

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

**MOTION RECORD
(Returnable January 27, 2022)**

January 20, 2022

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MOTION RECORD

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**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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**NOTICE OF MOTION
(Stay Extension, DIP Refinancing)**

Laurentian University of Sudbury (the “**Applicant**” or “**LU**”) will make a motion to Chief Justice Morawetz of the Ontario Superior Court of Justice on January 27, 2022, at 9:00 A.M. (Eastern Time), or as soon after that time as the motion can be heard, via Zoom videoconference due to the COVID-19 pandemic.

PROPOSED METHOD OF HEARING:

This motion is to be heard via Zoom videoconference, the details of which will be circulated to the Service List upon receipt from the Court.

THIS MOTION IS FOR:

1. An Order (the “**Stay Extension Order**”) substantially in the form attached at Tab 3 of the Motion Record of the Applicant dated January 20, 2022 (the “**Motion Record**”), that extends the Stay Period¹ up to and including May 31, 2022, and authorizes the Monitor and

¹ All capitalized terms not otherwise defined in this Notice of Motion are as defined in the Affidavit of Dr. Robert Haché sworn January 20, 2022 (the “**Haché Affidavit**”).

the Chief Redevelopment Officer (the “**CRO**”) to identify a third-party consultant to assist LU with the development of a strategic plan;

2. An Order (the “**DIP Approval Order**”) substantially in the form attached at Tab 4 of the Motion Record that approves the refinancing of the DIP Facility (as defined below) and the MCU DIP Loan Agreement (as defined below) between LU, as borrower, and Her Majesty the Queen in right of Ontario, as represented by the Minister of Colleges and Universities (“**MCU**”), as the lender; and
3. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

Overview

4. On February 1, 2021, the Applicant sought and obtained an initial order (the “**Initial Order**”) granting it protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), approving a stay of proceedings for an initial 10-day period (the “**Stay Period**”) and certain Court ordered super-priority charges.
5. On February 10, 2021, the Court held a comeback hearing that resulted in the issuance of an amended and restated initial order (the “**Amended and Restated Initial Order**”) that, among other things, approved a debtor-in-possession interim financing arrangement in the

amount of \$25 million (the “**Existing DIP Facility**”) and extended the Stay Period to April 30, 2021.

6. On May 2, 2021, the Court issued an order (the “**Stay Extension Order**”) extending the Stay Period to August 31, 2021. The Stay Extension Order also approved an amendment (the “**First DIP Amendment**”) to the Applicant’s Existing DIP Facility that, among other things, increased the principal amount available under the Existing DIP Facility by an additional \$10 million and extended the maturity date of the Existing DIP Facility to August 31, 2021.
7. On August 27, 2021, the Court issued an order (the “**Second Stay Extension Order**”) extending the Stay Period to January 31, 2022. The Second Stay Extension Order also extended the maturity date of the Existing DIP Facility to January 31, 2022.
8. LU now seeks an extension of the Stay Period up to and including May 31, 2022.
9. Since the issuance of the Initial Order and the Amended and Restated Initial Order, LU has undertaken significant aspects of its overall restructuring that were necessary for the reasons set out in the application record filed in support of the Initial Order. LU has undertaken a full academic restructuring, made changes to its faculties and departments to improve efficiencies, reached significant agreements with its two main labour partners LUFA and LUSU and effected a termination of its agreements with the Former Federated Universities.
10. Achieving these outcomes within the CCAA proceeding has allowed LU to successfully continue offering instruction to its students, without interruption, throughout the Winter,

Spring, and Fall 2021 terms (until recently affected due to the onset of the Omicron variant).

Extension of the Stay of Proceedings

11. The Applicant seeks an extension of the Stay Period up to and including May 31, 2022.
12. Since the Initial Order, LU has worked closely with the Monitor to advance the restructuring. To date, LU, with the assistance and oversight of the Monitor, has commenced and implemented two claims processes, undertook a full real estate review, undertook and completed a comprehensive governance review with respect of each of the Board and Senate, and undertook a full operational review of the university.
13. The stay extension is required to enable the Applicant to continue operating in the ordinary course while continuing to implement a restructuring leading to a Plan of Arrangement.
14. The Cash Flow Forecast prepared by the Applicant with the assistance of the Monitor demonstrates that the Applicant will have sufficient liquidity to operate its business and meet its obligations during the proposed Stay Period.
15. The Applicant has acted, and continues to act, in good faith and with due diligence during the course of this CCAA proceeding.
16. The Monitor supports the proposed stay extension and the relief sought on this motion.

The DIP Refinancing

17. The Applicant seeks an order authorizing it to obtain and borrow under a DIP facility from MCU (in such capacity, the “**Replacement DIP Lender**”) in the maximum principal amount of \$35 million (the “**Replacement DIP Facility**”). The Replacement DIP Facility

will be used by the Applicant to repay the Existing DIP Lender and refinance the Existing DIP Facility.

18. On December 16, 2021, the Province formally announced it would provide LU with a package of support. As part of the support package, MCU agreed to refinance the Existing DIP Facility, and expressed the intention of converting the Replacement DIP Facility to a long-term loan upon the Applicant's successful emergence from the CCAA proceeding, on terms to be agreed.
19. On January 19, 2022, LU and MCU executed a DIP Loan Agreement (the "**MCU DIP Loan Agreement**") to refinance the Existing DIP Facility.
20. Pursuant to the MCU DIP Loan Agreement, the interest rate on the Replacement DIP Facility will be based on the MCU's one-year cost of funds at the time of the advance. As of January 12, 2022, this rate would be 1.052%. This represents a significant cost savings that will benefit LU and its creditors when compared to the 8.5% interest rate of the Existing DIP Facility.
21. The proposed DIP Approval Order extends similar protections and rights to the Replacement DIP Lender as those granted to the Existing DIP Lender pursuant to the Amended and Restated Initial Order.
22. The proposed DIP Approval Order provides that, upon the filing of a certificate by the Monitor confirming that LU's obligations to the Existing DIP Lender have been repaid in full, LU shall be released and discharged from all liabilities and obligations to the Existing

DIP Lender and all encumbrances in favour of the Existing DIP Lender against LU or its property shall be released and discharged.

23. The Monitor supports the granting of the DIP Approval Order.

The Third-Party Consultant

24. As part of the Provincial package of support, the Province requires that LU develop a long-term strategic plan with the assistance of an external third party.
25. The Applicant seeks approval for the Monitor and the CRO to develop a process for the engagement with independent, prospective third parties who may be qualified and able to assist LU with the development of a strategic plan. In the Applicant's view, the identification of qualified third parties by the Monitor and the CRO will assist in ensuring that the process of developing a long-term strategic plan can proceed effectively, efficiently, and expeditiously, to the benefit of LU and its stakeholders.

Other Grounds

26. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court; and
27. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this application:

1. The Haché Affidavit (sworn January 20, 2022) and the Exhibits attached thereto;

2. The Tenth Report of the Monitor, to be filed; and
3. Such further and other evidence as counsel may advise and this Court may permit.

January 20, 2022

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Schedule “A”

SERVICE LIST

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

Court File No. CV-21-00656040-00CL

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

Proceedings commenced at Toronto

**NOTICE OF MOTION
(Stay Extension, DIP Refinancing)**

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TAB 2

**ONTARIO
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(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

Applicant

AFFIDAVIT OF DR. ROBERT HACHÉ
(sworn January 20, 2022)

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I, Dr. Robert Haché, of the City of Sudbury, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

I. INTRODUCTION

1. I am the President and Vice-Chancellor of Laurentian University of Sudbury (“**LU**” or the “**Applicant**”) and a member of the Board of Governors (the “**Board**”) of LU, having served in these roles since July 2019.
2. As such, I have knowledge of the matters hereinafter deposed to, except where I have obtained information from others. Where I have obtained information from others, I have stated the source of the information and believe it to be true.
3. This affidavit is sworn in support of LU’s motion for orders substantially in the form of the draft orders attached at Tabs 3 and 4 of the Motion Record of LU dated January 20, 2022 (the “**Motion Record**”) that, among other things:
 - (a) extends the Stay Period (as defined below) from January 31, 2022 until May 31, 2022, and authorizes the Monitor and CRO to identify a third party consultant to assist LU with the development of a strategic plan (the “**Stay Extension Order**”); and
 - (b) approves the refinancing of the existing DIP facility and approves the MCU DIP Loan Agreement (as defined below) between LU, as borrower, and Her Majesty the Queen in right of Ontario, as represented by the Minister of Colleges and Universities (“**MCU**”), as lender (the “**DIP Approval Order**”).
4. All monetary amounts referred to in this Affidavit are in Canadian dollars, unless otherwise noted.

II. OVERVIEW OF THE APPLICANT

5. As explained more fully in my Affidavit sworn January 30, 2021 (the “**Initial Haché Affidavit**”), LU is a non-share capital corporation that was incorporated pursuant to *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151 C. 154 (the “**LU Act**”). LU is also a registered charity pursuant to the *Income Tax Act*, R.S.C., 1985, c. 1(5th Supp). Capitalized terms used herein that are not otherwise defined shall have the meaning given to such terms in the Initial Haché Affidavit.
6. Since its inception, LU has operated in Sudbury, Ontario as a publicly-funded, bilingual and tricultural postsecondary institution. LU is an integral part of the economic fabric of Northern Ontario and serves as the primary postsecondary institution for a large geographic region. LU was the first bilingual university in Ontario to receive partial designation under the *French Languages Services Act*, R.S.O. 1990, c. F.32 (the “**FLSA**”) and is proud of its bilingual and tricultural mission.
7. LU’s governance structure is bi-cameral. The Board and the President and Vice-Chancellor generally have powers over the operational and financial management of LU, whereas the Senate of LU (the “**Senate**”) is responsible for the academic policy of LU.
8. On February 1, 2021, Chief Justice Morawetz granted an initial order (the “**Initial Order**”) that, among other things, appointed Ernst & Young Inc. as monitor (the “**Monitor**”) of LU in this proceeding, approved a stay of proceedings for the initial 10-day period (the “**Stay Period**”) and granted certain Court ordered super-priority charges. The Stay Period has been most recently extended through various court Orders up to and including January 31, 2022.

9. On February 5, 2021, Chief Justice Morawetz appointed the Honourable Justice Sean F. Dunphy as the Court-Appointed Mediator in this proceeding (the “**Mediator Appointment Order**”). The Mediator Appointment Order contained a Mediation Confidentiality Protocol to ensure that all aspects of the Court-supervised mediation (the “**Mediation**”) would remain confidential, and all participants could discuss and negotiate issues confidentially.
10. On February 10, 2021, the amended and restated initial order (the “**Amended and Restated Initial Order**”) was granted that, among other things, approved a debtor-in-possession interim financing facility in the maximum amount of \$25 million, which was subsequently increased to \$35 million (the “**DIP Facility**”).
11. A detailed history of the orders granted by the Court in this CCAA proceeding between February 10, 2021 and August 17, 2021 was provided in my affidavit sworn on August 20, 2021 (the “**August Haché Affidavit**”) and is not repeated here.
12. Throughout this proceeding, LU has operated in accordance with the Amended and Restated Initial Order and has attempted to minimize the impact of this proceeding on students and other stakeholders, recognizing that a restructuring of this nature creates some degree of disruption.
13. LU has worked closely with the Monitor and its advisors in advancing the restructuring including (among other things) commencing and implementing two parallel claims processes, undertaking a full real estate review, undertaking and completing a comprehensive governance review with respect to each of the Board and the Senate, and a full operational review of the university. These initiatives are part of LU’s commitment to

advance the restructuring towards a plan of compromise or arrangement to be presented to creditors, and to undertake the necessary steps to identify and proactively address practices, policies, structures or challenges that may impede LU's future success.

14. The August Haché Affidavit set out LU's expectations for when certain steps would be taken in this proceeding based on the information available at that time. LU has been working diligently to advance this restructuring, but some of those timelines were optimistic and have necessarily shifted. Since August, there have been many intervening events that created a further strain on LU's resources and the speed with which various aspects have progressed.
15. In particular, some of the key events which have pushed out certain timelines leading to the development of a plan of compromise or arrangement include:
 - (a) the initial phase of the operational and governance review procurement process being unsuccessful, and delaying the ultimate engagement of an advisor to undertake those reviews;
 - (b) the delays experienced in completing the real estate review, which will inform discussions with creditors;
 - (c) the delay in completing LU's audited financial statements due to the strained resources of LU's finance team and the extensive work required to review and reconcile all aspects, which has also delayed the preparation of refreshed financial projections;

- (d) the complexity of claims filed in the Claims Process has required a very extensive factual and legal review by the Monitor and LU, with challenges relating to the gathering of certain information;
- (e) the value-for-money audit by the Auditor General and the involvement by the Standing Committee on Public Accounts, which has required LU personnel to locate, collect and coordinate the delivery of information and documents to satisfy information requests and provide regular updates to the advisors and the Board; and
- (f) the onset of the Delta and Omicron variants of COVID-19, which has disrupted operations on LU's campus at various times and requires key senior leaders at LU to become diverted from other work streams in order to address the immediate health and safety needs of the students and staff on campus.

16. Notwithstanding the above, significant progress has been made by LU since August, as discussed in this affidavit.

III. OPERATIONS OF LU

17. Since this proceeding commenced, LU has undergone a significant academic restructuring and is undertaking a full operational and financial restructuring. As a result of the various agreements reached during the Mediation and approved by this Court and other restructuring efforts to date, including LU's disclaimer of the Federation Agreements, LU reduced its annual operating costs by approximately \$40 million each year. This represents a reduction of approximately 25% of LU's total annual operating expenses when compared to 2020. These steps occurred while LU was operating and delivering ongoing education during a global pandemic, to its approximately 6,000 full-time equivalent students.

18. Classes in the Winter 2021 term (January 1 to April 30, 2021) were completed on time. The Spring 2021 term (May 3 to July 23, 2021) also proceeded as planned, and during the Spring and Summer another cohort of graduates attended convocation (virtually, due to the pandemic) and received their LU degrees. The Fall 2021 term (September 7 to December 2021) proceeded as planned and featured a successful in-person return to campus for students, faculty and staff, until halted recently by the spread of the Omicron variant of the COVID-19 virus. Final exams began in-person and were then transitioned to remote delivery due to the spread of the Omicron variant and concluded on December 23, 2021.

A. *COVID-19 Impacts*

19. Prior to the Fall 2021 semester, LU engaged in significant preparations for a return to campus in person. These preparations were necessary to accommodate the return of nearly 6,000 in-person students (plus 2,100 online students) to the Sudbury campus by early September. To respond to the varying comfort levels of students regarding a return to campus, LU also provided flexibility to students by offering more than 270 online and remote courses during the Fall 2021 semester as well as extensive hybrid learning opportunities for those that might otherwise be face-to-face courses.

20. To ensure a safe, comfortable and successful semester, LU worked closely with Public Health Sudbury & District (“**PHSD**”) to ensure that LU complied with all public health recommendations. LU also offered a pop-up COVID-19 vaccination clinic on campus, and partnered with PHSD to offer additional vaccination clinics on campus in September and October via a Mobile Vaccination Bus for those students, faculty, staff and community members who were receiving their first or second dose. Moreover, through the Fall, LU

continued to provide access to COVID-19 vaccinations on campus, by appointment, at its Health and Wellness Clinic.

21. LU introduced a COVID-19 Vaccination Policy that came into effect on September 7, 2021. To comply with the policy, all persons entering campus (including students, faculty, staff and visitors) were required to:
 - (a) be fully vaccinated against COVID-19;
 - (b) be partially vaccinated against COVID-19 with a negative COVID-19 test in the previous 72 hours (until October 15, 2021, after which persons had to be fully vaccinated or have received a valid exemption for medical or creed/religious beliefs); or
 - (c) have a valid exemption (or be in the process of seeking an exemption) with a negative COVID-19 test in the previous 72 hours.
22. To facilitate compliance with the vaccination policy, LU established a process through the “myLaurentian” portal for uploading proof of vaccination and posted on its website an extensive document responding to frequently asked questions regarding COVID-19 and the policy.
23. By the end of the Fall term, over 99% of LU’s students, faculty and staff were fully vaccinated.
24. LU has tracked all positive cases of COVID-19 involving members of its university community present on campus. Upon being notified by public health authorities, LU posted notices of positive COVID-19 cases on its website.

25. Since September 1, 2021, there have been 20 confirmed cases of COVID-19 closed (cases are considered closed after the relevant isolation periods end). As of January 11, 2022, there were three (3) active cases.
26. All of LU's courses in the Fall 2021 semester were successfully completed on campus. However, the onset of the Omicron variant in early December 2021 resulted in increased restrictions and the transition to remote delivery of exams. These decisions were made in consultation with the PHSD. On December 17, 2021, all exams were moved to remote delivery to prevent the spread of the variant.
27. On December 22, 2021, LU notified students, faculty and staff that following the winter break, the vast majority of Winter 2022 courses would be conducted virtually until at least January 28, 2022. On January 15, 2022, I notified the community that remote learning would continue until at least February 7, 2022 due to the continued prevalence of Omicron. The university is working to create a plan for a staged return to campus in consultation with PHSD.
28. Although the return to campus in Fall 2021 was welcomed, there were still impacts on ancillary revenues due to restrictions on capacity and public health guidelines. It is anticipated that the impacts of the Omicron variant on ancillary revenue will be more significant, although it is still too early to tell the extent to which those impacts will be felt.

B. Fall 2021 Enrolment Update

29. As discussed in the August Haché Affidavit, LU anticipated a 30% decline in new student enrolment for the 2021-2022 academic year, taking into account a variety of factors, including uncertainty arising from the CCAA restructuring, reputational damage to LU

relating to facts disclosed through materials filed with the Court, the COVID-19 pandemic and declining demographic trends in northern Ontario. That anticipated decline in new student enrolment formed part of the financial projections that were previously filed with the Court in April, 2021.

30. The Fall 2021 enrolment numbers were finalized by the end of November 2021 in the ordinary course and provided to MCU. The decline in first-year student enrolment was broadly consistent with what had been forecasted by LU seven months earlier. There was a 33% decline in first-year student enrolment for the Fall 2021 semester (1,024 new students in the Fall of 2021, compared to 1,531 in the Fall of 2020). Domestic enrolment for first-year students decreased by 32.6%, while enrolment from international and mature students decreased by 33.8%.
31. Despite the reduction in first-year student enrolment, overall enrolment at LU exceeded the projections by approximately 400 students. Approximately 8,000 individual students enrolled at LU for the Fall 2021 semester. Of the approximately 8,000 individual students enrolled in Fall 2021, approximately 2,100 were enrolled in online programs while approximately 5,900 were enrolled in programs primarily delivered in-person at the Sudbury campus.
32. LU measures enrolment levels in November each year, in order to account for new and returning students. Compared to Fall 2020, total enrolment at LU (taking into account both first-year and returning students) decreased by 14%.

33. The percentage of students who are enrolled in French-language programs increased year-over-year, which resulted in more than 20% of the student population at LU being currently enrolled in French-language degree programs.
34. Although enrolment is down, LU anticipates that the decrease in tuition revenue will be significantly lower than the percentage decrease in enrolment. This lower decrease is due to the elimination of tuition transfers to the Former Federated Universities (as defined below). LU is now retaining tuition revenue that would have been transferred to the Former Federated Universities.
35. As further data regarding Winter 2022 enrolment becomes available to LU, an update will be provided to stakeholders and to the Court.

C. Fall 2022 Update Regarding Applications

36. The Ontario Universities' Application Centre ("OUAC") deadline for direct-entry high school applicants was January 13th, 2022. While applicants can apply after this deadline, LU typically receives the majority of direct-entry high school applications (101s) by the OUAC deadline. When comparing the same date (January 10th) year over year, domestic 101 applications are currently down by 44%. However, LU's fully online degree programs are only showing a 1% year-over-year decrease in applications, reflecting a shift in student preferences.
37. The decrease in applications is disappointing but not unexpected, given the academic restructuring that was undertaken last spring, which occurred after 101 applications had been received. It is important to note as well that this is partial data only, representing first

year direct-entry applicants only, and LU expects to continue to receive more applications after the deadline.

38. Further, the 101 applications represent less than 50% of LU's overall applications. The majority of applications that LU receives are what is referred to as 105 applications, which are all other applicants not directly entering from an Ontario high school. These applications, including International, Transfer/Mature and Graduate applicants, do not have an OUAC deadline and the bulk of applications are received later in the cycle.
39. In an effort to enhance our recruitment and retention, over the past two months, Liaison, Marketing and Digital Strategy have been having regular meetings with the Associate Vice-President, Student Success, Registrar and Secretary of Senate to develop and implement an enhanced strategy to maximize recruitment and retention for Fall 2022.
40. Domestic Recruitment, International Recruitment and the Office of Admissions will be focusing their efforts to secure high conversion rates to confirmed offerees for 2022/2023. To start, LU will be hiring two Enrolment Clerks in the coming weeks to facilitate document follow-up, outreach, and front-line services, encouraging not only new offerees, but also new applicants to flow through the funnel to receive offers and participate in one of the many unique and recurring conversion activities.
41. From now through February, we will begin the next phases of our ongoing Post-Secondary 12 series, aimed at helping applicants through their journey. This series has two events - 'Parent Night' and 'You and Your Offer' – which focus on helping offer holders and their supporters see the specific reasons and advantages of LU.

42. International offer holders will be invited to monthly information sessions to work on accepting offers, preparing for study permit applications, and how to get into Canada.
43. LU will be continuing to monitor the admission trends and provide updates as the cycle evolves.

IV. LABOUR RELATIONS MATTERS

44. I previously provided an update on labour relations matters in the August Haché Affidavit. This portion of the Affidavit provides an update on a number of labour relations matters since that time.

A. Unfair Labour Practice Complaint

45. Pursuant to the LUFA Term Sheet (as defined in my affidavit sworn April 21, 2021 (the “**April Haché Affidavit**”), LU and LUFA agreed to litigate LUFA’s outstanding Unfair Labour Practice complaint (the “**ULP Grievance**”). Initially, the ULP Grievance was scheduled to be heard by Arbitrator Kevin Burkett at a one-day hearing on September 21, 2021.
46. I am advised by Michael Kennedy, a partner at Hicks Morley Hamilton Stewart Storie LLP, LU’s employment and labour counsel, that at the request of LUFA, the hearing for the ULP Grievance was adjourned twice and was eventually heard on December 9, 2021. During the arbitration, Arbitrator Burkett suggested that the parties continue to work together with the arbitrator to arrive at a mutually agreeable resolution in order to build a bridge to better labour relations in the future.

47. I am further advised by Mr. Kennedy that since the ULP Grievance hearing on December 9, 2021, LU and LUFA have continued discussions with the assistance of Arbitrator Burkett. Those discussions remain ongoing, and the parties continue to work toward a consensual resolution.

B. October 14 Grievances

48. In accordance with the Compensation Claims Process Order dated August 17, 2021 (as amended and restated from time to time, the “**Compensation Claims Process Order**”), LUFA was required to file any and all grievances that it had that related to Pre-Filing Grievances or Restructuring Grievances (as such terms are defined in the Compensation Claims Process Order) on or before October 14, 2021.

49. In and around October 14, 2021, LUFA filed 29 additional grievances with LU. Including 7 grievances that were received following execution of the LUFA Term Sheet in April 2021, there were 36 outstanding grievances filed by LUFA as of October 14, 2021. Since that date, 2 grievances have been either resolved or withdrawn and the parties, with the assistance of the Monitor, have been working on the withdrawal of a third grievance.

50. With respect to the balance of the outstanding grievances, LU continues to work toward their resolution in accordance with the Grievance Resolution Process Order granted by the Court on December 20, 2021 (the “**Grievance Resolution Process Order**”). LU had requested particulars regarding certain of the grievances from LUFA several times since October 14, 2021. In accordance with the Grievance Resolution Process Order, on December 22, 2021, LU provided a list of the outstanding grievances that LU requires further particulars, in order to classify the grievance as pre-filing, post-filing or a

restructuring grievance, and, where possible, LU provided specific information requests that it needs to have satisfied in order to assess the grievances.

51. LU will continue to work through the Grievance Resolution Process with LUFA (as defined in the Grievance Resolution Process Order), with the assistance of the Monitor, in an effort to resolve the outstanding grievances filed. Where any issues as to classification of the grievances arise, the Monitor will refer the issue to Justice Dunphy for determination in accordance with the Grievance Resolution Process Order.

V. FORMER FEDERATED UNIVERSITIES

52. LU historically provided certain facilities-related services to Huntington University (“**Huntington**”), the University of Sudbury (“**USudbury**”) and Thorneloe University (“**Thorneloe**”, and together with Huntington and USudbury, the “**Former Federated Universities**”). LU entered into a transition agreement with Huntington in April 2021 (the “**Huntington Transition Agreement**”).
53. Since the August Haché Affidavit, LU entered into separate transition agreements with USudbury and Thorneloe on August 23, 2021 and October 21, 2021, respectively.
54. The transition agreements with USudbury and Thorneloe are similar to the Huntington Transition Agreement as it relates to facilities-related services on campus (e.g. internet, mail delivery, snow removal, security). The transition agreements did not address the Pension Plan.
55. In connection with the independence of each of the Former Federated Universities from LU following the disclaimers, LU requested that the City of Sudbury create separate

municipal addresses for each of the Former Federated Universities that are independent from LU's municipal address. Following this request, LU has worked with the City of Sudbury to advance this process.

56. Upon a review of the existing roadway names on campus, the City of Sudbury determined that two of the existing road names on campus where the Former Federated Universities are located are also used elsewhere in the municipality. Accordingly, LU and the City of Sudbury are working on renaming the roads. LU proposed that they be renamed with Anishinaabemowin names. To facilitate this process, LU and the City of Sudbury are working collaboratively with the Laurentian University Native Education Council (LUNEC).

VI. PENSION BENEFITS

A. Updated Pension Plan Valuation

57. As further explained in the Initial Haché Affidavit, LU maintains the Pension Plan for its employees and is the administrator of the Pension Plan. Employees of the Former Federated Universities and the employees of certain other employers also participate in the Pension Plan.
58. The last actuarial valuation report prepared in respect of the Pension Plan that was filed with the pension regulatory authorities had a valuation date of January 1, 2020. The actuary for the Pension Plan is preparing a new valuation report for the Pension Plan which will have a valuation date of July 1, 2021 (the "**New Valuation Report**"), the date on which significant changes to the Pension Plan were introduced, as discussed below.

59. Although the New Valuation Report has not yet been finalized, I am advised by the actuary for the Pension Plan that both the going concern and solvency funded positions of the Pension Plan will be improved as of July 1, 2021. This is due to a combination of improved market conditions and the changes to the Pension Plan that were undertaken as part of the Term Sheets negotiated in the confidential mediation as summarized in the August Haché Affidavit, which improved the overall funded position of the Pension Plan.

60. The New Valuation Report will be filed shortly with the Financial Services Regulatory Authority and Canada Revenue Agency. The deadline for its filing with the Financial Services Regulatory Authority is March 30, 2022.

B. Former Federated Universities

61. Employees of the Former Federated Universities historically participated in the Pension Plan. Changes to the treatment of the Former Federated Universities' participation in the Pension Plan were made following the disclaimers of the Federation Agreements. Effective on and after July 1, 2021, no new employees of Thorneloe or USudbury were permitted to join the Pension Plan. Effective December 31, 2021, all remaining Pension Plan members who were employees and former employees of Thorneloe or USudbury ceased to accrue benefits under the Pension Plan pursuant to an amendment to the Pension Plan adopted in December 2021. Huntington was removed as a Participating Employer under the Pension Plan in accordance with the terms of the Huntington Transition Agreement.

62. In conjunction with the cessation of accruals under the Pension Plan for employees and former employees of Thorneloe or USudbury effective December 31, 2021, the amendment to the Pension Plan adopted in December 2021 also provided that pension assets and

liabilities relating to the Thorneloe membership group and the USudbury membership group will be notionally segregated within the pension fund of the Pension Plan.

63. In addition to the above steps already taken, since the last stay motion, LU has continued to have communications with USudbury and Thorneloe regarding their obligations under the Pension Plan.
64. On October 25, 2021, LU sent separate letters to Thorneloe and USudbury which, among other things, set out LU's position regarding Thorneloe's obligations vis-à-vis the Pension Plan. A copy of the October 25 letters to Thorneloe and USudbury are attached hereto as **Exhibits "A" and "B"**, respectively.

VII. REAL ESTATE REVIEW

65. On July 5, 2021, the Court approved the appointment of the Real Estate Advisor. The engagement letter with the Real Estate Advisor was entered into in late July and work began in earnest in August. The general timeline given by various proponents in the RFP procurement process was 6-8 months, with the earliest proposal being a completion time of 4 months. The completion of the real estate process has taken longer than expected given the breadth and complexity of Laurentian's real estate, the availability of information and institutional knowledge required from LU by the real estate advisors, and the many competing demands on LU's very thin resources.
66. The depth of the Real Estate Advisor's analysis has been significant, and, upon completion of the review, LU and its stakeholders will have a clear understanding of the current portfolio of real estate and its options.

67. The Real Estate Advisor has been undertaking a review of all core and non-core real estate in order to determine whether there are efficiencies that should be considered, whether there is any surplus real estate that LU may wish to dispose of, or whether there are other opportunities to monetize or create value for LU and its stakeholders. The review includes the following components:
- (a) reviewing and understanding LU's current portfolio of real estate;
 - (b) consideration of potential strategies with respect to the monetization of any redundant or excess assets that may exist within the real estate portfolio (land and buildings);
 - (c) review of third-party leases within the real estate portfolio;
 - (d) consideration of different strategies to monetize real estate assets; and
 - (e) recommendations to optimize space utilization, including opportunities to consolidate, and the feasibility of doing so.
68. Since the August Haché Affidavit, the Real Estate Advisor continues to work closely with the LU team and its advisors. Initial information began to be delivered in September and October 2021 (and on a rolling basis thereafter), which permitted the Real Estate Advisor to analyze and report on the space utilization at LU, the urban planning context and potential options with the student housing at LU. In addition, the Real Estate Advisor completed an analysis of the Sudbury real estate market in order to take into account historical sales and leasing values.
69. This foundational information and analysis formed the preliminary basis for the Real Estate Advisor to consider potential monetization opportunities and recommendations to LU. As

of today's date, there are three reports that are very well advanced but remain to be finalized: (i) asset monetization strategy, (ii) consolidation strategy, and (iii) lease monetization strategy. Drafts of the asset monetization strategy, the consolidation strategy, and the lease monetization strategy have been provided to LU by the Real Estate Advisor. LU has provided substantially all of its comments to the Real Estate Advisor on the asset monetization strategy and the consolidation strategy, and those reports are expected to be final by January 31, 2022. LU has received a draft of the lease monetization strategy and expects that this report will be finalized shortly.

70. No decisions have been made at this time. Once the real estate review is complete, the recommendations of the real estate review will be presented to the Board for consideration.

71. After receiving input from the Board, LU will engage in consultations with its economic stakeholders with respect to LU's preferred course of action, if any, arising from the real estate review. Such consultations are expected to take place concurrently with negotiations regarding a plan of compromise or arrangement over the next few months. It is expected that any decisions regarding the real estate review will form part of the plan of compromise or arrangement that is negotiated with LU's stakeholders.

VIII. OPERATIONAL AND GOVERNANCE REVIEW

72. In addition to the real estate review, LU committed to a full-scale operational and governance review, including as part of the LUFA and LUSU Term Sheets (as defined in the April Haché Affidavit). The scope of the operational and governance review is described in greater detail in the August Haché Affidavit.

73. On August 5, 2021, LU issued a Request for Proposals for bids to undertake any one, a combination, or all of: (i) a Senate Governance Review; (ii) a Board of Governors Governance Review; and (iii) an Operational Review (the “**RFP**”). The process was conducted in accordance with the Broader Public Sector Guidelines and the deadline for submissions was August 31, 2021.
74. No suitable submissions were received through the RFP. When the RFP process was closed, the Monitor and the Chief Redevelopment Officer (“**CRO**”) then sought to engage with various parties who have experience with this type of mandate. This process reflected that the identification of the party to undertake the reviews would be independent of LU and its Board. After a competitive vetting process, the Nous Group (“**Nous**”) was selected to undertake both the operational review and the governance review due to their significant experience and expertise in the postsecondary sector, including developing systems and strategies for higher education institutions.
75. Over the last several months and under the supervision of the CRO and the Monitor, Nous conducted an extensive and comprehensive review of all facets of LU’s operations and governance, both at the Board and at Senate. I am advised by Sharon Hamilton of the Monitor that Nous’ reports were recently completed. The Monitor and the CRO are now working with Nous to coordinate next steps arising from the Nous reports, which will involve discussions with LU and its Board, with relevant stakeholders (including LUFA and LUSU, who LU committed to consult with in respect of the operational and governance review in the Term Sheets approved by the Court in April 2021) and discussions regarding the adoption and implementation of recommendations made by Nous in its report, and the mechanisms and funding that would be required to complete same.

76. Although the Nous reports have been completed, it is expected that discussions around the content of the reports will be ongoing and will form part of the discussions in respect of a plan of compromise or arrangement. The ultimate implementation of any of the adopted recommendations will also be a longer-term project that will continue after the CCAA proceeding has been completed.

IX. FRENCH LANGUAGE SERVICES ACT

77. Since April 2021, LU has been involved in discussions with the Ministry of Francophone Affairs (the “MFA”) (Ontario) and Ms. Kelly Burke, the FLSA Commissioner with the Office of the Ombudsman of Ontario (the “Commissioner”) to better understand the effects of the academic restructuring on LU’s francophone mandate.

A. Steps Undertaken and Status

78. On August 19, 2021, the MFA delivered a letter to LU requesting that LU, in its ongoing compliance with the FLSA, submit implementation plans for the designated degrees of the *Maîtrise en activité physique* and *Maîtrise ès arts* degrees as LU had committed to the MFA to resume these degrees in September 2022. A copy of the MFA’s letter is attached hereto as **Exhibit “C”**.

79. On September 27, 2021, LU delivered a letter to the MFA outlining its implementation plans for the two aforementioned degrees, including detailed steps to ensure that these degrees may be offered within the specified timeframe. The correspondence attached projected schedules for approval processes that must be undertaken by both the LU Academic Planning Committee (“ACAPLAN”) and LU’s Senate. A copy of LU’s letter to the MFA (please note that the English translation of the LU letters referred to in this section are the versions attached as exhibits) is attached hereto without lengthy appendices as **Exhibit “D”**.

80. On October 26, 2021, LU provided a progress report on its implementation plans for the two degrees to the MFA. LU reported that Senate had approved a proposal by ACAPLAN to create the *Maîtrise ès arts* program and the relevant applications had been sent out to MCU and the Ontario Universities Council on Quality Assurance (the “**Quality Council**”). Further, as reopening admissions to the existing *Maîtrise en activité physique* program did not require internal or external approval, the program is open for admittance and LU has commenced advertising for the program. A copy of this letter to the MFA is attached hereto as **Exhibit “E”**.

81. We are still awaiting approval of the *Maîtrise ès arts* program from the Quality Council. Following that process, we will provide a further progress report to the MFA.

82. LU will continue to engage in ongoing constructive dialogue with MFA in ensuring that a strong suite of French-language programs and services is offered at the university, in keeping with its bilingual character.

X. FINANCIAL SUPPORT FROM THE PROVINCE

83. LU and the Province have had regular and ongoing dialogue throughout the CCAA proceeding.

84. On December 16, 2021, a formal announcement was made by the Province that it would provide LU with a package of support. A copy of the Province’s announcement is attached hereto as **Exhibit “F”**. The details of the support package are summarized below.

A. DIP Refinancing

85. Due to LU’s immediate liquidity crisis, it had obtained debtor-in-possession financing (“**DIP**”) from Firm Capital Mortgage Fund Inc. (the “**Existing DIP Lender**”) to ensure it

could satisfy its obligations as they became due. LU secured a DIP loan from the Existing DIP Lender in the initial amount of \$25 million, which amount was increased to \$35 million in May 2021.

86. As part of its restructuring, LU will need to refinance (replace) the \$35 million DIP facility with long-term exit financing provided by a lender, and repay the \$35 million to that lender over a period of time following the CCAA proceeding.
87. As part of its support package, MCU agreed to refinance the existing DIP financing in the amount of \$35 million (the “**DIP Refinancing**”). MCU also expressed an intention to ultimately convert the DIP to a long-term loan upon LU’s emergence from the CCAA proceeding with a successful plan of compromise or arrangement, on terms to be agreed.
88. LU and MCU have entered into a DIP Loan Agreement (the “**MCU DIP Loan Agreement**”) to effect the DIP Refinancing. A copy of the MCU DIP Loan Agreement is attached hereto as **Exhibit “G”**.
89. Pursuant to the MCU DIP Loan Agreement, MCU will determine the interest rate on the DIP Refinancing based on its one-year cost of funds at the time of the advance. For reference, the rate as of January 12, 2022 would be 1.052%. This represents cost savings that will benefit LU and its stakeholders, as compared to the interest rate of 8.5% in place with the Existing DIP Lender, which is a commercial third-party lender.
90. The remaining terms of the MCU DIP Loan Agreement are, in large part, similar to the terms of the DIP Loan Agreement between LU and the Existing DIP Lender. Attached hereto as **Exhibit “H”** is a redline comparison of the MCU DIP Loan Agreement compared

to the DIP Loan Agreement between LU and the Existing DIP Lender previously approved by the Court.

B. COVID-19 Funding

91. On March 19, 2021, MCU announced that it was providing \$106.4 million to help publicly-assisted colleges and universities address the financial impacts of COVID-19. The purpose of the investment was to support the sustainability of the post-secondary sector and ensure that students continue to get the skills and education they need for the in-demand jobs of today and tomorrow. LU did not receive any of the \$106 million in COVID-relief funding at the time it was announced by the Province in March.
92. As part of the December 16, 2021 announcement outlining the package of support to be provided by the Province to LU, MCU committed to providing up to \$6 million in COVID-relief funding, subject to terms to be agreed. This will assist LU with ongoing efforts to recover revenue lost due to COVID-19.

C. Enrolment/Performance Protection

93. LU receives a portion of its revenue from grants provided by the Province, based on satisfaction of enrolment and performance-based metrics. The Core Operating Grant and Performance Grant, together with tuition received from students, are LU's largest revenue sources. These grants deliver enrolment funding through the establishment of a corridor mechanism for enrolment-related funding and performance-based funding tied to metric performance for each university (and college) in Ontario. The "Allowable Performance Targets" are calculated using recent historical data and established annually through the Strategic Mandate Agreement 3 (2020 – 2025 ("SMA3") Annual Evaluation process. The

activation of performance-based funding has been delayed for the first two years of the SMA3 cycle (2020-21 and 2021-22).

94. The SMA3 between LU and MCU communicated the corridor midpoint value, as per the Ontario University Funding Formula framework. If LU's moving average drops more than 3% below its corridor midpoint, there are deductions to the grant funding received by LU the following year.
95. LU experienced a decline in enrolment this year. The effect of this decrease in enrolment would have resulted in decreased grant funding for at least a four-year period.
96. To create stability for its stakeholders and confidence with prospective students regarding the commencement of degree programs, LU is focused on demonstrating a five to seven-year period of stability. This goal was reflected in LU's negotiation of a new five-year collective agreement with LUFA.
97. As part of the Province's support package, MCU has agreed to provide enrolment corridor and performance protection up to a combined amount of \$22 million over a number of years, subject to terms to be agreed. The amount of the actual protection will be determined on an annual basis, depending on LU's metrics.
98. This aspect of the support will assist in ensuring that the immediate effects of the current restructuring do not unduly create longer-term impacts on LU's operations, and provides LU with a period to stabilize all of its operations in a "new normal" following emergence from CCAA.

D. *Preparing for Development of Strategic Plan*

99. As part of the package of support provided by the Province, the Province requires that LU develop a long-term strategic plan with the assistance of an external third party. In order to identify an independent third party who is best suited to lead this initiative, it is proposed by LU that the Monitor and CRO canvas qualified and interested parties to identify the party that, in their view, can best assist LU and its stakeholders to ensure that a long-term strategic plan can be developed effectively and efficiently.

XI. BOARD RENEWAL

100. LU is a non-share capital corporation governed by the Board. The constitution of the Board is governed by the General Bylaws of the Board (the “**Bylaws**”) and the LU Act. Pursuant to section 13 of the LU Act, the Board is comprised of five members appointed by the Lieutenant-Governor-In-Council (“**LGIC**”).
101. LU expects that recommendations arising from the Nous reports may include various proposed changes to matters of governance, including at the Board. LU and its Board are committed to renewal as it undertakes this comprehensive restructuring. On December 15, 2021, a total of eleven (11) Board members resigned. This included three existing LGIC nominees and eight other Board members (including the Chair of the Board, Vice-Chair of the Board, and Chair of the Executive Committee of the Board). Two (2) of the five (5) LGIC positions on the Board were vacant at that time.
102. On December 16, 2021, the LGIC appointed five (5) new individuals to fill the LGIC nominee spots on the Board in accordance with the LU Act. This included the two (2)

previously-vacant LGIC positions and filling the openings created by the resignations of the three (3) existing LGIC nominees on December 15, 2021.

103. At the current time, after the resignation of eleven (11) Board members and the addition of these five (5) new LGIC appointees, there are 14 voting members of the Board of Governors, including myself as President. At a meeting on January 17, 2022 the Board elected one of the new members Jeff Bangs as Chair *pro tempora*, until the next annual meeting in June 2022. Attached hereto as **Exhibit "I"** is a copy of the statement that LU released upon the election of the new Board Chair.
104. LU's external counsel, together with the Monitor and independent counsel to the Board, have held a number of information sessions to provide the new Board members with a comprehensive orientation and onboarding process to ensure that they are fully prepared to fulfill their fiduciary and other duties as a voting Board member of LU's Board, particularly in the midst of a full operational and financial CCAA restructuring.
105. LU is committed to an accelerated process of Board renewal, and we anticipate that there will be continued renewal of the Board as LU restructures and ultimately prepares for emergence from the CCAA proceeding. The timing and implementation of such a renewal may also be informed by the recommendations in the governance reports prepared by Nous.
106. The Board, with the assistance of its independent counsel and the Monitor and the CRO will work together to ensure that new members appointed to the Board, in addition to representing key constituencies and communities (such as Indigenous, Francophone and Northern Ontario), have the necessary skillset and experience, particularly in finance, business and operations, to maximize LU's chances of a successful future.

XII. FINANCIAL STATEMENTS AND PROJECTIONS

107. Pursuant to, among other things, the Broader Public Sector Business Documents Directive issued by the Treasury Board of Ontario under the *Broader Public Sector Accountability Act*, 2010, S.O. 2010, c. 25 (the “**Directive**”), LU is required to publish audited financial statements within six months of its fiscal year-end on April 30, 2021. Accordingly, LU’s deadline to do so for the 2020-2021 audited financial statements was October 31, 2021. The Directive provides that, in exceptional circumstances, the Chair of the Treasury Board can extend the date by when these documents must be publicly available.
108. Due to, among other things, the limited resources within LU’s financial and management team, responding to the Auditor General’s requests for information, and numerous other critical work streams relating to the CCAA proceeding, LU’s resources have been very stretched. In late September 2021, LU’s finance team advised the Monitor and advisors that it was not in a position to have the preparation and audit of its financial statements for 2020-2021 fiscal year completed by October 31, 2021.
109. In an effort to avoid any consequences occurring from non-completion of the financial statements, LU contacted the Province in mid-October, 2021 to advise that the financial statements would be delayed. LU will provide the financial statements to MCU as soon as they are available. No funding from MCU has been impacted by the delay in delivering the financial statements at this time.
110. Given the financial circumstances of LU and the limited resources within the finance team at LU, at the Board’s request the Monitor arranged for additional accounting personnel to be brought in from Ernst & Young to assist the LU finance team.

111. KPMG will be conducting the audit of LU's financial statements. KPMG is working alongside the LU team in reviewing the working papers prepared by LU and the audit is being conducted concurrently with the completion of the financial statements.
112. Although material progress has been made, the depth and scope of the reconciliations requires a significant amount of time and effort. LU expects that the internal financial statements will be completed shortly, with the audited financial statements available once KPMG completes its work.
113. I understand that the completion of the financial statements is critical for several reasons. In addition to the statutory requirements, the financial statements will be a report to stakeholders regarding LU's financial results for Fiscal Year 2021. Given the resource constraints within LU's finance team, LU has been unable to refresh its fiscal 2022 or 5-year budget until it completes its financial statements and better understands enrolment projections for Fall 2022. We know that LU's financial statements and financial projections will be important for negotiations regarding a potential plan of compromise or arrangement. We anticipate that those will be prepared by LU's finance team, with the assistance of the Monitor, while the external auditor KPMG is reviewing the financial statements.

A. *Charitable Registration*

114. As a registered charity, LU had a deadline of October 31, 2021 to file its registered charity information return for the 2020-2021 fiscal year with the Canada Revenue Agency (the "CRA"). LU was also unable to file its information return with the CRA by October 31st, for the same reasons that LU was unable to complete its audited financial statements by October 31st.

115. On October 25, 2021, LU sent a letter to the Charities Directorate of CRA advising of the delay. LU assured the Charities Directorate that it was working on multiple fronts to ensure LU's successful restructuring and to ensure greater transparency and accountability. A copy of LU's letter to the Charities Directorate of CRA is attached hereto as **Exhibit "J"**.
116. On December 3, 2021, the CRA issued a "Notice of Intention to Revoke the Registration" to LU, which provided that if the annual information return was not filed within 45 days (i.e., by January 17, 2022), LU's charity registration would be revoked.
117. On January 15, 2022, LU filed its annual information return with CRA prior to the expiry of the 45-day window.

XIII. NOSM

A. Legislative Change to Relationship

118. On April 15, 2021, the Province tabled Bill 276 in the Legislature containing Schedule 16 titled the *Northern Ontario School of Medicine University Act, 2021* (the "**NOSM Act**"). The NOSM Act is intended to grant status as an independent university to NOSM. The bill does not include any timeline or any regulations that would be required to bring such a plan to fruition, such that NOSM could become an independent degree-granting institution. The NOSM Act does not come into force and effect until it receives proclamation of the Lieutenant Governor, on a date to be named.
119. On October 18, 2021, the Province posted a summary of a proposal for a regulation under the NOSM Act respecting various operational aspects of NOSM (degree-granting authority, governance matters, transition, etc.). Comments on the proposal were to be made to MCU by December 2, 2021.

120. LU used the opportunity provided by the Province to outline some of the financial impacts on LU and NOSM arising from NOSM's independence and identify other concerns, including:
- (a) that NOSM could encroach on LU's well-established academic and research areas;
 - (b) that there were key transitional matters to be resolved, including how LU was to be compensated for the provision of financial and administrative services to NOSM; and
 - (c) the need to address the continued use of LU property by NOSM – namely, the entire NOSM building and one-half of the Health Sciences building.

B. Status of NOSM Relationship Agreement

121. LU and NOSM have engaged in discussions regarding the transition of services provided by LU to NOSM once NOSM is fully independent and no longer affiliated with LU or Lakehead University in Thunder Bay. Pursuant to the tri-partite Relationship Agreement, LU and Lakehead University each agreed to provide certain support services and faculty to NOSM. Both LU and Lakehead provide facilities and support services, student registration and student fee collection, scholarship receipt and disbursement, and other educational, research and operational services.
122. As discussed in the August Haché Affidavit, as part of the tuition collection and registration services that LU has historically provided to NOSM, NOSM and LU enter into a Service Level Agreement (Tuition and Incidental Fees) each year. On August 6, 2021, NOSM and LU executed the Service Level Agreement (Tuition and Incidental Fees) for the 2021-22 academic year (the "**Service Level Agreement**").

123. The Service Level Agreement updates the tuition and incidental fees that LU collects from NOSM students and remits to NOSM. The Service Level Agreement provides that NOSM students pay their fees to LU and those funds are deposited into LU's general operating account with all other student fees. LU provides monthly outstanding balance reports for NOSM students to NOSM, and issues the relevant tax forms directly to NOSM students. Amounts collected by LU must be remitted by LU to NOSM in accordance with certain timelines, as set out in the Service Level Agreement.
124. The Service Level Agreement contains a provision in this year's Service Level Agreement providing that the purpose of entering into the new agreement is to reflect changes made to annual tuition fees and incidental fees payable for the 2021-22 academic year and that the Service Level Agreement shall not be construed or deemed to be an agreement entered into following the commencement of this CCAA proceeding.
125. The Relationship Agreement is reviewed by LU and NOSM every three years with the last one completed on December 19, 2018. LU and NOSM continue discussions regarding the structure and terms of a new Relationship Agreement that reflects the material change in relationship between the two entities and their anticipated ongoing close proximity on LU's campus. LU has advised NOSM that the continued provision of any services or use of any space must reflect the fair market value for services between arms-length parties. To ensure LU's future sustainability, and to satisfy the expectations of creditors under any plan of compromise or arrangement, any services provided by LU to NOSM in future would be expected to be on an arm's length, third party basis with appropriate compensation.

C. Future Use of Medical School Building and HSERC

126. NOSM has campuses located in Sudbury and Thunder Bay. LU owns the two buildings NOSM occupies on the Sudbury campus: 60% of the Health Sciences Education Resource Centre (“**HSERC**”) and the Medical School Building are leased to NOSM pursuant to the Commercial Lease Agreement dated September 1, 2005, between Laurentian and NOSM, as amended in the Lease Amendment dated July 1, 2011 (collectively, the “**NOSM Lease**”). These buildings have historically been leased to NOSM at nominal rent, given its relationship with LU and the benefit derived by LU in having a medical school and conferring medical degrees.
127. The NOSM Lease was entered into when NOSM was created jointly between Laurentian and Lakehead University. The NOSM Lease has a term of 30 years and is due to expire in 2035, with an option to renew for a further 30 years at the existing nominal rent.
128. Given the effect of NOSM’s impending independence and the real estate review undertaken by LU on behalf of its creditors, it is not feasible for LU to continue to lease two buildings to what will now be an arms-length third party for nominal consideration. LU also anticipates that its creditors will require an arms-length commercial arrangement for the two buildings to be in place as part of any plan of compromise or arrangement. LU has advised MCU of its expectations in that regard. Discussions are ongoing between LU and NOSM.

XIV. AUDITOR GENERAL AND LEGISLATIVE ASSEMBLY STEPS

A. Auditor General Application

129. For further background regarding the value-for-money audit being conducted by the Auditor General of Ontario (the “**Auditor General**”), please refer to the August Haché Affidavit.

130. As described in the August Haché Affidavit, LU has been fully cooperating with the Auditor General’s investigation. That cooperation continues to this day. However, LU objected to providing documents and information that were subject to legal privilege, or that were determined to be confidential by court Order issued within this CCAA proceeding, such as relates to the Mediation conducted by Justice Dunphy or a prior sealing Order issued by the Court. The Auditor General took the position that LU was nonetheless obligated to provide unfettered access to all such information and documents, including privileged information and documents, to the Auditor General as part of her audit.

131. On September 29, 2021, the Auditor General brought an application to court seeking a declaration that every grant recipient is required to give the Auditor General unfettered access to information and records described pursuant to section 10 of the *Auditor General Act*, R.S.O. 1990, c. A.35 (as amended) (the “**Auditor General Act**”), including information and records that are subject to solicitor-client privilege, litigation privilege, or settlement privilege.

132. LU responded to the Auditor General’s application, which sought a statutory interpretation of s. 10 of the *Auditor General Act*. Specifically, the issue was whether s. 10 confers on

the Auditor General the authority to access and require production of privileged information and documents from a grant recipient such as LU.

133. The application was heard on December 6, 2021. On January 12, 2022, Chief Justice Morawetz issued a written decision regarding the Auditor General's application, finding that the *Auditor General Act* does not require grant recipients to provide privileged information to the Auditor General, and that the Auditor General is not entitled to access privileged information. A copy of Chief Justice Morawetz's decision is attached hereto as **Exhibit "K"**.

B. *Speaker's Warrants*

134. Information relating to this issue and copies of materials filed by all parties can be obtained from the Monitor's website, which includes: [LU's Motion Record dated December 17, 2021](#).
135. On April 28, 2021, the Standing Committee on Public Accounts of the Ontario Legislative Assembly (the "**Committee**") instructed the Auditor General to conduct its audit of LU.
136. On September 27, 2021, the Auditor General and LU presented a joint memorandum to Chief Justice Morawetz in which they agreed on how the Auditor General's application would proceed.
137. On October 6, 2021, the Auditor General met with the Committee *in camera*. During that meeting, the Committee decided to make a list of requests for documents and information of LU, expressly including privileged information.

138. On October 15, 2021, the Committee wrote a letter to LU demanding the production of privileged information. LU responded with an explanation of why it could not fully comply with this request (including the fact it would breach the confidentiality provisions in the Mediator Appointment Order). The Committee then invited, under threat of a Speaker's warrant, myself and the then-Chair of the Board, Claude LaCroix, to appear before it on December 1, 2021.
139. On December 9, 2021, the Committee reported to the Legislative Assembly of Ontario (the "**Assembly**") and sought a Speaker's warrant compelling delivery of the information. The Assembly approved the Committee's report and the Speaker of the Assembly issued two warrants, one for myself and the other for the former Chair of the Board (collectively, the "**Speaker's Warrants**"). The Speaker's Warrants required LU to produce all documents from the Committee's requests, by delivering them to the Clerk of the Committee, and to do so by February 1, 2022. The Speaker's Warrants also threatened that if they were disobeyed, we may be subject to punishment, including imprisonment.
140. LU sought a stay of the Speaker's Warrants, so that the issue of LU's obligations could be heard on the basis of a fully-briefed court record, given the significance of the issue. LU's motion seeking a stay of the Speaker's Warrants was heard by Chief Justice Morawetz on January 18, 2022 and a decision is pending.

XV. REMAINING STEPS IN RESTRUCTURING

A. *Claims Process*

141. As described further in my affidavit sworn December 13, 2021, the claims process has significantly progressed. Since the commencement of the claims process, the Applicant

and the Monitor have received close to 1,500 claims in the aggregate amount of approximately \$360 million.

142. I am advised by Sharon Hamilton of the Monitor that there has been substantial progress made on review of all claims and it is expected that the Monitor will be issuing a number of Notices of Revision or Disallowance (“**NORDs**”) shortly.
143. In accordance with the Claims Process Order, the Monitor will be delivering drafts of the NORDs in respect of Material Claims to the Inspector Group (together with Material Claims, as defined in the Claims Process Order) for the purposes of consultation. The Inspector Group will have the opportunity to vote on the Monitor’s recommendations in respect of the Material Claims. Through this process, it is expected that significant progress will be made in addressing disputed claims by the end of March.
144. To facilitate this process, LU obtained an order from Chief Justice Morawetz on December 20, 2021 approving the appointment of three claims officers who are knowledgeable and experienced in claims adjudication and insolvency matters: the Honourable Clément Gascon, the Honourable J. Douglas Cunningham, and W. Niels Ortved (collectively, the “**Claims Officers**”). Once disputed claims are identified following issuance of the NORDs, they will proceed to a determination by the Claims Officers.

B. Development of Plan of Compromise or Arrangement

145. In conjunction with the determination and resolution of claims, discussions around the Nous reports, the real estate review and the preparation of updated financial projections, LU will be engaging in negotiations with its creditors with a view to developing a framework and terms for a plan of compromise or arrangement.

146. LU will be engaged in negotiations with its creditors during the period of the requested stay extension in an effort to arrive at a plan of compromise or arrangement for which a meeting order can be sought. It is LU's goal to develop a plan of compromise or arrangement that will provide an acceptable level of recovery for creditors and allow LU to exit from the CCAA proceedings and continue as a financially sustainable and successful university. In that regard, it is LU's intention to seek a Meeting Order prior to the expiry of the requested Stay Period.

C. *Implement Recommendations of Real Estate and Governance/Operational Reviews*

147. As addressed above, the (i) real estate; (ii) governance; and (iii) operational reviews are completed or substantially completed. Each needs to be discussed and fully considered by LU's Board, and by LU's stakeholders which will likely occur in connection with negotiations to develop the terms of a plan of compromise or arrangement.

148. Once it has been determined which recommendations will be adopted, LU will proceed with implementation, which (at least in the case of the operational review) is expected to be a multi-year process that will continue following LU's emergence from this CCAA proceeding. In addition, if real estate is identified for monetization opportunities, the terms upon which any property may be monetized would be contained in the plan of compromise or arrangement, even though the ultimate implementation of that step or any results following the taking of that step may occur after creditor and Court sanction of such plan of compromise or arrangement.

XVI. RELIEF SOUGHT

A. *Stay Extension*

149. LU seeks an extension of the Stay Period up to and including May 31, 2022.

150. The stay extension is requested in order to enable LU to continue operating in the ordinary course while engaging in discussions with the aim of developing a plan of compromise or arrangement that will be acceptable to its creditors, as well as implementing any opportunities identified through the real estate and governance/operational reviews being conducted, to promote greater efficiencies, improved functionality and accountability.
151. LU, with the assistance of the Monitor, has developed a Cash Flow Forecast (as defined below) which demonstrates that LU will have sufficient liquidity to meet its obligations during the proposed extension to the Stay Period. The Cash Flow Forecast will be appended to the Monitor's Report which will include its comments on same, in advance of the hearing of this stay extension motion.
152. LU has acted and continues to act diligently and in good faith in respect of all matters relating to this CCAA Proceeding.
153. In the circumstances, I do not believe that any creditor will suffer material prejudice as a result of the extension of the Stay Period. An extension of the Stay Period will permit a continued period of stability and allow LU to advance its restructuring efforts.

i. Cash Flow Forecast

154. A cash flow forecast for the period covering the requested stay extension has been developed (the "**Cash Flow Forecast**") and provided to the Replacement DIP Lender (as defined below). This Cash Flow Forecast reflects the most current information available.
155. The Cash Flow Forecast will be attached to a Monitor's Report that the Monitor will be serving and filing prior to the return of this motion.

B. DIP Refinancing

156. LU seeks an order authorizing and empowering it to obtain and borrow under a DIP facility from MCU (in such capacity, the “**Replacement DIP Lender**”) in the maximum principal amount of \$35 million (the “**Replacement DIP Facility**”).
157. The Replacement DIP Facility will be used by LU to repay in full and discharge the existing DIP loan provided by the Existing DIP Lender. This will result in significant cost savings to LU due to the lower interest rate offered by the Replacement DIP Lender. Further, the Replacement DIP Lender has expressed an intention to convert the Replacement DIP Facility into a longer-term exit financing upon a successful emergence from the CCAA proceeding, on terms to be agreed.
158. The proposed DIP Approval Order extends similar protections and rights to the Replacement DIP Lender as those granted to the Existing DIP Lender pursuant to the Amended and Restated Initial Order, including the granting of a super-priority charge in favour of the Replacement DIP Lender to secure LU’s obligations under the Replacement DIP Facility ranking in priority to all other Encumbrances (as defined in the draft DIP Approval Order) other than the Administration Charge and the Directors’ Charge to the maximum amount of \$2 million.
159. The proposed DIP Approval Order provides that, upon the filing of a certificate by the Monitor confirming that LU’s obligations to the Existing DIP Lender have been repaid in full, LU shall be released and discharged from all liabilities and obligations to the Existing DIP Lender and all encumbrances in favour of the Existing DIP Lender against LU or its property shall be released and discharged.

160. The proposed DIP Approval Order will also approve the terms of the MCU DIP Loan Agreement, attached earlier as Exhibit “G”.
161. I am advised by Sharon Hamilton of the Monitor, that the Monitor supports the approval of the DIP Approval Order and that she has been involved in the discussions leading to the final form of MCU DIP Loan Agreement.

C. Approval of Process for Engagement of Third Party re: Strategic Plan

162. As part of the package of financial support offered by the Province, MCU requires that LU retain an external independent party to assist with the development of a long-term strategic plan.
163. In order to facilitate the effective and expeditious development of the strategic plan, LU proposes that the Monitor and the CRO be authorized to immediately engage in discussions with prospective parties who may be identified as being qualified, independent and able to assist with the development of a strategic plan. For greater certainty, this step does not involve the actual development of the strategic plan, which will involve a number of stakeholders and LU and its Board. The step proposed in the Stay Extension Order sought is simply to commence the process to have the Monitor and CRO identify parties who may be suitable for such mandate.

XVII. CONCLUSION

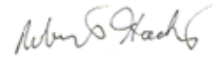
164. LU seeks the Stay Extension Order and the DIP Approval Order under the CCAA, in the proposed form of orders attached at Tabs 3 and 4, respectively, in LU’s Motion Record.
165. This affidavit is sworn in support of LU’s motion for, among other things, an extension to the Stay Period and approval of the DIP Refinancing, and for no other or improper purpose.

SWORN before me via videoconference by
ROBERT HACHÉ located in the City of
Sudbury, in the Province of Ontario, before
me at the City of Toronto, in the Province
of Ontario, this 20th day of January, 2022,
in accordance with O. Reg 431/20,
*Administering Oath or Declaration
Remotely.*



Commissioner for Taking Affidavits

Derek Harland
LSO#: 79504N



DR. ROBERT HACHÉ

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

Court File No. 21-CV-656040-00CL

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

Proceedings commenced at Toronto

AFFIDAVIT OF DR. ROBERT HACHÉ

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Lawyers for the Applicant

This is Exhibit “A” referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'D. Harland', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND



**Brown Mills Klinck
Prezioso LLP**

Pension, Benefits & Executive Compensation Law

LISA J. MILLS
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October 25, 2021

DELIVERED BY E-MAIL: ahatnay@kmlaw.ca

Andrew Hatnay
Koskie Minsky LLP
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3

Dear Counsel:

**Re: Funding Obligations of Thorneloe University (“Thorneloe”) in Respect of
the Retirement Plan of Laurentian University of Sudbury (the “Plan”)**

For a number of months, Laurentian University (“Laurentian”) has made efforts to reach a consensual agreement with Thorneloe regarding Thorneloe’s funding obligations under the Plan. We write in furtherance of such discussions and to ensure there is clarity on Laurentian’s position in regard to Thorneloe’s obligations under the Plan.

Thorneloe’s Obligations and Responsibilities

Pursuant to Section IV of the Plan, each “Employer” is responsible for funding the benefits payable to its employees and former employees under the Plan. Thorneloe is an “Employer” as defined under the terms of the Plan and will remain an Employer under the Plan even after its current employees cease to accrue pension benefits under the Plan. The Plan text requirements for Thorneloe to fund the Plan are consistent with the *Pension Benefits Act* (Ontario) the (“PBA”) and the regulations thereunder.

The PBA and Regulation 909 include “employer” contribution obligations (PBA section 55; Reg. 909 sections 4 and 5). Section 1(1) of the PBA defines the “employer” as follows:

“employer” means, in relation to a member, former member or retired member of a pension plan, the person or persons from whom or the organization from which the member, former member or retired member receives or received remuneration to which the pension plan is related, and “employed” and “employment” have a corresponding meaning;

The PBA is clear that the organization from which a member, former member or retired member receives or received remuneration is the entity which is legally responsible for funding the pension benefits payable to the member, former member or retired member.

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Partners practicing through professional corporations.



The interpretation of employer obligations in the context of a pension plan with multiple employers was considered by the Financial Services Tribunal in *Victorian Order of Nurses for Canada v. Ontario (Superintendent Financial Services)*¹ and the determination was that each employer (as defined above) has the exclusive obligation to fund the pension benefits of their own employees and former employees. Laurentian has no funding obligations with regard to plan members other than its own employees and former employees.

On behalf of Thorneloe, you indicated in your September 3, 2021 correspondence with Thornton Grout Finnigan LLP that Thorneloe is in the process of winding down its operations (except its Theology program). Similar comments have been made during Court proceedings with Chief Justice Morawetz. As with all of Thorneloe's other corporate obligations, the outstanding pension obligations for its employees and former members ("Thorneloe Plan Members") must also be addressed in the context of these wind-down activities.

We trust that in assisting Thorneloe with its winding down efforts, that Koskie Minsky and Farber have ensured that these liabilities are considered, and advised the members of the Thorneloe Board of Governors of the responsibility to ensure that Thorneloe's obligations under the Plan are addressed in the context of these wind-down activities.

Laurentian's Obligations and Responsibilities

Laurentian is the administrator of the Plan and in this capacity stands in a fiduciary position vis-à-vis all Plan members, including Thorneloe Plan Members. However, Laurentian only owes fiduciary duties to Plan members when undertaking "administrator" functions, including ensuring that contributions to the Plan are paid by employers when due.² Laurentian has no obligation under the terms of the Plan or under the PBA to fund the benefits payable to Thorneloe Plan Members – this is solely a Thorneloe obligation. If your position is that other employers or the continuing members of the Plan would be responsible in some manner to fund the pensions earned by Thorneloe Plan Members, such statements should be made clearly and on notice to other participants so that they have an opportunity to respond to such suggestions.

Settlement of Thorneloe's Obligations in respect of the Plan

Laurentian continues to be of the view that a consensual agreement with Thorneloe regarding its funding obligations under the Plan is the preferred outcome for both Laurentian and Thorneloe. A principled pension basis for any such agreement must

¹ *Victorian Order of Nurses for Canada v. Ontario (Superintendent Financial Services)*, 2009 ONFST 11.

² *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6 at paras. 187 - 192.



recognize that Thorneloe is at law solely responsible for ensuring there are sufficient funds to pay the benefits accrued under the Plan to the Thorneloe Plan Members before it winds down its operations.

The Plan actuary is in the process of preparing a July 1, 2021 valuation of the Plan. While the results of that valuation are not yet available, the Plan is expected to be fully funded on a going concern basis. However, there are expected to continue to be significant deficits on both a solvency and wind-up basis.

It is estimated that the Thorneloe portion of the Plan is 63.8% funded on a wind-up basis. In order to fully settle the Thorneloe Plan liabilities through an annuity purchase, which is the most appropriate course of action where an employer seeks to wind down its operations, Thorneloe would be required to make a significant contribution to the Plan.

If Thorneloe is unable to agree to satisfy the obligations to the Thorneloe Plan Members by funding an annuity purchase, Laurentian remains open to resolving the pension funding issues on another reasonable basis, including in a manner that provides finality to Thorneloe. The terms of any such agreement must be reasonable and must reflect that any solution that does not immediately settle the Thorneloe Plan Member liabilities transfers funding risk to Laurentian and the Plan. Guidance can be taken from the arrangements made with Huntington, and approved by the CCAA Court in this regard.

If Thorneloe and Laurentian are unable to reach an agreement that is approved by the Court, Laurentian will take the following steps vis-à-vis the Plan to ensure that Thorneloe's obligations are separately measured:

- Laurentian (qua sponsor) will amend the Plan to cease existing Thorneloe members' accruals under the Plan for service after December 31, 2021. (Our understanding from Laurentian is that this is consistent with Thorneloe's expectations and therefore a Plan amendment to achieve this result will be prepared this Fall.)
- The pension assets and liabilities relating to Thorneloe Plan Members will be notionally segregated within the pension fund of the Plan as of the date of the latest filed actuarial valuation for the Plan, January 1, 2020.
- After the filing of the July 1, 2021 actuarial valuation for the Plan and with retroactive effect to July 1, 2021 and in accordance with the Plan text, Thorneloe's contributions for current service and special payments to the Plan will be



calculated based on the membership data, assets and liabilities relating to the Thorneloe Plan Members determined as if such assets and liabilities comprised a standalone pension plan. The assumptions and methodologies to be used by the Plan actuary to determine Thorneloe's contributions and special payments will be consistent with filed actuarial valuations. The contribution requirements will reflect the Thorneloe portion of administration and actuarial expenses.

- Until the July 1, 2021 actuarial valuation for the Plan is filed, Thorneloe's contributions to the Pension Plan will be the sum of (i) 8% of active Members' pensionable earnings (including disabled members' deemed pensionable earnings); and (ii) \$623 per month as the special payment on account of the Pension Plan's going concern unfunded deficiency established in the January 1, 2020 actuarial report. Amounts paid in accordance with this methodology for the period commencing July 1, 2021 will be reconciled against the "standalone" contribution obligations (as explained above) determined by the Plan actuary which will be set out in the July 1, 2021 actuarial valuation, and a catch-up payment may be required.
- If Thorneloe is, for any reason, unable to meet its funding obligations under the Plan, Laurentian may take any and all steps it considers appropriate at the time, which may include initiating court proceedings to ensure the obligations to Thorneloe Plan Members are met or initiating a pension asset and liability transfer with respect to the assets and liabilities attributable to the Thorneloe Plan Members.

We remain available for further discussion.

Yours truly,

A handwritten signature in blue ink that reads "Lisa J. Mills".

Lisa J. Mills
LJM/

c: Client
D. J. Miller, Thornton Grout Finnigan LLP
S. Hamilton, Ernst & Young Inc.
L. Pillon, Stikeman Elliot LLP

This is Exhibit “B” referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 20, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

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

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND



Brown Mills Klinck
Prezioso LLP

Pension, Benefits & Executive Compensation Law

LISA J. MILLS
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October 25, 2021

DELIVERED BY E-MAIL: aclaude@sheppardclauder.ca
mnewton@newtonhrllaw.com

André Claude
Sheppard & Claude
202-1173 Cyrville Road
Ottawa, ON K1J 7S6

Mark Newton
Emond Harnden LLP
707 Bank Street
Ottawa, ON M5G 2N8

Dear Counsel:

Re: Funding Obligations of the University of Sudbury (“Sudbury”) in Respect of the Retirement Plan of Laurentian University of Sudbury (the “Plan”)

For a number of months, Laurentian University (“Laurentian”) has made efforts to reach a consensual agreement with Sudbury regarding Sudbury’s funding obligations under the Plan. We write in furtherance of such discussions and to ensure there is clarity on Laurentian’s position in regard to Sudbury’s obligations under the Plan and the approach that will be taken if the parties are unable to reach a consensual agreement.

Sudbury’s Obligations and Responsibilities

Pursuant to Section IV of the Plan, each “Employer” is responsible for funding the benefits payable to its employees and former employees under the Plan. Sudbury is an “Employer” as defined under the terms of the Plan and will remain an Employer under the Plan even after its current employees cease to accrue pension benefits under the Plan. The Plan text requirements for Sudbury to fund the Plan are consistent with the *Pension Benefits Act* (Ontario) the (“PBA”) and the regulations thereunder.

The PBA and Regulation 909 include “employer” contribution obligations (PBA section 55; Reg. 909 sections 4 and 5). Section 1(1) of the PBA defines the “employer” as follows:

“employer” means, in relation to a member, former member or retired member of a pension plan, the person or persons from whom or the organization from which the member, former member or retired member receives or received

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Partners practicing through professional corporations.



remuneration to which the pension plan is related, and “employed” and “employment” have a corresponding meaning;

The PBA is clear that the organization from which a member, former member or retired member receives or received remuneration is the entity which is legally responsible for funding the pension benefits payable to the member, former member or retired member.

The interpretation of employer obligations in the context of a pension plan with multiple employers was considered by the Financial Services Tribunal in *Victorian Order of Nurses for Canada v. Ontario (Superintendent Financial Services)*¹ and the determination was that each employer (as defined above) has the exclusive obligation to fund the pension benefits of their own employees and former employees. Laurentian has no funding obligations with regard to plan members other than its own employees and former employees.

Laurentian’s Obligations and Responsibilities

Laurentian is the administrator of the Plan and in this capacity stands in a fiduciary position vis-à-vis all Plan members, including Sudbury Plan Members. However, Laurentian only owes fiduciary duties to Plan members when undertaking “administrator” functions, including ensuring that contributions to the Plan are paid by employers when due.² Laurentian has no obligation under the terms of the Plan or under the PBA to fund the benefits payable to Sudbury Plan Members – this is solely a Sudbury obligation.

Settlement of Sudbury’s Obligations in respect of the Plan

Laurentian continues to be of the view that a consensual agreement with Sudbury regarding its funding obligations under the Plan is the preferred outcome for both Laurentian and Sudbury. A principled pension basis for any such agreement must recognize that Sudbury is at law solely responsible for ensuring there are sufficient funds to pay the benefits accrued under the Plan to the Sudbury Plan Members.

The Plan actuary is in the process of preparing a July 1, 2021 valuation of the Plan. While the results of that valuation are not yet available, the Plan is expected to be fully funded on a going concern basis. However, there are expected to continue to be significant deficits on both a solvency and wind-up basis.

¹ *Victorian Order of Nurses for Canada v. Ontario (Superintendent Financial Services)*, 2009 ONFST 11.

² *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6 at paras. 187 - 192.



It is estimated that the Sudbury portion of the Plan is 66.8% funded on a wind-up basis. In order to fully settle the Sudbury Plan liabilities through an annuity purchase, Sudbury would be required to make a significant contribution to the Plan.

If Sudbury is unable to agree to satisfy the obligations to the Sudbury Plan Members by funding an annuity purchase, Laurentian remains open to resolving the pension funding issues on another reasonable basis. The terms of any such agreement must be reasonable and must reflect that any solution that does not immediately settle the Sudbury Plan Member liabilities transfers funding risk to Laurentian and the Plan. Guidance can be taken from the arrangements made with Huntington, and approved by the CCAA Court in this regard.

If Sudbury and Laurentian are unable to reach an agreement that is approved by the Court, Laurentian will take the following steps vis-à-vis the Plan to ensure that Sudbury's obligations are separately measured:

- Laurentian (qua sponsor) will amend the Plan to cease existing Sudbury members' accruals under the Plan for service after December 31, 2021, including the Sudbury Plan Members who continue to accrue benefits and are currently in receipt of long-term disability benefits. A Plan amendment to achieve this result will be prepared for approval of Laurentian's Board of Governors in November.
- The pension assets and liabilities relating to Sudbury Plan Members will be notionally segregated within the pension fund of the Plan as of the date of the latest filed actuarial valuation for the Plan, January 1, 2020.
- After the filing of the July 1, 2021 actuarial valuation for the Plan and with retroactive effect to July 1, 2021 and in accordance with the Plan text, Sudbury's contributions for current service and special payments to the Plan will be calculated based on the membership data, assets and liabilities relating to the Sudbury Plan Members determined as if such assets and liabilities comprised a standalone pension plan. The assumptions and methodologies to be used by the Plan actuary to determine Sudbury's contributions and special payments will be consistent with filed actuarial valuations. The contribution requirements will reflect the Sudbury portion of administration and actuarial expenses.
- Until the July 1, 2021 actuarial valuation for the Plan is filed, Sudbury's contributions to the Pension Plan will be the sum of (i) 8% of active Members' pensionable earnings (including disabled members' deemed pensionable



earnings); and (ii) \$1,242 per month as the special payment on account of the Pension Plan's going concern unfunded deficiency established in the January 1, 2020 actuarial report. Amounts paid in accordance with this methodology for the period commencing July 1, 2021 will be reconciled against the "standalone" contribution obligations (as explained above) determined by the Plan actuary which will be set out in the July 1, 2021 actuarial valuation, and a catch-up payment may be required.

- If Sudbury is, for any reason, unable to meet its funding obligations under the Plan, Laurentian may take any and all steps it considers appropriate at the time, which may include initiating court proceedings to ensure the obligations to Sudbury Plan Members are met or initiating a pension asset and liability transfer with respect to the assets and liabilities attributable to the Sudbury Plan Members.

We remain available for further discussion.

Yours truly,

A handwritten signature in blue ink that reads "Lisa J. Mills".

Lisa J. Mills
LJM/

c: Client
D. J. Miller, Thornton Grout Finnigan LLP
S. Hamilton, Ernst & Young Inc.
L. Pillon, Stikeman Elliot LLP

This is Exhibit “C” referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

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

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND

Office of the Deputy Minister

Bureau de la sous-ministre

777 Bay Street, 6th floor
Toronto ON M7A 2J4
Tel.: 416 315-5210
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777, rue Bay, 6^e étage
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Tél. : 416 315-5210
www.ontario.ca/francophones

Toronto, August, 19, 2021

Dr. Robert Haché
President and Vice-Chancellor
Laurentian University
935 Ramsey Lake Rd.
Sudbury ON P3E 2C6
president@laurentian.ca

Re: Laurentian University's obligations under the *French Language Services Act*

Dear Dr. Haché:

I would like to thank you for your letter dated July 9, 2021, including the important clarification provided regarding Laurentian University's intention with respect to the *Maîtrise ès arts* and the *Maîtrise en kinésie humaine* degrees (the latter designated under the name *Maîtrise en activité physique* in French).

The information you have provided suggests that Laurentian University has plans to offer the *Maîtrise ès arts* and the *Maîtrise en kinésie humaine* degrees in the future.

Regarding the *Maîtrise ès arts* degree, I understand that the development of the new *Maîtrise interdisciplinaire en études relationnelles* program is underway. Regarding the *Maîtrise en kinésie humaine*, you mention in your letter that to resume enrolment in the program, Laurentian University is exploring the cross-listing of courses to achieve a critical mass of students.

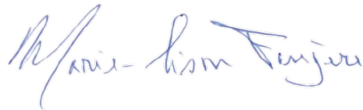
Section 5 of the *French Language Services Act* provides that a person has the right to communicate in French with, and to receive available services in French from a government agency, which includes those public services agencies designated under *Ontario Regulation 398/93 Designation of Public Service Agencies* in respect of designated services, as applicable. Considering this section mandates continuous compliance with the *French Language Services Act*, and to ensure Laurentian University is working towards compliance, the Ministry of Francophone Affairs is requesting that Laurentian University provide plans for compliance with respect to the designated

Maîtrise ès arts and *Maîtrise en activité physique* degrees and their resumption in September 2022. Compliance plans must include details as to what steps are necessary for these degrees to be offered within that timeframe, and details on how the forthcoming programs will offer similar career and/or academic paths as previously offered through the two designated degrees.

Please provide a detailed timeline as to when the review of the programs will be complete, who will be consulted and when, as well as when approvals will be sought and obtained from the different bodies you reference in your letters such as the Academic Planning Committee and the university's Senate.

I would appreciate it if you could provide this information to us by September 30, 2021. Once we have reviewed your proposal, we will be looking to set up a process for regular progress updates. Thank you once again for your collaboration on this matter. Please do not hesitate to contact me.

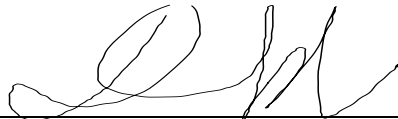
Regards,

A handwritten signature in blue ink that reads "Marie-Lison Fougère". The signature is fluid and cursive, with the first name "Marie" and last name "Fougère" being more prominent.

Marie-Lison Fougère
Deputy Minister

Cc.: Shelley Tapp, Deputy Minister, Ministry of Colleges and Universities

This is Exhibit “D” referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

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

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND



September 27, 2021

Sent via email

Ms. Marie-Lison Fougère
Deputy Minister, Ministry of Francophone Affairs
777 Bay Street, 6th floor
Toronto ON M7A 2J4

RE: Laurentian University's commitments under the French Language Services Act

Ms. Deputy Minister:

Thank you for your letter dated August 19, 2021, asking that Laurentian University, in its ongoing compliance with the French Language Services Act ("FLSA"), submit implementation plans for the designated degrees of *Maîtrise ès arts* and *Maîtrise en activité physique*, given their resumption in September 2022.

This correspondence will provide plans for compliance including detailed steps to ensure that these degrees may be offered within specified timeframes. To that end, you will find attached the projected schedules along with approval processes through both the Laurentian University Academic Planning Committee (ACAPLAN) and Senate. It is understood, as well, that both revamped programs will lead to similar academic options and/or prospective professional careers paths as originally intended when the degrees were previously offered. You will find these paths highlighted for each program in Appendix 1 and 2. Also, for ease of understanding of some of the upcoming processes for these degrees, a copy of Laurentian University's approved Institutional Quality Assurance Plan is enclosed. We are committed to keeping you up to date on the stages of the implementation process of the two designated diplomas.

I remain at your disposal for any further information required in regard to compliant implementation plans for these two degrees.

A handwritten signature in black ink, appearing to read 'Robert Haché'.

Robert Haché, Ph.D.
President and Vice-Chancellor

c.c. Shelley Tapp, Deputy Minister, Ministry of Colleges and Universities

Appendix 1: *Maîtrise ès arts*

Appendix 2: *Maîtrise en activité physique*

Appendix 3 : Institutional Quality Assurance Plan (IQAP)

APPENDIX 1

MAÎTRISE ÈS ARTS

Over the past few years, and well in advance of the CCAA proceedings, the Faculty of Arts was looking into the viability of the current *Maîtrise ès arts* programs. To that effect, and according to Laurentian University's IQAP (Appendix 3, section 2.0 – Process for New Program Approval) proponents worked on a new *Maîtrise interdisciplinaire ès arts en études relationnelles* program proposal. In 2019, this new program was approved by the Faculty of Arts Council, which is one of the first official steps to launching a new program.

The objective of this new program is to foster knowledge advancement and rigorous research training that acts as a bridge between undergraduate and doctoral studies, particularly for the PhD in Human Studies/*Doctorat en sciences humaines* offered at Laurentian University. We feel that this thorough training also supports access to the job market for careers in non-governmental agencies, the private sector, and municipal, provincial and federal government more so than did the terminated *Maîtrise ès arts* programs with their very disciplinary focus. In addition, implementation of the program is facilitated by remaining graduate-level interdisciplinary teaching resources at Laurentian University, and the program is an asset in supporting research connections among professors of the Faculty of Arts and other faculties, specifically studies relating to Francophone minorities in the North, elsewhere in the province, and beyond. The program will be advertised to attract domestic and international students from all disciplines within the arts.

The new program is a result of extensive consultations during the external evaluation. The external committee met with students, faculty and stakeholders in the community during the review.

Timeline (based on IQAP, section 2.0)

June 2020: Preliminary assessment by two external examiners

November 2020: Virtual site visit by the two external examiners

February 2021: Assessment report of the *Maîtrise interdisciplinaire ès arts en études relationnelles* program submitted by external examiners. Minor modifications were implemented based on their feedback. They noted, for example, the need for only four (instead of five) compulsory courses in addition to the thesis. They also felt that regular seminars should be held throughout the year for all students and faculty involved in the program to share updates on their research and promote the interdisciplinary nature of the program. All in all, the external examiners felt the proposed program was a great fit with Laurentian, and would be an excellent entry degree for the *Ph.D. en études interdisciplinaires*

End of September 2021: Full report to be presented to Laurentian University's Academic Planning Committee (ACAPLAN)

October 19, 2021: ACAPLAN's recommendation for the program to be presented to the Senate for approval.

Once approved by Senate, the program will be submitted for approval to the Quality Council, as well as to the MCU for funding approval, as needs to be done for every new, non-BA program, so that students taking this program can be claimed in our normal funding corridor. The required timelines for both steps are variable, but since the existing academic year has only just begun, it seems reasonable to expect to admit students for a program start in September 2022.

APPENDIX 2

MAÎTRISE EN ACTIVITÉ PHYSIQUE

This program has existed for quite some time at Laurentian, although there seems to be some confusion as to the name of the degree. The partial designation under the FLSA identifies it as 'Maîtrise en activité physique', but has been named 'Maîtrise en kinésie humaine' for many years. In fact, the program changed names – and nothing else – for the September 2015 year, which is very close to when Laurentian University received its partial designation under the FLSA. An update to the name should have been made at the time.

In July of 2020, the then-interim Vice-President Academic and Provost temporarily suspended admissions to this program. At the time, there were no students who had applied for the program for 2020-21, and the program was to work on a plan to ensure there was more interest, and registration in it. Given that this existing program was not cut by the April 5th 2021 Senate decision on academic restructuring as part of the CCAA restructuring, but admissions to the program were simply suspended, it is Laurentian University's intention to re-open applications for the 2022-23 session, while at the same time asking the leads of the program to explore other programming avenues within the program to make it more appealing to students, without changing the future academic options and/or prospective professional careers paths of graduates. The re-opening of admissions to this existing program requires no approvals (internally or externally) except for that of the Provost, which has already been granted. The program can be reinstated with the existing faculty that Laurentian has, so it also does not require any changes to the academic or financial restructuring undertaken as part of the CCAA proceeding.

There will be improved opportunities for students to access other graduate level courses taught in French at Laurentian. This will be achieved by having the Deans, Directors and graduate program coordinators identify a list of courses to be included in the timetable. Furthermore, the list of available courses would be promoted and advertised with new and returning graduate students via their program coordinators. This will ensure that students in the program will have sufficient options for elective courses.

This program has previously provided, and will continue to provide access to studies in physiotherapy and occupational therapy, as well as career opportunities in health promotion in hospital settings and public health agencies. It also provides a lead-in to Laurentian's new PhD in Human Kinetics. In terms of career paths, the program previously provided, and will continue to provide graduates with opportunities to work in occupational health and safety in industrial sectors such as mining, forestry, and others.

Timeline

October 2021: Registrar's office launches admissions cycle.

September 2021 – February 2022: Internal and external program publicity to recruit domestic and international students

November 2021 – February 2022: Submission of applications for admission

March – April 2022: Application review by the School's admissions committee and offers of admission sent to prospective students

September 2022: New cohort starts program

This is Exhibit “E” referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

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

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND



October 26, 2021

Sent via email

Ms. Marie-Lison Fougère
Deputy Minister, Ministry of Francophone Affairs
777 Bay Street, 6th floor
Toronto ON M7A 2J4

Ms. Deputy Minister:

This correspondence will serve as a progress report on our implementation plans for the following designated degrees: *Maîtrise interdisciplinaire ès arts en études relationnelles* and *Maîtrise en activité physique*.

1) *Maîtrise ès arts en études relationnelles*

This program focuses on interdisciplinarity, and is accessible to all Francophone students at Laurentian University. The program assessment report submitted by external examiners was presented to the University's Academic Planning Committee (ACAPLAN). At the committee meeting, the following proposal was submitted and approved:

At the October 19, 2021, meeting of Senate, ACAPLAN's positive recommendation was presented for approval. Senate approved the creation of the program. Following this approval, the program will be submitted for approval to the Quality Council and for funding approval to the Ministry of Colleges and Universities, as must be done for every new non-BA program so that registered students are included in our normal funding corridor. These applications for approval should be sent in the next 5–10 days.

2) *Maîtrise en activité physique*

Reopening admissions to this existing program does not require internal or external approval, and the program is now open. The Office of the Registrar has launched the admissions cycle.

Advertising began at the start of the recruitment process and included a virtual open house, the Virtual Postsecondary Destinations Fair and the Greater Sudbury and Nipissing Postsecondary Destinations Fair. Laurentian will also take part in national and international fairs.

Should you have any questions about either of these designated degrees, please do not hesitate to let me know.

Sincerely,

Robert Haché, Ph.D.
President and Vice-Chancellor

This is Exhibit “F” referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

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Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND

STATEMENT

Ontario Supports Postsecondary Education in Northern Ontario

Province acts to ensure a strong, financially stable future for Laurentian University

December 16, 2021

[Colleges and Universities](#)

TORONTO — Today, Jill Dunlop, Minister of Colleges and Universities, issued the following statement regarding the future of Laurentian University:

“At the beginning of this year, Laurentian University brought an Application under the Companies’ Creditors Arrangement Act (CCAA) to deal with the deeply concerning and serious financial situation it faced. Our government took quick action to appoint a Special Advisor, Dr. Alan Harrison, to provide advice and recommendations regarding the financial situation at Laurentian and to also offer a perspective on governance. Additionally, our government provided financial support to students impacted by program cancellations and who needed to transfer to another university to continue their studies.

While Laurentian University has made progress in restructuring under the CCAA process, there is still considerable progress to be made to ensure its long-term sustainability.

That is why, in response to this unprecedented situation, the government is taking measures to provide cost savings and greater financial relief to Laurentian University by stepping in to replace the current Debtor-in-Possession (DIP) lender.

Further financial support is being provided through a \$6 million grant for COVID-19-related costs and the suspension of recoveries and reductions, including those linked to enrolment targets. This support will be subject to conditions that ensure Laurentian’s board governance strategy guarantees a strong, financially stable future for the university, and more importantly, its students. It also requires that Laurentian provide enhanced, regular financial reporting.

We have also extended the Special Advisor position to continue to advise and provide recommendations to government while Laurentian University continues under the CCAA process.

Laurentian University students remain the government's priority and we are focused on ensuring that students get the support they need without experiencing any setbacks because of Laurentian’s financial situation.

The government will continue to explore options that provide greater oversight of university finances while protecting the interest of students and Ontario taxpayers.”

Related Topics

Education and Training

Learn about Ontario’s early years, education and training systems. Includes information on child care, elementary schools, secondary schools, colleges, universities, skills training and financial aid. [Learn more](#)

Media Contacts

Bethany Osborne

Minister's Office

Bethany.Osborne2@ontario.ca

James Tinajero

Communications Branch

[416-325-2746](tel:416-325-2746)

This is Exhibit “G” referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

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

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND

**DIP LOAN AGREEMENT
DATED AS OF JANUARY 19, 2022**

WHEREAS on February 1, 2021 (the “**Filing Date**”), Laurentian University of Sudbury (the “**Borrower**”) commenced proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) in the Ontario Superior Court of Justice (the “**Court**”) pursuant to an Initial Order granted by Chief Justice Morawetz;

AND WHEREAS pursuant to an Amended and Restated Initial Order dated February 11, 2021 (as it may be further amended or restated from time to time, the “**Amended and Restated Initial Order**”), the Court authorized the Borrower to obtain and borrow under a debtor-in-possession credit facility (the “**Existing DIP Facility**”) made available by Firm Capital Mortgage Fund Inc. (the “**Existing DIP Lender**”) pursuant to a DIP Loan Agreement dated as of February 10, 2021 (as amended by the First Amendment to the DIP Loan Agreement dated as of May 19, 2021 and the Second Amendment to the DIP Loan Agreement dated as of August 20, 2021, and as it may be further amended, restated or modified from time to time, the “**Existing DIP Agreement**”);

AND WHEREAS as of the date hereof, the aggregate principal obligations owing in respect of the Existing DIP Facility are \$35,000,000;

AND WHEREAS the Borrower has requested that Her Majesty the Queen in right of Ontario as represented by the Minister of Colleges and Universities (the “**DIP Lender**”) provide super-priority debtor-in-possession financing to the Borrower in the principal amount of \$35,000,000 (the “**DIP Facility**”) to be used by the Borrower to repay in full and discharge the Existing DIP Facility and to continue its restructuring efforts in the CCAA Proceedings;

AND WHEREAS the intention of the parties is for the DIP Facility to be converted to a long-term loan on the implementation of a CCAA Plan, upon such terms and conditions as may be agreed by the Borrower and the DIP Lender prior to that time;

AND WHEREAS the DIP Lender has agreed to make the DIP Facility available in accordance with the terms and subject to the conditions set out herein.

NOW THEREFORE in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Borrower and the DIP Lender hereby agree as follows:

1. **Defined Terms:** Capitalized terms that are not defined in the body of this Agreement have the meanings ascribed to them in Schedule “A”.
2. **Interpretation:** In this Agreement, words signifying the singular include the plural and vice versa, and words signifying gender include all genders. Every use of the word “including” in this Agreement is to be construed as meaning “including, without limitation”. The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. References in this Agreement to a Section or Schedule are to be construed as references to a Section or Schedule of or to this Agreement unless the context requires

otherwise. Subject to any limitations set forth herein, references to contracts, agreements or instruments are deemed to include all amendments, supplements, restatements or replacements to or of such contracts, agreements or instruments. References to a Person includes that Person's successors and permitted assigns.

3. **Currency:** Unless otherwise stated, all monetary denominations shall be in lawful currency of Canada.
4. **Borrower:** Laurentian University of Sudbury.
5. **DIP Lender:** Her Majesty the Queen in right of Ontario as represented by the Minister of Colleges and Universities.
6. **DIP Facility:** The DIP Lender agrees to provide to the Borrower the DIP Facility, which shall be a single-draw, non-revolving loan in the principal amount of \$35,000,000.
7. **DIP Advance:** The DIP Facility shall be made available to the Borrower in a single advance of \$35,000,000 (the "**Advance**") to be made no later than three (3) Business Days after the Conditions Precedent to Advances as set out in Section 12 have been satisfied or waived in the DIP Lender's sole discretion.
8. **Use of Proceeds:** The proceeds of the DIP Facility shall be used by the Borrower solely to repay in full and discharge the Existing DIP Facility and the Existing DIP Agreement.
9. **Evidence of DIP Obligations:** The DIP Lender shall maintain a record evidencing the Advance, any prepayments under the DIP Facility and all interest and other amounts owing from time to time hereunder. The DIP Lender's record constitutes, absent manifest error, *prima facie* evidence of the DIP Obligations of the Borrower to the DIP Lender pursuant to this Agreement.
10. **Interest:** The Advance pursuant to the DIP Facility shall bear interest at rate equal to the DIP Lender's one-year cost of funds on the date of the Advance, as determined by the DIP Lender in its sole discretion. For reference only, the interest rate as of January 12, 2022 determined on the basis of the foregoing would be 1.052%.

All interest hereunder shall be computed on the basis of a year of 365 days and shall accrue and be calculated monthly and payable in cash, monthly in arrears on the first Business Day of each calendar month.

Interest shall be payable: (i) monthly, in arrears, on the first Business Day of each month until the full amount of the Advance outstanding hereunder on account of the DIP Facility has been repaid in full; (ii) in accordance with Section 15 herein; and (iii) upon the Maturity Date.

For the purposes of the *Interest Act* (Canada), as amended, (i) whenever a rate of interest or fee rate hereunder is calculated on the basis of a year (the "deemed year") that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee rate shall be expressed as a yearly rate by multiplying such rate of interest or fee rate by the actual number of days in the calendar year of calculation and dividing it

by the number of days in the deemed year, (ii) the principle of deemed reinvestment of interest shall not apply to any interest calculation hereunder, and (iii) the rates of interest stipulated herein are intended to be nominal rates and not effective rates or yields.

11. **DIP Cash Flow Forecast:** The Borrower has delivered to the DIP Lender a detailed cash flow forecast (the “**DIP Cash Flow Forecast**”) for the period commencing February 1, 2022. Monthly on the last Business Day of each month or promptly upon the request of the DIP Lender, the Borrower, with the assistance of the Monitor, shall provide the DIP Lender with an updated rolling 13-week cash flow forecast substantially in the form of the DIP Cash Flow Forecast and a variance report (the “**Cash Flow Variance Report**”), certified by a senior representative of the Borrower, showing on a line-by-line basis the actual receipts and disbursements and the total available liquidity for the last day of the prior forecast and noting therein all variances on a line-by-line basis from the amounts in the DIP Cash Flow Forecast and shall include explanations for all material variances.
12. **Conditions Precedent to the Advance:** The DIP Lender’s agreement to provide the DIP Facility and make the Advance is subject to the satisfaction of the following conditions precedent:
 - (a) The Borrower shall have executed and delivered this Agreement and such other DIP Credit Documents as the DIP Lender may request;
 - (b) The motion materials filed by the Borrower in support of its motion for the DIP Approval Order shall be in form and substance satisfactory to the DIP Lender;
 - (c) The DIP Approval Order shall have been granted, leave to appeal the DIP Approval Order shall not have been granted and no application for leave to appeal shall have been filed, and the DIP Approval Order shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner that is not acceptable to the DIP Lender in its sole discretion;
 - (d) Save and except for the Permitted Priority Liens, there shall be no Encumbrances on the Collateral ranking in priority to or *pari passu* with the DIP Lender’s Charge;
 - (e) The DIP Lender shall be satisfied in all material respects that the Borrower has complied, and is continuing to comply with, all applicable Laws, regulations and policies in relation to the University Operations and the Borrower’s assets and property, including the Real Property, other than as may be permitted or modified by any order of the Court (each, a “**Court Order**”), which Court Order is in form and substance satisfactory to the DIP Lender, acting reasonably;
 - (f) The DIP Lender shall be satisfied in its sole discretion with changes to the composition of the Board of Governors of the Borrower undertaken prior to the date of the Advance;
 - (g) All representations and warranties of the Borrower contained in this Agreement and the other DIP Credit Documents shall be true and correct in all material respects as of the date of the Advance;

- (h) No Default or Event of Default shall have occurred or will occur as a result of the requested Advance;
 - (i) The CCAA Proceedings shall remain in place and the stay of proceedings provided by the Amended and Restated Initial Order shall remain in effect for so long as the DIP Facility remains outstanding;
 - (j) The Amended and Restated Initial Order and all other Court Orders issued in the CCAA Proceedings prior to the date of this Agreement shall not have been amended, restated, modified or vacated, except in a manner satisfactory to the DIP Lender in its sole discretion; and
 - (k) The Existing DIP Lender shall have executed and delivered to the Borrower a payout letter and release in respect of the Existing DIP Facility and an authorization and direction to discharge all mortgages and other security instruments in favour of the Existing DIP Lender registered on title to the Real Property, in each case in form and substance acceptable to the DIP Lender.
13. **DIP Lender's Charge and other Security:** All obligations of the Borrower under or in connection with the DIP Facility, this Agreement and the other DIP Credit Documents, including without limitation, all principal, interest, fees and Costs incurred by the DIP Lender (collectively, the "**DIP Obligations**"), shall be secured by a super-priority Court-ordered charge on the Collateral in favour of the DIP Lender (the "**DIP Lender's Charge**"). The Borrower shall execute and deliver to the DIP Lender such other mortgages, security agreements and other documents and instruments evidencing the DIP Lender's Charge as the DIP Lender may require. The DIP Lender shall be permitted and is hereby authorized to effect such security registrations in respect of the DIP Lender's Charge, including with respect to the Real Property, as the DIP Lender determines in its sole discretion.
14. **Priority of DIP Lender's Charge:** The DIP Lender's Charge shall rank senior and in priority to all Encumbrances on the Collateral, including the Real Property, other than the Permitted Priority Liens.
15. **Repayment and Maturity Date:** All DIP Obligations owing to the DIP Lender shall become immediately due and payable in full on the earliest of the following:
- (a) September 30, 2022, or such later date as the DIP Lender may agree in its sole discretion;
 - (b) the implementation of a CCAA Plan that has been approved by the requisite majorities of the Borrower's creditors and by the Court;
 - (c) the completion of any sale of all or substantially all of the assets and property of the Borrower;
 - (d) the date on which the stay of proceedings granted pursuant to the Amended and Restated Initial Order expires, without being extended or on which the CCAA Proceedings are terminated; or

- (e) the occurrence of an Event of Default that is not remedied within the Cure Period.
(the earliest such date or occurrence, the “**Maturity Date**”).

On the Maturity Date, all outstanding DIP Obligations shall become immediately due and payable and the Borrower shall repay the DIP Obligations to the DIP Lender, without the DIP Lender being required to make demand upon the Borrower or to give notice that the DIP Facility has expired and that the DIP Obligations are due and payable.

16. **Order of Payments:** All amounts received by the DIP Lender in repayment of the DIP Obligations shall be paid and applied in accordance with the following waterfall: (i) first, towards outstanding interest payable hereunder; (ii) second, towards fees, expenses, and Costs permitted and due hereunder; and (iii) third, towards the principal amount of the outstanding Advance.
17. **Optional Prepayment:** The Borrower shall be entitled without penalty, with prior written notice to the DIP Lender, to voluntarily prepay the DIP Obligations in whole or in partial payments of at least \$500,000. Such prior written notice shall be irrevocable and shall specify:
- (a) the date on which the prepayment is to take place; and
 - (b) the principal amount of the prepayment.
18. **Payments:** All payments of DIP Obligations by the Borrower hereunder shall be made for value in the full amount due at or before 2:00 pm (Toronto time) on the day such amount is due by deposit or transfer thereof to an account designated by the DIP Lender. Payments received after such time shall be deemed to have been made on the next following Business Day. If any payment is due on a day which is not a Business Day, such payment shall be due on the next following Business Day and interest shall accrue until but excluding the actual date of payment.

Each payment to be made by the Borrower shall be made in full without deduction, setoff or counterclaim of any kind or for any reason.

Interest shall be payable monthly, in arrears, on the first Business Day of each month, compounded monthly on the total of the outstanding principal amount of the Advance plus any outstanding accrued interest not paid in cash on a previous interest payment date.

19. **Indemnity:** The Borrower shall indemnify and hold harmless the DIP Lender and any Governmental Authority of the Province of Ontario and the principals, employees, representatives, advisors, solicitors and agents of each of the foregoing (collectively, the “**Indemnified Persons**”) from and against any and all actions, lawsuits, proceedings (including any investigations or inquiries), losses, damages, liabilities or expenses of any kind or nature whatsoever which may be incurred by or suited against or involve any of the Indemnified Persons as a result of, in connection with, or in any way related to the DIP Facility, the proposed or actual use of the Advance, this Agreement or the other DIP Credit Documents. Notwithstanding the foregoing, the Borrower shall have no obligation to indemnify any Indemnified Person against such loss, liability, cost or expense to the extent

that they are found by final judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of such Indemnified Person. The DIP Lender shall not be responsible or liable to the Borrower or any other Person for any indirect, consequential special or punitive damages.

20. **Representations and Warranties:** The Borrower represents and warrants to the DIP Lender, upon which the DIP Lender relies in entering into this Agreement and the other DIP Credit Documents, that:

- (a) The transactions contemplated by this Agreement and the other DIP Credit Documents have been duly authorized, executed and delivered by or on behalf of the Borrower, and upon the granting of the DIP Approval Order:
 - (i) are within the authority of the Borrower;
 - (ii) constitute legal, valid and binding obligations of the Borrower;
 - (iii) do not (or would not without the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any material contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected;
 - (iv) there is no requirement for the Borrower to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to the lawful consummation of the transactions contemplated by this Agreement;
- (b) From and after the Filing Date, the Borrower has maintained and paid current its obligations for payroll, source deductions, harmonized, goods and services and retail sales taxes, and all other applicable Taxes as and when due, and is not in arrears of its statutory obligations to pay or remit any amount in respect of such obligations; and
- (c) All factual information provided by or on behalf of the Borrower to the DIP Lender for the purposes of or in connection with this Agreement or any transaction contemplated herein is true and accurate in all material respects to the best knowledge of the Borrower on the date as of which such information is dated or certified and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided.

21. **Affirmative Covenants:** The Borrower agrees and covenants to perform and do each of the following until the DIP Facility is permanently and indefeasibly repaid and cancelled:
- (a) Consult with the DIP Lender with respect to any proposed or contemplated Court Order that affects the DIP Facility and ensure that the form of any such Court Order is confirmed in advance to be satisfactory to the DIP Lender, in its sole discretion;
 - (b) Comply with the provisions of the Court Orders made in the CCAA Proceedings including, without limitation, the Amended and Restated Initial Order;
 - (c) Utilize the Advance to indefeasibly repay in full and discharge the Existing DIP Facility and the Existing DIP Agreement promptly, and in any event no later than one (1) Business Day, following the Applicant's receipt of the Advance;
 - (d) Promptly upon the repayment of the Existing DIP Facility, effect the discharge of (i) all mortgages and other security instruments in favour of the Existing DIP Lender from title to the Real Property, and (ii) all registrations with respect to the Borrower in favour of the Existing DIP Lender pursuant to the *Personal Property Security Act* (Ontario) or any other registry system;
 - (e) Deliver to the DIP Lender (i) updated DIP Cash Flow Forecasts and Cash Flow Variance Reports in accordance with this Agreement; and (ii) such other reporting and other information from time to time as is reasonably requested by the DIP Lender;
 - (f) Deliver to DIP Lender: (i) within three (3) Business Day of delivery thereof to the Monitor, copies of all updates to the DIP Cash Flow Forecast that are reported weekly, together with any related or supporting information provided to the Monitor; and (ii) within three (3) Business Day of receipt from the Monitor, any final, written reports, commentary or analysis received by the Borrower from the Monitor regarding the financial position of the Borrower or otherwise;
 - (g) From time to time, at the reasonable request of the DIP Lender, provide updates to the DIP Lender with respect to the Borrower, the CCAA Proceedings, the University Operations, the CCAA claims process, and any material developments in respect of the Borrower;
 - (h) Provide the DIP Lender with regular updates regarding the Borrower's efforts to develop a CCAA Plan acceptable to its creditors and provide the DIP Lender with the proposed form of any CCAA Plan not less than seven (7) days prior to the date on which such CCAA Plan is submitted to the Court in connection with a motion for a Court Order authorizing a meeting of creditors to vote on the CCAA Plan;
 - (i) Consult with the DIP Lender prior to making or permitting any change to the composition of the Board of Governors of the Borrower;
 - (j) Pursue and implement, in consultation with the Monitor and the Chief Redevelopment Officer, the renewal process for the composition of the Borrower's

Board of Governors and management with due diligence and in a manner and on timing acceptable to the DIP Lender in its sole discretion;

- (k) Preserve, renew, maintain and keep in full force and effect its corporate existence and authorizations required in respect of the University Operations or any of the Collateral;
 - (l) Subject to the Amended and Restated Initial Order, in all material respects, conduct the University Operations and preserve, protect and maintain the Collateral, including the Real Property, in the ordinary course;
 - (m) Maintain in full force all policies and contracts of insurance that are now in effect (or renewals thereof) under which the Borrower or any of the Collateral, including the Real Property, is insured;
 - (n) Pay when due, in respect of all periods on and after the Filing Date, all applicable Taxes and other amounts that are Priority Payables;
 - (o) Forthwith notify the DIP Lender of the occurrence of any Default or Event of Default or any event or circumstance that may materially affect the DIP Cash Flow Forecast;
 - (p) Pay when due all DIP Obligations; and
 - (q) Maintain or cause to be maintained in good repair, working order and condition (ordinary wear and tear and casualty and expropriation excepted) all material properties used or useful in the University Operations and (ii) make or cause to be made all appropriate repairs, renewals and replacements thereof except in the case of this clause (ii) where the failure to do so, individually or in the aggregate, could not reasonably be expected to adversely affect the University Operations.
22. **Negative Covenants:** The Borrower covenants and agrees not to do the following, other than with the prior written consent of the DIP Lender in its sole discretion:
- (a) Except as contemplated by this Agreement and any Court Order (including the Amended and Restated Initial Order), make any payment of any liabilities or other obligations of the Borrower existing as at or relating to the period prior to the Filing Date (the “**Pre-Filing Debt**”);
 - (b) Create, incur or permit to exist, any liabilities or obligations other than Pre-Filing Debt, the DIP Obligations, and post-filing accounts payable in the ordinary course of the University Operations and in accordance with the DIP Cash Flow Forecast;
 - (c) Except for the Permitted Priority Liens and the Permitted Encumbrances, create or permit to exist any Encumbrance, or seek, support or fail to oppose a motion by another Person to obtain any Encumbrance, upon any of the Collateral;
 - (d) Subject to the Amended and Restated Initial Order, cease to carry on the University Operations as they are currently being conducted in any material respect;

- (e) Subject in all respects to the Amended and Restated Initial Order and except as required pursuant to (i) the terms of any compensation or benefit plan, program or arrangement as in effect on the date hereof or (ii) applicable Law, increase any termination or severance or bonus entitlements, pay any termination or severance or bonus payments, or modify any compensation or benefit plans whatsoever;
 - (f) Apply for, or consent to, or fail to oppose any change, amendment or modification to the Amended and Restated Initial Order, the DIP Approval Order or any other Court Order as it applies to the DIP Facility or affects the rights of the DIP Lender;
 - (g) Sell, transfer, lease or otherwise dispose of any Collateral outside of the ordinary course, including but not limited to pursuant to any CCAA Plan, or make any offer or take any steps with respect to the foregoing;
 - (h) Make or permit changes to the composition of the Board of Governors or management of the Borrower that in the opinion of the DIP Lender, in its sole and unfettered discretion, creates uncertainty, instability or has a negative effect regarding the Borrower's restructuring efforts;
 - (i) File or serve any motion for a Court Order sanctioning a CCAA Plan or authorizing the Borrower to submit a CCAA Plan for a vote of creditors unless such CCAA Plan provides that, on closing, the DIP Facility shall be (i) repaid in full in cash, or (ii) converted to long-term financing such that it is made available to the Borrower by the DIP Lender post-closing on terms acceptable to the Borrower and to the DIP Lender in its sole discretion; or
 - (j) Permit any material change to the University Operations that in the opinion of the DIP Lender in its sole discretion has a negative effect on the Borrower or the University Operations.
23. **Events of Default:** The occurrence of any of the following events shall constitute an event of default (each, an "**Event of Default**") under this Agreement:
- (a) Unless the DIP Lender has provided its prior written consent, any Court Order is issued, dismissed, stayed, reversed, vacated, amended or restated and such issuance, dismissal, stay, reversal, vacation, amendment or restatement adversely affects the interests of the DIP Lender, including the issuance of a Court Order:
 - (i) terminating the CCAA Proceedings or appointing a receiver and manager, receiver, interim receiver or similar official or the making of a BIA assignment in bankruptcy or bankruptcy order in respect of the Borrower;
 - (ii) terminating, lifting or amending the stay granted by the Amended and Restated Initial Order in a manner which, in the opinion of the DIP Lender, in its sole discretion, is prejudicial to the DIP Lender;
 - (iii) granting any Encumbrance on the Collateral other than the Permitted Priority Liens and the Permitted Encumbrances;

- (iv) staying, reversing, vacating, invalidating, or modifying in any respect this Agreement or the other DIP Credit Documents;
 - (v) making any amendment or modification to the DIP Lender's Charge or the rights or remedies of the DIP Lender with respect to the DIP Lender's Charge or the Collateral;
 - (vi) approving any CCAA Plan or other sale or restructuring transaction in respect of the Borrower unless such CCAA Plan or other sale or restructuring transaction provides that, on closing, the DIP Facility shall be (i) repaid in full in cash, or (ii) converted to long-term financing such that it is made available to the Borrower by the DIP Lender post-closing on terms acceptable to the Borrower and to the DIP Lender in its sole discretion; or
 - (vii) replacing the Monitor in the CCAA Proceedings;
- (b) Failure of the Borrower to diligently oppose any Person that brings an application or motion for any of the relief set out in subsection 23(a) above or the failure of the Borrower to secure the dismissal of such application or motion within ten (10) days' from the date that such application or motion is brought (provided no affirmative Court Order is issued on such application or motion during such ten (10) day period);
 - (c) The DIP Approval Order is amended, restated, modified or vacated without the prior consent of the DIP Lender in its sole discretion;
 - (d) Failure of the Borrower to pay any DIP Obligations when due and owing hereunder;
 - (e) The Borrower ceases to carry on or maintain the University Operations in the ordinary course in any material respect, except where such cessation is otherwise consented to in writing by the DIP Lender;
 - (f) Any representation or warranty made or given hereunder or under any other DIP Credit Documents by the Borrower shall be materially incorrect when made;
 - (g) A liability arises or an event occurs, including any material change in the University Operations, assets, or condition, financial or otherwise, of the Borrower that could, in the DIP Lender's judgment, acting reasonably, materially further impair, the Borrower's financial condition or operations or ability to comply with its obligations under this Agreement, any other DIP Credit Document or any Court Order;
 - (h) Any material violation or breach of any Court Order by the Borrower;
 - (i) Failure of the Borrower to perform or comply with any term, covenant, condition or obligation of this Agreement or any other DIP Credit Document; or

- (j) Failure of the Borrower to diligently take steps necessary to pursue the implementation of a CCAA Plan, so that same can be achieved by the Maturity Date.
24. **Cure Period.** Upon receipt by the Borrower of a notice in writing from the DIP Lender declaring an Event of Default, the Borrower shall have seven (7) calendar days to remedy an Event of Default that is capable of being remedied (the “**Cure Period**”), provided and except that (i) there shall be no Cure Period in respect of an Event of Default described in Section 23(a) or 23(b), and (ii) the Cure Period in respect of an Event of Default described in Section 23(d) shall be three (3) calendar days.
25. **Remedies:** In the event of an Event of Default that is not remedied during the Cure Period (if any), the DIP Lender may terminate the DIP Lender’s commitment hereunder, declare the DIP Obligations to be immediately due and payable, and set-off or consolidate all DIP Obligations. In addition, upon the occurrence of an Event of Default that is not cured within the Cure Period (if any), the DIP Lender may, subject to the Amended and Restated Initial Order and subject to the Permitted Priority Liens, and in each case upon a motion brought by the DIP Lender in the CCAA Proceedings:
- (a) Apply to the Court for the appointment of a receiver, an interim receiver or a receiver and manager over the Borrower and the Collateral, or for the appointment of a trustee in bankruptcy of the Borrower;
 - (b) Apply for a Court Order, on terms satisfactory to the Monitor and the DIP Lender, providing the Monitor with the authority, in the name of and on behalf of the Borrower, to exercise enhanced powers in respect of the Borrower or to take all necessary steps in the CCAA Proceedings to realize on the Collateral;
 - (c) Exercise the powers and rights of a secured creditor, including as a secured party under the *Personal Property Security Act* (Ontario) and as mortgagee in respect of the Real Property; and
 - (d) Exercise all such other rights and remedies available to the DIP Lender under this Agreement, the other DIP Credit Documents, the Court Orders and applicable Law.
26. **Taxes:** All payments by the Borrower to the DIP Lender under this Agreement and the other DIP Credit Documents shall be made free and clear of, and without reduction for or on account of, any Taxes.
27. **Further Assurances:** The Borrower shall, at its own expense, from time to time do, execute and deliver, or cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) as the DIP Lender may reasonably request for the purpose of giving effect to this Agreement and the other DIP Credit Documents.
28. **Entire Agreement:** This Agreement and the other DIP Credit Documents constitute the entire agreement between the parties related to the subject matter hereof. To the extent that

there is any inconsistency between this Agreement and the other DIP Credit Documents, this Agreement shall prevail.

29. **Amendments and Waivers:** No waiver or delay on the part of the DIP Lender in exercising any right or privilege hereunder or under any other DIP Credit Document shall operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this Agreement. A waiver, amendment, release or modification of this Agreement or any other DIP Credit Document shall not be established by conduct, custom or course of dealing and shall occur, if applicable, solely by an instrument in writing duly executed by the DIP Lender, in the case of a waiver or release, and the parties hereto, in the case of an amendment or other modification.
30. **Assignment:** The DIP Lender may assign this Agreement and its rights and obligations hereunder, in whole or in part, to any Person acceptable to the DIP Lender in its sole discretion, provided that the Monitor is satisfied that such assignee has the financial capacity to act as DIP Lender. The Borrower shall not be permitted to assign this Agreement nor any right and obligation hereunder without the written consent of the DIP Lender, in its sole discretion.
31. **Severability:** Any provision in this Agreement or any other DIP Credit Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or effecting the validity of enforceability of such provision in any other jurisdiction.
32. **No Third Party Beneficiary:** No Person, other than the Borrower and the DIP Lender, is entitled to rely upon this Agreement, and the parties expressly agree that this Agreement does not confer any rights upon any Person not a signatory hereto.
33. **Counterparts:** This Agreement may be executed in any number of counterparts and delivered by e-mail, including in PDF format, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.
34. **Notices:** Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the Person set forth below:

In the case of the DIP Lender:

Ministry of Colleges and Universities
Laurentian University Secretariat

Attention: Rakhi Lad, Executive Lead
Email: Rakhi.Lad@Ontario.ca

With a copy to:

Ministry of the Attorney General, Civil Law Division
Education/Colleges and Universities Branch

Attention: Michelle Pottruff, Senior Counsel
Email: Michelle.Pottruff@Ontario.ca

In the case of the Borrower:

Laurentian University of Sudbury
935 Ramsey Lake Road
Sudbury, Ontario
P3E 2C6

Attention: Dr. Robert Haché
Email: rhache@laurentian.ca

With a copy to:

Thornton Grout Finnigan LLP
100 Wellington Street West, Suite 3200
Toronto, Ontario
M5K 1K7

Attention: D.J. Miller / Mitch Grossell
Email: djmiller@tgf.ca / mgrossell@tgf.ca

In either case, with a copy to the Monitor:

Ernst & Young Inc.
100 Adelaide Street West
Toronto, Ontario
M5H OB3

Attention: Sharon Hamilton
Email: sharon.s.hamilton@ca.ey.com

With a copy to:

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Attention: Ashley Taylor / Elizabeth Pillon
Email: ataylor@stikeman.com / epillon@stikeman.com

Any such notice shall be deemed to be given and received, when received, unless received after 5:00 pm local time or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day.

35. **English Language:** The parties hereto confirm that this Agreement and all related documents have been drawn up in the English language at their request. *Les parties aux presentes conferment que le present acte et tous les documents y relatifs furent rediges en anglais a leur demande.*
36. **Governing Law and Jurisdiction:** 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 therein. The parties hereby irrevocably attorn and submit to the exclusive jurisdiction of the Court supervising the CCAA Proceedings with respect to any matter relating to this Agreement.
37. **Schedules Attached:** The following attached schedules form a part of this Agreement:

Schedule "A"	Definitions
Schedule "B"	Real Property

[Remainder of page left intentionally blank; signature page follows]


IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**HER MAJESTY THE QUEEN IN RIGHT
OF ONTARIO AS REPRESENTED BY
THE MINISTER OF COLLEGES AND
UNIVERSITIES**

Per: 
Name: The Honourable Jill Dunlop
Title: Minister of Colleges and Universities

I have authority to bind the DIP Lender

**LAURENTIAN UNIVERSITY OF
SUDBURY**

Per: 
Name: Dr. Robert Haché
Title: President and Vice-Chancellor

I have authority to bind the Corporation

SCHEDULE "A"

DEFINITIONS

"Administration Charge" shall have the meaning given to it in the Amended and Restated Initial Order, which Administration Charge shall not exceed \$1,250,000;

"Advance" has the meaning given to that term in Section 7;

"Agreement" means this Agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter;

"Amended and Restated Initial Order" has the meaning given to that term in the recitals;

"BIA" means the *Bankruptcy and Insolvency Act* (Canada);

"Borrower" has the meaning given to that term in the recitals;

"Business Day" means a day that banks are open in Toronto, Ontario, other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

"Cash Flow Variance Report" has the meaning given to that term in Section 11;

"CCAA" has the meaning given to that term in the recitals;

"CCAA Plan" means a plan of compromise or arrangement in respect of the Borrower pursuant to the CCAA;

"CCAA Proceeding" has the meaning given to that term in the recitals;

"Collateral" means all present and after-acquired assets, property and undertaking of the Borrower, real and personal (including the Real Property), tangible and intangible, and all proceeds therefrom;

"Costs" means all the reasonable fees, costs, charges and expenses incurred by or on behalf of the DIP Lender for or incidental to (a) registering the DIP Credit Documents, renewals thereof and any amendments thereto, (b) enforcing and realizing on the DIP Lender's Charge and the other DIP Credit Documents, including power of sale, foreclosure, execution, judicial sale, court appointed or private receivership, possession and/or management of the Collateral and other enforcement proceedings, and including without limiting the generality of the foregoing, all fees, costs, charges and expenses incurred in connection with the sale or attempted sale of the Real Property and any of the other Collateral, including real estate commissions, auctioneer's fees, termination fees, stalking-horse fees, cancellation of listing agreement fees and all other like or incidental fees, (c) inspecting, protecting, securing, completing, insuring, repairing, equipping, taking and keeping possession of, managing, selling or leasing the Real Property or any other Collateral, including all protective disbursements and curing any defaults under or renewing any leasehold interests, (d) exercising any rights of a receiver appointed by further Order of the Court under the DIP Lender's Charge or otherwise and such receiver's fees and expenses (including all reasonable legal fees and disbursements and agent's costs and expenses), (e) obtaining any

environmental audits or other inspections, tests or reports with respect to the Real Property, (f) complying with any notices, orders, judgments, directives, permits, licences, authorizations or approvals with respect to the Real Property or any other Collateral, (g) performing the obligations of the Borrower under the DIP Credit Documents, (h) all reasonable legal fees and disbursements in connection with the activities described in this definition, and (i) any other fees, costs, charges or expenses payable to the DIP Lender under the DIP Loan Agreement or under any of the DIP Credit Documents or otherwise at Law;

“**Court**” has the meaning given to that term in recitals;

“**Court Order**” has the meaning given to that term in Subsection 12(e);

“**Default**” means the occurrence or existence of any event, fact or circumstances that with the giving of notice, passage of time, or both, would constitute an Event of Default;

“**DIP Approval Order**” means an order of the Court, in form and substance acceptable to the DIP Lender in its sole discretion, *inter alia*, approving this Agreement, authorizing the Borrower to borrow under the DIP Facility, directing the Borrower to use the proceeds of the DIP Facility to repay in full and discharge the Existing DIP Facility and the Existing DIP Agreement, granting the DIP Lender’s Charge, providing that the DIP Lender shall be an unaffected creditor in the CCAA Proceedings with respect to the DIP Facility, providing that the DIP Approval Order shall be subject to provisional execution notwithstanding any subsequent variation to the DIP Approval Order through appeal or otherwise, and granting such other rights, protections and authority to the DIP Lender as is customary in connection with the approval of debtor-in-possession financing in CCAA proceedings;

“**DIP Cash Flow Forecast**” has the meaning given to that term in Section 11;

“**DIP Credit Documents**” means this Agreement and any other documents in respect of the DIP Facility as may be contemplated by this Agreement or required by the DIP Lender;

“**DIP Facility**” has the meaning given to that term in Section 6;

“**DIP Lender**” has the meaning given to that term in the recitals;

“**DIP Lender’s Charge**” has the meaning given to that term in Section 13;

“**DIP Obligations**” has the meaning given to that term in Section 13;

“**Directors’ Priority Charge**” means the super-priority charge supporting the indemnity granted in favour of the current and future directors and officers pursuant to the Amended and Restated Initial Order which shall rank in priority to the DIP Lender’s Charge, in the maximum amount of \$2,000,000;

“**Directors’ Subordinate Charge**” means the super-priority charge supporting the indemnity granted in favour of the current and future directors and officers pursuant to the Amended and Restated Initial Order which shall rank subordinate to the DIP Lender’s Charge, in the maximum amount of \$3,000,000;

“**Encumbrances**” means any encumbrance of whatever kind or nature whatsoever, lien, charge, hypothec, pledge, trust (including any actual, deemed, constructive or equitable trust arising pursuant to common law, statute or otherwise), mortgage, lease, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege or any contract to create any of the foregoing;

“**Event of Default**” has the meaning given to that term in Section 23;

“**Filing Date**” has the meaning given to that term in the recitals;

“**Governmental Authority**” means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, ministry, Crown corporation, court, body, board, tribunal or dispute settlement panel or other law or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, municipality 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;

“**Indemnified Persons**” has the meaning given to that term in Section 19;

“**Law**” means any federal, provincial, county, territorial, district, municipal, local, foreign, statute, ordinance, regulation, by-law, rule, code, treaty or rule of common law or equity, or otherwise of, or any order, judgment, injunction, decree or similar authority enacted, issued, promulgated, enforced or entered by, any Governmental Authority;

“**Maturity Date**” has the meaning given to that term in Section 15;

“**Monitor**” means Ernst & Young Inc., in its capacity as the Court-appointed Monitor of the Borrower in the CCAA Proceedings, and not in its personal capacity;

“**Permitted Encumbrances**” means, as of any particular time, (i) any registered easements and rights of way in land granted to, reserved or taken by any governmental authority or public utility relating to the Real Property, (ii) any registered subdivision, development, servicing, site plan or other similar agreement with any Governmental Authority or public utility relating to the Real Property, and (iii) *Personal Property Security Act* (Ontario) Reference File Number 759499308;

“**Permitted Priority Liens**” means (i) the Administration Charge, (ii) the Directors’ Priority Charge, and (iii) any validly perfected purchase-money security interest;

“**Person**” shall be interpreted broadly to mean any individual, sole proprietorship, partnership, firm, entity, association, organization, trust, body corporate, Governmental Authority, and where the context requires, any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

“**Priority Payables**” means any amount payable or accrued by the Borrower which is secured by an Encumbrance (other than Administration Charge or the Directors’ Priority Charge) which ranks or is capable of ranking in priority to or *pari passu* with the DIP Lender’s Charge, including

amounts accrued or owing for wages, vacation pay, termination pay, employee deductions, Taxes or other statutory or other claims, in each case solely to the extent that such amount is or will with the passage of time become secured by an Encumbrance ranking in priority to or *pari passu* with the DIP Lender's Charge;

“Real Property” means all of the real properties owned by the Borrower, including but not limited to the properties as set out in Schedule “B” hereto;

“Taxes” means any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education, employment and all social security taxes, all surtaxes, all customs, duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and other pension plan premiums or contributions to a Governmental Authority; and

“University Operations” means the ordinary day-to-day operations of the Borrower, including the delivery of post-secondary education to students, ongoing research activities and other related and ancillary activities of the Borrower.

SCHEDULE "B"
REAL PROPERTY

PIN	Legal Description
73584-0678	LT 63-67 PL 4SB MCKIM; LT 158-159 PL 25SA MCKIM; PT LT 160 PL 25SA MCKIM; PT LT 68-69 PL 4SB MCKIM; PT NELSON ST, DAVID ST PL 4SB MCKIM (CLOSED BY S70); PT S1/2 LT 5 CON 3 MCKIM AS IN S61148; S/T INTEREST IN S61148; S/T EXECUTION 00-00878, IF ENFORCEABLE; GREATER SUDBURY
73584-0804	LT 232-234 PL 6S MCKIM; PT LT 229-231 PL 6S MCKIM AS IN S53645 EXCEPT PART 1 53R6379; GREATER SUDBURY
73585-1167	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY
73592-0084	PCL 46194 SEC SES SRO; PT LT 2 CON 2 MCKIM PT 2 53R7594; GREATER SUDBURY
73592-0412	PCL 53884 SEC SES; 1STLY: PT LT 3 CON 2 MCKIM PT 1, 53R16920; 2NDLY: PT LT 3 CON 2 MCKIM PT 5, 8, 11 & 12 53R5371; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 2,4,5,6,8,10,11,12 & 13 53R17763 AS IN SD246793
73592-0426	PCL 30769 SEC SES; LT 3 CON 2 MCKIM SW OF PT 13 & 14 53R9175, E OF PT 15 & 16 53R5371, W OF BETHEL LAKE & N OF LT65581; S/T LT394500, LT891690; GREATER SUDBURY
73592-0427	PCL 30769 SEC SES; PT LT 3 CON 2 MCKIM LT 1 EXPROP PL M785; S/T LT622331; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R19195 AS IN SD246792
73593-0063	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY
73593-0406	PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY
73593-0446	PCL 53880 SEC SES; PT LT 3 CON 2 MCKIM PT 7 53R5371; GREATER SUDBURY
73593-0465	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1,2,3,4,5 & 6 EXPROP PL D49 & SW OF PT 2,3,7,9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1,2,3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2 CON 2 MCKIM AS IN EP6694; EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1-6, 853R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1-3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126;; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN

	EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY
	Lease between Her Majesty the Queen in Right of Ontario as Represented by the Minister of Government and Consumer Services and Laurentian University dated January 1, 2020

This is Exhibit “H” referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

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

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND

DIP LOAN AGREEMENT
DATED AS OF ~~February 10~~JANUARY 19, 2021~~2022~~

WHEREAS on ~~January 29~~February 1, 2021 (the “**Filing Date**”), Laurentian University of Sudbury (the “**Borrower**”) and ~~Firm Capital Corporation, as assigned to Firm Capital Mortgage Fund Inc. (the “DIP Lender”)~~, entered into a binding debtor-in-possession (“**DIP**”) financing term sheet agreement (the “**DIP Term Sheet**”) setting out the terms and conditions in respect of a super-priority loan in the amount of \$25,000,000 (the “**DIP Financing**”), subject to Court approval;

~~AND WHEREAS on February 1, 2021, the Borrower commenced a proceeding~~proceedings (the “**CCAA proceeding**Proceedings”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) in the Ontario Superior Court of Justice (the “**Court**”) pursuant to ~~the~~an Initial Order granted by Chief Justice Morawetz ~~dated February 1, 2021 (the “Initial Order”)~~;

~~AND WHEREAS the Borrower has advised the DIP Lender that it will be seeking Court approval of the DIP Financing at a Comeback Hearing scheduled for February 10, 2021; pursuant to an Amended and Restated Initial Order dated February 11, 2021 (as it may be further amended or restated from time to time, the “Amended and Restated Initial Order”)~~, the Court authorized the Borrower to obtain and borrow under a debtor-in-possession credit facility (the “Existing DIP Facility”) made available by Firm Capital Mortgage Fund Inc. (the “Existing DIP Lender”) pursuant to a DIP Loan Agreement dated as of February 10, 2021 (as amended by the First Amendment to the DIP Loan Agreement dated as of May 19, 2021 and the Second Amendment to the DIP Loan Agreement dated as of August 20, 2021, and as it may be further amended, restated or modified from time to time, the “Existing DIP Agreement”);

~~AND WHEREAS the DIP Lender has advised the Borrower that it wishes to enter into definitive loan documentation consistent with the terms agreed to in the DIP Term Sheet and as of the date hereof, the aggregate principal obligations owing in respect of the Existing DIP Financing~~Facility are \$35,000,000;

AND WHEREAS the Borrower has requested that Her Majesty the Queen in right of Ontario as represented by the Minister of Colleges and Universities (the “DIP Lender”) provide super-priority debtor-in-possession financing to the Borrower in the principal amount of \$35,000,000 (the “DIP Facility”) to be used by the Borrower to repay in full and discharge the Existing DIP Facility and to continue its restructuring efforts in the CCAA Proceedings;

AND WHEREAS the intention of the parties is for the DIP Facility to be converted to a long-term loan on the implementation of a CCAA Plan, upon such terms and conditions as may be agreed by the Borrower and the DIP Lender prior to that time;

AND WHEREAS the DIP Lender has agreed to ~~provide~~make the DIP Facility (~~as defined below~~)available in accordance with the terms and subject to the conditions set out herein.

NOW THEREFORE in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the ~~parties~~ Borrower and the DIP Lender hereby agree as follows:

1. **Defined Terms:** Capitalized terms that are not defined in the body of this Agreement have the meanings ascribed to them in Schedule "A".
2. **Interpretation:** In this Agreement, words signifying the singular include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation". The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. References in this Agreement to a Section or Schedule are to be construed as references to a Section or Schedule of or to this Agreement unless the context requires otherwise. Subject to any limitations set forth herein, references to contracts, agreements or instruments are deemed to include all amendments, supplements, restatements or replacements to or of such contracts, agreements or instruments. References to a Person includes that Person's successors and permitted assigns.
3. **Currency:** Unless otherwise stated, all monetary denominations shall be in lawful currency of Canada.
4. **Borrower:** Laurentian University of Sudbury.
5. **DIP Lender:** ~~Firm Capital Mortgage Fund Inc~~ Her Majesty the Queen in right of Ontario as represented by the Minister of Colleges and Universities.
6. **DIP Facility ~~and DIP Financing:~~** The DIP Lender agrees to provide to the Borrower a ~~non-revolving debtor in possession credit facility~~ (the "DIP Facility") ~~up to, which shall be a single-draw, non-revolving loan in the~~ maximum principal amount of ~~\$25,000,000~~ 35,000,000.
7. **DIP ~~Advances~~ Advance:** The DIP ~~Financing~~ Facility shall be ~~advanced in two (2) advances (each, an "Advance" and together, made available to the Borrower in a single advance of \$35,000,000 (the "Advances"), with the initial Advance~~ Advance) to be made no later than three (3) ~~business days~~ Business Days after the Conditions Precedent to Advances as set out ~~herein~~ in Section ~~13~~ 12 have been satisfied, ~~with the amount of the initial Advance to be determined no later than one (1) business day after receipt of the Amended and Restated Initial Order approving the DIP Financing and the DIP Facility. The second Advance shall be advanced upon five (5) calendar days' written notice by the Borrower, with such funds received by the Borrower by no later than the sixth calendar day or waived in the DIP Lender's sole discretion.~~
8. **Use of Proceeds:** The proceeds of the DIP Facility shall be used by the Borrower solely to ~~support its working capital requirements during its restructuring under the CCAA proceeding. No proceeds may be used for any other purpose, except with the prior written~~

~~approval of the DIP Lender, in its sole discretion~~ repay in full and discharge the Existing DIP Facility and the Existing DIP Agreement.

9. **Evidence of DIP Obligations:** The DIP Lender shall maintain a ~~register or~~ record evidencing the ~~Advances and~~ Advance, any prepayments under the DIP Facility and all interest and other amounts owing from time to time hereunder. The DIP Lender's ~~register or~~ record constitutes, absent manifest error, *prima facie* evidence of the DIP Obligations of the Borrower to the DIP Lender pursuant to ~~the DIP Facility~~ this Agreement.
10. **Interest:** ~~All Advances~~ The Advance pursuant to the DIP Facility shall bear interest at a rate ~~that is equal to~~ the greater of: (i) 8.50% per annum, or (ii) the TD Canada Trust Posted Bank Prime Rate of Interest from time to time plus 6.05% per annum (the "Interest Rate") DIP Lender's one-year cost of funds on the date of the Advance, as determined by the DIP Lender in its sole discretion. For reference only, the interest rate as of January 12, 2022 determined on the basis of the foregoing would be 1.052%.

All interest hereunder shall be computed on the basis of a year of 365 days and shall accrue and be calculated monthly and payable in cash, monthly in arrears on the ~~1st day~~ first Business Day of each calendar month.

Interest shall be payable: (i) monthly, in arrears, on the ~~1st day~~ first Business Day of each month until the full amount of the ~~Advances~~ Advance outstanding hereunder on account of the DIP Facility has been repaid in full; (ii) in accordance with Section ~~16~~ 15 herein; and (iii) upon the Maturity Date.

~~11. Other Costs, Fees and Expenses:~~ The following fees apply to the DIP Facility:

- ~~(a) Legal Fees: The Borrower shall be responsible for all of the DIP Lender's reasonable legal fees incurred in respect of the DIP Financing.~~
- ~~(b) Commitment Fee: The Borrower shall pay the DIP Lender a commitment fee of \$500,000.00. The \$500,000.00 commitment fee shall be deemed to have been fully earned by the DIP Lender and payable on the date that the Court issues the Amended and Restated Initial Order approving the DIP Financing. The Borrower hereby irrevocably directs the DIP Lender's solicitor to pay the commitment fee to the DIP Lender from the proceeds of the initial advance under the DIP Financing.~~
- ~~(c) Other Fees. Administration Fees, Administrative Set Up Fee, Maintenance Fee, Wire Transfer Fee, Lender in Possession or management fees and other reasonable DIP Financing costs as set out in the "General Mortgage DIP Financing Conditions", attached hereto as Schedule "C".~~

For the purposes of the *Interest Act* (Canada), as amended, (i) whenever a rate of interest or fee rate hereunder is calculated on the basis of a year (the "deemed year") that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee rate shall be expressed as a yearly rate by multiplying such rate of interest or fee rate by the actual number of days in the calendar year of calculation and dividing it

by the number of days in the deemed year, (ii) the principle of deemed reinvestment of interest shall not apply to any interest calculation hereunder, and (iii) the rates of interest stipulated herein are intended to be nominal rates and not effective rates or yields.

11. ~~12.~~ **DIP Cash Flow Forecast:** ~~Attached hereto as Schedule "B" is a rolling 13-week period~~The Borrower has delivered to the DIP Lender a detailed cash flow forecast (the "DIP Cash Flow Forecast"), ~~which is in form and substance satisfactory to~~ for the period commencing February 1, 2022. Monthly on the last Business Day of each month or promptly upon the request of the DIP Lender. ~~On Friday of each week,~~ the Borrower, with the assistance of the Monitor, shall provide the DIP Lender with an updated rolling 13-week cash flow forecast substantially in the form of the DIP Cash Flow Forecast (~~the "Updated Cash Flow"~~) and a variance report (the "Cash Flow Variance Report"), certified by a senior representative of the Borrower, showing on a line-by-line basis the actual receipts and disbursements and the total available liquidity for the last day of the prior ~~week~~forecast and noting therein all variances on a line-by-line basis from the amounts in the DIP Cash Flow Forecast and shall include explanations for all material variances. ~~The DIP Lender may, in its sole discretion, agree to substitute the Updated Cash Flow for the then current DIP Cash Flow Forecast, in which case the Updated Cash Flow shall thereafter be deemed to be the effective DIP Cash Flow Forecast for the purposes hereof.~~
12. **13. Conditions Precedent to Advancethe Advance:** The DIP Lender's agreement to ~~make any Advances under~~provide the DIP Facility and make the Advance is subject to the satisfaction of the following conditions precedent:
- (a) The Borrower shall have executed and delivered this Agreement and such other DIP Credit Documents as the DIP Lender may request;
 - (b) The motion materials filed by the Borrower in support of its motion for the DIP Approval Order shall be in form and substance satisfactory to the DIP Lender;
 - (c) ~~(a)~~ The Amended and Restated Initial DIP Approval Order shall have been granted, leave to appeal the DIP Approval Order shall not have been granted and no application for leave to appeal shall have been filed, and the DIP Approval Order shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner that is not acceptable to the DIP Lender (such consent not to be unreasonably withheld where any such amendment does not pertain to the DIP Financing) in its sole discretion;
 - (d) ~~(b)~~ Save and except for the Permitted Encumbrances, Administration Charge (\$1.25 million), the Directors' Charge (\$2 million) and any validly perfected purchase money security interests ("PMSIs") Priority Liens, there shall be no Encumbrance incurred Encumbrances on the Collateral ranking in priority to or pari passu with the DIP Lender's Charge;
 - (e) ~~(c)~~ The DIP Lender shall be satisfied in all material respects that the Borrower has complied, and is continuing to comply with, all applicable Laws, regulations and policies in relation to its the University Operations and the Borrower's assets and

property, including the Real Property, other than as may be permitted or modified by any order of the Court (each, a “Court Order”), which Court Order is in form and substance satisfactory to the DIP Lender, acting reasonably;

- (f) The DIP Lender shall be satisfied in its sole discretion with changes to the composition of the Board of Governors of the Borrower undertaken prior to the date of the Advance;
- (g) ~~(d)~~ All representations and warranties of the Borrower contained in this Agreement and the other DIP Credit Documents shall be true and correct in all material respects as of the date of the Advance;
- (h) ~~(e)~~ No Default or Event of Default shall have occurred or will occur as a result of the ~~payment of the~~ requested Advance;
- ~~(f) The DIP Lender shall have received an updated DIP Cash Flow Forecast and the Cash Flow Variance Report in accordance with this Agreement, which shall be in form and substance satisfactory to the DIP Lender, acting reasonably;~~
- ~~(g) The DIP Lender shall have been satisfied that all motions, orders and other pleadings and related documents filed or submitted to the Court by the Borrower are consistent with the terms hereof and all Court Orders and are not inconsistent with or have an adverse impact in any material respect on the rights, remedies or interests of the DIP Lender under the terms of the DIP Facility and the DIP Credit Documents, unless otherwise agreed to by the DIP Lender, in its sole discretion;~~
- ~~(h) The Borrower shall be in compliance in all material respects with all covenants and obligations contained in this Agreement and the other DIP Credit Documents;~~
- (i) The CCAA Proceedings shall remain in place and the stay of proceedings provided by the Amended and Restated Initial Order shall remain in effect ~~pursuant to subsequent stay extension orders that are in form and substance~~ for so long as the DIP Facility remains outstanding;
- (j) The Amended and Restated Initial Order and all other Court Orders issued in the CCAA Proceedings prior to the date of this Agreement shall not have been amended, restated, modified or vacated, except in a manner satisfactory to the DIP Lender, ~~acting reasonably~~ in its sole discretion; and
- ~~(j) The DIP Lender shall have the right to charge for all reasonable Costs incurred by the DIP Lender in connection with the DIP Facility, including reasonable legal fees and costs incurred in monitoring the DIP Facility, the CCAA proceedings and, if applicable, enforcing the DIP Lender's rights under this Agreement and the DIP Lender's Charge;~~
- (k) The ~~following additional security~~ Existing DIP Lender shall have ~~been~~ executed and delivered ~~by~~ to the Borrower a payout letter and release in respect of the Existing DIP Facility and an authorization and direction to discharge all mortgages and other security instruments in favour of the Existing DIP Lender; ~~a Charge/Mortgage of Land forming a~~ registered ~~first charge~~ on title to the Real

~~Property but subject to the Administration Charge (\$1.25 million) and the Directors' Charge (\$2 million);~~

~~(l) Without limiting the foregoing, the Amended and Restated Initial Order approving the DIP Term Sheet and granting the DIP Lender's Charge shall be, in each case in form and substance satisfactory/acceptable to the DIP Lender, and shall include:~~

~~a. Provisions approving the DIP Term Sheet and the DIP Financing created herein;~~

~~b. Provisions granting the DIP Lender's Charge in favour of the DIP Lender, subject only to the Administration Charge (\$1.25 million), Directors' Charge (\$2 million) and PMSIs;~~

~~c. Provisions authorizing the DIP Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the DIP Lender's Charge;~~

~~d. Provisions providing that the DIP Lender's Charge shall be valid and effective to secure all of the obligations of the Borrower to the DIP Lender hereunder, without the necessity of the making of any registrations or filings and whether or not any other documents have been executed by the Borrower;~~

~~e. Provisions declaring that the granting of the DIP Lender's Charge and all other documents executed and delivered to the DIP Lender as contemplated herein, including, without limitation, all actions taken to perfect, record and register the DIP Lender's Charge, do not constitute conduct meriting an oppression remedy, settlement, fraudulent preference, fraudulent conveyance or other challengeable or reviewable transaction under any applicable federal or provincial legislation; and~~

~~f. Provisions restricting the granting of any additional liens or Encumbrances, including leases, on the assets of the Borrower, other than as permitted herein and in the Initial Order, as same may be amended from time to time.~~

~~(m) The Amended and Restated Initial Order will provide that the DIP Lender shall be an unaffected creditor in the CCAA proceedings.~~

13. **14. DIP Lender's Charge and other Security:** All obligations of the Borrower under or in connection with the DIP Facility, this Agreement and the other DIP Credit Documents, including without limitation, all principal, interest, fees and ~~other amounts owing in respect of~~ Costs of incurred by the DIP Lender (collectively, the "DIP Obligations"), shall be secured by a super-priority Court-ordered charge on the Collateral in favour of the DIP Lender (the "DIP Lender's Charge"). The Borrower shall execute and deliver to the DIP Lender such other mortgages, security agreements and other documents and

instruments evidencing the DIP Lender's Charge as the DIP Lender may require. The DIP Lender shall be permitted and is hereby authorized to effect such security registrations in respect of the DIP Lender's Charge, including with respect to the Real Property, as the DIP Lender determines in its sole discretion.

14. ~~15.~~ **Priority of DIP Lender's Charge:** The DIP Lender's Charge shall rank ~~ahead of any senior~~ and in priority to all Encumbrances on the Collateral, including the Real Property, other than the ~~Administration Charge (\$1.25 million) and the Directors' Charge (\$2 million) and any validly perfected PMSIs~~ Permitted Priority Liens.

15. ~~16.~~ **Repayment and Maturity Date:** All DIP Obligations owing to the DIP Lender shall ~~be~~ become immediately due and payable in full on the earliest of the following:

(a) ~~May 1~~ September 30, 2021~~2022~~, or such later date as the DIP Lender may agree in ~~writing~~ its sole discretion;

(b) ~~The~~ the implementation of a ~~plan of compromise or arrangement within the CCAA Proceeding, which~~ Plan that has been approved by the requisite ~~majority~~ majorities of the Borrower's creditors and by the Court;

(c) the completion of any sale of all or substantially all of the assets and property of the Borrower;

(d) ~~(e) The~~ the date on which the stay of proceedings granted pursuant to the Amended and Restated Initial Order expires, without being extended or on which the CCAA ~~Proceeding is~~ Proceedings are terminated; ~~and~~ or

(e) ~~(d) The~~ the occurrence of an Event of Default that is not remedied within the Cure Period.

(the earliest such ~~earlier~~ date or occurrence, the "Maturity Date").

~~The DIP Lender's commitment to make Advances under the DIP Facility shall expire on~~ On the Maturity Date ~~and~~, all ~~then~~ outstanding DIP Obligations shall ~~be repaid on the Maturity Date~~ become immediately due and payable and the Borrower shall repay the DIP Obligations to the DIP Lender, without the DIP Lender being required to make demand upon the Borrower or to give notice that the DIP Facility has expired and that the ~~obligations hereunder~~ DIP Obligations are due and payable.

~~17.~~ ~~**Extension of Maturity Date:** Provided that the DIP Facility is not in default, the DIP Lender shall agree to extend the Maturity Date to a date to be determined by further agreement between the Borrower and the DIP Lender, but in any event, such extension shall be for a minimum period of 90 additional days (July 30, 2021) and a maximum of 5 months (October 1, 2021), SUBJECT TO the Borrower having achieved the following milestones by April 30, 2021, to the satisfaction of the DIP Lender in its sole and unfettered discretion:~~

~~1.~~ ~~The Borrower shall have reached consensus amongst all necessary stakeholders on an academic restructuring and reduction of the Borrower's program offerings~~

sufficient to permit the Borrower to operate on a financially sustainable basis (the “~~Academic Restructuring~~”);

~~2. The Borrower shall have entered into a negotiated settlement agreement with the Laurentian University Faculty Association (“LUFA”) with respect to: (i) terminations to be effected; (ii) resolution of outstanding grievances; and (iii) the terms of a new collective agreement between LUFA and the Borrower (the “Faculty Settlement”); and~~

~~3. The Borrower shall have provided a revised cash flow forecast and multi-year budget to the DIP Lender, taking into consideration the implementation of the Faculty Settlement and the Academic Restructuring, demonstrating to the Lender, in its sole and unfettered discretion, that the Borrower is financially sustainable;~~

~~(collectively, the “Extension Conditions”).~~

~~Any~~

16. **Order of Payments:** All amounts received by the DIP Lender in repayment of the DIP Obligations ~~owing under this Agreement~~ shall be paid and applied in accordance with the following waterfall: (i) first, towards outstanding interest payable hereunder; (ii) second, towards fees, expenses, and Costs permitted and due hereunder; and (iii) third, towards the principal amount of the outstanding ~~Advances~~ Advance.

17. ~~18.~~ **Optional Prepayment:** The Borrower shall be entitled without penalty, with prior written notice to the DIP Lender, to voluntarily prepay the DIP Obligations in whole or in partial payments of at least \$500,000 ~~of the DIP Obligations. The Borrower shall provide written notice to the DIP Lender of each voluntary prepayment prior to such voluntary prepayment. Such.~~ Such prior written notice shall be irrevocable and shall specify:

- (a) the date on which the prepayment is to take place; and
- (b) the principal amount of the prepayment.

18. ~~19.~~ **Payments:** All payments of ~~principal, interest, fees, expenses, and Costs~~ DIP Obligations by the Borrower hereunder shall be made for value in the full amount due at or before 2:00 pm (Toronto time) on the day such amount is due by deposit or transfer thereof to an account designated by the DIP Lender. Payments received after such time shall be deemed to have been made on the next following Business Day. If any payment is due on a day which is not a Business Day, such payment shall be due on the next following Business Day and interest shall accrue until but excluding the actual date of payment.

Each payment to be made by the Borrower shall be made in full without deduction, setoff or counterclaim of any kind or for any reason.

~~Payments are due~~ Interest shall be payable monthly, ~~with interest only, and in arrears, on the first Business Day of each month,~~ compounded monthly on ~~each payment date on~~ the total of the outstanding principal balance amount of the Advance plus any outstanding accrued interest ~~outstanding on the~~ not paid in cash on a previous interest payment date.

19. **20. Indemnity:** The Borrower shall indemnify and hold harmless the DIP Lender, ~~and its Affiliates~~ any Governmental Authority of the Province of Ontario and the ~~officers, directors, principals,~~ employees, representatives, advisors, ~~managers,~~ solicitors and agents of each of the ~~DIP Lender and its Affiliates~~ foregoing (collectively, the "Indemnified Persons") from and against any and all actions, lawsuits, proceedings (including any investigations or inquiries), losses, damages, liabilities or expenses of any kind or nature whatsoever which may be incurred by or suited against or involve any of the Indemnified Persons as a result of, in connection with, or in any way related to the DIP Facility, the proposed or actual use of the ~~Advances~~ Advance, this Agreement or the other DIP Credit Documents, ~~or any disputes or environmental liabilities.~~ Notwithstanding the foregoing, the Borrower shall have no obligation to indemnify any Indemnified Person against such loss, liability, cost or expense to the extent that they are found by final judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of such Indemnified Person. The DIP Lender shall not be responsible or liable to the Borrower or any other Person for any indirect, consequential special or punitive damages.

20. **21. Representations and Warranties:** The Borrower represents and warrants to the DIP Lender, upon which the DIP Lender relies in entering into this Agreement and the other DIP Credit Documents, that:

- (a) ~~(a)~~ The transactions contemplated by ~~the DIP Term Sheet,~~ this Agreement and the other DIP Credit Documents have been duly authorized, executed and delivered by or on behalf of the Borrower, and upon the granting of the ~~Amended and Restated Initial~~ DIP Approval Order:
- (i) are within the authority of the Borrower;
 - (ii) constitute legal, valid and binding obligations of the Borrower;
 - (iii) do not (or would not ~~with~~ without the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any material contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected;
 - (iv) there is no requirement for the Borrower to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to the lawful consummation of the transactions contemplated by this Agreement;

- ~~(b) — To the best of its knowledge, after due inquiry, the Business has been and will continue to be conducted in material compliance with all applicable Laws of each jurisdiction in which the Business has been or is being carried on, subject to the provisions of any Court Order made after the Filing Date and the CCAA;~~
- ~~(c) — To the best of its knowledge, after due inquiry, the Borrower has obtained all material Authorizations for the operation of the Business, which Authorizations remain, and after entering into the DIP Facility will remain, in full force and effect, and no proceedings have been commenced to revoke or amend any such Authorizations; and~~
- (b) From and after the Filing Date, the Borrower has maintained and paid current its obligations for payroll, source deductions, harmonized, goods and services and retail sales taxes, and all other applicable Taxes as and when due, and is not in arrears of its statutory obligations to pay or remit any amount in respect of such obligations; and
- (c) ~~(d)~~ All factual information provided by or on behalf of the Borrower to the DIP Lender for the purposes of or in connection with this Agreement or any transaction contemplated herein is true and accurate in all material respects to the best knowledge of the Borrower on the date as of which such information is dated or certified and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided.

21. ~~22.~~ **Affirmative Covenants:** The Borrower agrees and covenants to perform and do each of the following until the DIP Facility is permanently and indefeasibly repaid and cancelled:

- (a) Consult with the DIP Lender with respect to ~~the Amended and Restated Initial Order and any other Court Orders only to the extent that such Court Orders affect~~any proposed or contemplated Court Order that affects the DIP ~~Financing.~~Facility and ensure that the form of any such Court Order ~~must be~~is confirmed in advance to be satisfactory to the DIP Lender, ~~acting reasonably, subject to any amendments that are required by the Court, the Monitor or the Borrower that are acceptable to the DIP Lender, acting reasonably~~in its sole discretion;
- (b) Comply with the provisions of the Court Orders made in the CCAA ~~Proceeding~~Proceedings including, without limitation, the Amended and Restated Initial Order;
- (c) Utilize ~~all Advances in accordance with the DIP Cash Flow Forecast in all respects or as otherwise agreed to with the prior written approval of the DIP Lender, in its sole discretion;~~the Advance to indefeasibly repay in full and discharge the Existing DIP Facility and the Existing DIP Agreement promptly,

and in any event no later than one (1) Business Day, following the Applicant's receipt of the Advance;

- (d) Promptly upon the repayment of the Existing DIP Facility, effect the discharge of (i) all mortgages and other security instruments in favour of the Existing DIP Lender from title to the Real Property, and (ii) all registrations with respect to the Borrower in favour of the Existing DIP Lender pursuant to the *Personal Property Security Act* (Ontario) or any other registry system;
- (e) ~~(d)~~ Deliver to the DIP Lender (i) updated DIP Cash Flow Forecasts and Cash Flow Variance Reports in accordance with this Agreement ~~on Friday of each week;~~ and (ii) such other reporting and other information from time to time as is reasonably requested by the DIP Lender;
- (f) ~~(e)~~ Deliver to DIP Lender: (i) within three (3) Business Day of delivery thereof to the Monitor, copies of all updates to the DIP Cash Flow Forecast that are reported weekly, together with any related or supporting information provided to the Monitor; and (ii) within three (3) Business Day of receipt from the Monitor, any final, written reports, commentary or analysis received by the Borrower from the Monitor regarding the financial position of the Borrower or otherwise;
- (g) ~~(f)~~ From time to time, at the reasonable request of the DIP Lender, ~~the Borrower and the Monitor shall~~ provide updates to the DIP Lender with respect to the ~~status of Borrower,~~ the CCAA ~~proceeding generally and in particular, updates regarding the Academic Restructuring and the Faculty Settlement, including information that may otherwise be confidential, which such information shall be held in confidence by the DIP Lender pursuant to the terms and conditions~~ Proceedings, the University Operations, the CCAA claims process, and any material developments in respect of the ~~Confidentiality Agreement between the~~ Borrower ~~and FCC dated December 14, 2020;~~
- (h) Provide the DIP Lender with regular updates regarding the Borrower's efforts to develop a CCAA Plan acceptable to its creditors and provide the DIP Lender with the proposed form of any CCAA Plan not less than seven (7) days prior to the date on which such CCAA Plan is submitted to the Court in connection with a motion for a Court Order authorizing a meeting of creditors to vote on the CCAA Plan;
- (i) Consult with the DIP Lender prior to making or permitting any change to the composition of the Board of Governors of the Borrower;
- (j) Pursue and implement, in consultation with the Monitor and the Chief Redevelopment Officer, the renewal process for the composition of the Borrower's Board of Governors and management with due diligence and in a manner and on timing acceptable to the DIP Lender in its sole discretion;

- (k) ~~(g)~~ Preserve, renew, maintain and keep in full force and effect its corporate existence and ~~its Authorizations~~ authorizations required in respect of the Business University Operations or any of the Collateral;
- ~~(h) Use all reasonable efforts to keep the DIP Lender apprised on a timely basis of all material developments with respect to the Business and affairs of the Borrower (including any changes to the strategy of the Borrower);~~
- (l) ~~(i)~~ Subject to the Amended and Restated Initial Order, in all material respects, conduct the Business University Operations and preserve, protect and maintain the Collateral, including the Real Property, in the ordinary course ~~of Business~~;
- (m) ~~(j)~~ Maintain in full force all policies and contracts of insurance that are now in effect (or renewals thereof) under which the Borrower, ~~the Business~~ or any of the Collateral, including the Real Property, is insured;
- (n) ~~(k)~~ Pay when due, in respect of all periods on and after the Filing Date, all applicable Taxes and other amounts that are Priority Payables, ~~permitting and licences fees and other amounts necessary to preserve the Collateral to avoid any Encumbrance thereon and pay all amounts due under any utility contracts~~;
- (o) ~~(l)~~ Forthwith notify the DIP Lender of the occurrence of any Default or Event of Default or any event or circumstance that may materially affect the DIP Cash Flow Forecast;
- (p) ~~(m)~~ Pay when due all ~~principal interest, fees, expenses, and Costs and other amounts payable by the Borrower under this Agreement and the other DIP Credit Documents~~ DIP Obligations; and
- (q) ~~(n)~~ Maintain or cause to be maintained in good repair, working order and condition (ordinary wear and tear and casualty and expropriation excepted) all material properties used or useful in the Business University Operations and (ii) make or cause to be made all appropriate repairs, renewals and replacements thereof except in the case of this clause (ii) where the failure to do so, individually or in the aggregate, could not reasonably be expected to adversely affect the ~~Business~~; and University Operations.

22. ~~23.~~ **Negative Covenants:** The Borrower covenants and agrees not to do the following, other than with the prior written consent of the DIP Lender ~~and the Monitor~~, in ~~their~~ its sole discretion:

- (a) Except as contemplated by this Agreement and any Court Order (including the Amended and Restated Initial Order), make any payment of any liabilities or other obligations of the Borrower existing as at or relating to the period prior to the Filing Date (the "Pre-Filing Debt");
- ~~(b) Other than as permitted under the Amended and Restated Initial Order (as amended from time to time), the Borrower shall not distribute funds to any pre-filing~~

~~creditors, save for under the Administration Charge or the Directors' Charge, without the DIP Lender's consent or without a further Court Order.~~

- (b) ~~(e)~~ Create, incur or permit to exist, any liabilities or obligations other than Pre-Filing Debt, Advances the DIP Obligations, and post-filing accounts payable in the ordinary course of the Business University Operations and in accordance with the DIP Cash Flow Forecast;
- (c) ~~(d)~~ Except for the Permitted Priority Liens and the Permitted Encumbrances, ~~the Administration Charge (\$1.250 million) and the Directors' Charge (\$2 million)~~, create or permit to exist any Encumbrance, or ~~provide or seek or~~ support or fail to oppose a motion by another Person to provide obtain any Encumbrance, upon any of the Collateral;
- (d) ~~(e)~~ Subject to the Amended and Restated Initial Order, cease to carry on the Business or activities University Operations as they are currently being conducted ~~or change its operations or business practices~~ in any material respect;
- (e) ~~(f)~~ Subject in all respects to the Amended and Restated Initial Order and except as required pursuant to (i) the terms of any compensation or benefit plan, program or arrangement as in effect on the date hereof or (ii) applicable Law, increase any termination or severance or bonus entitlements ~~or~~ pay any termination or severance or bonus payments, or modify any compensation or benefit plans whatsoever;
- (f) ~~(g)~~ Apply for, or consent to, or fail to oppose any change, amendment or modification to the Amended and Restated Initial Order, the DIP Approval Order or any other Court Order as it applies to the DIP Financing (the "Change to the Order") ~~without the prior written consent of the DIP Lender, or fail to oppose any application or motion for a Change to the Order that is opposed by Facility or affects the rights of~~ the DIP Lender; ~~and~~
- (g) Sell, transfer, lease or otherwise dispose of any Collateral outside of the ordinary course, including but not limited to pursuant to any CCAA Plan, or make any offer or take any steps with respect to the foregoing;
- (h) ~~Initiate or consent to any order or consent to any change, amendment or modification to any Court Order issued in the CCAA proceedings that affects the DIP Lender without the prior written consent of the DIP Lender, which consent shall not be unreasonably withheld.~~ Make or permit changes to the composition of the Board of Governors or management of the Borrower that in the opinion of the DIP Lender, in its sole and unfettered discretion, creates uncertainty, instability or has a negative effect regarding the Borrower's restructuring efforts;

24. ~~Right of First Refusal: The~~

- (i) File or serve any motion for a Court Order sanctioning a CCAA Plan or authorizing the Borrower to submit a CCAA Plan for a vote of creditors unless such CCAA Plan provides that, on closing, the DIP Lender Facility shall ~~have the first opportunity to fund further amounts required by~~ (i) repaid in full in cash, or (ii) converted to long-term financing such that it is made available to the Borrower ~~that are secured by the DIP Lender's Charge, provided that such further loans are post-closing on the same terms as acceptable to the Borrower has been otherwise offered. Further, the Borrower shall provide~~ and to the DIP Lender with the right of first refusal to provide exit financing to the Borrower upon the Borrower putting forward a Plan of Compromise or Arrangement, save and except if the Province of Ontario agrees to provide exit financing to in its sole discretion;
or
- (j) Permit any material change to the University Operations that in the opinion of the DIP Lender in its sole discretion has a negative effect on the Borrower or the University Operations.

23. **25. Events of Default:** The occurrence of any ~~one or more~~ of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

- (a) Unless the DIP Lender has provided its prior written consent, any Court Order is issued, dismissed, stayed, reversed, vacated, amended or restated and such issuance, dismissal, stay, reversal, vacation, amendment or restatement adversely affects the interest interests of the DIP Lender ~~in a material manner~~, including the issuance of a Court Order:

 - (i) ~~i.~~ terminating the CCAA Proceeding Proceedings or appointing a receiver and manager, receiver, interim receiver or similar official or the making of a BIA assignment in bankruptcy or bankruptcy order ~~against~~ in respect of the Borrower;
 - (ii) ~~ii.~~ terminating, lifting or amending the stay granted by the Amended and Restated Initial Order in a manner which, in the opinion of the DIP Lender, in its sole discretion, is prejudicial to the DIP Lender;
 - (iii) ~~iii.~~ granting any other claim or Encumbrance on the Collateral ~~of equal or prior status to that of the DIP Charge except as permitted hereunder~~ other than the Permitted Priority Liens and the Permitted Encumbrances;
 - (iv) ~~iv.~~ staying, reversing, vacating, invalidating, or otherwise modifying in any respect this Agreement or the other DIP Credit Documents ~~or prejudicially affecting;~~
 - (v) making any amendment or modification to the DIP Lender's Charge or the rights or remedies of the DIP Lender with respect to the DIP Lender's Charge or the Collateral;

- (vi) approving any CCAA Plan or other sale or restructuring transaction in respect of the Borrower unless such CCAA Plan or other sale or restructuring transaction provides that, on closing, the DIP Facility shall be (i) repaid in full in cash, or (ii) converted to long-term financing such that it is made available to the Borrower by the DIP Lender post-closing on terms acceptable to the Borrower and to the DIP Lender in its sole discretion; or
- (vii) ~~v-~~replacing the Monitor in the CCAA ~~proceeding~~Proceedings;
- (b) Failure of the Borrower to diligently oppose any ~~party~~Person that brings an application or motion for any of the relief set out in subsection ~~2523~~2523(a) above ~~and/or~~ the failure of the Borrower to secure the dismissal of such ~~motion or~~ application or motion within ten (10) days¹ from the date that such application or motion is brought (provided no affirmative Court Order is issued on such ~~motion or~~ application or motion during such ten (10) day period);
- (c) The DIP Approval Order is amended, restated, modified or vacated without the prior consent of the DIP Lender in its sole discretion;
- (d) ~~(e)~~ Failure of the Borrower to pay any ~~amounts~~DIP Obligations when due and owing hereunder;
- (e) ~~(d)~~ The Borrower ceases to carry on or maintain the ~~Business or its assets~~University Operations in the ordinary course ~~of the Business in compliance with the covenants contained in this Agreement~~in any material respect, except where such cessation is otherwise consented to in writing by the DIP Lender;
- (f) ~~(e)~~ Any representation or warranty made or given hereunder or under any other DIP Credit ~~Document~~Documents by the Borrower shall be materially incorrect when made;
- (g) ~~(f)~~ A liability arises or an event occurs, including any material change in the ~~Business~~University Operations, assets, or ~~conditions~~condition, financial or otherwise, of the Borrower that could, in the DIP Lender's judgment, acting reasonably, materially further impair, the Borrower's financial condition or operations or ability to comply with its obligations under this Agreement, any other DIP Credit Document or any Court Order;
- (h) ~~(g)~~ Any material violation or breach of any Court Order by the Borrower;
- (i) ~~(h)~~ Failure of the Borrower to perform or comply with any term ~~or~~, covenant, condition or obligation of this Agreement or any other DIP Credit Document; or
- ~~(i) Any proceeding, motion or application is commenced or filed by a Borrower, or if commenced by another Person, supported or otherwise consented to by the Borrower, seeking the invalidation, subordination or other challenge of the terms~~

~~of the DIP Facility, the DIP Lender's Charge, this Agreement or any other DIP Credit Document; or~~

- (j) ~~The Failure of the~~ Borrower's failure to diligently take steps necessary to pursue the ~~Academic Restructuring and the Faculty Settlement~~ implementation of a CCAA Plan, so that same can be achieved by the Maturity Date.

24. ~~26.~~ **Cure Period.** Upon receipt by the Borrower of a notice in writing from the DIP Lender declaring an Event of Default, the Borrower shall have ~~fourteen~~seven (~~14~~7) calendar days to remedy ~~such an~~ Event of Default that is capable of being remedied (the "Cure Period"), provided and except that (i) there shall be no Cure Period in respect of an Event of Default described in Section 23(a) or 23(b), and (ii) the Cure Period in respect of an Event of Default described in Section 23(d) shall be three (3) calendar days.

25. ~~27.~~ **Remedies:** In the event of an Event of Default that is not remedied during the Cure Period (if any), the DIP Lender may, ~~with prior approval of the Court,~~ terminate the DIP Lender's commitment ~~to make further Advances to the Borrower and set off or consolidate all amounts outstanding under the DIP Facility, the DIP Lender's Charge and any DIP Credit Documents and hereunder,~~ declare ~~such amounts~~the DIP Obligations to be immediately due and payable ~~without any periods of grace. Upon,~~ and set-off or consolidate all DIP Obligations. In addition, upon the occurrence of an Event of Default that is not cured within the Cure Period (if any), the DIP Lender may, subject to the Amended and Restated Initial Order, ~~the Administration Charge~~ and subject to the Directors' Charge Permitted Priority Liens, and in each case upon a motion brought by the DIP Lender in the CCAA ~~Proceeding~~Proceedings:

- (a) Apply to the Court for the appointment of a receiver, an interim receiver or a receiver and manager over the Borrower and the Collateral, or for the appointment of a trustee in bankruptcy of the Borrower;
- (b) Apply for a Court Order, on terms satisfactory to the Monitor and the DIP Lender, providing the Monitor with the ~~power~~authority, in the name of and on behalf of the Borrower, to exercise enhanced powers in respect of the Borrower or to take all necessary steps in the CCAA ~~Proceeding~~Proceedings to realize on the Collateral;
- (c) Exercise the powers and rights of a secured creditor, including as a secured party under the Personal Property Security Act (Ontario) and as mortgagee in respect of the Real Property; and
- (d) Exercise all such other rights and remedies available to the DIP Lender under this Agreement, the other DIP Credit Documents, the Court Orders and applicable Law ~~including.~~

26. **Taxes:** All payments by the Borrower to the DIP Lender under this Agreement and the other DIP Credit Documents shall be made free and clear of, and without ~~limiting the~~

~~foregoing, the remedies set out in Schedule "D" attached hereto~~ reduction for or on account of, any Taxes.

27. ~~28.~~ **Further Assurances:** The Borrower shall, at its own expense, from time to time do, execute and deliver, or cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) as the DIP Lender may reasonably request for the purpose of giving effect to this Agreement and the other DIP Credit Documents.
28. ~~29.~~ **Entire Agreement:** This Agreement and the other DIP Credit Documents constitute the entire agreement between the parties related to the subject matter hereof. To the extent that there is any inconsistency between this Agreement and the other DIP Credit Documents, this Agreement shall prevail.
29. ~~30.~~ **Amendments and Waivers:** No waiver or delay on the part of the DIP Lender in exercising any right or privilege hereunder or under any other DIP Credit Document shall operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this Agreement. A waiver, amendment, release or modification of this Agreement or any other DIP Credit Document shall not be established by conduct, custom or course of dealing and shall occur, if applicable, solely by an instrument in writing duly executed by the DIP Lender, in the case of a waiver or release, and the parties hereto, in the case of an amendment or other modification.
30. ~~31.~~ **Assignment:** The DIP Lender may assign this Agreement and its rights and obligations hereunder, in whole or in part, to any Person acceptable to the DIP Lender in its sole discretion, provided that the Monitor is satisfied that such assignee has the financial capacity to act as DIP Lender. The Borrower shall not be permitted to assign this Agreement nor any right and obligation hereunder without the written consent of the DIP Lender, in its sole discretion.
31. ~~32.~~ **Severability:** Any provision in this Agreement or any other DIP Credit Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or effecting the validity of enforceability of such provision in any other jurisdiction.
32. ~~33.~~ **No Third Party Beneficiary:** No Person, other than the Borrower and the DIP Lender, ~~are~~is entitled to rely upon this Agreement, and the parties expressly agree that this Agreement does not confer any rights upon any Person not a signatory hereto.
33. ~~34.~~ **Counterparts:** This Agreement may be executed in any number of counterparts and delivered by e-mail, including in PDF format, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

34. ~~35.~~ **Notices:** Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the Person set forth below:

In the case of the DIP Lender:

~~Firm Capital Mortgage Fund Inc.
163 Cartwright Avenue
Toronto, Ontario
M6A 1V5~~

~~Attention: Jonathan Mair
Email: jmair@firmeapital.com~~

Ministry of Colleges and Universities
Laurentian University Secretariat

Attention: Rakhi Lad, Executive Lead
Email: Rakhi.Lad@Ontario.ca

With a copy to:

~~Fogler, Rubinoff LLP
77 King Street West
Suite 3000, PO Box 95
Toronto, Ontario
M5K 1G8~~

~~Attention: Joseph Fried / Vern W. DaRe~~

Ministry of the Attorney General, Civil Law Division
Education/Colleges and Universities Branch

Attention: Michelle Pottruff, Senior Counsel
Email: ~~jfried@foglers.com / vdare@foglers.com~~ Michelle.Pottruff@Ontario.ca

In the case of the Borrower:

Laurentian University of Sudbury
935 Ramsey Lake Road
Sudbury, Ontario
P3E 2C6

Attention: Dr. Robert Haché
Email: rhache@laurentian.ca

With a copy to:

Thornton Grout Finnigan LLP
100 Wellington Street West, Suite 3200
Toronto, Ontario
M5K 1K7

Attention: D.J. Miller / Mitch Grossell
Email: djmiller@tgf.ca / mgrossell@tgf.ca - djmiller@tgf.ca / mgrossell@tgf.ca

In either case, with a copy to the Monitor:

Ernst & Young Inc.
100 Adelaide Street West
Toronto, Ontario
M5H 0B3

Attention: Sharon Hamilton
Email: sharon.s.hamilton@ca.ey.com

With a copy to:

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Attention: Ashley Taylor / Elizabeth Pillon
Email: ataylor@stikeman.com / epillon@stikeman.com - ataylor@stikeman.com / epillon@stikeman.com

Any such notice shall be deemed to be given and received, when received, unless received after 5:00 pm local time or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day.

35. ~~36.~~ **English Language:** The parties hereto confirm that this Agreement and all related documents have been drawn up in the English language at their request. *Les parties aux presentes conferment que le present acte et tous les documents y relatifs furent rediges en anglais a leur demande.*

36. ~~37.~~ **Governing Law and Jurisdiction:** 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 therein. The parties hereby irrevocably attorn and submit to the ~~non~~-exclusive jurisdiction of the Court supervising the CCAA ~~proceeding~~.

~~38. **Non-Merger:** Notwithstanding the registration of the DIP Lender's Charge and the advance of funds pursuant to the terms hereunder, the terms and provisions of the DIP~~

~~Term Sheet shall remain binding and effective upon the parties. It is understood and agreed that any default under the said DIP Term Sheet shall be deemed a default under the DIP Lender's Charge, this Agreement and the DIP Credit Documents. In the event of any inconsistency, discrepancy or conflict between the terms of the DIP Lender's Charge, this Agreement, the DIP Credit Documents and the DIP Term Sheet, this Agreement shall prevail. The Borrower acknowledges that the terms and provisions of the DIP Term Sheet are not exhaustive. The Borrower acknowledges that any provisions contained herein or in any of the other DIP Credit Documents which are not dealt with in the DIP Term Sheet or which expand and elaborate on provisions in the DIP Term Sheet shall be deemed not to be an inconsistency or in conflict with the provisions of the DIP Term Sheet.~~
Proceedings with respect to any matter relating to this Agreement.

37. ~~39.~~ **Schedules Attached:** The following attached schedules form a part of this Agreement:

~~SCHEDULE "A": Definitions~~

~~SCHEDULE "B": DIP Cash Flow Forecast~~

~~SCHEDULE "C": General DIP Financing Conditions~~

~~SCHEDULE "D": Additional Remedies~~

~~SCHEDULE "E": Properties~~

<u>Schedule "A"</u>	<u>Definitions</u>
<u>Schedule "B"</u>	<u>Real Property</u>

[Remainder of page left intentionally blank; signature page follows]

|

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

AS DIP LENDER:

HER MAJESTY THE QUEEN IN RIGHT
OF ONTARIO AS REPRESENTED BY
THE MINISTER OF COLLEGES AND
UNIVERSITIES

FIRM CAPITAL MORTGAGE FUND INC.

Per: _____

Name: ~~Jonathan Mair~~

Title: ~~Senior Vice President~~

*I have authority to bind the ~~Corporation~~ DIP
Lender*

AS-BORROWER:

**LAURENTIAN UNIVERSITY OF
SUDBURY**

Per: _____

Name: Dr. Robert Haché

Title: President and Vice-Chancellor

I have authority to bind the Corporation

SCHEDULE "A"

Definitions

"

SCHEDULE A
DEFINITIONS

"Administration Charge" ~~means~~ shall have the ~~super-priority charge granted~~ meaning given to it in the Amended and Restated Initial Order ~~up to the maximum amount of, which~~ Administration Charge shall not exceed \$1,250,000;

~~"Advances"~~ "Advance" has the meaning given to that term in Section 7;

~~"Affiliate"~~ of any Person means, ~~at the time such determination is made, any other Person controlling, controlled by or under common control with such first Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of such Person, whether through the ownership of voting securities or otherwise;~~

"

"Agreement" means this Agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter;

"

"Amended and Restated Initial Order" ~~means an order of the Court, in form and substance satisfactory to the DIP Lender, acting reasonably, approving, *inter alia*, the DIP Term Sheet and granting the DIP Lender's Charge and authorizing the Borrower to enter into such further agreements as may be requested by the DIP Lender to more fully reflect the terms of the DIP Term Sheet, which shall include this Agreement, such order being sought on notice to such Persons as the DIP Lender requires"~~ has the meaning given to that term in the recitals;

~~"Authorization"~~ means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Authority related to the Borrowers, the Collateral or the Business;

"

"BIA" means the *Bankruptcy and Insolvency Act (Canada)*;

"Borrower" has the meaning given to that term in the recitals;

~~"Business"~~ means the ordinary day-to-day operations of the Borrower, which includes, without limitation, the post-secondary education of students, ongoing research activities and other related and ancillary activities of the Borrower;

"

"Business Day" means a day that banks are open in Toronto, Ontario, other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

"Cash Flow Variance Report" has the meaning given to that term in Section 4211;

"CCAA" has the meaning given to that term in the recitals;

"

"CCAA Plan" means a plan of compromise or arrangement in respect of the Borrower pursuant to the CCAA;

"CCAA Proceeding" has the meaning given to that term in the recitals;

"Collateral" means all present and after-acquired assets ~~and~~ property and undertaking of the Borrower, real and personal (including the Real Property), tangible and intangible, and all proceeds therefrom;

~~**"Commitment"** means the DIP Term Sheet;~~

"

"Costs" means all the reasonable fees, costs, charges and expenses incurred by or on behalf of the DIP Lender for or incidental to (a) ~~preparing, executing and~~ registering the DIP Credit Documents, renewals thereof and any amendments thereto, (b) enforcing and realizing on the DIP Lender's Charge and the other DIP Credit Documents, including power of sale, foreclosure, execution, judicial sale, court appointed or private receivership, possession and/or management of the Collateral and other enforcement proceedings ~~(each only with the express approval of the Court)~~, and including without limiting the generality of the foregoing, all fees, costs, charges and expenses incurred in connection with the sale or attempted sale of the Real Property and any of the other Collateral, including real estate commissions, auctioneer's fees, termination fees, stalking-horse fees, cancellation of listing agreement fees and all other like or incidental fees, (c) inspecting, protecting, securing, completing, insuring, repairing, equipping, taking and keeping possession of, managing, selling or leasing the Real Property or any other Collateral, including all protective disbursements and curing any defaults under or renewing any leasehold interests, (d) exercising any rights of a receiver appointed by further Order of the Court under the DIP Lender's Charge or otherwise and such receiver's fees and expenses (including all reasonable legal fees and disbursements and agent's costs and expenses), (e) obtaining any environmental audits or other inspections, tests or reports with respect to the Real Property, (f) complying with any notices, orders, judgments, directives, permits, licences, authorizations or approvals with respect to the Real Property or any other Collateral, (g) performing the obligations of the Borrower under the DIP Credit Documents, (h) all reasonable legal fees and disbursements in connection with the DIP Facility activities described in this definition, and (i) any other fees, costs, charges or expenses ~~including, renewal fees, forbearance fees, the fees set out in Section~~

~~11(e) hereof~~ payable to the DIP Lender under the DIP Loan Agreement or under any of the DIP Credit Documents or otherwise at Law;

“Court” has the meaning given to that term in recitals;

“Court Order” has the meaning given to that term in Subsection ~~13~~12(~~ee~~);

“Default” means the occurrence or existence of any event, fact or circumstances that with the giving of notice, passage of time, or both, would constitute an Event of Default;

”

“DIP Approval Order” means an order of the Court, in form and substance acceptable to the DIP Lender in its sole discretion, *inter alia*, approving this Agreement, authorizing the Borrower to borrow under the DIP Facility, directing the Borrower to use the proceeds of the DIP Facility to repay in full and discharge the Existing DIP Facility and the Existing DIP Agreement, granting the DIP Lender’s Charge, providing that the DIP Lender shall be an unaffected creditor in the CCAA Proceedings with respect to the DIP Facility, providing that the DIP Approval Order shall be subject to provisional execution notwithstanding any subsequent variation to the DIP Approval Order through appeal or otherwise, and granting such other rights, protections and authority to the DIP Lender as is customary in connection with the approval of debtor-in-possession financing in CCAA proceedings;

“DIP Cash Flow Forecast” has the meaning given to that term in Section ~~12~~11;

“DIP Credit Documents” means this Agreement, ~~the DIP Term Sheet~~ and any other documents in respect of the DIP Facility as may be contemplated by this Agreement or required by the DIP Lender;

“DIP Facility” has the meaning given to that term in Section 6;

~~“DIP Financing” has the meaning given to that term in the recitals;~~

”

~~“DIP Lender” has the meaning given to that term in the recitals;~~

~~“DIP Lender’s Charge” has the meaning given to that term in Section 14;~~

~~“DIP Obligations” has the meaning given to that term in Section 14;~~

~~“DIP Term Sheet”~~ has the meaning given to that term in the recitals;

”

“DIP Lender’s Charge” has the meaning given to that term in Section 13;

“DIP Obligations” has the meaning given to that term in Section 13;

“Directors’ Priority Charge” means the super-priority charge supporting the indemnity granted in favour of the current and future directors and officers pursuant to the Amended and Restated Initial Order which shall rank in priority to the DIP Lender’s Charge, in the maximum amount of ~~\$5,000,000, of which only \$2,000,000 shall be in priority;~~

“Directors’ Subordinate Charge” means the super-priority charge supporting the indemnity granted in favour of the current and future directors and officers pursuant to the Amended and Restated Initial Order which shall rank subordinate to the DIP Lender’s Charge, in the maximum amount of \$3,000,000;

“Encumbrances” means any encumbrance of whatever kind or nature whatsoever, lien, charge, hypothec, pledge, trust (including any actual, deemed, constructive or equitable trust arising pursuant to common law, statute or otherwise), mortgage, lease, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege or any contract to create any of the foregoing;

“Event of Default” has the meaning given to that term in Section ~~25~~23;

~~**“FCC” means Firm Capital Corporation;**~~

~~**“**~~

~~**“Filing Date” means** has the ~~date the Initial Order is made granting the Borrower protection under the CCAA~~meaning given to that term in the recitals;~~

“Governmental Authority” means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, ministry, Crown corporation, court, body, board, tribunal or dispute settlement panel or other law or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, municipality 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;

“Indemnified Persons” has the meaning given to that term in Section ~~20~~19;

~~**“Initial Order” has the meaning given to that term in the recitals;**~~

~~**“Interest Rate” has the meaning given to that term in Section 10;**~~

~~**“**~~

“Law” means any federal, provincial, county, territorial, district, municipal, local, foreign, ~~supranational or international law~~, statute, ordinance, regulation, by-law, rule, code, treaty or rule of common law or equity, or otherwise of, or any order, judgment, injunction, decree or similar authority enacted, issued, promulgated, enforced or entered by, any Governmental Authority;

~~"Lender"~~ means the DIP Lender hereunder;

"

"Maturity Date" has the meaning given to that term in Section ~~16~~15;

"Monitor" means Ernst & Young Inc., in its capacity as the Court-appointed Monitor of the Borrower in the CCAA ~~Proceeding~~Proceedings, and not in its personal capacity;

"Permitted Encumbrances" means, as of any particular time, (i) any registered easements and rights of way in land granted to, reserved or taken by any governmental authority or public utility relating to the Real Property, (ii) any registered subdivision, development, servicing, site plan or other similar agreement with any Governmental Authority or public utility relating to the Real Property, and (iii) *Personal Property Security Act* (Ontario) Reference File ~~Numbers 707417748, 719116425 and~~Number 759499308;

"

"Permitted Priority Liens" means (i) the Administration Charge, (ii) the Directors' Priority Charge, and (iii) any validly perfected purchase-money security interest;

"Person" shall be interpreted broadly to mean any individual, sole proprietorship, partnership, firm, entity, association, organization, trust, body corporate, Governmental Authority, and where the context requires, any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

"Priority Payables" means ~~Harmonized Sales Tax, sales Tax and~~ any amount payable or accrued by the Borrower which is secured by an Encumbrance (other than Administration Charge or the Directors' Priority Charge) which ranks or is capable of ranking in priority to or *pari passu* with the DIP Lender's Charge, including amounts accrued or owing for wages, vacation pay, termination pay ~~(only where it is a Priority Payable)~~, employee deductions, ~~or Taxes, and or~~ other statutory or other claims, in each case solely to the extent that ~~have~~ such amount is or may have will with the passage of time become secured by an Encumbrance ranking in priority ~~over, to or rank~~ *pari passu* with; the DIP Lender's Charge;

"Real Property" or "Properties" means all of the real properties owned by the Borrower, including but not limited to the properties as set out in Schedule ~~"E"~~"B" hereto;

~~"Tax" and~~ "Taxes" means any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education, employment and all social security taxes, all surtaxes, all customs, duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and

~~Canada, and other government~~ pension plan premiums or contributions to a Governmental Authority; and

~~"Updated Cash Flow" has the meaning given to that term in Section 12.~~

"University Operations" means the ordinary day-to-day operations of the Borrower, including the delivery of post-secondary education to students, ongoing research activities and other related and ancillary activities of the Borrower.

SCHEDULE "B"
DIP CASH FLOW FORECAST

SCHEDULE "C"
GENERAL MORTGAGE DIP FINANCING CONDITIONS

GENERAL MORTGAGE DIP FINANCING CONDITIONS:

1. ~~**ADMINISTRATION FEES:** There is a Late Payment Administration Fee payable by the Borrower in the amount of \$2,000.00 for payments not made when due or for any payments not honoured (and the Borrower hereby waives notice of dishonour). There is an Advance Administration Fee payable by the Borrower in the amount of \$500.00 per advance for each advance of funds made by the Lender under the DIP Financing. There is a Compliance Finance Capital Fee in the amount of \$200 due at the time of the initial Advance under the DIP Financing.~~
2. ~~**ADMINISTRATIVE SET UP FEE:** There is a \$1,000.00 administrative set up fee payable to FCC at the time of the initial Advance under the DIP Financing.~~
3. ~~**MAINTENANCE FEE:** The Borrower agrees to pay to FCC \$450.00 Per Annum for ongoing maintenance of the DIP Financing account, which includes, but is not limited to, system upgrades, document management, data storage, software licensing, and related customer services. The Maintenance Fee shall be payable to FCC and shall be due on each anniversary date of the interest adjustment date for the DIP Financing, or upon full DIP Financing discharge.~~
4. ~~**WIRE TRANSFER FEE:** There is wire transfer fee of \$90.00 payable to the Lender for all advances made by way of a wire transfer.~~
5. ~~**LENDER IN POSSESSION:** If the Lender goes into possession of, or enforces its security regarding the assets of the Borrower, a management fee equal to 2.5% percent of the DIP Financing amount will be charged to the Borrower.~~
6. ~~**ASSIGNMENT:** This Commitment and the security may be assigned by FCC in whole or in part. The Borrower acknowledges and agrees that FCC may be the lender in whole or in part or may be acting for an investor client or institution, in which case FCC shall have the right to assign this agreement to another party.~~
7. ~~**TAXES:** Any tax bills issued and unpaid at the interest adjustment date are to be paid in full from the proceeds of the DIP Financing. If the Borrower fails to pay any realty taxes when due, at the Lender's option, the Borrower shall establish with the Lender a property tax escrow account (and undertakes to provide funds to establish the subject account satisfactory to the Lender), and the Borrower agrees to pay to the Lender 1/12 of the annual taxes on a monthly basis, and the Lender will remit same to the local municipality as taxes are due. No interest will be paid to the Borrower on funds held in the property tax escrow account. If a property tax escrow account is required, the Borrower agrees to pay the Lender a \$750.00 Per Annum Tax Account Administration Fee for servicing the tax account.~~
8. ~~**SALE OF PROPERTY:** The Borrower agrees that in the event of a sale, conveyance, lease, or transfer of the title to the assets of the Borrower to a purchaser, grantee, transferee, mortgagee, or lessee not approved in writing by the Lender, then at the option of the Lender, all monies secured~~

~~under the DIP Financing shall forthwith become due and payable, other than with respect to sales that occur pursuant to partial discharge provisions detailed herein.~~

- ~~9. **INSURANCE:** The Borrower agrees that at least 3 days prior to initial Advance of funds under the DIP Financing, the Borrower shall provide to the Lender or its solicitors, with evidence that the real property owned by the Borrower is adequately insured with an insurance company satisfactory to the Lender and such insurance may be straight insurance, but if the Lender so requests, then such insurance must provide for boiler coverage, liability, or rental insurance as the case may be. The Borrower shall provide a certified copy of such insurance policy to the Lender or its solicitors, denoting loss payable to the Lender, such insurance policy shall insure the mortgaged property for the principal amount secured by the DIP Financing. An independent insurance consultant selected by the Lender, the cost of which shall be borne by the Borrower, shall review evidence of such coverages, consisting of the full policies. If a material change is made to the insurance policy, the independent insurance consultant will review the amended insurance policy, the cost of which shall be borne by the Borrower.~~

~~10. **SOLICITORS:**~~

~~FCC has appointed the legal firm of:~~

~~Fogler, Rubinoff LLP~~

~~to act on its behalf and the DIP Lender's behalf on this transaction. Legal fees and disbursements up to the amount of \$25,000 are to be paid by the Borrower to the DIP Lender whether or not any funds are advanced. In the event funds are advanced under the DIP Financing, all actual reasonable legal fees shall be deducted by the solicitors from the DIP Financing advance.~~

- ~~11. **DIP FINANCING DOCUMENTS:** The DIP Financing to be made to the Borrower shall be subject to all extended terms and conditions set forth in the Lender's standard form of DIP Financing documents.~~

- ~~12. **REPRESENTATIONS & INFORMATION:** The Borrower undertakes that all information made available by the Borrower through the electronic data room and in response to any questions asked by FCC in connection with the DIP Financing and in the materials filed with the Court in support of the Initial Order are materially true and accurate; and that the Borrower agrees to supply promptly, on request, any reasonable further information concerning the Borrower, its financial standing, or about the property, which may be required by FCC or its solicitors.~~

- ~~13. **HAZARDOUS SUBSTANCE INDEMNITY:** The Borrower acknowledges and agrees that they shall indemnify the Lender and hold harmless the Lender from and against all claims, demands, liabilities, losses, costs damages and expenses that the Lender may incur or suffer, directly or indirectly, as a result of the presences of any hazardous substance on, upon or within the real property owned by the Borrower or the escape, seepage, leakage or spillage from the real property owned by the Borrower. The form and content of said indemnity shall be to the complete satisfaction of the Lender in their sole discretion.~~

- ~~14. **ASSIGNMENT OF COMMITMENT LETTER:** At closing, FCC will assign this Commitment to the DIP Lender. At the time of assignment, FCC shall be relieved by the Borrower of all liabilities~~

~~and claims relating to this DIP Financing, at which time FCC shall become the DIP Financing servicer (the "Servicer"). The Borrower acknowledges that the registered Lender has retained the services of FCC as Servicer to service the subject DIP Financing, including the collection of payments under the DIP Financing and that title to the DIP Financing will be registered directly in the Lender's name. The Borrower further acknowledges that the Servicer is not the Lender and the Servicer owes no obligation to the Borrower to advance funds under the DIP Financing, or continue to be the Servicer of the DIP Financing. For the purposes of this Commitment, all references to the Lender shall be deemed to be the registered named Lender. The Lender shall have and may exercise at all times and without restriction all of the rights and benefits under this Commitment. The Borrower shall not assign any of its rights hereunder without the prior written approval of FCC.~~

- ~~15. **PAYMENT OF FEES:** All DIP Financing costs, including commitment fees, reasonable legal fees, appraisal costs (if ordered by the DIP Lender for enforcement purposes), and insurance premiums, if applicable, in connection with the application and any resulting loan, are to be paid by the Borrower upon court approval of this DIP Financing, and may be deducted from the proceeds of the DIP Financing. The Lender will charge a reasonable fee for the preparation of the DIP Financing Discharge Statement, and the Lender's solicitor will charge a reasonable fee for the preparation of the discharge of security for the DIP Financing. The Borrower acknowledges and agrees that if government legislation requires that GST/HST is payable on any DIP Financing costs, including but not limited to brokerage fees, commitment fees, renewal fees, funding fees, and administration fees, the Borrower will be responsible for the payment of the GST/HST, including any GST/HST that is payable due to the retroactive implementation of legislative changes.~~
- ~~16. **TIME OF PAYMENT:** Any payment (other than payment of regular payments of principal and interest) that is made after 2:00 p.m. on any date, shall be deemed, for the purpose of calculation of interest, to have been made and received on the next bank business day.~~
- ~~17. **CROSS-DEFAULT /SERVICE FEE:** The occurrence of an event of default under any one of the security documents held by the Lender will constitute an event of default under all other security documents. If the Lender takes any proceeding pursuant to the DIP Financing or other security document by reason of the Borrower's default the Lender shall be entitled to add to the DIP Financing debt a service and administrative fee and a property inspection fee in addition to all other fees, cost, claims or demands to which the Lender are also entitled.~~
- ~~18. **MERGER OF COMMITMENT:** It is agreed that the execution, delivery and registration, as applicable, of the mortgage and the security required herein shall not operate as a merger of the terms and provisions of this Commitment and this Commitment shall survive such delivery and registration, as applicable, and remain in full force and effect.~~
- ~~19. **AUTOMATIC RENEWAL:** Expressly subject to the extension provisions outlined in the "Term" section of the Commitment, in the event that the Borrower fails to repay the principal and interest outstanding on the Maturity Date, or fails to accept a renewal offer tendered by the Lender (for any reason not attributable to the Lender) within 10 business days of the Maturity Date, then the Lender may, at their sole option, automatically renew the DIP Financing for a period of one month from the maturity date, at an interest rate equal to the greater of 12.00% Per Annum or the TD Canada Trust Prime Lending Rate plus 9.00% per annum, calculated daily, and compound and payable monthly; In the event that the renewal has not been finalized within this one month period, then there will be no further extensions, and the Lender will exercise its remedies in respect of its security. The Lender~~

~~shall not be obligated to offer any renewal. All other terms and covenants under the DIP Financing shall continue to apply. The DIP Financing may be repaid in full at any time during the one month renewal period, a Processing Fee of \$40,000.00 shall be added to the principal balance if this extension is utilized.~~

- ~~20. **COUNTERPARTS:** This Commitment may be executed in counterparts and all counterparts so executed will constitute one agreement binding on the parties effective on execution. Provided further and notwithstanding the foregoing, the failure of any one of the Borrower to execute this Commitment shall not be pleaded as an estoppel or a defense to the execution of this Commitment by the others of the Borrower.~~
- ~~21. **FACSIMILE TRANSMISSION / E-MAIL:** The transmission of an executed copy of this Commitment by facsimile or e-mail shall be deemed to constitute execution and delivery of an original executed copy. The Lender shall be entitled to rely on any agreement, document, instrument, report or certificate provided by the Borrower by way of e-mail or facsimile as though it were an originally signed agreement, document, instrument, report or certificate. The Borrower acknowledges and agrees that any communication from the Borrower to the Lender that is received by e-mail or facsimile is a reliable communication from the Borrower~~
- ~~22. **ELECTRONIC IMAGING:** The Borrower acknowledges and agrees that, at any time, the Lender may convert any paper records / documentation relating to the DIP Financing that was delivered to the Lender (collectively the "Paper Record"), into electronic images (the "Electronic Image") as part of the Lender's normal business practices. The parties agree that each Electronic Image shall be considered as an authoritative copy of the Paper Record and shall be legally binding on the parties and admissible in any legal, administrative or other proceeding as conclusive evidence of the contents of such document in the same manner as the original Paper Record.~~
- ~~23. **ENFORCEMENT OF SECURITY:** The Borrower acknowledges and agrees that all security received for the DIP Financing must be enforceable in the province in which the DIP Financing security documentation is registered. The court in the province in which the DIP Financing security documentation is registered shall have exclusive jurisdiction to hear all disputes relating to the DIP Financing and its security.~~
- ~~24. **CONSENT TO RELEASE OF INFORMATION:** The Borrower shall execute and deliver whatever consents are required by the Lender and its solicitors concerning the release and disclosure of information by the Lender to third parties and by third parties to the Lender in accordance with provisions of the Personal Information Protection and Electronic Documentation (Act) Canada.~~

SCHEDULE "D"
ADDITIONAL REMEDIES

~~In addition to any other remedies that may be available at Law, the DIP Lender shall have the remedies hereinafter set forth.~~

Acceleration

~~Upon written notice by the DIP Lender of an Event of Default under the Agreement or hereunder that remains uncured for a period of 14 calendar days, the entirety of the DIP Obligations shall, at the option of the DIP Lender, in its sole discretion, immediately become due and payable, with interest thereon at the interest rate set out in the Agreement to the date of actual payment thereof, and all the Lender's rights and remedies hereunder and under the DIP Lender's Charge, or any other DIP Credit Documents, and otherwise at law and in equity shall become enforceable upon the issuance of an order of the Court confirming that the DIP Lender may enforce its rights and remedies.~~

Possession

~~Upon the DIP Lender's rights and remedies hereunder or under the DIP Lender's Charge, or any other DIP Credit Documents becoming enforceable pursuant to Order of the Court, the Lender may enter into and take possession of the Properties, and shall be entitled to:~~

- ~~(a) — have, hold, use, occupy, possess and enjoy the Properties without let, suit, hindrance, interruption or denial of the Borrower or any other person;~~
- ~~(b) — maintain, repair and renovate the improvements and structures on the Properties;~~
- ~~(c) — inspect, manage, take care of, collect rents and lease the Properties or any part thereof for such terms and for such rents (which may extend beyond the Maturity Date), and on such conditions and provisions (including providing any leasehold improvements and tenant inducements) as the Lender may determine in its sole discretion, which leases shall have the same effect as if made by the Borrower; and~~
- ~~(d) — pay from the rents received, all expenses of maintaining, preserving, protecting and operating the Properties, making any additions and replacements thereto and all charges payment of which may be necessary to preserve or protect the Properties and the DIP Lender shall have and enjoy and may exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including without limitation power to advance its own monies at the interest rate chargeable hereunder and to enter into contracts and undertake obligations for the foregoing purposes upon security hereof, and all costs, charges and expenses incurred by the DIP Lender in the exercise of such rights (including allowances for the time, service or effort of any person appointed by the DIP Lender for the above purposes, and all legal fees and disbursements incurred and all commissions and other fees payable to real estate agents and brokers in connection with any lease), together with interest thereon at the interest rate chargeable under the Agreement, shall be payable forthwith by the Borrower to the DIP Lender, and until paid shall be added to the DIP Obligations and shall be secured by the DIP Lender's Charge.~~

~~Each lease or renewal of lease made by the DIP Lender while in possession of the Properties shall continue for its full term notwithstanding the termination of the DIP Lender's possession. The DIP Lender shall not be liable for any loss or damage sustained by the Borrower or any other person resulting from any lease entered into by the DIP Lender, any failure to lease the Properties, or any part thereof, or from any other act or omission of the DIP Lender or any receiver in managing the Properties, nor shall the DIP Lender be obligated to perform or discharge any obligation or liability of the Borrower under any lease, or otherwise at law or in equity.~~

~~Exercise Rights of Borrower; Distraint~~

~~Upon the DIP Lender's rights and remedies hereunder becoming enforceable pursuant to Order of the Court, the DIP Lender shall have, enjoy and exercise of all the powers and rights of and enjoyed by the Borrower with respect to the Properties or incidental, ancillary, attaching or deriving from the ownership by the Borrower of the Properties, including without limitation the power to enter into agreements, to grant or agree to mortgages and other encumbrances, and to grant or reserve easements, rights of way, rights in the nature of easements and licences, in each case over or pertaining to the whole or any part of the Properties. If the Borrower shall make default in payment of any part of the interest payable under the Agreement at any of the dates or times fixed for payment thereof, it shall be lawful (subject to Order of the Court confirming same) for the DIP Lender to distraint therefor upon the Properties or any part thereof, and by distress warrant, to recover by way of rent reserved, as in the case of a demise of the Properties, so much of such interest as shall from time to time be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress for rent. The DIP Lender may distraint for arrears of principal or other monies owing hereunder in the same manner as if the same were arrears of interest.~~

~~DIP Lender's Right to Perform Obligations~~

~~If the Borrower shall fail, refuse or neglect to make any payment or perform any act required by this Agreement, then while any Event of Default exists, and upon further Order of the Court, the Lender may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of the Borrower, and shall have the right to enter upon the Properties for such purpose and to take all such action thereon and with respect to the Properties as it may deem necessary or appropriate. If the DIP Lender shall elect to pay any sum due with reference to the Properties, the DIP Lender may do so in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the DIP Lender's Charge, the DIP Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, action, claim or charge before making an advance for the purpose of preventing or removing the same. The Borrower shall indemnify the DIP Lender for all Costs, losses, expenses, damages, claims and causes of action, including legal fees (on a full indemnity basis), incurred or accruing by reason of any acts performed by the DIP Lender pursuant to these provisions. All sums paid by the DIP Lender pursuant to this section, and all other sums expended by the DIP Lender to which it shall be entitled to be indemnified, together with interest thereon at the interest rate charged herein from the date of such payment or expenditure until paid, shall be added to the DIP~~

~~Obligations, shall be secured by the DIP Charge and shall be paid by the Borrower to the Lender upon demand.~~

~~Concurrent Remedies~~

~~Subject to further Order of the Court, the DIP Lender may exercise all remedies provided for in this Agreement or otherwise at Law concurrently or in such order and at such times as it may see fit and will not be obligated to exhaust any right or remedy before exercising any of its other rights or remedies pursuant to any other provisions contained in this Agreement or otherwise at law or in equity.~~

~~Remedies Cumulative~~

~~For greater certainty, it is expressly understood and agreed that the rights and remedies of the DIP Lender hereunder or instruments executed pursuant to the Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by Law, and any single or partial exercise by the DIP Lender of any right or remedy for a default or breach of any term, covenant, condition or agreement contained herein, or other documents or instruments executed pursuant to the Agreement shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the Lender may be lawfully entitled for such default or breach. Any waiver by the DIP Lender of the strict observance, performance or compliance with any term, covenant, condition or other matter contained herein, or other documents or instruments executed pursuant to the Agreement and any indulgence granted in writing by the DIP Lender shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the DIP Lender hereunder, or other documents or instruments executed pursuant to the Agreement as a result of any other default or breach hereunder or thereunder. In the event of a conflict or inconsistency between the application of any of the rights and remedies contained herein and the application of any of the rights or remedies or other documents or instruments executed pursuant to the Agreement, the provisions giving the DIP Lender the greater rights or remedies shall govern (to the maximum extent permitted by applicable law), it being understood that the purpose of this Agreement is to add to, and not detract from, the rights granted to the DIP Lender under the DIP Lender's Charge. The DIP Lender in its exercise of its rights and remedies may proceed to exercise any and all rights hereunder and as available at law and no such remedy for the enforcement of the rights of the DIP Lender shall be exclusive of, or dependent on, any other remedy, but any one or more of such remedies may from time to time be exercised independently or in combination, in all cases in accordance with a further Order of the Court.~~

~~Extension of Time and Waiver~~

~~Neither any extension of time given by the DIP Lender to the Borrower or any person claiming through the Borrower will in any way affect or prejudice the rights of the DIP Lender against the Borrower. The DIP Lender may waive any Event of Default in its sole discretion. No waiver will extend to a subsequent Event of Default, whether or not the same as or similar to the Event of Default waived, and no act or omission by the DIP Lender will extend to, or affect, any subsequent Event of Default or the rights of the DIP Lender arising from such Event of Default.~~

~~Any such waiver must be in writing, signed by the DIP Lender and delivered by electronic means. No failure on the part of the DIP Lender to exercise, and no delay by the DIP Lender in exercising, any right pursuant to this Agreement will operate as a waiver of such right. No single or partial exercise of any such right will preclude any other or further exercise of such right.~~

~~No course of dealing on the part of the DIP Lender, its officers, employees, consultants or agents, nor any failure or delay by the DIP Lender with respect to exercising any right, power or privilege of the DIP Lender hereunder or under the DIP Lender's Charge, shall operate as a waiver thereof. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the DIP Lender.~~

Assignment of Rents

~~If the DIP Lender consents in writing to the Borrower's written requests to rent or lease the Real Property or any part thereof, then, to further secure the DIP Obligations, the Borrower hereby assigns and transfers unto the DIP Lender all rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal or any letting of, or of any agreement for the use or occupancy of the lands and premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to, or which may be granted, it being the intention of the parties to establish an absolute transfer and assignment of all such rents, issues and profits under such leases and agreements and all the avails thereunder unto the DIP Lender.~~

~~The Borrower further covenants and agrees to execute and deliver at the request of the DIP Lender all such further assurances and assignments with respect to such tenancies as the DIP Lender shall from time to time require, and shall do all other acts with respect to such tenancies as requested by the DIP Lender.~~

~~Any entry upon the Real Property under the terms of this Agreement shall not constitute the DIP Lender as a "Mortgagee in Possession" in contemplation of Law and that the DIP Lender shall not become liable to account to the Borrower or credit the Borrower with any money on account of the DIP Charge except those which shall come into its hands or into the hands of any agents appointed by its pursuant hereto; the DIP Lender shall not be liable for failure to collect rents or revenues and shall be under no obligation to take any action or proceeding or exercise any remedy for the collection or recovery of the said rents and revenues, or any part thereof, and then, subject to all deductions and payments made out of the rents and revenues received from the Real Property as herein provided.~~

~~That this assignment is taken by way of additional security only and neither the taking of this assignment nor anything done in pursuance hereof shall make the DIP Lender liable in anyway, as landlord or otherwise, for the performance of any covenants, obligations or liabilities under the leases, as set out in Schedule "E" hereto, or any of them.~~

Appointment of Receiver

~~At a time after the DIP Credit Documents hereby constituted become enforceable, or the monies hereby secured shall have become payable, the Lender may, pursuant to further Order of the Court, seek the appointment of a receiver (which term shall include a receiver and manager) (the~~

~~"Receiver") of the Real Property or any part thereof, with or without bond, and may from time to time, subject to further Order of the Court, remove the Receiver and appoint another in his stead, and any such Receiver appointed hereunder may have the powers granted by the Court, including:~~

- ~~a. To take possession of the Real Property and to collect and get in the same and for such purpose to enter into and upon any lands, premises and all buildings, structures and other improvements, now or hereafter situated, placed or constructed upon the Real Property from time to time;~~
- ~~b. To carry on or concur in carrying on the business of the Borrower, and to employ and discharge agents, workmen, accountants and others upon such terms and with such salaries, wages or remuneration as he shall think proper, and to repair and keep in repair the Real Property and to do all necessary acts and things for the carrying on of the business of the Borrower and the protection of the Real Property of the Borrower;~~
- ~~c. To sell or lease or concur in selling or leasing any or all of the Real Property, or any part thereof, and to carry any such sale or lease into effect by conveying in the name of or on behalf of the Borrower or otherwise; and any such sale may be made either at public auction or private sale as seen fit by the Receiver and any such sale may be made from time to time as to the whole or any part or parts of the Real Property; and he may make any stipulations as to title or conveyance or commencement of title or otherwise which he shall deem proper; and he may buy or rescind or vary any contracts for the sale of any part of the Real Property and may resell the same; and he may sell any of the same on such terms as to credit or part cash and part credit or otherwise as shall appear in his sole opinion to be most advantageous and at such prices as can reasonably be obtained therefor and in the event of a sale on credit neither he nor the DIP Lender shall be accountable for or charged with any monies until actually received;~~
- ~~d. To make any arrangement or compromise which the Receiver may think expedient in the interest of the DIP Lender and to consent to any modification or change in or omission from the provisions of the DIP Lender's Charge and to exchange any part or parts of the Real Property for any other property suitable for the purposes of the DIP Lender and upon such terms as may seem expedient and either with or without payment or exchange of money or regard to the equality of the exchange or otherwise;~~

- ~~e. To borrow money to carry on the business of the Borrower and to charge the whole or any part of the Real Property in such amounts as the Receiver may from time to time deem necessary and in so doing the Receiver may issue certificates that may be payable when the Receiver thinks expedient and shall bear interest as stated therein and the amounts from time to time payable under such certificates shall charge the Real Property in priority to the DIP Lender's Charge;~~

- ~~f. To execute and prosecute all suits, proceedings and actions which the Receiver in his opinion considers necessary for the proper protection of the Real Property, to defend all suits, proceedings and actions against the Borrower or the Receiver, to appear in and conduct the prosecution and defense of any suit, proceeding or action then pending or thereafter instituted and to appeal any suit, proceeding or action;~~

- ~~g. To fully manage, develop, operate, lease, construct, deal with agreements, complete, repair, renovate or alter the Real Property or any part thereof on behalf of the Borrower and to take all such actions as are required in the exercise of such powers including entering into, amending and terminating such contracts and other agreements relating to the Real Property as are necessary or advisable, in the opinion of the Receiver, and the entering into, renewal, amendment, supplement, or termination of any agreements and leases as the Receiver may deem appropriate in its sole and absolute discretion;~~

- ~~h. To execute and deliver to the purchaser of any parts of the Real Property, good and sufficient deeds for the same, the Receiver hereby being constituted the irrevocable attorney of the Borrower for the purpose of making such sale and executing such deed, and any such sale made as aforesaid shall be a perpetual bar in Law against the Borrower, and all other persons claiming the Lands or any part or parcels thereof by, from through or under the Borrower and the proceeds of any such sale shall be distributed in the manner hereinafter provided;~~

- ~~i. To exercise any powers as may be granted by a court upon such appointment;~~

~~**AND IT IS AGREED** that no purchaser at any sale purporting to be made in pursuance of the aforesaid power or powers shall be bound or concerned to see or inquire whether any default has been made or continued, or whether any notice required hereunder has been given, or as to the necessity or expediency of the stipulations subject to which such sale shall have been made, or otherwise as to the propriety of such sale or regularity of its proceedings, or be affected by notice that no such default has been made or continues, or notice given as aforesaid, or that the sale is otherwise unnecessary, improper or irregular; and notwithstanding any impropriety or~~

~~irregularity or notice thereof to such purchaser, the sale as regards such purchaser shall be deemed to be within the aforesaid power and be valid accordingly and the remedy (if any) of the Borrower, or of any party claiming by or under it, in respect of any impropriety or irregularity whatsoever in any such sale shall be in damages only.~~

~~The net profits of the business of the Borrower and the net proceeds of any sale of the Real Property or part thereof shall be applied by the Receiver subject to the claims of any creditors ranking in priority to the DIP Charge (such as the Administration Charge and the Directors' Charge):~~

- ~~(a) — First, in payment of all Costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise by him of all or any of the powers aforesaid including the reasonable remuneration of the Receiver and all amounts properly payable by him;~~
- ~~(b) — Second, in payment of all Costs, charges and expenses payable hereunder;~~
- ~~(c) — Third, in payment to the DIP Lender of the principal sum owing hereunder;~~
- ~~(d) — Fourth, in payment to the DIP Lender of all interest and arrears of interest and any other portion of the Indebtedness remaining unpaid hereunder; and~~
- ~~(e) — Fifth, any surplus shall be paid in accordance with a further Order of the Court; provided that in the event that any party claims a charge against all or a portion of the surplus, the Receiver shall make such disposition of all or a portion of the surplus as the Receiver deems appropriate in the circumstances.~~

~~The DIP Lender shall not be liable to the Receiver for its remuneration costs, charges or expenses, and the Receiver shall not be liable for any loss howsoever arising unless the same shall be caused by his own gross negligence or willful default; and he shall, when so appointed, by notice in writing pursuant hereto, be deemed to be the agent of the Borrower for all purposes and the Borrower shall be solely responsible for his acts and defaults and for his remuneration.~~

~~The appointment of a Receiver by the Lender pursuant to further Order of the Court shall not, to the extent permitted by Law, incur or create any liability on the part of the DIP Lender in connection with anything which may be done by any such Receiver or the removal of any such Receiver or the termination of any such Receivership shall not have the effect of constituting the Lender as a mortgagee in possession in respect of the Properties or any part thereof.~~

Personal Property Remedies

~~(1) — On or after the occurrence of any Event of Default and at any time thereafter, (a) any or all of the DIP Obligations shall at the option of the DIP Lender become immediately due and payable or be subject to immediate performance, as the case may be, upon delivery of written notice of the occurrence of such Event of Default; (b) the obligation, if any, of the DIP Lender to extend further credit to the Borrower shall cease; and (c) any or all security granted hereby shall be enforceable, subject to further Order of the Court.~~

~~(2) — In addition to any right or remedy provided by law, the DIP Lender will have the rights and remedies set out below, all of which rights and remedies will be enforceable successively, concurrently or both, in accordance with further Order of the Court in the CCAA Proceeding;~~

~~(a) — the DIP Lender may, by further Order of the Court in the CCAA Proceeding, appoint a Receiver of the Collateral or may remove or replace such Receiver from time to time, and the term “DIP Lender” when used in this section shall include any Receiver so appointed and the agents, officers and employees of such Receiver; and the DIP Lender shall not be in any way responsible for any misconduct or negligence of any such Receiver;~~

~~(b) — the DIP Lender may take possession of the Collateral and require the Borrower to assemble the Collateral and deliver or make the Collateral available to the DIP Lender at such place or places as may be specified by the DIP Lender;~~

~~(c) — the DIP Lender may take such steps as it considers desirable to maintain, preserve or protect the Collateral;~~

~~(d) — the DIP Lender may carry on or concur in the carrying on of all or any part of the business of the Borrower;~~

~~(e) — the DIP Lender may enforce any rights of the Borrower in respect of the Collateral by any manner permitted by Law;~~

~~(f) — the DIP Lender may sell, lease or otherwise dispose of the Collateral at public auction, by private tender, by private sale or otherwise either for cash or upon credit upon such terms and conditions as the Lender may determine and without notice to the Borrower unless required by Law;~~

~~(g) — the DIP Lender may accept the Collateral in satisfaction of the DIP Obligations upon notice to the Borrower of its intention to do so in the manner required by Law;~~

~~(h) — the DIP Lender may, for any purpose specified herein, borrow money on the security of the Collateral in priority to the DIP Lender’s Charge and/or the DIP Credit Documents;~~

~~(i) — the DIP Lender may enter upon, occupy and use all or any of the premises, buildings and plant occupied by the Borrower and use all or any of the equipment and other personal property of the Borrower for such time as the Lender requires to facilitate the realization of the Collateral, free of charge, and the DIP Lender will not be liable to the Borrower for any neglect in so doing or in respect of any rent, charges, depreciation or damages in connection with such actions;~~

~~(j) — the DIP Lender may charge on its own behalf and pay to others all reasonable amounts for expenses incurred and for services rendered in connection with the exercise of the rights and remedies of the DIP Lender hereunder, including, without limiting the generality of the foregoing, reasonable legal, Receiver and accounting fees and expenses, and in every such case the amounts so paid together with all Costs, charges and expenses incurred in connection therewith, including interest thereon at such rate as the DIP~~

~~Lender deems reasonable, will be added to and form part of the DIP Obligations hereby secured; and~~

~~(k) — the DIP Lender may discharge any claim, lien, mortgage, charge, security interest, Encumbrance or any rights of others that may exist or be threatened against the Collateral, and in every such case the amounts so paid together with costs, charges and expenses incurred in connection therewith shall be added to the DIP Obligations hereby secured.~~

~~(3) — The DIP Lender may grant extensions of time, take, abstain from taking and perfecting and give up securities, accept compositions, grant releases and discharges, release any part of the Collateral and otherwise deal with the Borrower, debtors of the Borrower, sureties and others and with the Collateral and other security as the DIP Lender sees fit without prejudice to the liability of the Borrower to the DIP Lender or the DIP Lender's rights hereunder.~~

~~(4) — The DIP Lender will not be liable or responsible for any failure to seize, collect, realize, or obtain payment with respect to the Collateral and is not bound to institute proceedings or to take other steps for the purpose of seizing, collecting, realizing or obtaining possession or payment with respect to the Collateral or for the purpose of preserving any rights of the DIP Lender, the DIP Lender or any other person, firm or corporation in respect of the Collateral.~~

~~(5) — The DIP Lender may apply any proceeds of realization of the Collateral to payment of expenses in connection with the preservation and realization of the Collateral as above described and the DIP Lender may apply any balance of such proceeds to payment of the DIP Obligations in such order as the DIP Lender sees fit. If there is any surplus remaining, the DIP Lender may pay it to any Person having a claim thereto in priority to the Borrower of whom the DIP Lender has knowledge and any balance remaining shall be paid to the Borrower. If the disposition of the Collateral fails to satisfy the DIP Obligations secured by this Agreement and the aforesaid expenses and Costs, the Borrower will be liable to pay any deficiency to the DIP Lender forthwith on demand.~~

SCHEDULE "E"

PIN	Legal Description
73584-0678	LT 63-67 PL 4SB MCKIM; LT 158-159 PL 25SA MCKIM; PT LT 160 PL 25SA MCKIM; PT LT 68-69 PL 4SB MCKIM; PT NELSON ST, DAVID ST PL 4SB MCKIM (CLOSED BY S70); PT S1/2 LT 5 CON 3 MCKIM AS IN S61148; S/T INTEREST IN S61148; S/T EXECUTION 00-00878, IF ENFORCEABLE; GREATER SUDBURY
73584-0804	LT 232-234 PL 6S MCKIM; PT LT 229-231 PL 6S MCKIM AS IN S53645 EXCEPT PART 1 53R6379; GREATER SUDBURY
73585-1167	PT LT 6, CON 3 MCKIN, PTS 1, 2, AND 3 ON PLAN 53R-19698; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 53R19698 AS IN SD225472; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD225678; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3, 53R19698 AS IN SD229534; CITY OF GREATER SUDBURY
73592-0084	PCL 46194 SEC SES SRO; PT LT 2 CON 2 MCKIM PT 2 53R7594; GREATER SUDBURY
73592-0412	PCL 53884 SEC SES; 1STLY: PT LT 3 CON 2 MCKIM PT 1, 53R16920; 2NDLY: PT LT 3 CON 2 MCKIM PT 5, 8, 11 & 12 53R5371; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 2,4,5,6,8,10,11,12 & 13 53R17763 AS IN SD246793
73592-0426	PCL 30769 SEC SES; LT 3 CON 2 MCKIM SW OF PT 13 & 14 53R9175, E OF PT 15 & 16 53R5371, W OF BETHEL LAKE & N OF LT65581; S/T LT394500, LT891690; GREATER SUDBURY
73592-0427	PCL 30769 SEC SES; PT LT 3 CON 2 MCKIM LT 1 EXPROP PL M785; S/T LT622331; GREATER SUDBURY; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R19195 AS IN SD246792
73593-0063	PCL 21810 SEC SES; FIRSTLY: PT LT 2 CON 1 MCKIM; SECONDLY: PT LT 2 CON 2 MCKIM AS IN LT130739; GREATER SUDBURY
73593-0406	PCL 34100 SEC SES AS IN LT264521; PT BROKEN LT 1 CON 1 MCKIM LOCATION 145, PT 1 SR1028; GREATER SUDBURY
73593-0446	PCL 53880 SEC SES; PT LT 3 CON 2 MCKIM PT 7 53R5371; GREATER SUDBURY
73593-0465	PCL 30769 SEC SES; LT 3 CON 2 MCKIM S OF UNIT 1,2,3,4,5 & 6 EXPROP PL D49 & SW OF PT 2,3,7,9 & 14 53R5371; EXCEPT PT 1 SR754 & PARTS 1,2,3 53R20763; N 1/2 LT 2 CON 1 MCKIM; EXCEPT LT130739; PT LT 2

~~CON 2 MCKIM AS IN EP6694; EXCEPT LT130739, PT 3 53R7594; SRO E 1/2 LT 3 CON 1 MCKIM; EXCEPT PT 1 6, 853R6915; PT LT 3 CON 1 MCKIM AS IN LT211094, EP4842, LT 1 EXPROP PL M764; EXCEPT PT 1 SR754; PT BROKEN LT 4 CON 2 MCKIM AS IN LT220905 (FIRSTLY); EXCEPT UNITS 1 3, 13 EXPROP PL D48; PT LT 4 CON 1 MCKIM AS IN LT2 20905 (SECONDLY) & PT 2 SR754; EXCEPT PT 1 53R4053, PT 1 53R7807, PT 1 & 2 53R8716 & PT 1 & 2 53R9178; PT LT 5 PL M92 PT 2 53R7807; S/T LT119418, LT32862, LT233153 (PARTIALLY RELEASED AS IN SD371949), LT436834, LT25019, LT748126, LT842126;; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 53R7680 AS IN SD261440; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 53R20567 AS IN SD317507; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 & 3 53R20797 AS IN SD353369; CITY OF GREATER SUDBURY~~

SCHEDULE B
REAL PROPERTY

This is Exhibit "I" referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 20, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'D. Harland', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND

LU Board of Governors Elect New Chair

Jeff Bangs will chair the board until a permanent chair begins their term in June 2022

(January 18, 2022 - Sudbury, ON) The Laurentian University Board of Governors has elected a “pro tempore” chair to lead the board until June 2022 in keeping with its bylaws. The board will be chaired by Mr. Jeff Bangs on an interim basis until a new board chair is selected for a full term, which would begin at the end of June.

This announcement marks another step in Laurentian University's continued commitment to an accelerated process of Board renewal.

In connection with the package of support provided in December by the Province of Ontario, Laurentian welcomed five new members to its Board of Governors last month: Debbi Nicholson, Don Duval, Robert Brouillette, Gerard (Gerry) Bilodeau, and Jeff Bangs. These volunteer members were appointed by the Lieutenant Governor in Council (LGIC), and they join nine other volunteer members of the Board.

The Board of Governors will hold their next meeting in February, 2022.

About Jeff Bangs:

Jeff Bangs specializes in public sector decision making, public policy advocacy, public relations, stakeholder relations, and organizational change. With nearly 30 years of experience in government and politics, he has a deep understanding of government and its impact on society. He has served in many senior political advisory roles including as the Principal Secretary to the Premier of Ontario, the Chief of Staff to the Minister of Finance and the Executive Director of a political party. His experience in government also includes time as Chief of Staff at the Ministry of Natural Resources and the Ministry of Northern Development and Mines among others. From December 2020 until his appointment to Laurentian's Board of Governors in December, 2021, Jeff served as a government relations advisor to Laurentian University through his firm Pathway Group.

Jeff is a public representative on CPA Ontario's Public Accounting Licensing Board and is a regular guest lecturer in the Seneca College post-grad government relations certificate program. Originally from Mattawa, Ontario, Jeff completed his post-secondary studies at Carleton University in Public Administration.

Laurentian University (<https://laurentian.ca/news/tag/Laurentian-University>)

Board of Governors (<https://laurentian.ca/news/tag/Board-of-Governors>)

Jeff Bangs (<https://laurentian.ca/news/tag/Jeff-Bangs>)

Debbi Nicholson (<https://laurentian.ca/news/tag/Debbi-Nicholson>)

Don Duval (<https://laurentian.ca/news/tag/Don-Duval>)

Robert Brouillette (<https://laurentian.ca/news/tag/Robert-Brouillette>)

Gerard (Gerry) Bilodeau ([https://laurentian.ca/news/tag/Gerard-\(Gerry\)-Bilodeau](https://laurentian.ca/news/tag/Gerard-(Gerry)-Bilodeau))

This is Exhibit “J” referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

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

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND



October 25, 2021

VIA FAX (613-957-8925) and MyBA

Charities Directorate
Canada Revenue Agency
Ottawa, Ontario K1A 0L5

To Whom It May Concern:

Re: Laurentian University's Annual Information Return

We write to you to advise that Laurentian University of Sudbury ("**Laurentian**") will not be in a position to file its registered charity information return for the 2020-2021 fiscal year by the deadline of October 31, 2021.

As you may be aware, Laurentian commenced an insolvency proceeding pursuant to the federal *Companies' Creditors Arrangement Act* ("**CCAA**") on February 1, 2021. This CCAA proceeding is ongoing and requires the full attention of Laurentian's management to ensure that Laurentian can successfully restructure and emerge from the CCAA proceedings as quickly as possible as a strong and financially sustainable institution.

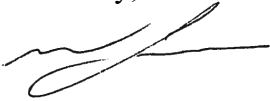
Within the CCAA proceeding, Laurentian has numerous equally-urgent work streams ongoing in parallel. This includes a value-for-money audit being undertaken by the Auditor General of Ontario pursuant to the *Auditor General Act*, an investigation by the *French Language Services Act* Commissioner regarding Laurentian's partial designation under that Act, and responding to various stakeholder demands which have arisen throughout the proceeding including the extraordinary demands placed on Laurentian's already-limited personnel relating to the CCAA proceeding generally. As a result, Laurentian's bandwidth is very stretched.

Due to the limited resources within Laurentian's financial and management team, it will not be in a position to have the preparation of its information return for the 2020-2021 fiscal year completed by October 31st. While we cannot confirm an exact date at this time as to when it will be ready, we are working towards having them completed by December 31, 2021.

The exceptional circumstances of Laurentian's ongoing CCAA proceeding has necessitated this delayed filing. I can assure you that Laurentian is tirelessly working on multiple fronts to ensure Laurentian's successful restructuring and to fulfill our mandate which includes transparency and accountability.

We are available at your convenience to discuss should you have any questions or if you would like to discuss this matter further.

Yours truly,

A handwritten signature in black ink, appearing to read 'Normand Lavallee', with a long horizontal flourish extending to the right.

Normand Lavallee
Associate Vice-President, Financial Services

cc: *Thornton Grout Finnigan LLP* – Counsel to Laurentian
Ernst & Young Inc. – Court-Appointed Monitor

This is Exhibit “K” referred to in the Affidavit of Dr. Robert Haché sworn by Dr. Robert Haché of the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on January 20, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

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

Commissioner for Taking Affidavits (or as may be)

DEREK HARLAND

CITATION: Auditor General of Ontario v. Laurentian University of Sudbury, 2022 ONSC 109
COURT FILE NO.: CV-21-00669471-00CL
DATE: 2022-01-12

SUPERIOR OF JUSTICE - ONTARIO

RE: Auditor General of Ontario, Applicant

AND:

Laurentian University of Sudbury, Respondent

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Richard Dearden, Heather Fisher and Sarah Boucaud*, for the Auditor General of Ontario

Brian Gover, Fredrick R. Schumann, for Laurentian University of Sudbury

D.J. Miller, for Laurentian University of Sudbury (Insolvency Counsel)

Danielle Stampley, for Laurentian University Staff Union

HEARD: December 6, 2021

ENDORSEMENT

Background

[1] The Auditor General of Ontario (the “Auditor”) brings this application for:

(a) a Declaration that every grant recipient is required to give the Auditor the information and records described in s. 10(1) of the *Auditor General Act*, R.S.O. 1990, c. A.35 (as amended) (the “Act”), including information and records that are subject to solicitor-client privilege, litigation privilege, or settlement privilege;

(b) a Declaration that the Auditor has a right to free and unfettered access to the information and records described in s. 10(2) of the Act that are subject to solicitor-client privilege, litigation privilege, or settlement privilege.

[2] The issues that require determination arose when the Ontario Standing Committee on Public Accounts passed a motion requesting that the Auditor conduct a value-for-money audit on the operations of Laurentian University of Sudbury (“LU”) for the period of 2010 to 2020.

[3] The Auditor is an Officer of the Legislative Assembly of Ontario. The Office of the Auditor is an independent, non-partisan Office of the Legislative Assembly of Ontario.

[4] LU is a grant recipient that has received annual grants from the Government of Ontario.

[5] The Auditor has requested that LU provide it with access to its privileged information and records.

[6] LU takes the position that the Auditor does not have the right to access privileged information.

[7] This application seeks a statutory interpretation of s. 10 of the Act. Specifically, the issue is whether s. 10 confers on the Auditor the authority to access and require production of privileged information and documents from a grant recipient.

[8] The relevant provisions of the Act are set out below:

Duty to furnish information

10 (1) Every ministry of the public service, every agency of the Crown, every Crown controlled corporation and every grant recipient shall give the Auditor General the information regarding its powers, duties, activities, organization, financial transactions and methods of business that the Auditor General believes to be necessary to perform his or her duties under this Act. 2004, c. 17, s. 13.

Access to records

10 (2) The Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by a ministry, agency of the Crown, Crown controlled corporation or grant recipient, as the case may be, that the Auditor General believes to be necessary to perform his or her duties under this Act. 2004, c. 17, s. 13.

No waiver of privilege

10(3) A Disclosure to the Auditor General under subsection (1) or (2) does not constitute a waiver of solicitor-client privilege, litigation privilege or settlement privilege.

Power to examine on oath

11 (1) The Auditor General may examine any person on oath on any matter pertinent to an audit or examination under this Act. 2004, c. 17, s. 13.

Application of Public Inquiries Act, 2009

(2) Section 33 of the *Public Inquiries Act, 2009* applies to the examination by the Auditor General. 2009, c. 33. Sched. 6, s. 42.

Prohibition re obstruction

11.2 (1) No person shall obstruct the Auditor General or any member of the Office of the Auditor General in the performance of a special audit under section 9.1 or an examination under section 9.2 and no person shall conceal, or destroy any books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property that the Auditor General considers to be relevant to the subject-matter of the special audit or examination. 2004, c. 17, s. 13.

Offence

(2) Every person who knowingly contravenes subsection (1) and every director or officer of a corporation who knowingly concurs in such a contravention is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or imprisonment for a term of not more than one year, or both. 2004, c. 17, s. 13.

Duty of confidentiality

27.1 (1) The Auditor General, the Deputy Auditor General, the Advertising Commissioner, the Commissioner of the Environment appointed under section 50 of the *Environmental Bill of Rights, 1993*, each employee of the Office of the Auditor General and any person appointed to assist the Auditor General for a limited period of time or in respect of a particular matter shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her employment or duties under this Act. 2004, c. 17, s. 28; 2004, c. 20, s. 13(7); 2018, c. 17, Sched. 3, s. 5.

Same

(2) Subject to subsection (3) the persons required to preserve secrecy under subsection (1) shall not communicate to another person any matter described in subsection (1) except as may be required in connection with the administration of this Act or any proceedings under this Act or under the *Criminal Code (Canada)*. 2004, c. 17, s. 28.

Same

(3) A person required to preserve secrecy under subsection (1) shall not disclose any information or documents disclosed to the Auditor General under section 10 that is subject to solicitor-client privilege, litigation privilege or settlement privilege unless the person has the consent of each holder of the privilege. 2004, c. 17, s. 28.

[9] The Auditor takes the position that ss. 10 and 27.1 of the Act expressly, clearly, and unambiguously confer on the Auditor the authority to access and require production of privileged information and documents from a grant recipient and a broader public sector organization such as LU.

[10] LU takes the position that s. 10 of the Act does not evince the clear, explicit, and unequivocal legislative intention that is required to abrogate privilege. Rather, ss. 10(1) and (2) are general disclosure provisions that do not specifically address privilege and so cannot abrogate it. Subsection 10(3) exists simply to ensure that the disclosure of privileged information to the Auditor (whether inadvertent or intentional) does not have the effect of waiving privilege as against third parties.

[11] For the following reasons, the Application is resolved in favour of LU.

Position of the Auditor

[12] The Auditor takes the position that legislatures can pierce solicitor-client privilege by statute and the Legislature has done so in s. 10 of the Act. The Auditor acknowledges that the language of the provision must be explicit and evince a clear and unambiguous intent to abrogate privilege: *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 (“*Alberta*”), at para. 71. The Auditor also acknowledges that solicitor-client privilege cannot be set aside by inference. Express words are necessary to pierce solicitor-client privilege and open-textured language will not be read to include solicitor-client privileged documents: *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44 (“*Blood Tribe*”), at para. 11.

[13] The Auditor submits that a legislature does not necessarily have to use the term “solicitor-client privilege” in order to abrogate the privilege. An abrogation of privilege can be clear, explicit, and unequivocal where the legislature uses another expression that can be interpreted as referring unambiguously to the privilege: *Lizotte v. Aviva Insurance Co. of Canada*, 2016 SCC 52, at para. 61.

[14] The Auditor submits that looking at the legislative history of the Act and the text of the Act, the Legislature clearly intended that the disclosures made to the Auditor under s. 10 include privileged information and documents.

[15] In 2004, the Legislature enacted Bill 18, which repealed s. 10 of the *Audit Act* and replaced it with ss. 10(1), 10(2), and 10(3) of the Act. The *Audit Act* was renamed the *Auditor General Act*.

[16] The Legislature added two new provisions to the Act that address information and documents subject to solicitor-client privilege, litigation privilege, and settlement privilege, namely, s. 10(3) (no waiver of the privileges) and s. 27.1(3) (secrecy of the privileged disclosures made under s. 10).

[17] The 2004 amendments also added into s. 10(2) that the Auditor is “entitled to have free access” to, *inter alia*, an audit subject’s files and all other papers, things, or property (compared to “the Auditor shall be given access” accorded by the former s. 10 of the *Audit Act*).

[18] From the standpoint of the Auditor, ss. 10 and 27.1 are not general open-textured provisions and the new subsections entitle the Auditor to compel production of and have free access to an audit subject’s files and all other papers, things, or property, including those subject to privilege.

[19] The Auditor submits that s. 10 of the Act must be read in its entire context, in its grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 118, the modern approach to statutory interpretation was summarized as requiring consideration of the “text, context and purpose” of the legislation.

[20] Section 10(1) of the Act requires that a grant recipient “shall give the Auditor General” the information that the Auditor believes is necessary to perform the audit.

[21] This duty and obligation to give information to the Auditor is followed by s. 10(2), which provides that the Auditor is “entitled to have free access” to an audit subject’s files and all other papers, things, or property belonging to or used by a grant recipient.

[22] Further, s. 10(3) safeguards the mandatory disclosures made to the Auditor under ss. 10(1) and (2) by providing that those disclosures do not constitute a waiver of privilege.

[23] The Auditor submits that the “no waiver of privilege” safeguard provided by s. 10(3) is inextricably linked to the disclosures made to the Auditor under s. 10(1) and (2) and submits that the Legislature clearly intended that disclosures made under these subsections include information and documents subject to solicitor-client privilege, litigation privilege, and settlement privilege by directly safeguarding those disclosures through s. 10(3).

[24] Further, the disclosures under ss. 10(1) and (2) are mandatory and an audit subject is not provided a choice to consent to the disclosure of privileged documents. Had the legislature intended to require a grant recipient’s consent for the disclosures, the Legislature would have expressly said so, as it did in s. 27.1(3).

[25] In addition, an interpretation that the disclosures do not include a grant recipient’s privileged information and documents would be absurd because s. 10(3) speaks directly to the privileges attached to those disclosures.

[26] Subsection 10(3) would be rendered meaningless in relation to the disclosures made to the Auditor under ss. 10(1) and (2) if those mandatory disclosures did not include privileged documents because s. 10(3)’s “no waiver of privilege” safeguard only applies to disclosures made to the Auditor under ss. 10(1) and (2).

[27] The Auditor further submits that the Legislature clearly intended that the disclosures made to the Auditor under s. 10 of the Act include privileged information and documents because s. 27.1(3) unambiguously says so.

[28] The Auditor submits that the Legislature imposed the secrecy obligation on the Auditor and its staff over information and documents disclosed under s. 10 that are subject to solicitor-client privilege because the mandatory disclosures under ss. 10(1) and (2) include a grant recipient’s privileged information and documents. An interpretation that disclosures under ss. 10(1) and (2) do not include privileged information and documents is incompatible with the express words in s. 27.1(3) that mandate secrecy over privileged information and documents.

[29] The Auditor goes on to submit that an indicia of legislative intent to pierce solicitor-client privilege is whether the Legislature put in place safeguards to ensure that privileged documents are not disclosed in a manner that compromises the substantive right. The Act contains two safeguards that ensure that privileged documents are not disclosed in a manner that compromises the privileges. Subsection 10(3) ensures the privileged information disclosed to the Auditor under s. 10 does not constitute a waiver of privilege and subsection 27.1(3) ensures that the Auditor and the office of the Auditor maintains the secrecy of privileged documents.

[30] The Auditor referenced the legislative evolution of s. 10 of the Act as well as extrinsic aids such as the Interim Protocol On Access By The Office of the Provincial Auditor of Ontario to Privileged Documents (July 2003); the 2003 Handbook for Interaction with the Office of the Provincial Auditor of Ontario (November 2003); the 2006 Handbook for Interaction with the Auditor General of Ontario; and the Ontario Public Sector Guide for Interaction with the Office of the Auditor General: Value-for-Money Audits (April 2019) (the “OPS Guide”), in an effort to support its position. These submissions are addressed in the section below.

Position of LU

[31] As stated above, LU takes the position that s. 10 of the Act does not evince a clear, explicit, and unequivocal intention to abrogate privilege.

[32] LU takes issue with the Auditor’s arguments that the legislative evolution of the Act demonstrates a clear and unambiguous intention to abrogate privilege. LU submits that the Act’s legislative history instead supports an interpretation that the Legislature did not intend to abrogate privilege.

[33] Prior to Bill 18’s passage, s. 10 of the *Audit Act* did not specifically refer to privileged information. There is no suggestion by the Auditor that it could compel audit subjects to provide privileged information under the former s. 10. Consequently, the Auditor focused on the 2004 amendments, and in particular, the amendments to ss. 10 and 27.1, to establish its position.

[34] In 2001, 2002, and 2003, three attempts were made to amend the *Audit Act*. All three would have changed the language of s. 10 but none referred expressly to privilege or contained a provision resembling s. 10(3). None of these bills were passed by the Legislature.

[35] In December 2003, Bill 18 was introduced. From the standpoint of LU, two points about Bill 18 need to be emphasized:

- (a) MPPs from both the government and Official Opposition understood Bill 18 as being substantially similar to the prior unsuccessful bills introduced; and
- (b) there is no indication in the Hansard Debates on Bill 18 that it was ever intended to abrogate privilege. The only time privilege is mentioned anywhere in the Debates is when opposition MPPs stated that the new legislation will prevent waiver of privilege.

[36] Bill 18 extended the Act’s coverage to include the broader public sector, including universities and hospitals. LU contends that if the legislature intended to abrogate privilege, a

fundamental civil and constitutional right, for broad sectors of the Ontario economy that are not part of government and that had not previously been subject to the Auditor's oversight, one would expect discussion in the legislature about this step. Such discussion did not take place.

[37] The Auditor submits that the debates in the Legislature leading up to the enactment of the 2004 *Audit Act* demonstrate that the Legislature intended to bestow on the Auditor robust audit powers regarding value-for-money audits of universities.

[38] The Auditor references three excerpts from Hansard Debates (Bill 18) on December 9, 2003, April 19, 2004 and May 17, 2004, which are summarized at paragraphs 54-59 of the Auditor's factum.

[39] Each excerpt references an expanded mandate and requirement to provide the Auditor with access to information and records.

[40] However, LU points out that there is no suggestion in the debates that Bill 18 was ever intended to abrogate privilege. The only time privilege is mentioned in the debates is when opposition MPPs stated that the new legislation will prevent waiver of privilege.

[41] The court can consider Hansard Debates to ascertain the background and purpose of the legislation. The Supreme Court of Canada has noted: "However, such references will not be helpful in interpreting the words of a legislative provision when the references are themselves ambiguous: *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, at para. 47.

[42] With respect to the extrinsic aids referenced by the Auditor in para. 30 above, the Interim Protocol (2003) and the Handbook of Interaction (2003) predate Bill 18. The Legislature, in considering Bill 18, had the opportunity to squarely address the issue of abrogating privilege. The Handbook (2006) comments on s. 10(3) and repeats many of the arguments made by the Auditor referenced in the preceding section. LU points out that the OPS Guide (2019) was not signed by anyone at LU, nor is there any evidence that LU or any other university ever agreed to be bound by it. Further, there is no evidence that the OPS Guide was ever provided to LU, before or after it was signed, until the Auditor sent it to LU's President on August 30, 2021, well after the disagreement about privilege had arisen. LU submits that this suggests the Auditor did not consider the OPS Guide to be a particularly relevant aid for interpreting s. 10.

[43] Finally, the OPS Guide does not expressly state that s. 10 requires audit subjects to provide all privileged documentation to the Auditor. In any event, the OPS Guide is just a guideline, not a legally binding document. LU asserts that the OPS Guide should be given no weight in the court's interpretation of s. 10.

[44] LU's primary submission is that the text and scheme of the Act do not demonstrate a clear and unambiguous legislative intent to abrogate privilege.

[45] LU submits that because solicitor-client privilege is so fundamentally important to our legal system, legislation purporting to limit or deny it will be interpreted restrictively and the language of such a provision "must be explicit and evince a clear and unambiguous legislative intent to do so": *Alberta*, at paras. 28 and 71.

[46] LU argues that the same interpretive principles apply to litigation privilege and settlement privilege.

[47] LU relies on the following principles laid down by the Supreme Court in respect of solicitor-client privilege:

In its modern form, solicitor-client privilege is not merely a rule of evidence; it is “a rule of evidence, an important civil and legal right and a principle of fundamental justice in Canadian law”: *Alberta* at para. 41; see also *Canada (Attorney General) v. Chambre des notaires du Québec*, 2016 SCC 20 (“*Chambre des notaires*”), at paras. 5 and 28.

It is indisputable that solicitor-client privilege is fundamental to the proper functioning of our legal system and a cornerstone of access to justice: *Alberta*, at para. 34.

[A]s a substantive rule, solicitor-client privilege must remain as close to absolute as possible and should not be interfered with unless absolutely necessary: *Alberta*, at para. 43.

[48] LU states that the language of s. 10 does not expressly say that an audit subject must disclose privileged information. Sections 10(1) and (2) are general disclosure provisions that do not mention privilege. As a result, they cannot be interpreted to compel the disclosure of privileged information as “privilege cannot be abrogated by inference. Open-textured language governing production of documents will be read *not* to include solicitor-client documents”: *Blood Tribe*, at para. 11.

[49] Where s. 10 does refer to privilege, in s. 10(3), it is not to compel disclosure of privileged information. Rather, it is to ensure that where privileged information is disclosed, whether intentionally or inadvertently, it is not construed as a waiver of privilege.

[50] LU notes that the Auditor places great weight on the words in s. 10(3), “disclosure to the Auditor General under subsections (1) or (2).” The Auditor argues that because these sections create mandatory duties of disclosure, s. 10(3) must mean that ss. 10(1) and (2) require the disclosure of privileged information. LU submits that this is a multi-step argument that requires reading the statute to mean something that it does not expressly say.

[51] LU provides examples that it submits show that where the Legislature truly intends to abrogate privilege, it uses express language:

- (a) *Law Society Act*, R.S.O. 1990, c. L. 8, s. 49.8(1): “A person who is required under section 42, 49.2, 49.3 or 49.15 to provide information or to produce documents shall comply with the requirement even if the information or documents are privileged or confidential”;
- (b) *Health Insurance Act*, R.S.O. 1990 c. H.6, s. 43.1(6): “Subsections (1) and (5) apply even if the information reported is confidential or privileged and despite any Act, regulation or other law prohibiting disclosure of the information”; and

(c) *Archives and Recordkeeping Act, 2006*, S.O. 2006, c. 34, Sched. A, s. 8(4):
“Despite any other Act or privilege, the Archivist shall have access to any public record for the purpose of exercising or performing the Archivist’s powers or duties under this Act...”

[52] LU points out that such language could have been introduced in s. 10 of the Act if the Legislature’s intention had truly been to abrogate privilege.

[53] Importantly, LU points out that where the Nova Scotia Legislature intended to grant its Auditor General the power to compel privileged information, it used more express language:

14 (1) Notwithstanding the *Freedom of Information and Protection of Privacy Act* or any other legislation, and notwithstanding any other rights of privacy, confidentiality or privilege, including solicitor-client privilege, litigation privilege, settlement privilege and public interest immunity, the Auditor General has the right of unrestricted access, at all times, to all record records of any auditable entity, including the right to copy such records and to any things or property belonging to or used by any auditable entity, and every officer, employee and agent of any auditable entity shall forthwith provide the Auditor General any such information or explanations, or information concerning its duties, activities, organization and methods of operation, that the Auditor General believes to be necessary to perform the Auditor General’s duties under this Act: *Auditor General Act*, S.N.S. 2010, c. 33, s. 14(1).

[54] Not surprisingly, LU argues that this is the sort of “clear, explicit, and unambiguous” language that would have been required to abrogate privilege in the Act.

[55] In the absence of the direct and express language that exists in other statutes, the Auditor seeks an inference that ss. 10(1) and (2) require disclosure of privileged information, not on their own, but only when read in light of ss. 10(3) and 27.1(3). LU submits that this argument, based on inference rather than clear and explicit intention, is insufficient to abrogate privilege. As the Court held in *Blood Tribe*, “privilege cannot be abrogated by inference. Open-textured language governing production of documents will be read *not* to include solicitor-client documents”: *Blood Tribe*, at para. 11. LU submits that ss. 10(1) and (2) are open-textured and the court cannot infer from the words “under subsections (1) and (2)” in s. 10(3) that the legislature intended to completely abrogate privilege.

[56] LU argues that it is more plausible that by those words, the Legislature merely intended to refer to disclosure to the Auditor when describing the circumstances that will not result in a waiver of privilege.

[57] LU also points out that it would be truly odd if s. 10 required the disclosure of privileged information. This is because the Act also contains a summons power that does not require such disclosure.

[58] Section 11 of the Act gives the Auditor the power to examine “any person” under oath, and s. 11(2) provides that s. 33 of the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6 “applies to the examination.” In turn, s. 33 of the *Public Inquiries Act, 2009* provides in s. 33(13) that

“nothing is admissible in evidence at an inquiry that would be admissible in a court by reason of any privilege under the law of evidence.” Accordingly, s. 11 of the Act cannot be used to compel privileged information.

[59] LU argues that it would be incongruous if the Legislature chose to give the Auditor the power to compel privileged information under s. 10, but not under s. 11. Indeed, one would expect that a summons would be an escalated means of investigation, to be used where s. 10 did not achieve compliance.

[60] As a result, the only interpretation of s. 10 that is consistent with the scheme of the Act is that it, like s. 11, does not compel the production of privileged information.

[61] In summary, LU takes the position that the more persuasive interpretation of s. 10 is that it was simply intended to complement the existing practice whereby audit subjects could disclose privileged information to the Auditor if they so choose, by clarifying that doing so does not waive privilege.

Analysis

[62] There is no debate with respect to the importance of solicitor-client privilege. It is, as submitted by LU, “a civil right of supreme importance in the Canadian justice system”: *Chambre des notaires*, at para. 5. Further, to remain effective, it “must remain as close to absolute as possible and should not be interfered with unless absolutely necessary”: *Alberta*, at para. 43.

[63] There is also no debate that legislatures can pierce solicitor-client privilege by statute. However, the language of any statutory provision must be explicit and demonstrate a clear and unambiguous intent to do so: *Alberta*, at para. 17. Further, solicitor-client privilege cannot be set aside by inference and express words are necessary in order to pierce it. Open-textured language will not be read to include solicitor-client privilege: *Blood Tribe*, at para. 11. The same principles also apply to litigation privilege and settlement privilege.

[64] The question for determination is whether ss. 10 and 27.1 of the Act demonstrate a clear, explicit, and unambiguous intention to abrogate solicitor-client privilege, litigation privilege, and settlement privilege.

[65] Prior to the 2004 amendments, there was no statutory provision in the *Audit Act* abrogating solicitor-client privilege. The question is whether the amendments had the effect of abrogating solicitor-client privilege, litigation privilege, or settlement privilege.

[66] It is instructive to look at the legislative history behind the passage of Bill 18. As noted by LU, three prior attempts were made to amend the *Audit Act*, including s. 10. None referred expressly to privilege or contained anything resembling s. 10(3).

[67] The debates from December 2003, when Bill 18 was introduced, indicate that Bill 18 was understood as being substantially similar to the previous bills and there was no reference to any intention to abrogate privilege.

[68] The absence of any reference to the intention to abrogate solicitor-client privilege in the debates leads to the conclusion that the references to the Hansard Debates are of no assistance to the Auditor.

[69] Counsel to the Auditor also referenced the extrinsic aids referenced at para. 30 above as evidence of an interpretation that favours the Auditor's position.

[70] In my view, these references do not assist the Auditor. The comments in the 2003 documents are not reflected in Bill 18. The comments in the 2006 document are incorporated into the Auditor's submissions, and the submissions of LU in paras. 42 and 43 above are a complete answer to the Auditor's submissions. Further, the OPS Guide is not a legally binding document. It is not law and provides no evidence of legislative intention.

[71] It follows that this application must be determined on the wording of ss. 10 and 27.1 of the Act.

[72] To state the obvious, the Legislature could have adopted the route followed by the Province of Nova Scotia and enacted legislation that clearly expressed an unambiguous intention to abrogate solicitor-client privilege. It did not do so.

[73] The question remains whether through the efforts of ss. 10(3) and s. 27, the Legislature has in fact addressed the issue in a clear and unambiguous manner.

[74] In my view, s. 10 falls short of evincing an intention to abrogate privilege in a clear and unambiguous manner. Section 10 does not clearly state that an audit subject must disclose privileged information. Further, s. 10(1) and (2) do not mention privilege. At best, they are general disclosure provisions and, in my view, cannot be interpreted as authorizing the Auditor to access or compel the disclosure of privileged information.

[75] There are references in ss. 10(3) and 27.1(3) to privilege. However, these provisions do not compel disclosure of privileged information. Section 10(3) addresses a situation where privileged information is disclosed, whether inadvertently or with the consent of the privilege holder, and confirms that this does not constitute a waiver of privilege. Section 27.1(3) contemplates the same situation and ensures that privilege is maintained by obligating the Auditor and the Auditor's staff to maintain secrecy over the privileged information and documents. Neither s. 10(3) nor s. 27.1(3) are rendered meaningless if ss. 10(1) and (2) do not compel disclosure of privileged information. As argued by LU, s. 10(3) and s. 27.1(3) ensure that where privileged information is disclosed, whether intentionally or inadvertently, it is not construed as a waiver of privilege.

[76] The Auditor submits that the words of s. 10(3), "disclosure to the Auditor General under subsection (1) or (2)" are significant because ss. 10(1) and (2) create mandatory duties of disclosure and s. 10(3) must therefore mean that ss. 10(1) and (2) mandate the disclosure of privileged information. In my view, however, this argument cannot succeed as it requires reading into the statute something that is not expressly stated. This is contrary to the required direction to interpretation set forth in *Blood Tribe*. Open-textured language governing production of documents will be read not to include solicitor-client documents.

[77] To repeat, at best, ss. 10(1) and (2) are general disclosure provisions that cannot be interpreted as authorizing the Auditor to access or compel the disclosure of privileged information.

[78] In arriving at this conclusion, I have taken into account that where the Legislature truly intends to abrogate privilege, it has done so in express language. Examples of this are the *Law Society Act*, the *Health Insurance Act*, and the *Archives and Recordkeeping Act, 2006*. It is trite to state that such language could have been introduced in s. 10 of the Act if the Legislature's intention had been to abrogate privilege.

[79] Another example of where express language has been used to compel privileged information is in the *Auditor General Act (Nova Scotia)*. Had it intended to abrogate privilege, the Legislature would have used this or similar language.

[80] In the absence of direct and express language, the Auditor's argument relies on the inference that ss. 10(1) and (2) require disclosure of solicitor-client information, not on their own, but only when read together with ss. 10(3) and 27.1(3). As noted above, ss. 10(3) and 27.1(3) do not compel this interpretation and privilege cannot be abrogated by inference.

[81] I also accept LU's submission that looking more broadly at the Act, it would be inexplicable if s. 10 required the disclosure of privileged information when the summons power set out in s. 11 – an escalated means of investigation – cannot compel such disclosure. It would indeed be highly unusual if the Auditor were able to compel privileged information from LU under s. 10, but not from its President pursuant to a summons served on the President.

[82] LU also argued that if s. 10 of the Act did abrogate privilege as the Auditor contends, it would be unconstitutional. In view of my conclusions, it is not necessary for me to address this issue. I also note that there is no evidence that the Attorney General was served with a Notice of Constitutional Question as required by s. 109 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[83] In the result, I have concluded that the provisions of the Act, and in particular s. 10, do not demonstrate a clear and unambiguous intent to abrogate solicitor-client privilege.

[84] Accordingly, this Application is resolved as follows:

- (a) a Declaration shall issue that s. 10 of the Act does not require audit subjects to give the Auditor information and records that are subject to solicitor-client privilege, litigation privilege, or settlement privilege; and
- (b) a Declaration shall issue that s. 10(2) of the Act does not give the Auditor a right to free and unfettered access to information and records that are subject to solicitor-client privilege, litigation privilege, or settlement privilege.

[85] Costs are payable to LU in the agreed-upon amount of \$25,000.

[86] I thank counsel for their exceptional submissions.



Chief Justice G.B. Morawetz

Date: January 12, 2022

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF) THURSDAY, THE 27TH
JUSTICE MORAWETZ) DAY OF JANUARY, 2022

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

ORDER

(Stay Extension and Preparing for Strategic Plan)

THIS MOTION, brought by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") proceeded on January 27, 2022 by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Dr. Robert Haché sworn January 20, 2022 (the "**Haché Affidavit**") and the Exhibits thereto and the Tenth Report of Ernst & Young Inc. in its capacity as court-appointed Monitor (the "**Monitor**") and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and those other parties listed on the Counsel Slip, no one else appearing although duly served with the Applicant's Motion Record as appears from the Affidavit of Service of Derek Harland sworn [X], 2022,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that service of the Applicant's Notice of Motion and the Applicant's Motion Record is hereby validated, so that its Motion is properly returnable today.
2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Haché Affidavit.

EXTENSION OF STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period, as ordered and defined in paragraph 20 of the Amended and Restated Initial Order dated February 11, 2021 is hereby extended up to and including May 31, 2022.

DEVELOPMENT OF STRATEGIC PLAN

4. **THIS COURT ORDERS** that the Monitor and the Chief Redevelopment Officer are authorized and directed to develop and implement a process to identify and retain a qualified, independent third-party to assist the Applicant with the development of a new strategic plan.

GENERAL

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Applicant, the Monitor 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
6. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative

in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

ORDER
**(Stay Extension and Preparing for Strategic
Plan)**

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TAB 4

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF) THURSDAY, THE 27TH
)
JUSTICE MORAWETZ) DAY OF JANUARY, 2022

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

DIP APPROVAL ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order authorizing the Applicant to borrow under a credit facility governed pursuant to a DIP Loan Agreement dated as of January 19, 2022 (as it may be amended or modified in accordance with its terms, the "**DIP Agreement**") between the Applicant and Her Majesty the Queen in right of Ontario as represented by the Minister of Colleges and Universities (the "**DIP Lender**") and granting related relief was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Dr. Robert Haché sworn January 20, 2022 and the Exhibits thereto (the "**Haché Affidavit**") and the Tenth Report of Ernst & Young Inc. (the "**Monitor**") dated January ●, 2022, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and those other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of Derek Harland sworn January ●, 2022:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that service of the Applicant's Notice of Motion and the Applicant's Motion Record is hereby validated, so that this Motion is properly returnable today.
2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined herein shall have the meanings ascribed to them in the Amended and Restated Initial Order dated as of February 11, 2021 (as amended prior to the date hereof, the "**Amended and Restated Initial Order**").

DIP FINANCING

3. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Facility**") from the DIP Lender, provided that principal borrowings under the DIP Facility shall not exceed \$35,000,000.00 unless permitted by further Order of this Court.
4. **THIS COURT ORDERS AND DIRECTS** the Applicant, within one (1) Business Day of receiving the Advance (as defined in the DIP Agreement), to utilize the proceeds of the Advance, together with such other funds of the Applicant as may be necessary, to repay in full and discharge the indebtedness and obligations owing by the Applicant under the credit facility (the "**Existing DIP Facility**") made available to the Applicant by Firm Capital Mortgage Fund Inc. (the "**Existing DIP Lender**") pursuant to the DIP Loan Agreement dated as of February 10, 2021 (as amended by the First Amendment to the DIP Loan Agreement dated as of May 19, 2021 and the Second Amendment to the DIP Loan Agreement dated as of August 20, 2021, and as it may be further amended, restated or modified from time to time, the "**Existing DIP Agreement**").
5. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Agreement between the Applicant and the DIP Lender attached as Exhibit "G" to the Haché Affidavit, subject to such minor amendments as may be acceptable to the Applicant and the DIP Lender and approved by the Monitor.
6. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, security instruments, guarantees and other instruments and documents (collectively, and together with the DIP

Agreement, the “**DIP Documents**”), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms of the DIP Agreement, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, costs, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement and the other DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order or the Amended and Restated Initial Order.

7. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, including without limitation, the real property set out in Schedule “B” to this Order (the “**Real Property**”), as security for the Applicant’s indebtedness and obligations under the DIP Documents, which DIP Lender’s Charge shall not secure any obligation that exists before this Order is made.

8. **THIS COURT ORDERS** that the DIP Lender’s Charge shall constitute a charge on the Property and such DIP Lender’s Charge shall rank in priority to all other security interests, trusts (including any actual, deemed, constructive or equitable trust arising pursuant to common law, statute or otherwise), liens, construction liens and certificates of action, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the “**Encumbrances**”) in favour of any Person. The DIP Lender’s Charge, as amongst the other Charges, shall have the priority set out in paragraph 45 of the Amended and Restated Initial Order.

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

10. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order or the Amended and Restated Initial Order:

- (a) the DIP Lender may, but is not required to, take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the DIP Documents;

- (b) upon the occurrence of an event of default under the DIP Documents or the DIP Lender's Charge, the DIP Lender may immediately cease making advances and make demand, accelerate payment and give other notices and, upon seven (7) days' written notice to the Applicant and the Monitor, may exercise, with prior approval of this Court, any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Agreement, the other DIP Documents or the DIP Lender's Charge, including to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

11. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* (Canada), with respect to any advances made under the DIP Documents.

12. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if this Order or any provision hereof shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (a "**Variation**"), whether by subsequent order of this Court or any court of appeal, such Variation shall not in any way impair, limit or lessen the protections, rights or remedies of the DIP Lender, whether pursuant to this Order (as made prior to the Variation), the Amended and Restated Initial Order, the DIP Documents, the DIP Lender's Charge, or otherwise, with respect to any advance made prior to the DIP Lender receiving written notice of the Variation, and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made by the DIP Lender prior to such Variation.

APPLICATION OF THE AMENDED AND RESTATED INITIAL ORDER

13. **THIS COURT ORDERS** that, upon the delivery of a certificate by the Monitor substantially in the form appended as Schedule "A" to this Order confirming that the obligations

of the Applicant to the Existing DIP Lender under the Existing DIP Facility and Existing DIP Agreement have been repaid in full (the “**Monitor’s Certificate**”):

- (a) the Applicant and the Property shall be released and discharged from all indebtedness, liabilities and obligations under the Existing DIP Facility, the Existing DIP Agreement and all other documents and instruments delivered in connection therewith;
- (b) all Encumbrances in favour of the Existing DIP Lender against the Applicant or its Property (including the Real Property) shall be released, deleted and discharged;
- (c) the Applicant is hereby authorized and directed to effect the discharge of the Existing DIP Mortgage (as defined below) and any and all registrations and filings made in favour of the Existing DIP Lender in respect of the Applicant under the *Personal Property Security Act* (Ontario) or under any other registry system;
- (d) paragraphs 39 to 44 (inclusive) of the Amended and Restated Initial Order shall be rendered inoperative and of no further force or effect and shall be deemed to be deleted from the Amended and Restated Initial Order;
- (e) any reference in the Amended and Restated Initial Order to the “DIP Term Sheet” shall mean the DIP Agreement as defined in this Order;
- (f) any reference in the Amended and Restated Initial Order to the “DIP Documents” shall mean the DIP Documents as defined in this Order;
- (g) any reference in the Amended and Restated Initial Order to the “DIP Lender” shall mean the DIP Lender as defined in this Order;
- (h) any reference in the Amended and Restated Initial Order to the “DIP Lender’s Charge” shall mean the DIP Lender’s Charge as defined in this Order; and
- (i) any reference in the Amended and Restated Initial Order to the “Charges” shall include the DIP Lender’s Charge as defined in this Order.

14. **THIS COURT ORDERS** that upon the registration of this Order in the Land Registry Office for the Land Titles Division #53 in the form prescribed in the *Land Titles Act* or the *Land Registration Reform Act*, as applicable, the Land Registrar is hereby directed to: (a) register this Order, which includes, without limitation, the DIP Lender's Charge, on title to the Real Property, and (b) discharge, delete and expunge from title to the Real Property all Encumbrances in favour of the Existing DIP Lender or any nominee or agent on its behalf, including, without limitation, Instrument No. SD430066, being a charge in favour of Firm Capital Mortgage Fund Inc. (the "**Existing DIP Mortgage**").

15. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.

GENERAL

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, land registrar, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Applicant, the Monitor 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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

Schedule A – Form of Monitor’s Certificate

Court File No. CV-21-656040-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

MONITOR’S CERTIFICATE

RECITALS

- A. Pursuant to an Amended and Restated Initial Order of the Ontario Superior Court of Justice (the “**Court**”) dated February 11, 2021 (the “**Amended and Restated Initial Order**”), Ernst & Young Inc. was appointed as monitor (the “**Monitor**”) of Laurentian University of Sudbury (the “**Applicant**”) in proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.
- B. Pursuant to a DIP Approval Order of the Court dated January ●, 2022 (the “**DIP Approval Order**”), the Court authorized the Applicant to borrow under a credit facility (the “**DIP Facility**”) made available by Her Majesty the Queen in right of Ontario as represented by the Minister of Colleges and Universities (the “**DIP Lender**”) pursuant to a DIP Loan Agreement dated as of January 19, 2022 between the Applicant and the DIP Lender and directed the Applicant to utilize the funds advanced by the DIP Lender under the DIP Facility to repay in full and discharge the obligations owing by the Applicant under the Existing DIP Facility.

- C. The DIP Approval Order provides for certain matters set forth in paragraph 13 of the DIP Approval Order to occur or be deemed to occur upon the delivery of a certificate by the Monitor confirming that the obligations of the Applicant to the Existing DIP Lender under the Existing DIP Facility and Existing DIP Agreement have been repaid in full.
- D. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the DIP Approval Order.

THE MONITOR CERTIFIES the following:

- 1. The Existing DIP Lender has delivered written notice to the Monitor that the obligations of the Applicant to the Existing DIP Lender under the Existing DIP Facility and Existing DIP Agreement have been repaid in full.
- 2. The matters set forth in paragraph 13 of the DIP Approval Order which are to occur or be deemed to occur upon delivery of the Monitor's Certificate have become operative as of the date and time set forth immediately below.

This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE], 2022.

**ERNST & YOUNG INC., solely in its capacity
as Monitor of the Applicant, and not in its
personal or corporate capacity**

Per: _____
Name:
Title:

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

DIP APPROVAL ORDER

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Lawyers for the Applicant

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **LAURENTIAN UNIVERSITY OF SUDBURY**

Court File No.: CV-21-656040-00CL

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

Proceedings commenced at Toronto

**MOTION RECORD
(Returnable January 27, 2022)**

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