the Company, determines that there are no Qualified Bids, or that there are no Qualified Bids superior to the Stalking Horse Bid based on the Consideration Factors, the Proposal Trustee shall promptly proceed to declare the Stalking Horse Bid as the Successful Bid (as such term is defined below).
14. If the Proposal Trustee receives one or more Qualified Bids which are superior to the Stalking Horse Bid based on the Consideration Factors, it shall proceed with an auction ("**Auction**") to select the highest or otherwise best bid in the SISP (the "**Successful Bid**" and the bidder making such bid, the "**Successful Bidder**"), and the Stalking Horse Bidder and each Qualified Bidder that submitted a Qualified Bid will be invited to attend the Auction. Each bidder invited to participate in the Auction will be deemed an "**Auction Bidder**".
15. If an Auction is conducted, it shall be conducted in accordance with the following procedures:
  - (a) The Auction shall be conducted at a time and date to be designated by the Proposal Trustee by electronic communication means (including videoconference, teleconference or such other reasonable means as the Proposal Trustee deems appropriate);
  - (b) The identity of each Auction Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Auction Bidder;
  - (c) Except as otherwise permitted in the Proposal Trustee's discretion, only the Proposal Trustee, the Company and the Auction Bidders, and in each case their respective professional advisors, shall be entitled to attend the Auction. Each Auction Bidder shall appear at the Auction through a duly authorized representative that shall be designated by the Auction Bidder as its spokesperson;
  - (d) Except as otherwise set forth herein, the Proposal Trustee may waive and/or employ and announce at the Auction additional procedures that the Proposal Trustee deems reasonable under the circumstances for conducting the Auction, provided that such procedures are (i) not inconsistent with this SISP, the Stalking Horse Agreement or any order of the Court granted in the within proceedings, (ii) disclosed to each Auction Bidder, and (iii) designed, in the Proposal Trustee's judgement, to result in the solicitation of the highest and best offer;
  - (e) Not less than one (1) business day prior to the Auction, the Proposal Trustee shall: (i) identify the highest or otherwise best Qualified Bid received, which shall constitute the opening bid for purposes of the Auction (the "**Opening Bid**"), and (ii) provide the Definitive Agreement in respect of the Opening Bid to all Auction Bidders, on a confidential basis. Subsequent bidding at the Auction will continue in minimum increments of \$25,000. Each Auction Bidder shall, if requested by the Proposal Trustee, provide evidence of its financial wherewithal and ability to consummate the Transaction at the increased consideration bid at the Auction;
  - (f) Each Auction Bidder shall be given a reasonable opportunity to submit an overbid at the Auction to any then-existing overbids; and

- (g) The Auction shall continue until the bidding has concluded and there is one remaining Auction Bidder that the Proposal Trustee has determined has submitted the highest or otherwise best bid of the Auction. At such time, the Auction shall be closed and the Auction Bidder that submitted the highest or otherwise best bid shall be designated by the Proposal Trustee as the Successful Bidder.

#### **Finalizing the Successful Bid and the Approval Order**

16. Following selection of the Successful Bid, if any, the Proposal Trustee, with the assistance of its advisors, and in consultation with the Company, shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the milestones set out in Section 8. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the Company in consultation with the Proposal Trustee, the Company shall apply to the Court, on notice to the service list, for an order or orders approving such Successful Bid and/or the mechanics to authorize the Company to complete the Transaction contemplated thereby, as applicable, and authorizing the Company to: (a) enter into any and all necessary agreements and related documentation with respect to the Successful Bid; (b) undertake such other actions as may be necessary to give effect to such Successful Bid; and (c) implement the Transaction contemplated in such Successful Bid (each, an "Approval Order").

#### **Treatment of Deposits**

17. If a Successful Bid is selected and an Approval Order authorizing the consummation of the Transaction contemplated thereunder is granted by the Court, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the Transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the Definitive Agreement entered into in connection with such Successful Bid. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid will be returned to the applicable bidder by the Proposal Trustee as soon as reasonably practicable (but not later than ten (10) business days) after the date upon which the Successful Bid is approved pursuant to an Approval Order or such earlier date as may be determined by the Proposal Trustee.

#### **General**

18. The Proposal Trustee, shall be permitted, in its discretion, to provide general updates and information in respect of the SISF to any other creditor (each a "Creditor") and its legal and financial advisors, if applicable, on a confidential basis, upon: (a) the irrevocable confirmation in writing from such Creditor that it will not submit any bid in the SISF; and (b) such Creditor executing a confidentiality agreement or undertaking with the Company in form and substance satisfactory to the Company and the Proposal Trustee.
19. Any amendments to this SISF may only be made by the Proposal Trustee, with the written consent of the Company, or by further order of the Court.
20. Unless otherwise set out herein, participants and prospective participants in this SISF shall not be permitted to receive any information that is not generally available to all participants relating to the number or identity of Qualified Bidders or the details of any

confidential discussions or correspondence between the Proposal Trustee and Qualified Bidders in connection with this SISP.

21. The Proposal Trustee may, with the consent of the applicable participants, disclose such information to other bidders for the purpose of seeking to combine separate bids.
22. At any time during this SISP, the Company or the Proposal Trustee may apply to the Court for advice and directions regarding the implementation and completion of this SISP.

**SCHEDULE "A": E-MAIL ADDRESSES FOR DELIVERY OF BIDS**

To counsel for the Company:

skour@reconllp.com; jwuthmann@reconllp.com

and with a copy to the Proposal Trustee and its counsel:

rahn.dodick@dodick.ca; pcho@weirfoulds.com



~~IN~~ THE MATTER OF THE BANKRUPTCY AND  
INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED

Court File No. BK-24-03044331-0033

Estate File No. 33-3044331

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE  
A PROPOSAL OF MAXSOLD INC. OF THE CITY OF KINGSTON  
IN THE PROVINCE OF ONTARIO

*March 14/24*

*Order to gas signed  
Mullin returned April 26/24 at 10:00 AM.*

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

*Proceedings commenced at Ottawa*

**MOTION RECORD**  
(returnable March 14, 2024)

**RECONSTRUCT LLP**  
Royal Bank Plaza, South Tower  
200 Bay Street  
Suite 2305, P.O. Box 120  
Toronto, ON M5J 2J3

**Sharon Kour** LSO No. 58328D  
skour@reconllp.com  
Tel: 416.613.8283

**Jessica Wuthmann** LSO No. 72442WS  
jwuthmann@reconllp.com  
Tel: 416.613.8288

**Jared Rosenbaum** LSO No. 74769U  
jrosenbaum@reconllp.com  
Tel: 416.613.8284

Fax: 416.613.8290

**Lawyers for the Applicant**

IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED AND

Bankruptcy Court File No. BK-24-03044331-0033  
Estate No. 33-3044331

AND IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF MAXSOLD INCORPORATED OF THE  
CITY OF KINGSTON IN THE PROVINCE OF ONTARIO

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

Proceedings commenced at *Ottawa*

**ORDER  
(Approval of SISP, Administration Charge and  
Stay Extension)**

**RECONSTRUCT LLP**  
Royal Bank Plaza, South Tower  
200 Bay Street  
Suite 2305, P.O. Box 120  
Toronto, ON M5J 2J3

**Sharon Kour** LSO No. 58328D  
skour@reconllp.com  
Tel: 416.613.8285

**Jessica Wuthmann** LSO No. 72442W  
jwuthmann@reconllp.com  
Tel: 416.613.8288

**Lawyers for MaxSold Incorporated**

# APPENDIX "C"

## STALKING HORSE ASSET PURCHASE AGREEMENT

This Agreement made this 11<sup>th</sup> day of March, 2024.

### BETWEEN:

**MaxSold Incorporated, a corporation existing under the laws of Canada pursuant to the  
*Canada Business Corporations Act, RSC 1985, c. C-44***

(the "Company")

- and -

**1000822913 Ontario Inc.**

(the "Purchaser")

### RECITALS:

- A. The Company filed a Notice of Intention to Make a Proposal (the "NOI") under the *Bankruptcy and Insolvency Act, RSC 1985, c B-3* (the "BIA") on February 15, 2024 (the "Proposal Proceedings"). Dodick Landau Inc. was appointed as proposal trustee of the Company (in such capacity, the "Proposal Trustee").
- B. The Company has determined it is in the best interest of the creditors and stakeholders of the Company to conduct a sale process ("Sale Process") pursuant to which potential offerors may submit offers to purchase the assets of the Company.
- C. The Company will bring a motion for an Order approving a stalking horse sale process (the "Sale Process Order") to authorize the Company, with the assistance of the Proposal Trustee conduct a Sale Process with respect to the Purchased Assets and to approve this agreement as the stalking horse bid.
- D. Subject to the conditions set forth herein, the Company has agreed to sell, convey, transfer and deliver to the Purchaser, and the Purchaser has agreed to purchase, acquire, assume and accept from the Company the Purchased Assets and Assumed Obligations, on the terms and subject to the conditions of this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confirmed, the Parties agree as follows:

## ARTICLE 1 – INTERPRETATION

### 1.1.1 Definitions

In this Agreement and the Recitals herein, the following terms shall have the meanings set out below:

**“Acceptance Date”** means that date this Agreement is executed by each of the parties hereto;

**"Affiliate"** means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate;

**"Agreement"** means this asset purchase agreement, including all schedules attached hereto and forming part hereof, and all written amendments and written restatements thereto from time to time;

**"Applicable Law"** means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

**"Approval and Vesting Order"** means an order of the Court approving this Agreement and the transactions contemplated hereby and vesting, upon the delivery of the Trustee's Certificate to the Purchaser, all right, title and interest of the Company to the Purchased Assets in the Purchaser, free and clear of all Claims and Encumbrances pursuant to the terms and conditions of this Agreement, substantially in the form of the model order approved by the "Ontario Commercial List Users Committee", and otherwise in form and substance acceptable to the Purchaser and the Company;

**"Article"** or **"Section"** or **"Schedule"** means the specified Article, Section of or Schedule to this Agreement and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

**“Assignment Order”** means an order of the Court, in form and substance satisfactory to the Company, Proposal Trustee, and the Purchaser, acting reasonably, and obtained on a motion made on notice to such Persons as the Company and the Purchaser determine, to be sought by the Company, authorizing and approving the assignment to the Purchaser of any Assumed Contracts for which the consent, approval or waiver of the party or parties thereto (other than the Company) is required to assign such Assumed Contracts.

**"Assumed Contracts"** has the meaning ascribed thereto in Section 2.9;

**"Assumed Obligations"** has the meaning ascribed thereto in Section 2.7;

**"Bid Deadline"** has the meaning ascribed thereto in the Sale Procedures;

**"Books and Records"** means all of the books and records relating to the Purchased Assets, including, without limitation, all personnel files/records relating to all Transferred Employees and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, business reports, projections and all other documents, surveys, plans, files, records, assessments, correspondence, and other data and information, financial or otherwise, including all data, information and databases stored on computer-related or other electronic media, excluding any of the foregoing as applicable to any Excluded Assets;

**"Break Fee"** has the meaning ascribed thereto in Section 4.1(b);

**"Business"** means the business carried on by the Company being the operating of an online platform to market and auction customer goods;

**"Business Day"** means a day on which banks are open for business in the City of Toronto, but does not include a Saturday, Sunday or statutory holiday recognized in the Province of Ontario;

**"Claims"** means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, prosecutions or other similar processes, and **"Claim"** means any one of them;

**"Closing"** means the completion of the purchase and sale of the Purchased Assets, in accordance with the provisions of this Agreement;

**"Closing Date"** has the meaning ascribed thereto in Section 3.1 hereof;

**"Closing Time"** has the meaning ascribed thereto in Section 3.1 hereof;

**"Contracts"** means the right, title and interest of the Company to and in all pending and/or executory contracts, agreements, leases and arrangements Related to the Business to or by which any of the Company or any of the Purchased Assets or Business is bound or affected, and **"Contract"** means any one of them;

**"Court"** means the Ontario Superior Court of Justice, sitting in Bankruptcy;

**"Critical Supplier Pre-Filing Costs"** means the amounts owed by the Company to certain key suppliers, for pre-filing services, that the Company will pay, with the oversight of the Proposal Trustee, in the exact amounts identified in **Schedule "E"**.

**"Critical Supplier Ongoing Costs"** means the amounts owed by the Company to the key suppliers identified in Schedule "E" from the time of filing the NOI to Closing.

**"Cure Costs"** means, save and except for the Critical Supplier Pre-Filing Costs and Critical Supplier Ongoing Costs, a payment required to cure any existing monetary defaults that exist on or before Closing in relation to an Assumed Contract, other than those arising by reason only of the Company's insolvency, the commencement of proceedings under this Proposal Proceeding, or the Company's failure to perform a non-monetary obligation;

**"Deposit"** has the meaning ascribed thereto in Section 2.3(a);

**"Effective Time"** means 12:01 a.m. on the Closing Date;

**"Employee"** means an individual who was formerly employed or engaged by the Company or, as at the Effective Time, is employed or engaged by the Company in connection with the Business, and **"Employees"** means every Employee;

**"Employee Liabilities"** means any and all Liabilities having priority over registered security interests (whether by statute, contract, common law or otherwise) owed to any of the Employees, or otherwise arising out of, or resulting from, the relationship between the Company and any of the Employees, including any Liability arising as a result of such party being deemed to be a successor employer, related employer or otherwise responsible or liable for payment of any amounts owing to, on behalf of, or in respect of, any of the Employees (including, but not limited to, the Transferred Employees), whether pursuant to the *Employment Standards Act, 2000* (Ontario), the *Pay Equity Act* (Ontario) or the *Workplace Safety and Insurance Act, 1997* (Ontario). Without limiting the foregoing, Employee Liabilities shall include:

- (a) all salaries, wages, bonuses, commissions, vacation pay, public holiday pay and other compensation relating to the employment of the Employees (including accrued but unpaid vacation pay and any retroactive pay) and all Liabilities under employee benefit plans relating to employment of the Employees; and
- (b) all termination pay, severance pay, damages in lieu of reasonable notice and other related Liabilities (under statute, contract, common law or otherwise) in respect of the termination and/or severance of employment of the Employees;

**"Encumbrances"** means any and all security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, leases, title retention agreements, reservations of ownership, demands, executions, levies, charges, options or other rights to acquire any interest in any assets, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, and all contracts to create any of the foregoing, or encumbrances of any kind or character whatsoever, other than Permitted Encumbrances;

**"Equipment"** means all equipment and personal property owned by the Company wherever located, including all fixed and tangible assets, machinery, chattels, tooling, furniture, computer hardware and other tangible assets;

**"Excluded Assets"** means the following:

- (a) all cash, bank balances, deposits, moneys in possession of banks and other depositories, term or time deposits and similar cash items of, owned or held by, or for the account of, the Company, excluding the Company's merchant account bearing Merchant ID no. MID 8032779756 with a reserve of \$300,000 held with the Merchant holding reserve Elavon (the **"Merchant Account"**), which shall be transferred to the Purchaser as part of the Purchased Assets;

- (b) all cash, bank balances, deposits, moneys in possession of banks and other depositories, term or time deposits and similar cash items of, held by, or for the account of, the Company in trust for its clients in Royal Bank of Canada account 003 02382 1007095 (the "Trust Account");
- (c) the Purchase Price;
- (d) all minute books, share ledgers, corporate seals, capital stock, equity interests and stock certificates of the Company;
- (e) all policies of insurance or assurance (including directors' and officers' insurance and claims against insurance and insurance settlements), except for the right to receive the proceeds of insurance in respect of Purchased Assets and all Books and Records related thereto which shall not constitute Excluded Assets;
- (f) original Tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance, and existence of the Company, in each case that do not relate to the Business or the Purchased Assets;
- (g) any Books and Records that the Company is required by Applicable Law to retain in its possession, provided however, the Purchaser shall be provided with copies of all such Books and Records that pertain to the Business; and
- (h) any other assets that the Purchaser elects to exclude in writing prior to Closing pursuant to Section 2.5.

"**Excluded Liabilities**" has the meaning ascribed thereto in Section 2.8;

"**Expense Reimbursement Fee**" has the meaning ascribed thereto in Section 4.1(b);

"**Governmental Authorities**" means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and "**Governmental Authority**" means any one of them;

"**HST**" means all of the harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada);

"**Intellectual Property**" means any or all of the following items of the Company, wherever located, domestic or foreign: all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, copyrights and copyright rights, brand names, trade dress, business and product names, domain names, corporate names, logos, slogans, trade secrets, inventions, processes,



formulae, industrial models, designs, specifications, data, technology, methodologies, computer programs (including all source code), confidential and proprietary information, whether or not subject to statutory registration, all related technical information, manufacturing, engineering and technical drawings, know how, all pending applications for and registrations of patents, trademarks, service marks and copyrights, including all obligations of third parties relating to the protection of the foregoing, the goodwill associated with the foregoing, and the right to sue for past payment, if any, in connection with any of the foregoing, and all documents, disks and other media on which any of the foregoing is stored, including without limitation;

**"Inventory and Supplies"** means all items that are held by the Company for sale, license, rental, lease or other distribution (and includes all supplies used by the Company in the operation of the Business) on hand at Closing;

**"Liability"** means any debt, loss, damage, adverse claim, fines, penalties, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, determined or determinable, disputed or undisputed, liquidated or unliquidated, or due or to become due, and whether in or under statute, contract, tort, strict liability or otherwise), and includes all costs and expenses relating thereto (including all fees, disbursements and expenses of legal counsel, experts, engineers and consultants and costs of investigation), and, **"Liabilities"** means the plural thereof;

**"Licences and Permits"** means all licences, permits, filings, certificates, authorizations, approvals or indicia of authority Related to the Business or the Purchased Assets or necessary for the operation or use of the Purchased Assets;

**"Ordinary Course"** means, with respect to an action taken or omitted to be taken by a Person, that such action is reasonably practicable and generally consistent with the recent past practices of the Person having specific regard to the recent circumstances leading up to and including the transactions contemplated by this Agreement and, as applicable, subject to any Orders in the Proposal Proceeding;

**"Outside Date"** means April 30, 2024;

**"Parties"** means the Company and the Purchaser collectively, and **"Party"** means any one of them;

**"Permitted Encumbrances"** means those Encumbrances listed in **Schedule "A"** attached hereto;

**"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

**"Prepaid Amounts"** means all prepayments, prepaid charges, deposits, security deposits, sums and fees Related to the Business or in respect of the Purchased Assets;

**"Proposal Trustee"** has the meaning given to that term in Recital A and shall include Dodick Landau Inc. in its capacity as trustee in bankruptcy of the Company;

**"Purchase Price"** has the meaning ascribed thereto in Section 2.2;

**"Purchased Assets"** means all of the Company's right, title and interest in all of its assets, properties and undertakings, other than the Excluded Assets, including but not limited to, the following assets:

- (a) Assumed Contracts;
- (b) Books and Records;
- (c) Claims of the Company;
- (d) Equipment;
- (e) The Merchant Account;
- (f) Intellectual Property, including but not limited to trademarks, copyrights, trade secrets, patents;
- (g) All software owned by the Company including but not limited to application software, executables, databases, scripts, data backups, system software, software platforms, all related source code, object code and other code or data in any form or stage of development;
- (h) All online access keys, accounts, admin privileges, passwords, certificates, authorities and access permissions;
- (i) All configurations, architectural diagrams, deployment guides, setup documentation necessary for the deployment, operation and maintenance of the software and technology assets;
- (j) Documentation related to all technology and software, including but not limited to API documentation, code comments, technical specifications and any other documents essential to the ongoing use, development and maintenance of the software assets;
- (k) Any licenses, permissions, and authorizations necessary for the use, modification, and distribution of any third-party software or technology integrated with or used in conjunction with the software and systems of the Company, to the extent such licenses, permissions, and authorizations are transferable to the Purchaser;
- (l) Any digital assets related to the software business, including but not limited to domain names, websites, web applications, cloud accounts, telephone and facsimile numbers, email addresses, social media accounts and the content therein, along with any associated credentials or access keys;
- (m) Inventory and Supplies;
- (n) Licenses and Permits;
- (o) Prepaid Amounts;

- (p) Receivables;
- (q) Any and all right to receive auction proceeds from auctions that have not been completed on or before the date of Closing, including any deposits held in relation thereto;
- (r) All personal information, within the meaning of applicable privacy legislation, to the extent such information can be transferred to the Purchaser without the consent of any individual which has not been obtained (it being agreed that the Company has no obligation to seek such consent);
- (s) All rights and interests under or pursuant to all warranties, representations and guarantees, express implied or otherwise, of or made by suppliers or others in connection with the Purchased Assets or otherwise Related to the Business;
- (t) All goodwill associated with the Business, including, without limitation, the goodwill associated all names previously and currently operating under including but not limited to "MaxSold" and any variation thereof including the right of the Purchaser to hold itself out as operating the Business as the successor to the Company; and
- (u) all other property, assets and undertakings of the Company used in or Related to the Business of whatsoever nature or kind.

"**Qualified Bid**" has the meaning ascribed thereto in the Sale Procedures;

"**Receivables**" means the right, title and interest of the Company to all accounts receivable, bills receivable, trade accounts, book debts, insurance claims, and choses-in-action, now or hereafter due or owing to the Company, Related to the Business or the Purchased Assets, together with any unpaid interest accrued on such items and any security or collateral for such items, including recoverable deposits, attributable to the period prior to Closing, and without limiting the generality of the foregoing, includes all tax refunds and government subsidies. For clarity, "Receivables" shall not include revenue received by the Company in respect of auctions that are completed on or before the Closing Date;

"**Related to the Business**" means, directly or indirectly, used in, arising from, or relating in any manner to the Business;

"**Sale Procedures**" means the sale and solicitation process approved by the Sale Process Order and on terms substantially similar to those attached as **Schedule "B"** hereto;

"**Sale Process Order**" means an order of the Court approving the execution of this Agreement as a "stalking horse" asset purchase agreement and the Sale Procedures, in form and content acceptable to the Purchaser and the Company;

"**Stalking Horse Bid**" has the meaning ascribed thereto in Section 4.1(a);

"**Taxes**" means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net

worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax, including, Canada Pension Plan and provincial pension plan contributions (or equivalent in the jurisdiction where the Purchased Assets may be located), employment insurance payments and workers compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

"**Transaction**" means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement;

"**Transferred Employees**" means Employees who have accepted an offer of employment from the Purchaser as of the Closing;

"**Trustee's Certificate**" means a certificate from the Proposal Trustee confirming the Closing of the transactions contemplated hereby, substantially in the form attached to the Approval and Vesting Order; and

"**Winning Bidder**" has the meaning ascribed thereto in Section 4.1(c).

### **1.1.2 Section References**

Unless the context otherwise, references in this Agreement to Sections are to Sections of this Agreement.

### **1.1.3 Schedules**

The following Schedules shall form an integral part of this Agreement:

- Schedule "A"** Permitted Encumbrances
- Schedule "B"** Sale Procedures
- Schedule "C"** Purchased Assets List
- Schedule "D"** Assumed Contracts
- Schedule "E"** Critical Supplier Pre-Filing Costs

## **ARTICLE 2 – PURCHASE AND SALE**

### **2.1 Purchase and Sale of Purchased Assets**

At the Closing Time, subject to the terms and conditions of this Agreement and the Approval and Vesting Order, the Company shall sell, and the Purchaser shall purchase the Purchased Assets and the Purchaser shall assume the Assumed Obligations.

The Purchaser and the Company shall mutually agree upon and finalize a detailed list of the Purchased Assets to be included in **Schedule "C"** hereto (the "**Purchased Assets List**"), which shall be attached hereto and made a part hereof, no later than five (5) business days prior to the

Approval and Vesting Order. Notwithstanding the Purchaser shall retain its right to add assets to the Excluded Assets up until close.

## **2.2 Purchase Price**

In consideration of the sale, assignment, transfer and conveyance of the Purchased Assets to the Purchaser, the purchase price payable by the Purchaser to the Company for the Purchased Assets shall be the cash sum of Seven Hundred and Fifty Thousand (\$750,000.00) (the "**Purchase Price**") plus the cash sum required to pay the Cure Costs for all of the Assumed Contracts, if any.

In the event that the Merchant Account or the funds therein are determined by the Purchaser, in its sole and absolute discretion, to be non-transferable to the Purchaser, the Purchaser will have the option, but not the obligation, by notice in writing to the Company and the Proposal Trustee prior to Closing to reduce the Purchase Price by \$300,000.00, and in such case, the Merchant Account shall form part of the Excluded Assets.

## **2.3 Satisfaction of Purchase Price**

The Purchaser shall satisfy the Purchase Price by payment to the Proposal Trustee by way of a certified cheque, wire transfer or bank draft as follows:

- (a) an amount representing 10% of the Purchase Price will be paid by the Purchaser within 2 business days following the Acceptance Date. This payment will serve as a deposit (the "**Deposit**") to be held by the Proposal Trustee in trust until the Closing and will be credited toward the Purchase Price upon Closing; and
- (b) the balance on Closing.

The Proposal Trustee agrees to cause the Deposit to be placed into a non-interest-bearing account or certificate of deposit.

The Purchaser will pay the Cure Costs for all of the Assumed Contracts by electronic wire transfer to each counterparty to the Assumed Contract on the Closing Date. The wire transfer information shall be provided by the Company to the Purchaser at least three (3) days prior to Closing.

## **2.4 Allocation of Purchase Price**

The Purchase Price shall be allocated among the Purchased Assets in the manner agreed to by the Purchaser and the Company (each acting reasonably) prior to the Closing Date, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this section of the Agreement such that each Party shall be free to make its own reasonable allocation.

## **2.5 Excluded Assets**

Save and except as otherwise expressly set out herein, the Purchaser may, at its option, exclude any of the Purchased Assets from the transaction contemplated hereby at any time prior to Closing upon delivery of prior written notice to the Company, whereupon such assets shall be deemed to form part of the Excluded Assets, provided, however, that there shall be no reduction in the Purchase Price as a result of such exclusion. Any changes, including exclusions, to the list of Purchased Assets agreed upon by the Parties shall be promptly updated in Schedule "C", with the final version to be attached to this Agreement prior to Closing.

## 2.6 Taxes and Elections

- (a) The Purchaser shall be responsible for the payment on Closing of all Taxes that are required to be paid or remitted in connection with the consummation of the transactions contemplated in this Agreement.
- (b) If applicable, at the Closing, the Receiver and the Purchaser shall jointly execute an election under Section 167 of the *Excise Tax Act* (Canada) to seek to cause the sale of the Purchased Assets to take place on an HST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser shall file such election with its HST return for the applicable reporting period in which the sale of the Purchased Assets takes place.
- (c) If applicable, at the Closing, the Company and the Purchaser shall execute jointly an election in prescribed form under Section 22 of the *Income Tax Act* (Canada) in respect of the Receivables and shall file such election with their respective tax returns for their respective taxation years that include the Closing Date.
- (d) The Purchaser agrees to indemnify and save the Company harmless from and against all claims and demands for payment of all Taxes payable by Purchaser in connection with the purchase of the Purchased Assets, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such Taxes when due.
- (e) The Purchaser shall, at all times, indemnify and hold harmless the Company's directors, officers, and employees, and the Proposal Trustee against and in respect of any and all amounts assessed by any taxing authority in the event that any Tax exemption claimed by the Purchaser was inapplicable, invalid, or not properly made, including all taxes, interest, and penalties assessed and including all reasonable legal and professional fees incurred by the Company's directors, officers, and employees as a consequence of or in relation to any such assessment. Notwithstanding anything else in this Agreement, this indemnity shall survive the Closing Date in perpetuity and shall not be subject to any caps or restrictions.

## 2.7 Assumed Obligations

At Closing, the Purchaser shall assume and be liable for the following (collectively, the "**Assumed Obligations**"):

- (a) any Liabilities in connection with the Assumed Contracts as set out in Section 2.9;
- (b) all Liabilities and Claims arising or accruing from the use of the Purchased Assets from and after the Closing; and
- (c) all Permitted Encumbrances.

## **2.8 Excluded Liabilities**

Except for the Assumed Obligations, the Purchaser is not assuming, and shall not be deemed to have assumed, any Liabilities of the Company not specifically assumed (collectively, the "**Excluded Liabilities**"), which Excluded Liabilities include, but are not limited to, the following:

- (a) all Liabilities and Claims arising or accruing from the use of the Purchased Assets prior to the Closing;
- (b) all Employee Liabilities that arise out of, or result from the employment or engagement by the Company (or any predecessor to the Company) of any of the Employees (including the Transferred Employees) (unless otherwise imposed by law) and/or the termination or severance of such engagement or employment; and
- (c) all Encumbrances, other than Permitted Encumbrances.

## **2.9 Assumed Contracts**

The Purchaser shall assume the Contracts which are listed and described in **Schedule "D"** (which Contracts shall be referred to as the "**Assumed Contracts**" and of which any one of them is an "**Assumed Contract**"). Save and except as hereinafter set out, the Purchaser shall be able to add or remove Contracts from Schedule "D" up until at least five (5) Business Days prior to the hearing date for the Approval and Vesting Order, by giving notice to the Company and Proposal Trustee in writing. This Agreement and any document delivered under this Agreement will not constitute an assignment or an attempted assignment of any Contract contemplated to be assigned to the Purchaser under this Agreement which is not assignable without the consent of a third Person if such consent has not been obtained and such assignment or attempted assignment would constitute a breach of such Contract, in which event, the provisions of Section 2.10 hereof shall govern.

## **2.10 Assignment of Assumed Contracts**

The Company, in cooperation with the Purchaser, shall take such reasonable steps as necessary to obtain the consent of the counterparties for the assignment of the Assumed Contracts. If necessary, such steps shall include the Company making reasonable efforts to obtain an Assignment Order.

# **ARTICLE 3 – CLOSING ARRANGEMENTS**

## **3.1 Closing**

Closing shall take place at 10:00 a.m. (Toronto, Ontario time) (the "**Closing Time**") on the third business day following the granting of the Approval and Vesting Order or such other date as the Parties may agree to in writing, but in any event shall not be later than the Outside Date, and if such date falls on a holiday or weekend, it shall be the next Business Day (the "**Closing Date**").

The Closing shall take place by electronic transmission of documents, or at such other time and location, and in such other manner, as the Parties may agree upon in writing.

### **3.2 Tender**

Except as otherwise set out herein, any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel and money may be tendered by official bank draft drawn upon a Canadian chartered bank, by negotiable cheque payable in Canadian funds and certified by a Canadian chartered bank or trust company, or by wire transfer of immediately available funds to the account specified by that Party.

### **3.3 Company's Closing Deliveries**

At the Closing, the Company shall deliver to the Purchaser the following, each in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) a copy of the Approval and Vesting Order, issued by the Court;
- (b) a copy of the Assignment Order, if any;
- (c) the Books and Records;
- (d) if applicable, the elections referred to in Section 2.6;
- (e) a general conveyance with respect to the Purchased Assets;
- (f) any assignments, transfers or bills of sale as may be requested by the Purchaser to effect the transfer of the Intellectual Property;
- (g) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date, with the same effect as though made on and as of the Closing Date; and
- (h) such further and other documentation as is referred to in this Agreement or as the Purchaser or its lawyers may reasonably require to complete the transactions provided for in this Agreement.

### **3.4 Purchaser's Closing Deliveries**

At the Closing, the Purchaser shall deliver to the Company the following, each in form and substance satisfactory to the Company, acting reasonably:

- (a) the balance of the Purchase Price;
- (b) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true



and correct as of the Closing Date, with the same effect as though made on and as of the Closing Date;

- (c) a general conveyance with respect to the Purchased Assets;
- (d) a certified resolution of the Purchaser authorizing the Agreement and the purchase of the Purchased Assets;
- (e) a certificate of status of the Purchaser;
- (f) if applicable, the elections referred to in Section 2.6; and
- (g) such further and other documentation as is referred to in this Agreement or as the Company or its lawyers may reasonably require to complete the transactions provided for in this Agreement.

### **3.5 Risk**

The Purchased Assets, including all software, intellectual property rights, operational functionalities, and associated services, shall remain at the risk of the Company until the Closing. From and after Closing, such risks shall be assumed by the Purchaser.

In the event that any of the Purchased Assets are subject to material impairment prior to Closing, including but not limited to operational disruptions exceeding 48 consecutive hours, intellectual property disputes that call into question the ownership and the ability to operate the service, or any other circumstances that significantly impair the business's value or operations, the Company/Seller shall notify the Purchaser in writing within twenty-four (24) hours upon becoming aware of such material impairment.

In the event of such material impairment to the Purchased Assets prior to Closing, the Purchaser shall, at its sole and absolute discretion, have the right to elect to terminate this Agreement by providing written notice to the Company, upon which, the Parties shall each be released from all obligations under this Agreement except that the Company shall promptly return the Deposit to the Purchaser without interest, subject to further written agreement of the Parties.

For purposes of this Agreement, 'material impairment' shall include any event or condition that significantly disrupts the functionality, marketability, or the Company's rights and obligations in respect of the Purchased Assets, rendering the business's continuous operation or the value of the Purchased Assets substantially compromised.

### **3.6 Conduct Prior to Closing**

Prior to the Closing, the Company shall conduct the Business in the Ordinary Course, except to the extent required to allow the Company to comply with its obligations under this Agreement or as may be permitted with the written consent of the Purchaser (such consent not to be unreasonably conditioned, withheld, or delayed), subject in all cases to any Court orders granted

in the Proposal Proceedings. Without limiting the generality of, but subject to, the foregoing, the Company shall:

- (a) maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the Ordinary Course;
- (b) use reasonable commercial efforts in the circumstances to preserve the goodwill of the Company and maintain satisfactory relationships with suppliers and customers;
- (c) not terminate any Employees without the prior written consent of the Purchaser, such consent not to be unreasonably withheld;
- (d) not convey, encumber or otherwise dispose of any of the Purchased Assets except in the Ordinary Course;
- (e) not amend or modify any Assumed Contract in any material respect, waive any material rights in respect of any Assigned Agreement or disclaim any Assigned Agreement;
- (f) not enter into any material contract or agreement in respect of the Business without the prior written consent of the Purchaser, such consent not to be unreasonably withheld;
- (g) use reasonable commercial efforts to maintain any insurance currently in effect respecting the Purchased Assets until Closing; and
- (h) comply in all material respects with all Applicable Laws relating to the conduct of the Business and the ownership and use of the Purchased Assets.

### **3.7 Delivery of the Trustee 's Certificate**

When the conditions set out in Article 5 below have been satisfied and/or waived by the Vendor and/or the Purchaser, as applicable, the Vendor and the Purchaser or their respective counsel will each deliver to the Proposal Trustee confirmation that such conditions of Closing, as applicable, have been satisfied and/or waived (the "**Conditions Certificates**"). Upon receipt of the Conditions Certificates, the Proposal Trustee shall: (a) issue the Trustee's Certificate to the Purchaser and the Vendor, at which time the Closing will be deemed to have occurred; and (b) file a copy of the Trustee's Certificate with the Court and provide a copy of same to the service list in the Proposal Proceedings. In the case of (a) and (b), the Proposal Trustee will be relying exclusively on the Conditions Certificates without any obligation whatsoever to verify the satisfaction or waiver of the applicable conditions. The Parties hereby acknowledge and agree that the Proposal Trustee shall have no liability to the Parties in connection with the Trustee's Certificate or otherwise in connection with this Agreement.

## ARTICLE 4 – SALE PROCEDURE

### 4.1 Sale Procedures

- (a) The Company shall bring a motion on or before March 14, 2024, for approval of the Sale Procedures. The Sale Process Order shall recognize the Purchase Price as a baseline or "stalking horse bid" (the "**Stalking Horse Bid**"), and shall also provide for a marketing process of the Purchased Assets by the Company with the potential for competitive bidding. The Purchaser acknowledges and agrees that the aforementioned process is in contemplation of determining whether a superior bid can be obtained for the Purchased Assets;
- (b) In consideration for the Purchaser's expenditure of time and money and agreement to act as the initial bidder through the Stalking Horse Bid, and the preparation of this Agreement, and subject to Court approval, the Purchaser shall be entitled to a break fee of \$30,000 (the "**Break Fee**") and an expense reimbursement fee in the amount of a maximum of \$20,000 (inclusive of HST, if any) (the "**Expense Reimbursement Fee**") payable by the Company to the Purchaser only in the event that a successful bid other than the Stalking Horse Bid is accepted by the Company, approved by the Court and completed. The payment of the foregoing amounts shall be approved in the Sale Process Order and shall be payable to the Purchaser out of the sale proceeds derived from and upon completion of the winning bid. The Parties acknowledge and agree that the foregoing amounts represent a fair and reasonable estimate of the expenses that will be incurred by the Purchaser as a result of preparing for and entering into this Agreement, and is not intended to be punitive in nature nor to discourage competitive bidding for the Purchased Assets. For certainty, the Break Fee and the Expense Reimbursement Fee do not form part of the Purchase Price.
- (c) Notwithstanding anything contained herein to the contrary, in the event that the Purchaser is not the selected winning bid in the Sale Process (the "**Winning Bidder**"), then upon the closing of a transaction with such Winning Bidder, this Agreement shall be terminated and the Purchaser shall be entitled to the Break Fee, the Expense Reimbursement Fee and a return of the Deposit and neither Party hereto shall have any further liability or obligation, except as expressly provided for in this Agreement.
- (d) If no Qualified Bids other than the Stalking Horse Bid are received by the Bid Deadline, the Company shall forthwith bring a motion to the Court to obtain the Approval and Vesting Order and, if granted, shall proceed with completing the transaction contemplated hereby forthwith.

### 4.2 Approval and Vesting Order

The Approval and Vesting Order shall approve this Agreement and the transactions contemplated hereby and vest, upon the delivery of the Trustee's Certificate to the Purchaser, all right, title and interest of the Company in and to the Purchased Assets to the Purchaser, or as it may direct, free and clear of all Claims and Encumbrances pursuant to the terms and conditions of this Agreement, other than Permitted Encumbrances.

## **ARTICLE 5 – CONDITIONS PRECEDENT**

### **5.1 Conditions Precedent of the Purchaser**

The Purchaser shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing, by the Purchaser at any time; and the Company agrees with the Purchaser to take all such commercially reasonable actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Execution of this Agreement.* The Company shall deliver a fully executed copy of this Agreement to the Purchaser on or before March 8, 2024;
- (b) *Representations and Warranties.* The representations and warranties of the Company in Section 6.1 shall be true and correct at the Closing Time;
- (c) *Sale Process Order.* The Sale Process Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Sale Process Order shall have expired;
- (d) *Winning Bidder.* The Company shall have determined in accordance with the Sale Procedure that this Agreement is a successful bid and the Purchaser is the Winning Bidder;
- (e) *Approval and Vesting Order Final.* The Approval and Vesting Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Approval and Vesting Order shall have expired if the hearing for the Approval and Vesting Order was contested;
- (f) *Assignment of Assumed Contracts.* The Company shall have the authorization to assign all of the Assumed Contracts whether by the terms of the Assumed Contracts, the consent, approval, waiver of the counterparty to the Assumed Contract, or the Assignment Order;
- (g) *Company's Compliance.* The Company shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before the Closing Time and shall have executed and delivered to the Purchaser at the Closing Time all the deliveries contemplated in Section 3.3;

- (h) *Post-Filing Obligations.* All post-filing obligations of the Company have been paid, including but not limited to, the Critical Supplier Ongoing Costs prior to Closing; and
- (i) *No Legal Action:* No action or proceeding will be pending or threatened by any Person (other than the Purchaser), and there is no order or notice from any Person to (or seeking to) enjoin, restrict or prohibit, on a temporary or permanent basis any of the transactions contemplated by this Agreement or imposing any terms or conditions on the transactions contemplated by this Agreement, the Business or the business of the Purchaser or otherwise limiting the right of the Purchaser to conduct the Business after Closing on substantially the basis as heretofore operated.

## **5.2 Conditions Precedent of the Company**

The Company shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Company, and may be waived, in whole or in part, in writing by the Company at any time; and the Purchaser agrees with the Company to take all such commercially reasonable actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Purchaser's Compliance.* The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed by or complied with at or before the Closing Time and shall have executed and delivered to the Company at the Closing Time all the deliveries contemplated in Section 3.4 in this Agreement;
- (b) *Sale Process Order.* The Sale Process Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Sale Procedure Order shall have expired;
- (c) *Approval and Vesting Order Final:* The Approval and Vesting Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Approval and Vesting Order shall have expired if the hearing for the Approval and Vesting Order was contested; and
- (d) *Representations and Warranties.* The representations and warranties of the Purchaser in Section 6.2 shall be true and correct at the Closing Time.

## **5.3 Non-Satisfaction of Conditions**

If any condition precedent set out in Section 5.1 or 5.2 is not satisfied or performed at or before the Closing Time, the Party for whose benefit the condition precedent is inserted may:

- (a) waive compliance with the condition, in whole or in part, in its sole discretion by written notice to the other Party (but may not claim for any matter waived) and

without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or

- (b) elect on written notice to the other Party to terminate this Agreement, in which event each Party shall be released from all obligations under this Agreement. Notwithstanding the foregoing, the Proposal Trustee shall retain the Purchaser's deposit if the Purchaser fails to perform or satisfy the condition precedents in Subsection 5.2(a) and/or 5.2(d). If the Company fails to perform its condition precedents in Section 5.1, the Proposal Trustee shall promptly return the Deposit to the Purchaser.

## **ARTICLE 6 – REPRESENTATIONS AND WARRANTIES**

### **6.1 Representations and Warranties of the Company**

As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Company set out in this Section 6.1, the Company hereby represents and warrants to the Purchaser as follows:

- (a) *Due Authorization.* Subject to the granting of the Approval and Vesting Order, the Company has all necessary authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments.
- (b) *Enforceability of Obligations.* Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a valid and binding obligation of the Company, enforceable against the Company, in accordance with its terms.
- (c) *HST.* The Company is a registrant under Part IX of the *Excise Tax Act* (Canada), and its Business Number is 1 - 835321050RT0001.
- (d) *Residency.* The Company is not a non-resident within the meaning of section 116 of the *Income Tax Act* (Canada).
- (e) *Intellectual Property.* The Company has valid rights to use all intellectual property used in connection with the business, including software, trademarks, patents, and copyrights, free and clear of all liens, encumbrances, and disputes. For further clarity with respect to intellectual property of the core software assets required to run the business, the Company hereby represents and warrants that it:
  - (i) owns all intellectual property of the following systems: maxsold.com including subdomains (including but not limited to pages, support, static,maxsold), android and ios apps, seller portal/platform and admin site, all databases, image processing server, pzn, catgor, data warehouse, integrations/etl server, max360 service; and

(ii) licenses the auction method systems code, data and APIs from AuctionMethod and has in its possession the code, systems and data and the right to modify and use said code, data and APIs in perpetuity, subject to the terms of the Software Source Code License Agreement between the Company and AuctionMethod, Inc. dated June 12, 2020, to carry out the Business without further payment due and owing to AuctionMethod.

- (f) *Critical Supplier Pre-Filing Costs.* The Critical Supplier Pre-Filing Costs will be paid by the Company prior to Closing and the amounts owed by the Company to certain key suppliers for pre-filing services, as identified in Schedule "E", are true and accurate.

## 6.2 Representations and Warranties of the Purchaser

As a material inducement to the Company entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Company is entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 6.2, the Purchaser hereby represents and warrants to the Company as follows:

- (a) *Incorporation of the Purchaser.* The Purchaser is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized, validly subsisting and in good standing under such laws;
- (b) *Due Authorization.* The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments;
- (c) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser, enforceable against the Purchaser, in accordance with its terms;
- (d) *Approvals and Consents.* Except as otherwise provided herein, no authorization, consent or approval of or filing with or notice to any Governmental Authority or other Person is required in connection with the execution, delivery or performance of this Agreement by the Purchaser or the purchase of any of the Purchased Assets hereunder;
- (e) *HST.* The Purchaser is or will on Closing be a registrant under Part IX of the *Excise Tax Act* (Canada); and
- (f) *Residency.* The Purchaser is not a non-resident within the meaning of section 116 of the *Income Tax Act* (Canada).

## 6.3 Acquisition of Purchased Assets on "As Is, Where Is" Basis

The Purchaser acknowledges that the Company is selling the Purchased Assets on an "as is, where is basis" as they shall exist on the Closing Date, subject to the terms of the Approval and Vesting Order. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Company does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deemed appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Company to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations, expressed or implied, pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The Purchaser further acknowledges that all written and oral information (including analyses, financial information and projections and studies) obtained by the Purchaser from the Company or any of its directors, officers, employees, professional consultants or advisors with respect to the Purchased Assets or otherwise relating to the transactions contemplated in this Agreement has been obtained for the convenience of the Purchaser only and is not warranted to be accurate or complete.

#### **6.4 No Additional Representations and Warranties**

- (a) None of the Company and the Purchaser, nor their respective Representatives, have made or shall be deemed to have made any other representation or warranty, express or implied, at law or in equity, in respect of the Company, the Purchaser, the Purchased Assets or the Transactions other than those stated expressly herein.
- (b) None of representations and warranties contained in this Article 6 shall survive Closing and, other than in the case of fraud, the Purchaser's sole recourse for any material breach of representation or warranty in this Article 6 shall be for the Purchaser to not complete the Transactions in accordance with Section 8.1 of this Agreement.

### **ARTICLE 7 – EMPLOYEES**

#### **7.1 Offers to Employees**

The Purchaser may offer new employment, conditional upon Closing and effective as of the Effective Time, to such of the Employees as determined by the Purchaser in its sole discretion, on such terms as the Purchaser and each of the Transferred Employees may agree.

#### **7.2 Transferred Employees**

The Purchaser shall provide to the Company a list five (5) Business Days before Closing, indicating:

- (a) those Employees to whom offers of employment or expressions of interest have been made;



- (b) those Employees who have accepted any such offer; and
- (c) those Employees who the Purchaser has determined will not be offered employment with the Purchaser.

The Purchaser shall assume and be responsible for all Employee Liabilities in respect of Transferred Employees following the Closing Date.

## **ARTICLE 8 – TERMINATION**

### **8.1 Termination by the Parties**

This Agreement may be terminated:

- (a) upon the mutual written agreement of the Company and the Purchaser;
- (b) pursuant to Section 5.3(b) by either Party;
- (c) pursuant to Section 4.1(c); or
- (d) pursuant to Section 3.5.

### **8.2 Deposit**

If this Agreement is terminated through no fault of the Purchaser, such as Sections 3.5 and 4.1(c), the Parties shall each be released from all obligations under this Agreement, and the Deposit shall be immediately refunded to the Purchaser by the Company without interest.

### **8.3 Breach by Purchaser**

If the Purchaser fails to comply with its obligations under this Agreement, the Company may by notice to the Purchaser elect to treat this Agreement as having been repudiated by the Purchaser. In that event, other than as provided for in 8.2, the Deposit and any other payments made by the Purchaser will be forfeited to the Company on account of its liquidated damages and the Purchaser shall have no further obligations to the Company, and the Purchased Assets may thereafter be sold by the Company to any other party.

## **ARTICLE 9 – POST-CLOSING MATTERS**

### **9.1 Post-Closing Receipts**

If, following the Closing Date, any of the Purchased Assets are paid to or otherwise received by the Company or Proposal Trustee, or if any of the Excluded Assets are paid to or otherwise received by the Purchaser, then the Company, the Proposal Trustee or the Purchaser, as the case may be, shall hold such assets in trust for the other and shall promptly deliver such assets to the Company or the Purchaser, as the case may be.

## **9.2 Books and Records**

The Purchaser shall preserve and keep the Books and Records which relate to the Purchased Assets for a period of six years from the Closing Date or for any longer period as may be required by any Applicable Law or Governmental Authority. Upon reasonable advance notice, after the Closing Date, the Purchaser will grant the Company, the Proposal Trustee or any trustee in bankruptcy of the Company reasonable access during normal business hours, to use such Books and Records included in the Purchased Assets, including, without limitation, any personnel files/records of the Transferred Employees relating to the period up to the Closing and any Employees engaged by the Company at or in respect of the Purchased Assets up to and including the Closing Date, and computer systems, tapes, disks, records and software acquired as part of the Purchased Assets.

## **9.3 Use of Business Name**

If requested by the Purchaser, on or promptly following the Closing Date, the Company shall discontinue use of the name "MaxSold" and any variation thereof and shall, subject to the Court's approval, as soon as is reasonably practicable file articles of amendment to change the corporate name of MaxSold to another name not confusingly similar to its present name.

# **ARTICLE 10 – GENERAL CONTRACT PROVISIONS**

## **10.1 Headings and Sections**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **10.2 Number and Gender**

Unless the context requires otherwise, words importing the singular include the plural and vice versa, and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

## **10.3 Currency**

Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.

## **10.4 Statutory References**

All references in this Agreement to any statute or regulation is to that statute or regulation as now enacted or as may from time to time be amended, re-enacted or replaced and includes all

regulations made thereunder, unless something in the subject matter or context is inconsistent therewith or unless expressly provided otherwise in this Agreement.

#### **10.5 No Strict Construction**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party, including, without limitation, the doctrine of *contra proferentum*.

#### **10.6 Entire Agreement**

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and sets out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement. Subject to the Approval and Vesting Order being issued by the Court, this Agreement is intended to create binding obligations on the part of the Company as set forth herein and on acceptance by the Purchaser, is intended to create binding obligations on the part of the Purchaser, as set out herein.

#### **10.7 Expenses**

Subject to Section 4.1(b), each Party shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

#### **10.8 Notices**

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by email as follows:

- (a) in the case of notice to the Company at:

Russ Patterson, email: [russ.patterson@maxsold.com](mailto:russ.patterson@maxsold.com)

With a copy to:

Sharon Kour, email: [skour@reconllp.com](mailto:skour@reconllp.com)

- (b) in the case of a notice to the Purchaser at:

Chris Reid, email: [chris@reids.co](mailto:chris@reids.co)

With a copy to:

Ian Klaiman, email: [iklaiman@szklaw.ca](mailto:iklaiman@szklaw.ca)

(d) in the case of the Proposal Trustee at:

Rahn Dodick, email: [rahn.dodick@dodick.ca](mailto:rahn.dodick@dodick.ca)

With a copy to:

Philip Cho, email: [pcho@weirfoulds.com](mailto:pcho@weirfoulds.com)

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.

#### **10.9 Successors and Assigns**

This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

#### **10.10 Third Party Beneficiaries**

Unless where provided to the contrary by the specific terms hereof, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

#### **10.11 Time of the Essence**

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

#### **10.12 Amendment**

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

#### **10.13 Further Assurances**

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing Date, provided that the reasonable costs and expenses of any actions taken after the Closing Date at the request of a Party shall be the responsibility of the requesting Party.

#### **10.14 Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

#### **10.15 Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

#### **10.16 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the Courts of the Province of Ontario. The Parties consent to the jurisdiction and venue of the Court for the resolution of any disputes under this Agreement.

#### **10.17 Non-Merger**

The representations, warranties and covenants of each Party contained in this Agreement will not merge on and will survive the closing of the Transaction and will continue in full force and effect, notwithstanding the closing of the Transaction or any investigation or knowledge acquired by or on behalf of the other Party.

#### **10.18 Independent Legal Advice**

The Purchaser warrants that it has received independent legal advice in connection with this Agreement.

### **10.19 Execution and Delivery**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original form or by electronic delivery in portable document format (PDF).

### **10.20 Damages**

Under no circumstance shall any of the Parties or their representatives be liable for any special, punitive, exemplary, consequential, or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

### **10.21 No Brokers**

It is understood and agreed that the Purchaser shall not be liable for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Company. It is further understood and agreed that the Company shall not be liable for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Purchaser.

**[Remainder of page left blank intentionally. Signature page follows.]**

**IN WITNESS OF WHICH** the Parties have executed this Agreement.

**MaxSold Incorporated**

Per: \_\_\_\_\_

Name: Russ Patterson  
Title: President and Chief Executive  
Officer

I have the authority to bind the Corporation.

**1000822913 Ontario Inc.**

Per:  \_\_\_\_\_

Name: Chris Reid  
Title: CEO

I have the authority to bind the Corporation.

**SCHEDULE "A" – PERMITTED ENCUMBRANCES**

None.



**SCHEDULE "B" – SALE PROCEDURES**

**SCHEDULE "C" – PURCHASED ASSETS LIST**

To be delivered by the Purchaser on or before the Bid Deadline.

**SCHEDULE "D" – ASSUMED CONTRACTS**

All Contracts of the Company with the following counterparties:

Auction Method
AYESHA FATIMA
BELIZE VIRTUAL CENTER
BUCUR, MARIUS (BITFORGE)
Datadog Inc
FLAT PLANET PTY LTD
HOMEWORK (GORDO, JANUARY)
INNOVATIVE SOLUTIONS
KALPA SERVICES
KPMG
LABARGE WEINSTEIN
NIVED.IO
Paul Vickers
PAUL VICKERS, CPA
PERIMETER 81 LLC
S&E CLOUD EXPERTS
TWILIO INC
ZENDESK

**SCHEDULE "E" – CRITICAL SUPPLIER PRE-FILING COSTS**

VENDOR	CEN \$
Auction Method	14,905.05
AYESHA FATIMA	1,228.56
BELIZE VIRTUAL CENTER	17,493.80
BUCUR, MARIUS (BITFORGE)	5,066.54
Datadog Inc	5,105.13
FLAT PLANET PTY LTD	8,087.19
HOMEWORK (GORDO, JANUARY)	6,013.29
INNOVATIVE SOLUTIONS	33,555.91
KALPA SERVICES	8,142.55
KPMG	7,062.50
LABARGE WEINSTEIN	2,497.87
NIVED.IO	5,747.49
Paul Vickers	18,780.78
PAUL VICKERS, CPA	2,021.25
PERIMETER 81 LLC	1,701.46
S&E CLOUD EXPERTS	114,761.15
TWILIO INC	86.35
ZENDESK	19,317.83
<b>Grand Total</b>	<b>271,574.70</b>

# **APPENDIX “D”**

**MaxSold Incorporated**  
**Weekly Cash Flow Forecast**  
**For the period April 19, 2024 to May 6, 2024**  
**(\$CDN)**

<b>Week Ending</b>	<b>Notes</b>	<b>25-Apr-24</b>	<b>02-May-24</b>	<b>06-May-24</b>	<b>TOTAL</b>
<b>Receipts</b>	2	72,589	179,760	(112,660)	139,689
<b>Disbursements</b>					
Marketing Expenses	3	13,050	14,868	7,905	35,823
Payroll	4	192,925	1,130	233,050	427,105
Contracted Services	5	45,358	106,206	42,563	194,127
Occupancy Costs	6	-	487	107	594
G&A Expenses	7	600	33,408	3,078	37,087
HST	8	-	142,889	150,000	292,889
Professional Fees	9	42,174	19,460	72,000	133,634
<b>Total Disbursements</b>		294,107	318,449	508,703	1,121,258
<b>Net Cash Flow</b>		(221,517)	(138,689)	(621,363)	(981,570)
<b>Bank Balance</b>					
Opening Bank Balance	10	833,845	612,328	473,639	833,845
Add: Net Cash Flow		(221,517)	(138,689)	(621,363)	(981,570)
Add: Internal Transfer	11	-	-	117,450	117,450
<b>Closing Bank Balance</b>		612,328	473,639	(30,274)	(30,274)

**MAXSOLD INCORPORATED (“MAXSOLD”)**  
**MAJOR ASSUMPTIONS**  
**CASH FLOW STATEMENT**  
**FOR THE PERIOD APRIL 19, 2024 TO MAY 6, 2024 (THE “PERIOD”)**

1. MaxSold’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:

(1) MaxSold will continue operations in the normal course until it closes the sale transaction entered into between 1000822913 Ontario Inc and MaxSold. Closing is currently anticipated to occur on May 6, 2024 (“Closing”) and remains subject to the Court’s approval before that date; and

(2) Exchange rates on all USD collections and payments have been applied at an exchange rate of 1.35.

Receipts:

**2. Customer Collections**

Customer collections are forecast based on a projected number of auctions per week. Receipts exclude consignor payments held in trust and distributed at the close of the consignors’ auctions. Receipts include all revenue earned by the Company through May 5, 2024, the day before the scheduled closing of the transaction.

Disbursements:

**3. Marketing Expenses**

These amounts include payments for various marketing initiatives as well as referral payments.

**4. Payroll, Employee Benefits and Payroll Taxes**

MaxSold’s 40 full-time salaried employees’, and approximately 110 part-time hourly employees’, gross wages. Part-time employees are on call, and work on an as needed basis, on auctions occurring in their local geographies. The payroll includes gross salaries, an estimate of part-time hourly wages, source deductions, employee benefits, and accrued vacation pay owed to employees from the NOI filing date through to Closing.

**5. Contracted Services**

MaxSold’s contracted vendors, infrastructure, and SaaS tools required for its operations. The Period includes a payment to the payroll service utilized for the period from the NOI filing date through to Closing.

**6. Occupancy Costs**

MaxSold’s employees all work remotely. Occupancy costs are limited to shared office space, general liability insurance and phone expenses.

**7. G&A Expenses**

Amounts primarily include bank charges, and merchant account fees.

**8. HST**

The period includes two payments in respect of HST: (i) HST collected in March 2024 (payable by the end of April 2024) and, (ii) an estimate for HST to be collected in April 2024 (payable by the end of May 2024).

The HST collected in April 2024 would normally be remitted to CRA at the end of May 2024 by Maxsold, however, as a result of the sale transaction scheduled to close on May 6, 2024, Maxsold has advised the Proposal Trustee that it intends on remitting the HST to CRA prior to the May 6, 2024 closing date. Currently, Maxsold estimates this amount to be \$150,000.

**9. Professional Fees**

Over the Period, professional fees of MaxSold's legal counsel, the Proposal Trustee, and the Proposal Trustee's legal counsel are estimated to total approximately \$133,000 including HST. This balance includes unpaid bills of approximately \$62,000, as well as work-in-progress and fee accruals estimated at approximately \$71,000, including HST, through to Closing.

**10.** The opening cash balance as of April 19, 2024, is \$833,845. It does not include \$300,000 held as a reserve against chargebacks with MaxSold's merchant processor, but it does include approximately \$280,000 of consignor funds held in trust which are netted against receipts in that week.

**11. Internal Transfer**

MaxSold will be receiving cash receipts collected by its US subsidiary MaxSold Inc. in the Period to reimburse Maxsold (Canadian parent company) for funding the shared services.



**IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE  
A PROPOSAL OF MAXSOLD INC. OF THE CITY OF  
KINGSTON IN THE PROVINCE OF ONTARIO**

Court File No. BK-24-03044331-0033

Estate File No. 33-3044331

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at Ottawa

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**SECOND REPORT TO COURT  
OF THE PROPOSAL TRUSTEE**

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**WeirFoulds LLP**

66 Wellington Street West, Suite 4100  
Toronto-Dominion Centre  
P.O. Box 35  
Toronto, ON M5K 1B7

**Philip Cho**

(LSO # 45615U)

[pcho@weirfoulds.com](mailto:pcho@weirfoulds.com)

Tel: (416) 365-1110

Fax: (416) 365-1876

**Wojtek Jaskiewicz**

(LSO # 49809L)

[wjaskiewicz@weirfoulds.com](mailto:wjaskiewicz@weirfoulds.com)

Tel: (416) 365-1110

Fax: (416) 365-1876

**Lawyers for the Proposal Trustee,  
Dodick Landau Inc.**