

Court File No. BK-24-03137745-0032

Estate File No. 32-3137745

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  
DATEC COATING CORPORATION  
OF THE CITY OF MISSISSAUGA  
IN THE PROVINCE OF ONTARIO

FIRST REPORT TO COURT OF THE PROPOSAL TRUSTEE

DATED OCTOBER 22, 2024

**TABLE OF CONTENTS**

INTRODUCTION.....3  
TERMS OF REFERENCE.....4  
BACKGROUND.....5  
CREDITORS.....7  
EXTENSION OF STAY OF PROCEEDINGS.....8  
INTERIM FINANCING.....8  
WEEKLY CASH FLOW FORECAST.....10  
SALE AND INVESTOR SOLICITATION PROCESS.....11  
DIP LENDER'S CHARGE.....16  
ADMINISTRATIVE CHARGE.....17  
CONCLUSION AND RECOMMENDATION.....17

## INTRODUCTION

1. On October 4, 2024 (the “**Filing Date**”), Datec Coating Corporation (“**Datec**” 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. A detailed overview of Datec’s business operations and financial difficulties which led to the filing of the NOI is set out in the Affidavit of Dominic Talalla sworn October 21, 2024 (the “**Talalla Affidavit**”), served and filed with the Ontario Superior Court of Justice (In Bankruptcy and Insolvency) (the “**Court**”) in support of Datec’s motion for the relief set out herein.
3. All capitalized terms used in this report (the “**First Report**”) but not otherwise defined shall have the meaning ascribed to such terms in the Talalla Affidavit.
4. The purpose of this First Report of the Proposal Trustee is to provide the Court with information pertaining to the following:
  - i) a limited summary of certain background information about Datec;
  - ii) Datec’s request for an extension of the time for filing a proposal to December 18, 2024;
  - iii) Datec’s projected cash flow for the period from October 11, 2024 to January 10, 2025;
  - iv) Datec’s request that it be authorized to obtain and borrow interim financing, including the terms of the debtor in possession (“**DIP**”) facility;
  - v) the proposed DIP lender’s charge (the “**DIP Lender’s Charge**”) sought by Datec;
  - vi) the Sale and Investor Solicitation Process (“**SISP**”);
  - vii) the terms of a Stalking Horse Asset Purchase Agreement (the “**Stalking Horse Agreement**”) between Urecka Canada Corporation (“**Urecka**”) and Datec dated October 21, 2024 to purchase the assets of Datec (“**Assets**”) which, subject to the approval of this Court, would act as the “stalking horse bid” in the SISP;
  - viii) the proposed first-ranking priority charge against the assets, property and

undertakings of the Company ("**Administrative Charge**") being sought by Datec;  
and

- ix) the Proposal Trustee's recommendation that this Court make the following orders, as requested by Datec approving;
  - a) the extension of time for filing a proposal to December 18, 2024;
  - b) the first-ranking Administrative charge;
  - c) the second-ranking DIP Lender's Charge;
  - d) the SISP; and
  - e) the Stalking Horse Agreement, solely for the purposes of being the "stalking horse bid" in the SISP, provided that if Urecka is the successful bidder, completion of the transaction contemplated by the Stalking Horse Agreement will be subject to the Court's approval, upon a further motion by Datec in these proceedings.

#### **TERMS OF REFERENCE**

- 5. In preparing this Report, the Proposal Trustee has relied upon certain unaudited, draft and/or internal financial information, Datec's books and records, discussions with the management of Datec ("**Management**") and information from other third-party sources (collectively, the "**Information**").
- 6. Except as described in this Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Canadian Institute of Chartered Accountants Handbook (the "**CPA Handbook**") and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
- 7. Some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the CPA Handbook, has not been performed. Future oriented financial information referred to in this Report was prepared based on Management's estimates and assumptions.

Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations may be material.

8. The Proposal Trustee has prepared this Report in its capacity as a Court appointed officer and has made a copy of this Report available on the Proposal Trustee's website at [www.dodick.ca](http://www.dodick.ca) for purposes of Datec's motion returnable October 23, 2024. Parties using this Report, other than for the purpose of the motion, are cautioned that it may not be appropriate for their purposes.
9. All references to dollars are in Canadian currency unless otherwise noted.

## **BACKGROUND**

10. As detailed in the Talalla Affidavit, Datec is in the business of developing and manufacturing custom heating, coating, and thermal solutions for customers across Canada and the United States (the "**Business**"). The Company leverages its own patented thick film heating technology and develops new technology to provide application-specific, high performance heating solutions for its clients.
11. The Company's principal assets are its intellectual property, equipment in its technology lab, inventory, manufacturing equipment, and brand goodwill. The Company's technology lab is located at the Company's head office located at 130 Matheson Blvd East, Unit #2 in Mississauga, Ontario (the "**Leased Premises**").
12. Datec currently employs nine full-time employees, three specialized contractors and two students for the September to December 2024 term. The Company does not participate in any prescribed pension plan for its employees.
13. In and around 2020, Datec began experiencing cash flow pressures due to increasing debt servicing requirements, increasing rent payments for the Leased Premises, and decreasing revenues caused by extrinsic conditions including high interest rates, the effects of COVID-19 on the Company's customers in the food service industry, and the rising cost of labour and material.
14. In response to the Company's cash flow pressures, the Company implemented an operational restructuring process to decrease the Company's operating costs and enhance the Company's market position. The process included decreasing the number

of employees, modifying the employment structure of the Business, scaling its operations in the kitchen appliance industry, increasing the price of their products, trying to obtain payment on delivery from the Company's customers, and reducing its number of suppliers.

15. The Company also obtained a fixed term rate loan from the Royal Bank of Canada ("**RBC**") pursuant to the Highly Affected Sectors Credit Availability Program (HASCAP) in the amount of \$250,000 ("**RBC Loan**"). Despite its operational restructuring and the RBC Loan, the Company continued to suffer liquidity challenges as sales remained slower than expected due to the high interest rates and the long-term effects of COVID-19 on certain industries.
16. The Company determined it required a long-term solution to restructure its Business and balance sheet. Accordingly, in early 2022, the Company retained XL Business Consulting & Financing Inc. ("**XL**"), an investment banker to conduct a marketing and sale process for the Company (the "**Pre-Filing Sale Process**").
17. During the Pre-Filing Sale Process, XL contacted over 30 parties that were in the industry or were in a complimentary industry about a strategic investment in or purchase of the Business.
18. The Pre-Filing Sale Process lasted over a year and a half until approximately November 2023 but did not generate an offer from any of the parties for the Business. As such, the Company terminated the Pre-Filing Sale Process to preserve the Company's cash flow.
19. After the completion of the Pre-Filing Sale Process, the Company was approached by a company affiliated with Urecka ("**Ekagrata**"), the proposed Stalking Horse Bidder and DIP Lender, who advised it was interested in investing in the Company.
20. During the negotiations with Ekagrata, the Company's cash flow pressures continued to mount. As a result, in September 2024, the Company was unable to make its debt service payment to its principal secured lender, Western Ontario Community Futures Development Corporation Association ("**WOCFDCA**") or in respect of its monthly lease payments to De Lage Laden Financial Services Canada Inc. ("**De Lage**") for the equipment leased by the Company pursuant to an Equipment Leasing Agreement dated April 25, 2023 (the "**Equipment Lease**").

21. In order to preserve its ongoing operations and value, the Company filed the NOI on October 4, 2024. The primary objectives of this NOI proceeding are to restructure Datec's balance sheet and implement a long-term solution to the Company's liquidity challenges in the interests of stakeholders.

## **CREDITORS**

### **Western Ontario Community Futures Development Corporation Association**

22. WOCFDCA is the Company's principal secured creditor. WOCFDCA is owed approximately \$435,000 pursuant to a Loan Agreement and a Promissory Note each dated July 29, 2022, between WOCFDCA and the Company for the principal amount of \$500,000.
23. Following defaults on its obligations to WOCFDCA under its credit facilities, on September 25, 2024, WOCFDCA delivered a demand notice to the Company and issued a Notice of Intention to Enforce Security under section 244(1) of the Bankruptcy and Insolvency Act (Canada).

### **De Lage Financial Services Canada Inc.**

24. De Lage is also a secured creditor of the Company. The amount outstanding under the Equipment Lease is approximately \$22,000.
25. On September 26, 2024, De Lage delivered a demand letter to the Company.

### **Royal Bank of Canada**

26. The Company is also indebted to RBC in the approximate amount of \$225,000 pursuant to the RBC Loan. Although the RBC Loan was accompanied by a general security agreement between the Company and RBC, there is no registration in favour of RBC on the PPSA Report.

### **Unsecured Creditors**

27. In addition, Datec has unsecured creditors at the date of the NOI totaling approximately \$118,000.

## EXTENSION OF STAY OF PROCEEDINGS

28. Datec is seeking an extension of the time for the filing of the proposal up to and including December 18, 2024, for a total of 45 days following the expiration of the initial 30-day stay of proceedings.
29. The stay extension is required to provide Datec with the necessary time to preserve its Business while it engages in the proposed SISP with a view to either obtaining additional investment or completing a sale of the Assets. The Proposal Trustee is of the view that Datec is acting in good faith and with due diligence in formulating and implementing a restructuring plan that would preserve its business.
30. Without the requested extension of the Stay Period being granted, Datec will not have the opportunity to formulate and implement a restructuring plan and will then become bankrupt to the detriment of its stakeholders.
31. In contrast, no creditor will be materially prejudiced if the extension applied for is granted. If the extension applied for is granted, Datec would have the time to complete the proposed SISP and will have the opportunity to restructure.

## INTERIM FINANCING

32. As described in the Tallala Affidavit, Datec's liquidity constraints have resulted in it not having sufficient funds to continue operating the Business.
33. In order to allow the Company to continue operating and to bridge to the completion of the SISP, Urecka ("**DIP Lender**") agreed to extend financing to the Company. According to Management, the DIP Lender represents the only available interim financing arrangement that could be arranged by the Company. The DIP Lender's Term Sheet was executed, subject to Court approval. A copy of the DIP Lender's Term Sheet (the "**DIP Term Sheet**") is attached hereto as **Appendix "B"**.
34. The DIP Term Sheet include the following terms:
  - i) the total available funds under the DIP facility are \$125,000 (the "**Interim Facility**");
  - ii) the Interim Facility is available on a draw basis and is subject to a finance fee of 5%



on each advance;

- iii) interest shall be payable at the rate of 14% per annum;
  - iv) no other fee or penalty shall be charged on the Interim Facility, however, the DIP Lender may recover reasonable fees, expenses and costs associated with negotiating and, if necessary, enforcing, the DIP Term Sheet;
  - v) the Interim Facility matures on the earliest of: a) January 15, 2025; b) the closing of the transaction contemplated by the Stalking Horse Agreement; c) the closing of any transaction resulting from the SISP; d) the implementation of a proposal; (e) the date on which the stay of proceedings ordered in the BIA Proceedings expires or is terminated or lifted; and f) the occurrence of an event of default; and
  - vi) advances under the DIP Facility are conditional upon Court approval of the Commitment Letter, Court approval of the SISP and Stalking Horse Agreement, and the granting of a super-priority DIP Lender's Charge in favour of the DIP Lender over all of the Property of the Company, subordinate only to the Administration Charge.
35. The Cash Flow Forecast indicates that Datec will have sufficient funds available under the Interim Facility to fund its expenditures through the Cash Flow Period (defined herein).
36. The Proposal Trustee is of the view that acceptance of the DIP Term Sheet and the Interim Facility contemplated therein:
- i) is required to fund the operations of Datec while it carries out the SISP;
  - ii) will enhance the prospects of a viable proposal being made by Datec;
  - iii) in the view of the Proposal Trustee, the creditors will not be materially prejudiced by the granting of the DIP Lender's Charge, as it will provide the Company with the cash flow it requires to fund its going concern operations while it continues the SISP and, absent such funding, operations would cease; and
  - iv) is in the best interests of the Company and its stakeholders.
37. Furthermore, the Proposal Trustee is of the view that the costs associated with the

Interim Facility are commercially reasonable in the circumstances for a DIP Facility for a business in circumstances similar to Datec's.

38. Without access to financing under the Interim Facility, the Company will: (i) not be able to maintain its operations and fund payroll, preserve asset value or complete the SISF; and (ii) be forced to wind down its operations and commence a liquidation of its assets, resulting in the loss of value and fourteen jobs to the material detriment of its creditors and stakeholders.

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

39. Datec, with the assistance of the Proposal Trustee, has prepared a weekly cash flow forecast ("**Cash Flow Forecast**") for the period from October 11, 2024 to January 10, 2025 ("**Cash Flow Period**"). A copy of the Cash Flow Forecast is attached hereto as **Appendix "C"** to this Report. The Cash Flow Forecast has been prepared by Management of Datec for the purpose of this motion, using probable and hypothetical assumptions set out in notes 1 to 8 attached to the Cash Flow Forecast. The Cash Flow Forecast reflects receipts and disbursements to be received or paid over a thirteen-week forecast period in Canadian dollars.
40. The Cash Flow Forecast projects that Datec will require the use of the Interim Facility in order to have sufficient liquidity, to fund its expenses and the Proposal proceeding throughout the proposed extension of the stay of proceedings.
41. 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 Datec. 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 Datec for the probable assumptions, and the preparation and presentation of the Cash Flow Forecast.
42. 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 Datec 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.

43. 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.

44. 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.

## **SALE AND INVESTOR SOLICITATION PROCESS**

### **Overview of the Proposed SISP**

45. To complement the Company's prior and ongoing operational restructuring efforts, the Company has determined that a sale and investment solicitation process is critical to developing a long-term solution to the Company's liquidity challenges and maximizing stakeholder interests. Accordingly, the Company, in consultation with the Proposal Trustee and the Stalking Horse Bidder, developed the SISP.

46. The SISP is intended 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.

47. The SISP is a transparent and objective process that will be implemented and supervised by the Proposal Trustee as an officer of this Court. The Company will continue to operate

in the normal course during the SISP to preserve and maximize going concern value of the Business. A copy of the SISP appears as Schedule A to the draft Order filed with the Company's Motion Record and is attached as **Appendix "D"**.

48. The SISP involves a stalking horse bid in the form of the Stalking Horse Agreement (the "**Stalking Horse Bid**"). The Stalking Horse Bid is intended to stimulate market interest by setting a "floor" price that bidders must bid against. It also provides comfort to stakeholders, that value will be realized through the SISP. The details of the Stalking Horse bid are discussed further herein.
49. The Proposal Trustee, with the assistance of the Datec's management will, among other things:
  - i) prepare a list of known interested parties, including those parties that previously expressed interest during the Pre-Filing Sale Process, and any additional parties identified by the Company and the Proposal Trustee;
  - ii) prepare a teaser detailing the opportunity ("**Teaser**");
  - iii) prepare a non-disclosure agreement (the "**NDA**") to be executed by potential purchasers in order to conduct due diligence;
  - iv) compile information to be included in an electronic data room (the "**Data Room**") to be provided to potential purchasers upon executing the NDA;
  - v) place notices of the SISP in Insolvency Insider, an independent publication dedicated to the Canadian insolvency market, and other such newspaper(s), publication(s) or journal as determined by the Proposal Trustee in consultation with the Company;
  - vi) cause the Teaser and NDA to be sent to each known interested party, as well as any other party who requests them or is identified as a potential bidder;
  - vii) coordinate all reasonable requests for information and due diligence access for each potential bidder who executes the NDA;
  - viii) review and assess offers received for the Assets and negotiation of same for the purpose of clarifying or amending the terms; and
  - ix) report to Court on the results of the SISP and the Proposal Trustee's recommendation

in respect of Qualifying Bids (defined below) and the successful bid.

### The SISP Timeline

50. The SISP contemplates an approximately 30-day, single phase sale process that will be managed by the Proposal Trustee with a deadline for offers of no later than 5:00pm (Toronto time) on December 2, 2024 ("**Bid Deadline**").

51. A summary of the timelines is provided below:

| <b>Activity</b>                            | <b>Timeline</b>                    |
|--|------------------------------------|
| Commence SISP                              | October 31, 2024                   |
| Bid Deadline                               | December 2, 2024                   |
| Successful Bidder or Auction, if necessary | December 3, 2024                   |
| Seek Court approval                        | by no later than December 13, 2024 |
| Closing date                               | December 27, 2024                  |

52. The SISP provides that the Proposal Trustee may extend the above deadlines up to seven days in consultation with the Company, or for a longer period with the consent of the Stalking Horse Bidder, or by Court order. The ability to extend deadlines provides the Proposal Trustee and the Company with the necessary flexibility to maximize the Company's success in the SISP.

53. The timeline of the SISP was designed to balance the limitations of the Company's financial position with the need for sufficient flexibility to allow interested parties a reasonable opportunity to formulate and submit bids to maximize the Company's success in the SISP.

54. Given the extensive marketing completed in the Pre-Filing Sale Process completed by XL and the Company, the Proposal Trustee believes that the timeline of the SISP is sufficient to re-canvass the market. The Proposal Trustee is supportive of the timelines in the SISP based on its discussions with the Company and the Stalking Horse Bidder.

## The Stalking Horse Agreement

55. The Stalking Horse Agreement provides for a floor price for the Assets and provides the Company with the opportunity to see if a higher offer can be achieved. Provided the Court approves the Stalking Horse Agreement and the SISP, the Assets will be marketed as outlined above for approximately 30 days to determine if there are any better bids for the Assets or offers to invest. A copy of the Stalking Horse Agreement is attached as **Appendix "E"**.
56. The key terms and conditions of the Stalking Horse Agreement are summarized below.
- i) **Purchaser:** Urecka Canada Corporation ("**Stalking Horse Bidder**"). The Stalking Horse Bidder is an arms-length company.
  - ii) **Purchased Assets:** all of the Company's assets, properties and undertakings other than the Excluded Assets including but not limited to intellectual property, the Company's software and technology, certain contracts ("**Assumed Contracts**") and the Company's receivables.
  - iii) **Excluded Assets:** the purchase price, all cash and money in bank accounts except for customer deposits and the Scientific Research and Experimental Development Credits (all as defined in the Stalking Horse Agreement).
  - iv) **Purchase Price:** the cash sum of \$300,000.00 plus the cash sum required to pay the cure costs for all the Assumed Contracts, if any. The Purchase Price will be comprised of a credit bid of all amounts owed by the Company to Urecka pursuant to the DIP Facility as of the time of closing, with the remainder to be paid in cash.
  - v) **Deposit:** no deposit will be given as Urecka is providing the DIP Facility.
  - 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.

## **Bid Protection**

57. The Stalking Horse Agreement includes a break fee of \$10,000 (inclusive of HST) (the "**Break Fee**") that represents approximately 3% of the purchase price under the Stalking Horse Agreement if the Stalking Horse Bidder is not the successful bidder.
58. The Proposal Trustee is of the view that the Break Fee is not punitive in nature, nor will it discourage competitive bidding with respect to the SISP.

## **Qualified Bids**

59. To be a "Qualified Bid", a bid must meet the following requirements:
  - i) a base cash purchase price equal to or greater than \$330,000 ("**Consideration Value**"), which is the amount of the Stalking Horse Bid, plus \$30,000 (i.e. a Break fee of \$10,000 and an overbid amount of \$20,000);
  - ii) accompanied by a deposit of at least 10% of the Consideration Value, to be retained by the Proposal Trustee in trust;
  - iii) contains an executed binding transaction document(s), including all exhibits and schedules contemplated thereby, together with a blackline against the Stalking Horse Agreement (which shall be posted in the data room), 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;
  - iv) states it is not conditional upon any condition or contingency relating to due diligence, financing or another material condition precedent to the bidder's obligation to complete the transaction;
  - v) submitted by the Bid Deadline;
  - vi) provides evidence satisfactory to the Proposal Trustee of the financial ability of the bidder to consummate the transaction;
  - vii) acknowledges the offer is expressly made on an "as is, where is" basis in all respects;  
and
  - viii) describes the intended treatment of the Company's stakeholders including secured

creditors, unsecured creditors, employees, customers, suppliers, and contractual counterparties.

### **Selection of Successful Bid**

60. In the event that the Proposal Trustee, in consultation with the Company, determines that there are no Qualified Bids, the Proposal Trustee shall promptly proceed to declare the Stalking Horse Bid as the Successful Bid. If the Proposal Trustee receives one or more Qualified Bids which are superior to the Stalking Horse Bid, it may proceed with an auction to select the highest or otherwise best bid in the SISP in accordance with the procedure delineated in the SISP.

### **Court Approval and Closing**

61. Upon selection of the Successful Bid, the Company will bring a motion to the Court on notice to the service list for an order approving the Successful Bid. The Company, with the assistance of the Proposal Trustee, will then proceed to close the transaction as soon as possible after Court approval is granted.

### **DIP LENDER'S CHARGE**

62. Datec requires immediate funding to maintain its existing operations and to meet ordinary course of business expenses and to complete its SISP, as evidenced by the Cash Flow Forecast. Any amounts advanced are expected to be used for payroll, supplier payments and other ordinary course business expenses, as well as payment of restructuring professionals in connection with completion of the SISP.
63. As noted above, a condition of the DIP Term Sheet is that the DIP Lender receives the benefit of a DIP Lender's Charge to the maximum amount of the aggregate of any and all advances by the DIP Lender to Datec pursuant to the DIP Term Sheet. The Proposal Trustee supports Datec's request for the DIP Lender's Charge.
64. For the reasons set out above, in the view of the Proposal Trustee, the DIP Term Sheet is reasonable and appropriate and is typical in similar proceedings, as is the proposed priority of the DIP Lender's Charge as set out in the form of draft order filed with the Court and, therefore, should be granted by the Court.



## ADMINISTRATIVE CHARGE

65. Datec is seeking a charge (the "**Administration Charge**"), in a maximum amount of \$75,000, against the assets of Datec, to secure the fees and disbursements incurred in connection with services rendered to Datec both before and after the commencement of the proposal proceedings by the following entities: the Proposal Trustee, its counsel and counsel to Datec, and in the event of a bankruptcy, the trustee in bankruptcy and its counsel, which shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise in favour of any person.
66. The quantum of the Administration Charge sought by Datec was determined in consultation with the Proposal Trustee and in the view of the Proposal Trustee is reasonable and appropriate in the circumstances and should be granted by the Court. The creation of the Administration Charge is typical in similar proceedings, as is the proposed priority of the Administration Charge, as set out in the form of draft order filed with the Court.

## CONCLUSION AND RECOMMENDATION

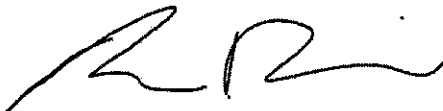
67. Based on all of the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief requested by Datec in the Orders requested, as summarized in paragraph 4 of this Report.

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

### **DODICK LANDAU INC.**

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

Per:



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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. 09 - Mississauga  
Court No. 32-3137745  
Estate No. 32-3137745

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

**Datec Coating Corporation**

Insolvent Person

**DODICK LANDAU INC.**

Licensed Insolvency Trustee

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Date of the Notice of Intention:

October 04, 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: October 07, 2024, 14:01

E-File/Dépôt Electronique

Official Receiver

Federal Building - Hamilton, 55 Bay Street N, 9th Floor, Hamilton, Ontario, Canada, L8R3P7, (877)376-9902

**Canada**

# APPENDIX "B"

**DEBTOR-IN-POSSESSION FINANCING**

October 21, 2024

**TERM SHEET**

This term sheet ("**DIP Term Sheet**") sets out the terms and conditions upon which Urecka Canada Corporation. will provide debtor-in-possession financing to the Borrower (as defined below) in consideration of the mutual covenants, terms and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

|  |  |
|--|--|
| <b>Borrower:</b>                         | Datec Coating Corporation (the " <b>Borrower</b> ")  |
| <b>DIP Lender:</b>                       | Urecka Canada Corporation or an affiliated entity (the " <b>DIP Lender</b> ")  |
| <b>Proposal Trustee:</b>                 | Dodick Landau Inc. in its capacity as proposal trustee (in such capacity, the " <b>Proposal Trustee</b> ") in connection with the Borrower's proceedings (the " <b>Proceedings</b> ") under the <i>Bankruptcy and Insolvency Act (Canada)</i> (the " <b>BIA</b> ") commenced by a Notice of Intention to Make a Proposal filed on October 4th, 2024.   |
| <b>Type of DIP Loan:</b>                 | Loan of up to a maximum amount of CDN \$125,000 (the " <b>DIP Loan</b> "), plus the Finance Fee and fees and expenses (i.e. DIP Expenses), or such greater amount as may be agreed to by the DIP Lender, secured by way of the DIP Charge (defined herein) to be available to the Borrower with the agreement of the Proposal Trustee subject to and in accordance with the terms herein.  |
| <b>Availability:</b>                     | Subject to the fulfillment of the applicable condition's precedent to the availability of the DIP Loan set out herein and the Borrower's adherence to the Reporting of Consolidated Cash-Flow Statement (the " <b>Approved Cash Flows</b> ") being satisfactory to each of the Proposal Trustee and the DIP Lender, and provided that no Event of Default (as defined below) has occurred and is then continuing, advances of the DIP Loan shall be made by the DIP Lender to the Borrower.  |
| <b>Purpose, Use of Proceeds:</b>         | The proceeds of the DIP Loan will be used by the Borrower to fund: working capital requirements and restructuring costs including but not limited to the fees and disbursements of the Proposal Trustee, its counsel, and counsel to the Borrower, on a going concern basis provided that the same is, unless approved in writing by the DIP Lender and the Proposal Trustee, (i) in accordance with the Approved Cash Flows, and (ii) not on account of a liability that existed as of the later of October 11 <sup>th</sup> , 2024, and the date of execution of this Term Sheet including for avoidance of doubt but without limitation any unremitted statutory remittances existing as of the Closing Date.                                     |
| <b>Closing Date:</b>                     | No later than 1 business day after Court approval of the DIP Term Sheet (the " <b>Closing Date</b> ").   |
| <b>Maturity and or Termination Date:</b> | The maturity of the DIP Loan (the " <b>Termination Date</b> ") shall be the earliest of: <ul style="list-style-type: none"> <li>(a) January 15th, 2025;</li> <li>(b) the closing of the transaction contemplated by the Stalking Horse Asset Purchase Agreement between the DIP Lender and the Borrower (the "<b>Stalking Horse Agreement</b>");</li> <li>(c) the closing of a sale or investment transaction within the Proceedings ("<b>Transaction</b>");</li> <li>(d) the implementation of a proposal within the Proceedings;</li> <li>(e) the date on which the Proceedings are terminated or are converted into a bankruptcy proceeding under the BIA; and</li> <li>(f) the occurrence of an Event of Default (as defined herein).</li> </ul> |

## DEBTOR-IN-POSSESSION FINANCING

October 21, 2024

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|  | All outstanding amounts under the DIP Loan, together with all interest accrued in respect thereof and all other amounts owing under this DIP Term Sheet shall be payable in full on the Termination Date.  |
| <b>Interest Rate:</b>                  | All amounts outstanding under the DIP Loan will bear interest at a rate of 14% per annum, on the daily balance outstanding under the DIP Loan.<br><br>Interest shall be due, owing, payable and repaid as the Termination Date without further notice, protest, demand or other act on the part of the DIP Lender.   |
| <b>Finance Fee:</b>                    | Borrowing under the DIP facility are subject to a fee of 5% (the "Finance Fee") on each advance hereunder which fee shall be fully earned upon the making of each advance and secured by the DIP Charge (as defined herein) but shall only be payable when the principal and interest under the DIP Loan becomes payable.  |
| <b>Repayment:</b>                      | Unless otherwise repaid as contemplated herein, the DIP Loan the accrued Interest, and all associated fees and expenses (i.e. DIP Expenses) shall be due, owing, payable and repaid as the Termination Date without further notice, protest, demand or other act on the part of the DIP Lender.  |
| <b>Mandatory Prepayments:</b>          | The DIP Loan and the DIP Expenses shall be repaid in full from the net proceeds of any Transaction involving the Borrower unless subject to a credit bid in the Stalking Horse Agreement by the DIP Lender.  |
| <b>Representations and Warranties:</b> | The Borrower represents and warrants to the DIP Lender as of the date hereof, and as of the date of each advance under the DIP Loan, that: <ul style="list-style-type: none"> <li>(a) the Borrower is duly organized, validly existing and in good standing under the laws of the jurisdiction of their organization, has all requisite power to carry on business as now and formerly conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to constitute a material adverse effect, are qualified to do business in, and are in good standing in, every jurisdiction where such qualification is required;</li> <li>(b) the execution, delivery and performance, as applicable, of the DIP Term Sheet has been duly authorized by all actions, if any, required on the part and by the Borrower's directors, and constitutes a legal, valid and binding obligation of the Borrower enforceable against them in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, moratorium and other similar laws of general application that limit the enforcement of creditors' rights generally and to general equitable principals subject to approval of the Court;</li> <li>(c) the Approved Cash Flows represent the Borrower's best estimate as at each applicable date of the likely results of the operations of the Borrower during the period applicable thereto and, to the Borrower's knowledge, such results are achievable as provided therein;</li> <li>(d) there are no arrears for any statutory remittances, withholding taxes or other amounts that, if unpaid, would have the benefit of an encumbrance or deemed trust in priority to the DIP Security and the DIP Charge (each as defined herein), such as without limitation taxes under the <i>Excise Tax Act</i> (Canada) and any source deduction remittances to the Canada Revenue Agency, except those accruing in the normal course and not yet due; and</li> <li>(e) except in respect of periods preceding October 4, 2024, all employee wages and other amounts owing to employees are up-to-date and there</li> </ul> |

**DEBTOR-IN-POSSESSION FINANCING**

**October 21, 2024**

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|                          | <p>are no amounts owing in respect of wages, vacation pay, pension benefit contributions or other benefits except those accruing in the normal course and in accordance with the established practices and arrangements of the Borrower.</p>   |
| <p><b>Covenants:</b></p> | <ul style="list-style-type: none"> <li>(a) the Borrower shall pay all amounts and satisfy all obligations in respect of the DIP Loan, including the Finance Fee;</li> <li>(b) the Borrower shall not make or permit to be made any payment on account of obligations owing as at October 4, 2024 without the prior consent of the Proposal Trustee and the DIP Lender or pursuant to an order of the Court;</li> <li>(c) the Borrower shall not undertake any actions with respect to their respective assets, business operations and/or capital structure which would, in the sole determination of the DIP Lender, have a material adverse effect on the Borrower or the Collateral (as defined below);</li> <li>(d) the Borrower shall not incur any indebtedness, including the giving of guarantees, other than indebtedness specifically contemplated herein or permitted in writing by the DIP Lender;</li> <li>(e) the Borrower shall not incur, create, assume or suffer to exist any lien, charge, security interest or other encumbrance on any of the Collateral now owned or hereafter acquired other than: (i) those encumbrances existing as of October 11, 2024, (ii) permitted by the DIP Lender in its sole discretion, (iii) the DIP Charge, and (iv) the Administration Charge, to be granted by the Court;</li> <li>(f) the Borrower shall not enter into any other credit facility or loan arrangements that would be secured in priority to or pari passu with the DIP Loan;</li> <li>(g) the Borrower shall not enter into any Transaction without the prior written consent of the DIP Lender;</li> <li>(h) without the prior written consent of the DIP Lender, the Borrower shall not: (i) declare or pay any dividends on, or make any other payments or distributions (whether by reduction of capital or otherwise) with respect to any of their respective issued and outstanding shares or other equity interests, or (ii) grant any loans;</li> <li>(i) the Borrower shall not sell any of their assets outside of the ordinary course of business without the prior written consent of the DIP Lender or the approval of the Court;</li> <li>(j) the Borrower shall ensure that their senior management team and advisors are available to meet and respond to enquiries and information requests from the Proposal Trustee and the DIP Lender and their advisors as may be reasonably required, and in any event no less frequently than once per week, and to provide them with updates as may be required by the DIP Lender or the Proposal Trustee;</li> <li>(k) the Borrower shall promptly pay all DIP Expenses (as defined below), including all legal and advisory fees and expenses, of the DIP Lender as such DIP Expenses are incurred and invoiced to the Borrower;</li> <li>(l) the Borrower shall pay the fees, if any, owing to the DIP Lender in connection with the DIP Loan (as set out herein or otherwise) promptly when such fees are due;</li> <li>(m) the Borrower shall update the Approved Cash Flows and provide a copy thereof to the DIP Lender and the Proposal together with a comparison to the prior version for the DIP Lender's approval, it being</li> </ul> |

**DEBTOR-IN-POSSESSION FINANCING**

**October 21, 2024**

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|                                  | <p>understood that such updated Approved Cash Flows, if approved, become the Approved Cash Flows for purposes hereof; and</p> <p>(n) the Borrower shall provide such other information that the DIP Lender may reasonably request in relation to the Proceedings, the Collateral, or the DIP Loan generally.</p>   |
| <p><b>Security:</b></p>          | <p>As continuing security (the “<b>DIP Security</b>”) for the prompt payment of all amounts payable by the Borrower to the DIP Lender under the DIP Term Sheet and as continuing security for the due and punctual performance by the Borrower of their existing and future obligations pursuant to the DIP Term Sheet, the Borrower hereby grants, conveys, assigns, transfers, mortgages and charges as and by way of a fixed and specific security interest, mortgage and charge, to and in favour of the DIP Lender, all of their property, assets, rights and undertakings, real and personal, moveable or immovable, tangible and intangible, intellectual property, legal or equitable, of whatsoever nature and kind, wherever located, both present and future, and now or hereinafter owned or acquired (collectively, the “<b>Collateral</b>”).</p> <p>The DIP Security shall be elevated by way of a Court-ordered super-priority charge (the “<b>DIP Charge</b>”) which the DIP Charge shall rank in priority on the Collateral in priority to any security interests, claims, or deemed trusts (statutory or otherwise) but subordinated to the Administration Charge, without any other formality or requirement, such as without limitation under the <i>Personal Property Security Act</i> (Ontario) or registrations in land registration office(s) or otherwise.</p>  |
| <p><b>Events of Default:</b></p> | <p>Each of the following shall constitute an Event of Default</p> <ul style="list-style-type: none"> <li>(a) the Borrower defaults on the payment of any amount due and payable to the DIP Lender (whether of principal, interest or otherwise) pursuant to this DIP Term Sheet;</li> <li>(b) any representations and warranties made by the Borrower in the DIP Term Sheet proves to be incorrect as of the date given including more than a 15% negative deviation in the cash flow and financial forecast provided by the Borrower;</li> <li>(c) the Borrower fails or neglects to observe or perform any term, covenant, condition or obligation contained or referred to in the DIP Term Sheet or any other document between the Borrower and the DIP Lender;</li> <li>(d) the stay of proceedings expires without being extended or the Proceedings being dismissed or terminated or the Borrower becoming subject to a proceeding in bankruptcy or receivership or similar insolvency proceeding;</li> <li>(e) the entry of an order staying, amending, reversing, vacation or otherwise modifying or having a material adverse effect with respect to, in each case without the prior written consent of the DIP Lender, the DIP Loan, or the DIP Charge;</li> <li>(f) the Borrower undertakes any actions with respect to their assets, business operations and/or capital structure which would, in the sole determination of the DIP Lender, has a material adverse effect on the Borrower or the Collateral;</li> <li>(g) if the Borrower makes any payments of any kind not permitted by this DIP Term Sheet, or contemplated by the Approved Cash Flows;</li> <li>(h) the occurrence of any other event or circumstance that has, or could reasonably be expected to have, a material adverse effect on either of</li> </ul> |



**DEBTOR-IN-POSSESSION FINANCING**

**October 21, 2024**

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|   | <p>the Borrower or on the Collateral, including a material adverse change from the Approved Cash Flow budget as determined by the DIP Lender in its sole discretion; and</p> <p>(i) if there is a change in the ownership, control, existing senior operating management arrangements or governance of the Borrower that is not acceptable to the DIP Lender.</p> <p>Upon the occurrence of an Event of Default, without any notice, protest, demand or other act on the part of the DIP Lender, all indebtedness of the Borrower to the DIP Lender shall become immediately due and payable and the DIP Lender shall be able to take all steps necessary to enforce its security. The DIP Lender shall also have the right to exercise all other customary remedies, including, without limitation, the right to enforce and realize on any or all of the Collateral, in each case, upon providing two (2) days prior written notice to the Borrower and the Proposal Trustee, without the necessity of obtaining further relief or an order from the Court.</p>  |
| <p><b>Fees and Expenses:</b></p>                      | <p>In addition to any principal and interest owing under the DIP Loan, the DIP Lender shall be entitled to recover all of its reasonable fees (including the Finance Fee), professional fees, expenses and out-of-pocket costs incurred, whether or not any of the transactions contemplated hereby are consummated and whether incurred prior to or after the date of the Closing Date, as well as all expenses of the DIP Lender in connection with the ongoing monitoring, interpretation, administration, protection an enforcement of the DIP Loan, and the enforcement of any and all of its remedies at law (collectively, the <b>"DIP Expenses"</b>).</p>  |
| <p><b>Conditions Precedent, to first advance:</b></p> | <p>The conditions precedent to the DIP Loan, include but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) the Court approving the DIP Term Sheet;</li> <li>(b) the granting of the DIP Charge;</li> <li>(c) the Court approving a sale and investment solicitation process ("<b>SISP</b>"), in a form satisfactory to the DIP Lender, including the approval of the Stalking Horse Agreement as the "Stalking Horse Bid" in the SISP;</li> <li>(d) the DIP Lender shall have received and approved the Approved Cash Flows, and the Borrower shall be in material compliance with respect to same; and</li> <li>(e) the DIP Lender shall be satisfied that the Borrower has complied with and are continuing to comply in all material respects with all applicable laws, regulations and orders of the Court in the Proceedings;</li> <li>(f) no Event of Default shall have occurred or shall be reasonably expected to occur; and</li> <li>(g) the representations and warranties made by the Borrower in this DIP Term Sheet being true and correct as of the date given.</li> </ul> |
| <p><b>Taxation:</b></p>                               | <p>All payments of principal, interest and fees will be made free and clear of all present and future taxes, levies, duties or other deductions of any nature whatsoever, levied either now or at any future time.</p>   |
| <p><b>Governing Law and Forum</b></p>                 | <p>This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in such Ontario. The DIP Lender and Borrower hereby irrevocably submit to the exclusive</p>  |

**DEBTOR-IN-POSSESSION FINANCING**

**October 21, 2024**

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|  | jurisdiction of the courts of the Province of Ontario with respect to all matters arising under or in connection with this DIP Term Sheet. |
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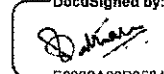
**IN WITNESS HEREOF**, the parties hereby execute this DIP Term Sheet as of the date first written above.

**DATEC COATING CORPORATION**

Signed by:  
  
Per: \_\_\_\_\_  
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Name: Dominic Talalla  
Title: President

**URECKA CANADA CORPORATION**

DocuSigned by:  
  
Per: \_\_\_\_\_  
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Name: Prashant Pathak  
Title: Director


# **APPENDIX “C”**

Datex Coating Corporation  
 Weekly Cash Flow Forecast  
 For the period from October 14, 2024 to January 10, 2025  
 80cda

| Week Ending                    | Notes | Week 1<br>18-Oct-24 | Week 2<br>25-Oct-24 | Week 3<br>01-Nov-24 | Week 4<br>08-Nov-24 | Week 5<br>15-Nov-24 | Week 6<br>22-Nov-24 | Week 7<br>29-Nov-24 | Week 8<br>06-Dec-24 | Week 9<br>13-Dec-24 | Week 10<br>20-Dec-24 | Week 11<br>27-Dec-24 | Week 12<br>03-Jan-25 | Week 13<br>10-Jan-25 | TOTAL   |
|--------------------------------|-------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|----------------------|----------------------|----------------------|----------------------|---------|
| Receipts                       | 2     | 22,669              | 59,601              | 30,000              | 6,467               | 13,815              | 20,000              | 53,333              | 24,601              | 28,648              | 158,000              | 427,132              |                      |                      |         |
| Disbursements                  |       |                     |                     |                     |                     |                     |                     |                     |                     |                     |                      |                      |                      |                      |         |
| Materials                      | 3     | 2,000               | 2,000               | 2,000               | 2,000               | 2,000               | 2,000               | 2,000               | 2,000               | 2,000               | 2,000                | 2,000                | 2,000                | 2,000                | 26,000  |
| Payroll                        | 4     | 9,000               | 37,738              | 300                 | 27,300              | 42,838              | 2,200               | 34,300              | 42,838              | 2,000               | 2,000                | 2,000                | 2,000                | 2,000                | 235,613 |
| Professional fees              | 5     | -                   | -                   | 10,000              | 25,000              | -                   | 25,000              | -                   | 10,000              | -                   | -                    | -                    | -                    | 10,000               | 80,000  |
| Occupancy Costs                | 6     | 3,050               | 2,600               | 19,515              | 2,690               | 2,690               | 19,515              | 2,690               | 19,515              | 2,690               | 2,690                | 19,515               | 19,515               | -                    | 71,614  |
| MEA Expenses                   | 7     | 850                 | -                   | 1,426               | 850                 | -                   | 850                 | -                   | 1,426               | 850                 | 850                  | 200                  | 1,276                | -                    | 6,878   |
| Total Disbursements            |       | 14,940              | 4,600               | 70,678              | 27,300              | 32,240              | 27,000              | 47,438              | 35,141              | 38,390              | 2,850                | 47,638               | 22,741               | 41,100               | 412,055 |
| Net Cash Flow                  |       | 7,729               | 55,001              | (40,678)            | (20,834)            | (18,425)            | (7,000)             | 5,896               | (15,141)            | (14,390)            | 21,751               | (18,990)             | (22,741)             | 116,900              | 15,079  |
| Bank Balance                   |       |                     |                     |                     |                     |                     |                     |                     |                     |                     |                      |                      |                      |                      |         |
| Opening Bank Balance           |       | 908                 | 8,637               | 63,638              | 72,969              | 127,126             | 126,701             | 101,701             | 107,597             | 72,456              | 34,066               | 65,817               | 46,828               | 24,087               | 908     |
| Add: Net Cash Flow             |       | 7,729               | 55,001              | (40,678)            | (20,834)            | (18,425)            | (7,000)             | 5,896               | (15,141)            | (14,390)            | 21,751               | (18,990)             | (22,741)             | 116,900              | 15,079  |
| Add: Debt in Process Financing |       | -                   | -                   | -                   | 125,000             | -                   | -                   | -                   | -                   | -                   | -                    | -                    | -                    | -                    | 225,000 |
| Closing Bank Balance           | 8     | 8,637               | 63,638              | 22,960              | 127,126             | 108,701             | 101,701             | 107,597             | 72,456              | 34,066              | 65,817               | 46,828               | 24,087               | 140,987              | 140,987 |

This statement of forecast cash flow of Datex Coating Corporation is prepared in accordance with section 90.4 (2) of the Bankruptcy and Insolvency Act and should be read in conjunction with the accompanying notes and Trustee's report on cash flow statement dated this 13th day of October, 2024.

Dadick Landau Inc.  
 Per:   
 Robin Dadick, CPA, CA, CFP, LIT

Datex Coating Corporation  
 Per:   
 Mr. Dominic Tallin

**DATEC COATING CORPORATION**  
**MAJOR ASSUMPTIONS**  
**CASH FLOW STATEMENT**  
**FOR THE PERIOD OCTOBER 11, 2024 TO JANUARY 10, 2025 (THE "PERIOD")**

1. Datec Coating Corporation ("Datec") 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 Datec will: (i) be able to close on its third-party financing, discussed further below; (ii) operate in the normal course; and (iii) complete a successful restructuring.

**Receipts:**

2. Cash receipts are composed of customer receipts forecast to be collected in the Period as well other receipts. The other receipts are composed of HST refunds, the receipt of the Ontario Vehicle Innovation Grant and the receipt of annual license fee.

**Disbursements:**

3. Material costs include estimated weekly purchases in the Period.
4. Payroll represents both net pay and remittances to CRA and is comprised of nine salaried employees and three hourly employees.
5. During the Period, legal fees are forecast for Datec's counsel as well the fees of the Proposal Trustee.
6. Occupancy costs consist of gross rent for Datec's premises, utilities as well as commercial/liability insurance.
7. G&A expenses include IT support, monthly cleaning services and estimated employee reimbursements.
8. The forecast includes the receipt of \$125,000 in external short term third-party financing. The Company is in receipt of a term sheet and expects to finalize the financing in the near term. The proposed financing is sufficient to cover any shortfall in the Period. Absent receipt of this financing the Company will be unable to meet its obligations as they come due in the Period. According to Management, as it anticipates a sale of its business in the near term, the financing is expected to be repaid by way of sales proceeds. Whether sales proceeds are received during the Period is uncertain at this time, therefore, a repayment of the financing in the period is not in the forecast.

# APPENDIX "D"

## Sale and Investment Solicitation Process for Datec Coating Corporation

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1. On October 4, 2024, Datec Coating Corporation (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 October 23, 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 Urecka Canada Corporation (the "**Stalking Horse Bidder**") pursuant to a purchase agreement in substantially the form attached to the Affidavit of Dominic Talalla dated October 21, 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 October 23, 2024;
  - (b) the Proposal Trustee, with the assistance of the Company, commences the solicitation process by no later than October 31, 2024, it being understood that the Proposal Trustee, in consultation with the Company, shall be at liberty to provide marketing materials and commence discussions with interested parties prior to such date as it considers appropriate;
  - (c) deadline to submit a Qualified Bid – by no later than 5:00 p.m. (Toronto time) on December 2, 2024 (the "**Qualified Bid Deadline**");
  - (d) date of the Auction (as defined below), if any – December 3, 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 December 3, 2024;
  - (f) Approval Order (as defined below) hearing – by no later than December 13, 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 December 27, 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 \$20,000 in excess of the aggregate purchase price contemplated by the Stalking Horse Agreement; and (ii) a break fee in the amount of \$10,000 (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 SISF, 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 any 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 guarantees 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 SISF, 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. In the event that the Proposal Trustee, in consultation with the Company, determines that there are no Qualified Bids, the Proposal Trustee shall promptly proceed to declare the Stalking Horse Bid as the Successful Bid (as such term is defined below).
13. 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**".

14. 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 SISF, 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**

15. 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**

16. 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**

17. The Proposal Trustee, shall be permitted, in its discretion, to provide general updates and information in respect of the SISP 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 SISP; 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.
18. Subject to the SISP Approval Order or any other order of the Court, the Proposal Trustee, in consultation with the Company, shall have the right to adopt such other rules for, or extend any deadlines in, the SISP that, in its sole discretion, will better promote the goals of the SISP, provided that if such modification or amendment materially deviates from this SISP, such modification or amendment may only be made with the written consent of the Company or by order of the Court.
19. Unless otherwise set out herein, participants and prospective participants in this SISP 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.
20. 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.
21. 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:

[jwuthmann@reconllp.com](mailto:jwuthmann@reconllp.com); [sjoshi@reconllp.com](mailto:sjoshi@reconllp.com)

and with a copy to the Proposal Trustee and his Counsel:

[rahn.dodick@dodick.ca](mailto:rahn.dodick@dodick.ca); [pcho@weirfoulds.com](mailto:pcho@weirfoulds.com)

# APPENDIX "E"

## STALKING HORSE ASSET PURCHASE AGREEMENT

This Agreement made this 21st day of October 2024.

### BETWEEN:

**Datec Coating Corporation**, a corporation existing under the laws of Ontario pursuant to the Ontario *Business Corporations Act*, RSO 1990, c. B.16

(the "**Company**")

- and -

**Urecka Canada Corporation**, a corporation existing under the laws of Canada pursuant to the *Canada Business Corporations Act*, RSC 1985, c. C-44, or its permitted nominee (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 October 4, 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:

**"Administration Charge"** means a court ordered superior charge in priority to all security interests, claims and encumbrances, including without limitation of the DIP Financing Charge, securing the payment of the fees and disbursements of the Company's legal counsel, the Proposal Trustee and the Proposal Trustee's legal counsel, incurred in connection with the BIA proceedings;

**"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, substantially in the form of **Schedule "D"**, that approves 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;

**"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 2.10;

**"Assumed Obligations"** has the meaning ascribed thereto in Section 2.8;

**"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 which includes, among other things, developing and manufacturing of custom thick-film heating element solutions, research and development of novel thermal and dielectric materials, and thermal solutions;

**"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;

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

**"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 (Commercial List);

**"Credit Bid Amount"** means an amount equivalent to all of the indebtedness of the Company owing to the Purchaser under the DIP Financing Term Sheet, plus interests and costs accrued as of the Closing Date;

**"Cure Costs"** means, 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;

**"Customer Deposits"** means the funds received by the Company from a customer as a deposit for work to be performed by the Company for the Customer;

**"DIP Financing"** means interim financing provided by the Purchaser to the Company in the amount of \$125,000 plus interest and fees pursuant to the terms of the DIP Term Sheet, which interim financing is secured by the DIP Financing Charge;

**"DIP Financing Charge"** means a court ordered superior priority charge in priority to all security

interests, claims and encumbrances, but subordinate to the Administration Charge, securing the obligations of the Company under the DIP Term Sheet;

**"DIP Term Sheet"** means the DIP Term Sheet setting out the terms of the DIP Financing, which term sheet was approved by the Court;

**"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, and similar cash items of, owned or held by, or for the account of, the Company except for Customer Deposits;
- (b) the Purchase Price;

- (c) the SR&ED Credit;
- (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 2.9;

**"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, process 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 January 15, 2024;

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

**"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) Intellectual Property, including but not limited to trademarks, copyrights, trade secrets, patents;
- (f) 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;
- (g) All online access keys, accounts, admin privileges, passwords, certificates, authorities and access permissions;
- (h) Any and all 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;
- (i) 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;
- (j) all customer lists and supplier lists;
- (k) Inventory and Supplies;
- (l) Licenses and Permits;
- (m) Prepaid Amounts;
- (n) Receivables;
- (o) Customer Deposits;
- (p) 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;
- (q) All goodwill associated with the Business, including, without limitation, the goodwill associated all names previously and currently operating under including but not limited to "Datec" 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
- (r) 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.

**"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 "A"** 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;

**"SR&ED Credit"** means the Scientific Research and Experimental Development tax credit administered by the federal and provincial government;

**"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"** – Sale Procedures
- Schedule "B"** – Excluded Assets
- Schedule "C"** – Assumed Contracts
- Schedule "D"** – Form of Approval and Vesting Order

## **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.

### **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 equal to the sum of Three Hundred Thousand Dollars (\$300,000.00), comprised of: (a) the assumption of the amount outstanding under the DIP Term Sheet, plus interest, fees and expenses (as outlined in the DIP Term Sheet); and (b) the remainder in cash (together, the "**Purchase Price**") plus the cash sum required to pay the Cure Costs for all of the Assumed Contracts, if any.

### **2.3 Satisfaction of Purchase Price**

The Purchaser shall satisfy the Purchase Price by payment as follows:

- (a) the Credit Bid Amount shall be applied in full and final satisfaction of all Liabilities of the Company to the Purchaser under the DIP Term Sheet outstanding as of Closing; and
- (b) the balance of the Purchase Price shall be paid in cash on Closing to the Proposal Trustee by way of a certified cheque, wire transfer or bank draft.

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 "B"**, with the final version to be attached to this Agreement prior to Closing.

## **2.6 SR&ED Credit**

The Purchaser agrees to assist the Company, including any trustee in bankruptcy, with all of the necessary tasks with respect to filing the application material for the Company to receive the 2024 SR&ED Credit for the benefit of the Company's creditors. In particular, the Purchaser is responsible, at reasonable cost and expense, including but not limited to the cost of retaining appropriate consultants, for making all necessary information in its possession available and filing the application material for the SR&ED Credit with the Canada Revenue Agency by no later than the end of day on March 14, 2025 for the 2024 fiscal year. The Purchaser will provide evidence that the application for the 2024 SR&ED Credit was filed to the Company, including any trustee in bankruptcy, within five Business Days after submitting the application to the Canada Revenue Agency. The Purchaser agrees to execute an undertaking on Closing, in a form agreeable to the Proposal Trustee, Company and Purchaser, all acting reasonably, in this regard. The Purchaser's standard in assisting with filing for the 2024 SR&ED Credit is not intended to create any more costs and liabilities than the Company has incurred in its past practices. This undertaking will not create any personal or contingent liability to the Purchaser for the SR&ED Credit other than the commitment to conduct the above-noted exercise.

## **2.7 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 strictly with the consummation of the purchase 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 strictly 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.

## 2.8 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 2.10;
- (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.

## 2.9 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.

## 2.10 Assumed Contracts

The Purchaser shall assume the Contracts which are listed and described in **Schedule "C"** (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 "C" 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 2.11 hereof shall govern.

### **2.11 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.

### **2.12 Assignment of Licenses and Permits**

To the extent the Licenses and Permits are transferrable and assignable, 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 Licenses and Permits.

If the Licenses and Permits cannot be transferred or assigned, 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.

## **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 release of the Company's Credit Bid Amount
- (c) an executed assignment agreement evidencing the assumption by the Purchaser of all Intellectual Property;
- (d) 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;
- (e) a general conveyance with respect to the Purchased Assets;
- (f) a certified resolution of the Purchaser authorizing the Agreement and the purchase of the Purchased Assets;
- (g) a certificate of status of the Purchaser;
- (h) an undertaking of the Purchaser to the Proposal Trustee to assist with the filing of the SR&ED Credit as referred to in Section 2.6;
- (i) if applicable, the elections referred to in Section 2.6; and
- (j) 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 24 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.

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) continue to pursue all current sales pipeline and customer opportunities especially the high potential ones including among others EGO, Everspecher and Modine;
- (d) not terminate any Employees without the prior written consent of the Purchaser, such consent not to be unreasonably withheld;
- (e) not convey, encumber or otherwise dispose of any of the Purchased Assets except in the Ordinary Course;
- (f) 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;

- (g) 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;
- (h) use reasonable commercial efforts to maintain any insurance currently in effect respecting the Purchased Assets until Closing; and
- (i) 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 Company and/or the Purchaser, as applicable, the Company 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 Company, 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 October 23, 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 \$10,000 (the "**Break 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 does 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, 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;
- (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, in a form satisfactory to the Purchaser, 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 Cure 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 Sections 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.

## **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 895943561.
- (d) *Residency.* The Company is not a non-resident within the meaning of section 116 of the *Income Tax Act* (Canada).

### **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 No Fault Termination**

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.

### **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, 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 and delivered at Closing 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 "Datec" 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 Datec 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:

Dominic Talalla  
[dominic@dateccoating.com](mailto:dominic@dateccoating.com)

With a copy to its counsel at:

Reconstruct LLP  
Attn: Jessica Wuthmann  
[jwuthmann@reconllp.com](mailto:jwuthmann@reconllp.com)

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

Urecka Canada Corporation  
The Daily Planer Building  
202 King Street West  
Chatham N7M 1E5  
Prashant Pathak  
[psp@ekagratagroup.com](mailto:psp@ekagratagroup.com)

- (c) in the case of the Proposal Trustee at:

Dodick Landau Inc.  
Rahn Dodick  
[rahn.dodick@dodick.ca](mailto:rahn.dodick@dodick.ca)

With a copy to:

Weirfoulds LLP  
Attn: Philip Cho  
[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.

**DATEC COATING CORPORATION**

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

Name: Dominic Talalla

Title: President

I have the authority to bind the Corporation

**URECKA CANADA CORPORATION**

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

Name: Prashant Pathak

Title:

I have the authority to bind the Corporation



**Schedule "A"**  
**Sale Procedures**

**Schedule "B"**  
**Excluded Assets**

- (a) all cash, bank balances, deposits, moneys in possession of banks and other depositories, and similar cash items of, owned or held by, or for the account of, the Company except for Customer Deposits;
- (b) the Purchase Price;
- (c) the SR&ED Credit;
- (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.

**Schedule "C"**  
**Assumed Contracts**

| <b>Name of Contract and Date</b>   | <b>Contractual Counterparty</b>                           |
|--|---|
| Consulting Agreement dated June 1, 2023                                      | Dominic Talalla   |
| Engineering Agreement dated October 11, 2023                                 | MD Farhad Ismail  |
| Engineering Agreement dated October 15, 2024                                 | Gurkirat Singh  |
| Escrow Reviewer Agreement dated April 17, 2018                               | E.G.O Elektro-Geratebau and Intertek Health Sciences Inc. |
| OCI Funding Agreement dated March 21, 2023                                   | Ontario Centre of Innovation                              |
| Amended and Restated Technology Cooperation Agreement dated February 7, 2018 | E.G.O. Elektro-Geratebau GmbH                             |
| Lease Extending Agreement dated December 5, 2023                             | Midking Properties Limited                                |

**Schedule "D"**  
**Form of Approval and Vesting Order**

Estate File No. 32-3137745

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

THE HONOURABLE ) WEEKDAY, THE #  
 )  
JUSTICE ) DAY OF MONTH, 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  
DATEC COATING CORPORATION OF THE CITY OF MISSISSAUGA IN THE PROVINCE  
OF ONTARIO**

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by Datec Coating Corporation (the "**Vendor**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended (the "**BIA**") for an order that, among other things, (i) approves the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Company, as vendor, and Urecka Canada Corporation, as purchaser (in such capacity, the "**Purchaser**"), dated October ●, 2024; and (ii) vesting in the Purchaser the Vendor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Dominic Talalla, sworn ●, 2024 (the "**Talalla Affidavit**"), and the exhibits thereto, and the Second Report of Dodick Landau Inc. in its capacity as proposal trustee of the Vendor (the "**Proposal Trustee**").

**ON HEARING** the submissions of counsel for the Vendor, 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 ● sworn ●, 2024, is hereby deemed adequate notice so that this Motion is properly returnable today and hereby dispenses with further service thereof.

#### **APPROVAL AND VESTING**

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Vendor is hereby authorized and approved, with such minor amendments as the Vendor and the Purchaser, with the approval of the Proposal Trustee, may deem necessary. The Vendor is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Proposal Trustee's Certificate**"), all of the Vendor's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Black dated October 23, 2024; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (the "**Net Proceeds**") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee's Certificate all Claims and Encumbrances shall attach to the Net Proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold

and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Proposal Trustee's Certificate forthwith after delivery to the Purchaser.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Vendor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendor's records pertaining to the Vendor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendor.

7. **THIS COURT ORDERS** that, notwithstanding:

- the pendency of these proceedings;
- any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Vendor and any bankruptcy order issued pursuant to any such applications; and
- any assignment in bankruptcy made in respect of the Vendor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Vendor and shall not be void or voidable by creditors of the Vendor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **GENERAL**

8. **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.

9. **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.

10. **THIS COURT ORDERS** that each of the Vendor, the Proposal Trustee and the Purchaser be at liberty and are 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.

11. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

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