

7132221 CANADA INC.

FIRST REPORT OF THE COURT APPOINTED RECEIVER

September 7, 2023

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

7132221 CANADA INC.

Respondent

**FIRST REPORT OF BDO CANADA LIMITED
IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF
7132221 CANADA INC.**

SEPTEMBER 7, 2023

TABLE OF CONTENTS

I. INTRODUCTION.....	4
II. PURPOSE OF REPORT.....	4
III. QUALIFICATIONS.....	5
IV. BACKGROUND AND EVENTS LEADING TO THE APPOINTMENT OF THE RECEIVER.....	5
V. ACTIVITIES OF THE RECEIVER.....	8
VI. ASSETS.....	9
VII. SALE PROCESS.....	11
VIII. THE PROPOSED TRANSACTION.....	14
IX. CREDITORS.....	16
X. RECOMMENDATIONS.....	18

APPENDICES

APPENDIX "A" – Receivership Order dated June 11, 2023 and made on July 11, 2023

APPENDIX "B" – Expedited Sale Process Letter

APPENDIX "C" – "Redacted" Purchase Agreement dated August 29, 2023

CONFIDENTIAL APPENDIX "A" – Letter of Intent from LOI Bidder A dated August 3, 2023

CONFIDENTIAL APPENDIX "B" – Letter of Intent from LOI Bidder B dated August 11, 2023

CONFIDENTIAL APPENDIX "C" – "Unredacted" Purchase Agreement dated August 29, 2023

I. INTRODUCTION

1. Pursuant to an order (the “**Receivership Order**”) of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice, Commercial List (the “**Court**”) dated June 11, 2023 and made on July 11, 2023 (the “**Date of Appointment**”), BDO Canada Limited (“**BDO**”) was appointed as receiver and manager (the “**Receiver**”) of all of the assets, properties and undertakings (collectively, the “**Property**”) of 7132221 Canada Inc. (o/a Hawktree Solutions) (“**Hawktree**” or the “**Company**”) pursuant to section 243 (1) of the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended* (the “**BIA**”) and section 101 of the *Courts of Justice Act R.S.O 1990, c. C.43 as amended* (the “**CJA**”). A copy of the Receivership Order is attached hereto as **Appendix “A”**.

II. PURPOSE OF REPORT

2. The purpose of this first report of the Receiver (the “**First Report**”) is to:
- (a) Provide this Court with certain information pertaining to the receivership, including:
 - (i) Hawktree’s background, operations, and certain facts leading up to the appointment of the Receiver;
 - (ii) Taking possession and control of Hawktree’s assets;
 - (iii) Other activities of the Receiver since the Date of Appointment;
 - (b) Provide this Court with information on a proposed transaction (the “**Proposed Transaction**”) between the Receiver Acme United Limited (the “**Purchaser**”) for the sale of substantially all of Hawktree’s inventory (excluding PPE inventory), contracts and intellectual property, and the steps taken to get to this transaction, including:
 - (i) Information regarding the marketing and sales process undertaken by the Company prior to the appointment of the Receiver to effect an acquisition or investment in the Company or a sale of the Company or its assets;
 - (ii) The marketing and sales process undertaken by the Receiver to effect a sale of the Company’s assets;
 - (iii) the agreement of purchase and sale entered into between the Receiver, as vendor, and the Purchaser dated August 29, 2023 (the “**Purchase Agreement**”), subject to Court approval; and
 - (iv) The Receiver’s recommendations with respect to the Proposed Transaction.
 - (c) Recommend that this Court make an order(s):
 - (i) Approving this First Report, including the actions and activities of the Receiver set out herein;
 - (ii) Approving the Purchase Agreement and the Proposed Transaction, and authorizing and directing the Receiver to complete the Proposed Transaction and execute such documents and take such additional steps as are necessary to do so;

- (iii) Upon completion of the Proposed Transaction (as evidenced by the Receiver filing with the Court a certificate certifying the same), vesting the Purchased Assets (as defined in the Purchase Agreement), free and clear of all liens, charges, security interests and other encumbrances (other than such permitted encumbrances as may be described in the order) in the Purchaser; and
- (iv) Sealing the Confidential Appendices (as defined below).

III. QUALIFICATIONS

- 3. In preparing this First Report, the Receiver has relied upon unaudited financial information, Hawktree's books and records, and other financial information provided to it by Hawktree's lender(s) (collectively, the "**Information**"). The Receiver has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided, and in consideration of the nature of the evidence provided to this Court, in relation to the relief sought therein. The Receiver has not, however, audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the Canadian Institute of Chartered Accountants Handbook and, as such, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information. An examination of the Company's financial forecasts in accordance with the Chartered Professional Accountants of Canada Handbook has not been performed. Future-oriented financial information reported on or relied upon in this Report is based on management's assumptions regarding future events; actual results achieved may vary from forecast and such variations may be material.
- 4. Unless otherwise noted, all monetary amounts contained in this Report are expressed in Canadian dollars ("**CAD**").

IV. BACKGROUND AND EVENTS LEADING TO THE APPOINTMENT OF THE RECEIVER

- 5. While this First Report summarizes certain of the information set out in the affidavit of Leo Chun sworn May 5, 2023 (the "**Chun Affidavit**") filed in support of the Receivership Order, for a more detailed explanation of the Company's background and events leading to the appointment of the Receiver, readers are directed to the Chun Affidavit. A copy of the Chun Affidavit is posted on the Receiver's website at www.extranets.bdo.ca/HawktreeSolutions/ (the "**Receiver's Website**").
- 6. This First Report and all other court materials and orders issued and filed in these receivership proceedings are available on the Receiver's Website and will remain available for a period of six (6) months following the Receiver's discharge.

Company Overview & Corporate Structure

- 7. Hawktree is an importer and distributor of wholesale and retail health and safety products, including first aid kits, disaster preparedness kits, training and apparel, automated external defibrillators, and personal protective equipment ("**PPE**") such as masks, respirators, eye protection, gowns, and gloves, and testing devices (including COVID-19 rapid tests). It is the

near-exclusive distributor of these products under the Canadian Red Cross (“**CRC**”) brand. The Company’s sale and distribution contract with CRC (the “**CRC Contract**”) expires in 2025. Under the CRC Contract, the Company operated an e-commerce website which sells CRC products (the “**CRC eShop**”).

8. Hawktree operated out of a rented office located at 220 Kennevale Drive, Ottawa, Ontario (the “**Premises**”), but carried on business throughout Ontario, Canada, and internationally. The Company’s inventory is primarily stored in third-party logistics warehouses (each, a “**3PL**”) in Canada and abroad.
9. The shareholders of Hawktree are Robbie Fraser (26.5%), his spouse Sarah Fraser (26.5%), 2569386 Ontario Inc. (24.5%), Gauke International Trading Co. Ltd. (12.5%) and 9147 4999 Quebec Inc. (10%). Mr. Fraser is the President of Hawktree and Mrs. Fraser was heavily involved in day-to-day operations and related management (collectively, “**Management**”).

Events Leading to Appointment of a Receiver & Causes of Insolvency

10. Bank of Montreal (“**BMO**”), the Company’s senior secured creditor, issued a breach notice dated July 21, 2021 as a result of the Company’s failure to pay its 2020 income taxes (the “**Tax Arrears**”) which amounted to approximately \$2,316,000.
11. BMO also issued a breach notice dated August 20, 2021 as a result of the Company’s financial covenant breaches as at June 30, 2021.
12. In September 2021, BMO conducted a review of Hawktree’s financial statements, loans, and accounts, and noted that, amongst other concerns, the Tax Arrears were still unpaid, a decline in deposit volume to the Company’s operating account over the previous six (6) months, a significant drop in accounts receivables, and negative gross margins in the first and second quarters of 2021.
13. The Receiver understands that the Company’s financial concerns were attributed to, among other things:
 - (a) The Company had a significant increase in revenue in 2020 (approximately \$64.5 million) as a result of the COVID-19 pandemic and the increased demand for PPE. In 2021, revenue returned to historical levels (approximately \$5.4 million) due to a decrease in demand for PPE as well as an oversaturation of PPE product in the market. The Company incurred PPE inventory write-downs and bad debts expense of approximately \$7.2 million and \$2.7 million, respectively. Accordingly, the Company incurred a net loss of approximately \$10.1 million; and
 - (b) The Company bought out a shareholder in 2021 based on a valuation of the Company’s 2020 financial position which was at a peak due to an unprecedented increase in revenue in that year, over-leveraging the Company’s balance sheet.
14. The Bank required that the Tax Arrears be paid by October 20, 2021; however, this did not occur, and the Company’s accounts were transferred to BMO’s Special Account Management Unit (“**SAMU**”) in October 2021.

15. As the Tax Arrears were not paid in full, and the Company was unable to satisfy BMO that there would be an improvement in sales, revenue, or cashflow, or that the covenant breaches would be cured, BMO decided to exit its banking relationship with Hawktree. By a standstill agreement dated February 10, 2022 (the “**Standstill Agreement**”), BMO agreed to forbear from making demand on the Hawktree indebtedness and from taking steps to enforce its security until May 31, 2022, provided, among other terms and conditions, Hawktree repaid all of its indebtedness to BMO by May 31, 2022 and presented a firm a binding financing commitment for repayment on or before April 29, 2022.
16. Hawktree was unable to raise financing to pay out its indebtedness to BMO by May 31, 2022, and BMO agreed to extend the Standstill Agreement, now requiring payment of the indebtedness by November 30, 2022, and delivery of a firm and binding financing commitment to pay out same by October 31, 2022.
17. Hawktree was unable to provide a financing commitment by October 31, 2022 and was unable to raise financing to pay out its indebtedness to BMO by November 30, 2022.
18. On December 1, 2022, Hawktree retained BDO to assist with, among other matters, assessing the Company’s current financial position and its strategic options to secure refinancing, a sale, or investment in the business. BDO’s recalculation of Hawktree’s borrowing limit on the operating loan as of October 31, 2022, resulted in a margin deficit on the operating loan of approximately \$1,480,000.
19. On January 9, 2023, BMO demanded payment of its loans and gave notice under s. 244 of the *BIA* of its intention to enforce its security. In order to allow the Company time to conduct a sale and investment solicitation process (“**SISP**”), the parties entered into a forbearance agreement dated February 2, 2023 (the “**Forbearance Agreement**”) whereby BMO agreed to forbear until April 7, 2023, from taking steps to recover payment of the Company’s indebtedness to BMO or from enforcing its security in consideration of, among other matters:
 - (a) Hawktree making reductions in the operating loan of \$50,000 on each of March 3, March 30 and April 7, 2023;
 - (b) The guarantors providing cash collateral and/or mortgage security; and
 - (c) Hawktree agreeing that in executing the Forbearance Agreement, on default thereunder it consented to the appointment of a receiver and manager of the Property of Hawktree.
20. Hawktree was unable to make the operating loan reductions of \$50,000 on March 3, March 30, or April 7, 2023.
21. The deadline for the delivery of expressions of interest (“**EOIs**”) under the SISP was on March 15, 2023, and only one (1) EOI was received and was in an amount insufficient to repay BMO in full. The EOI was also subject to additional due diligence which could further reduce the bid amount. The prospective purchaser who submitted the EOI ultimately did not submit a binding letter of intent.

22. After the SISP was conducted, the Company, with the assistance of BDO, reached out to other potential interested parties. Another party submitted an EOI; however, the EOI did not proceed or result in the submission of a letter of intent (“**LOI**”). No further purchasers or investors submitted EOI's in the process.
23. As the forbearance period under the Forbearance Agreement expired, and the Company's attempt to refinance, sell, or attract investors had been unsuccessful, BMO made an application to the Court to have BDO appointed as Receiver over the Company's Property.

V. ACTIVITIES OF THE RECEIVER

Receiver's Activities since the Date of Appointment

24. Since the Date of Appointment, the Receiver has performed the following activities:
- (a) On July 11, 2023, the Receiver ceased operations of the Company;
 - (b) The Receiver secured and placed the CRC eShop on temporary hold;
 - (c) The Receiver terminated the employment of the Company's known six (6) employees (the “**Former Employees**”) and the contract of an external consultant;
 - (d) On July 12, 2023, the Receiver attended and took possession of the Premises, which contained the Company's physical books and records, as well as some sample inventory;
 - (e) The Receiver changed the locks at the Premises and took control of the Company's available books and records;
 - (f) The Company maintained bank accounts with both BMO and the Bank of Nova Scotia (“**BNS**”). The Receiver notified both BMO and BNS of the receivership appointment, requested that the Company's bank accounts be switched to deposit only, and opened a new bank account in the name of the Receiver;
 - (g) The Receiver reviewed the Company's books and records, and took electronic back-ups of the Company's server, e-mails, electronic files, and reports from its accounting system;
 - (h) On July 20, 2023, the Receiver mailed a copy of the notice and statement of the Receiver pursuant to sections 245(1) and 246(1) of the BIA to the Office of the Superintendent of Bankruptcy (the “**OSB**”) and the Company's known creditors;
 - (i) The Receiver disclaimed the lease of the Premises as of July 31, 2023;
 - (j) The Receiver contacted Canada Revenue Agency (“**CRA**”) to set up a new Harmonized Sales Tax (“**HST**”) account in the name of the Receiver, as well as arrange for a trust examination of the Company's HST and source deduction accounts;

- (k) The Receiver engaged two (2) Former Employees, on a term and task basis, as independent contractors to assist with the Receiver's Sale Process (as defined below) and the compilation of the Company's books and records;
- (l) The Receiver administered the claims of certain Former Employees pursuant to the *Wage Earner Protection Program Act* ("**WEPPA**");
- (m) The Receiver coordinated the completion of records of employment for the Former Employees;
- (n) The Receiver responded to calls and enquiries from the Company's creditors, including Former Employees, customers, suppliers and other stakeholders;
- (o) The Receiver confirmed the Company's Medical Distribution Establishment Licence ("**MDEL**") with Health Canada, required to distribute and sell certain health products in Canada, was in good standing;
- (p) The Receiver planned and implemented the Sale Process (as defined below);
- (q) The Receiver communicated with BMO and its counsel and BDC Capital Inc. ("**BDC**") and its counsel in connection with various aspects of the receivership, including estimated realizations anticipated from the sale of assets under their respective security positions with respect to the Sale Process (as defined below);
- (r) The Receiver entered into separate profit-sharing agreements with both Wills Transfer Ltd. ("**Wills**") and Gilmore Global Logistics Services Inc. ("**Gilmore**") with respect to inventory held at their 3PL locations subject to storage liens in their favour;
- (s) The Receiver investigated inventory located at the 3PL in the United Kingdom;
- (t) The Receiver provided regular updates with respect to its realization strategy and the status of the Sale Process to the CRC, a key stakeholder of the Company;
- (u) The Receiver investigated the merit in continuing multiple legal claims the Company initiated including a proceeding to enforce a movable hypothec security on all the assets of G-Force CNC Enterprises Inc. ("**G-Force**"), and a proceeding to collect a deposit receivable from World Prestige Treasure SDN BHD ("**World Prestige**"); and
- (v) The Receiver prepared this First Report.

VI. ASSETS IN RECEIVER'S POSSESSION

25. The Company's Property primarily consists of accounts receivables, loan and deposits receivables, inventory, contracts, and intellectual property.

Accounts Receivables

26. The book value of the Company's trade accounts receivables ("**AR**"), as per the Company's books and records is \$636,932. The majority of the AR is aged and is uncollectible.

27. The Company's AR is not included in the Purchased Assets as defined in the Purchase Agreement. Accordingly, the Receiver is making efforts to collect the AR.

Loan and Deposits Receivable

28. The Company has two (2) legal claims against G-Force relating to approximately \$1.308 million that is owed to the Company. Of this amount, \$900,000 is secured by a movable hypothec on all of the assets of G-Force (the "**Hypothec Receivable**"), and \$408,000 relates to a deposit that is owed to the Company in relation to the non-performance of a contract (the "**G-Force Deposit Receivable**"). The Receiver is investigating the merit in continuing the claims the Company initiated in order to enforce the movable hypothec security on the assets of G-Force and collect the amounts owing.

29. The Company also initiated a legal claim in the amount of approximately \$1.2 million USD against World Prestige, a company based on Thailand and Malaysia, relating to the supply of PPE nitrile gloves (the "**World Prestige Deposit Receivable**"). The Receiver is also investigating the merit in continuing the claim the Company initiated in order to collect on the World Prestige Deposit Receivable.

Inventory

30. The book value (in dollars) of the Company's inventory, as per the Company's books and records, is summarized by type below.

Inventory Type	Book Value
Personal protective equipment (PPE)	843,283
First aid	683,652
Emergency preparedness	339,457
Training and apparel	195,177
Hawktree samples	112,745
Automated external defibrillator (AED)	62,951
Total	2,237,265

31. First aid, emergency preparedness, training and apparel, and automated external defibrillators are all included in the Purchase Agreement.

32. Should the Proposed Transaction be approved by the Court, the Receiver will make efforts to sell the PPE inventory. The Receiver does not anticipate that Hawktree's sample inventory will have any realizable value.

33. The Receiver understands that there is an additional container of PPE product shipped from China that is currently in the possession of Canadian National Railway and which is in dispute with the Company's customs broker. The Receiver intends to also realize on this inventory if beneficial to the estate.

34. The Receiver understood that inventory with a book value of approximately \$294,000 was located at a 3PL in the United Kingdom, VIP Freight Ltd. ("**VIP Freight**"). On July 13, 2023, VIP Freight informed the Receiver that they were not in

possession of any of Hawktree's inventory as the inventory was disposed of due to arrears owing to VIP Freight. The Receiver has made multiple requests for VIP Freight to provide a full accounting of the inventory disposal and has yet to receive a response. The Receiver will continue to follow up on the matter.

Contracts

35. As previously noted, one of the assets of the Company is its CRC Contract. The Company also has international contracts with Red Cross societies in Mexico, Columbia, and Argentina. The CRC Contract is subject to the Purchase Agreement, but the international contracts are not. Business conducted by Hawktree with international Red Cross societies was minimal as at the Date of Appointment.

Intellectual Property

36. The Company's intellectual property primarily consists of its website (the CRC eShop), an enterprise resource planning system, marketing, and customer lists (collectively, the "IP"). The Company's IP is also subject to the Purchase Agreement.

VII. SALE PROCESS

SISP Overview

37. In February 2023 the Company conducted a SISP that was run by BDO as financial advisor to Hawktree. The key milestones under the SISP were as follows.

<u>Milestone</u>	<u>Deadline</u>
Deadline to deliver Teaser Letter and NDA to Known Potential Bidders	Monday, February 6, 2023
Due Diligence Deadline Expression of Interest Date	Wednesday, March 15, 2023 (5:00 PM Eastern Time)
Bid Selection Date	Friday, March 17, 2023
Binding Letter of Intent Date (Bid Deadline)	Friday, March 31, 2023
Definitive Transaction Agreement	Friday, April 7, 2023
Transaction Execution Date (if Court Order is not necessary)	Friday, April 14, 2023
Hearing of the Sale Approval Motion	No later than Friday, April 28, 2023, subject to the availability of the Court

38. BDO, with the assistance of Management, identified potential buyers, consisting of both strategic targets and financial targets (the "Prospective SISP Purchasers"). In February 2023, seventy-five (75) Prospective SISP Purchasers,

consisting of 51 strategic targets and 24 financial targets, were contacted and provided with a teaser document describing the opportunity (the “**Teaser Letter**”) and were solicited to sign a non-disclosure agreement (“**NDA**”).

39. A total of 13 executed NDA's were received, 10 from strategic targets and 3 from financial targets (the “**Potential SISP Bidders**”). Each Potential SISP Bidder was:

- (a) Sent a confidential information memorandum (“**CIM**”) that provided an overview of the acquisition opportunity; and
- (b) Provided access to a virtual data room (“**VDR**”) containing detailed financial and contractual information relevant to the acquisition opportunity.

40. The deadline for the delivery of EOI's under the SISP was on March 15, 2023, and only one (1) EOI was received which valuation was insufficient to repay BMO in full. The EOI was also subject to additional due diligence which could further reduce the bid amount. In addition, requests for a statement of qualifications (“**SOQ**”) to validate the buyer's ability to complete the transaction, did not receive any response. Accordingly, the EOI ultimately did not proceed or result in the submission of a binding LOI.

41. After the SISP was conducted, the Company, with the assistance of BDO, reached out to other potential interested parties. Another party submitted an EOI; however, the EOI did not proceed or result in the submission of a LOI. No further purchasers or investors submitted EOI's in the process and as such the SISP process was terminated.

42. Although the SISP undertaken prior to the receivership was unsuccessful, the work product from that SISP was beneficial to the receivership as it allowed the Receiver to undertake an expedited marketing and SISP in the receivership.

Expedited Sale Process Overview

43. Given the extensiveness of the pre-filing SISP, the Receiver initiated an expedited sale process on July 13, 2023 (the “**Sale Process**”). The key milestones that were initially set under the Sale Process were as follows.

<u>Milestone</u>	<u>Deadline</u>
Initiation of Sale Process	Thursday, July 13, 2023
Expression of Interest Date (EOI Deadline)	Friday, July 28, 2023 (5:00 PM Eastern Time)
Binding Letter of Intent Date (LOI Deadline)	Friday, August 4, 2023 (5:00 PM Eastern Time)
Bid Selection Date	Monday, August 7, 2023
Definitive Transaction Agreement	Friday, August 11, 2023
Hearing of the Sale Approval Motion / Transaction Execution Date	Subject to availability of the Court

44. Fifty-nine (59) targets (8 new parties not included in the SISP) were identified as potential purchasers (the “**Potential Purchasers**”) and were contacted with additional information related to the acquisition opportunity, including a teaser and CIM, and were solicited to sign an NDA.
45. A copy of a letter issued by the Receiver to the Prospective Purchasers outlining the Sale Process (the “**Sale Process Letter**”) is attached as **Appendix “B”**.
46. The results of the Sale Process were as follows:
- (a) Six (6) of the Potential Purchasers expressed initial interest in the acquisition opportunity and obtained access to the VDR containing financial and contractual information for performance of due diligence procedures (the “**Potential Bidder(s)**”);
 - (b) Three (3) Potential Bidders submitted an EOI by the EOI deadline of July 28, 2023;
 - (c) Two (2) Potential Bidders submitted a binding LOI by the deadline of August 4, 2023. The Receiver officially extended the LOI deadline to August 11, 2023, to allow the third Potential Bidder who submitted an EOI (the “**Third Potential Bidder**”) additional time to speak with the CRC regarding the CRC Contract in order to submit an LOI. The Third Potential Bidder subsequently advised it would no longer be a participant of the Sale Process after its discussion with CRC; and
 - (d) The Receiver received revised LOI’s from both parties who submitted LOI’s (collectively, the “**LOI Bidder(s)**”) prior to the extended LOI deadline. A copy of the final revised LOI received from LOI Bidder A is attached as **Confidential Appendix “A”** and a copy of the final revised LOI received from LOI Bidder B is attached as **Confidential Appendix “B”** (collectively, the “**Confidential Appendices**”).
47. On August 18, 2023, the Receiver selected the binding LOI submitted by LOI Bidder B (Acme United Limited). After significant consideration and in consultation with BMO and BDC, the Receiver selected the LOI submitted by LOI Bidder B over the LOI submitted by LOI Bidder A primarily due to the following:
- (a) LOI Bidder A modified its LOI to include a condition that its bid was subject to CRC confirming in writing it was willing to assign the CRC Contract to LOI Bidder A; and
 - (b) CRC advised the Receiver that it would not be willing to assign the CRC Contract to LOI Bidder A.
48. The Receiver understands that the President of a Canadian division of the Purchaser is the sole owner of 9147 4999 Quebec Inc., 10% owner of Hawktree. This individual was directly involved in the submission of Bidder B’s LOI and the negotiation of the Purchase Agreement but does not have an ownership stake in the Purchaser.
49. On August 29, 2023, the Receiver entered into the Purchase Agreement with the Purchaser.

VIII. THE PROPOSED TRANSACTION

Proposed Transaction

50. The Purchase Agreement contains information that could prejudice the Company in a future sale process in the event that the Proposed Transaction does not close. As such a redacted copy of the Purchase Agreement is attached hereto as **Appendix “C”**. In filing this First Report with the Court, a copy of the unredacted Purchase Agreement will be included in the Confidential Appendices as **Confidential Appendix “C”**, and a sealing order will be sought in respect of same.
51. Capitalized terms in this section not otherwise defined herein have the meaning ascribed to them in the Purchase Agreement.
52. The Proposed Transaction is subject to prior Court approval.
53. Pursuant to the Purchase Agreement, the Purchaser has agreed to purchase, for a cash purchase price (the **“Purchase Price”**), all of the right, title, and interest in the following assets of the Company: i) all non-PPE inventory; ii) contracts including the CRC Contract (the **“Assumed Contracts”**), and iii) all websites, marketing lists, and other intellectual property of the Company (collectively, the **“Purchased Assets”**). The Purchase Price is subject to an inventory price adjustment for unsellable and stale inventory.
54. Pursuant to the Purchase Agreement, the Receiver shall assign to the Purchaser all of the Company’s rights, benefits, and interests in and to the Assumed Contracts and the Purchaser shall assume the obligations and liabilities of the Company under the Assumed Contracts from and after the Closing Date.
55. The Purchase Price will be fully paid on Closing. On Closing, the Purchased Assets are to be conveyed to the Purchaser pursuant to the Approval and Vesting Order being sought on an “as is, where is” basis, and subject to usual terms and conditions contained in such a transaction. The Purchase Price is to be satisfied as follows:
- (a) The Purchaser paid a non-refundable deposit (the **“Non-refundable Deposit”**) on or around August 22, 2023, which is being held in trust by the Receiver; and
 - (b) At Closing, the Purchaser shall pay the balance of the Purchase Price, being the amount of the Purchase Price less the Non-refundable Deposit.
56. Pursuant to the Purchase Agreement, the Closing date is to be the first business day following the expiry of the appeal period from the granting of the Approval and Vesting Order, or such other date agreed to between the Receiver and Purchaser.
57. The Purchase Agreement provides for certain conditions precedent to closing in favour of the Purchaser, including:
- (a) Court approval of the Proposed Transaction
 - (b) The vesting of the Purchased Assets in the Purchaser, free and clear of all encumbrances; and

(c) CRC consenting to the assignment to the Purchaser of the CRC Contract.

58. The Purchaser and CRC executed an assignment of the CRC Contract on August 28, 2023 to be effective upon the completion of the Proposed Transaction.

Basis for the Receiver's Recommendation

59. In light of the above, the Receiver's view is that the Purchase Agreement and Proposed Transaction contemplated therein represent the highest and best possible outcome for the Company's stakeholders. The Receiver respectfully recommends the Court approve the Proposed Transaction and authorize and direct the Receiver to complete all matters needed to close the Proposed Transaction for the following reasons:

- (a) **Efforts to get the best price:** The market was widely canvassed as a going concern sale during the SISP over a period of approximately six (6) weeks, resulting in only one (1) EOI submission and no subsequent LOI submissions. The market was canvassed again during the expedited Sale Process undertaken by the Receiver for a period of approximately three (3) weeks. The direct-contact marketing method used was sufficient to attract the interest of reasonable buyers and investors;
- (b) **Interest of the parties:** BMO and BDC were supportive of the process and were consulted regarding offers submitted as part of the SISP and Sale Process, notwithstanding that both will suffer a significant shortfall in the Proposed Transaction;
- (c) **Efficacy and integrity of the process:** The SISP and expedited Sale Process were both commercially reasonable and conducted with integrity. All interested parties were given an opportunity to participate in both processes. No objections or concerns regarding the SISP or the Sale Process have been brought to the Receiver's attention. Furthermore, the Purchase Agreement was negotiated in good faith, and is the best and highest price under the circumstances;
- (d) **There was no unfairness:** In the view of the Receiver, there has been no unfairness in the conduct of the SISP or expedited Sale Process. No party has been prejudiced or excluded;
- (e) **Other considerations:**
 - (i) The Receiver understands that the minimal interest in the Company as a going concern and for the Company's assets can be attributed to the current oversaturation of the PPE market as well as the fact that a significant portion of the Company's value is related to the CRC Contract which expires in 2025;
 - (ii) LOI Bidder B, being the only party with an LOI submission in which CRC was willing to assign the CRC Contract, confirms the Receiver's conclusion that the Proposed Transaction is the only viable offer; and
 - (iii) It is noted that the CRC eShop has not been operating during the receivership proceedings (since July 2023). Accordingly, time is of the essence in respect of a value-maximizing sale transaction as a prolonged

closure of the CRC eShop will further diminish the value of the Company's assets and cause BMO and BDC to suffer even greater shortfalls on their indebtedness.

IX. CREDITORS

Secured Claims

60. The Receiver understands the Company's secured debt facilities consist of loans made available by BMO and BDC. As at the Date of Appointment, the Company reported indebtedness owing to BMO and BDC of approximately \$3.5 million and \$2 million, respectively, for a total of approximately \$5.5 million.
61. The indebtedness of the Company to BMO is secured by a general security agreement (the "**GSA**") granted in favour of BMO dated August 14, 2019.
62. Pursuant to a subordination agreement executed by BMO and BDC in March 2021 (the "**Subordination Agreement**"), BDC has priority over intellectual property, defined as "all intellectual property owned or licensed, including all patents, trade-marks, domain and website names, business names, copyright, industrial designs, trade secrets, know-how and all other intellectual property of any kind and nature whatsoever".

Priority Claims

63. The priority claims in respect of the Property are comprised of:
- (a) The Receiver's Charge¹;
 - (b) The Receiver's Borrowing Charge²;
 - (c) Potential deemed trust claims;
 - (d) Potential statutory claims pursuant to the BIA (the "**BIA Claims**"); and
 - (e) Storage lien claims pursuant to the Ontario Repair and Storage Lien Act ("**RSLA**").

Receiver's Charge

64. Paragraph 17 of the Receivership Order provided a first priority charge on the Property for the Receiver's fees and costs and those of the Receiver's Counsel in priority to all other security interest, trusts, liens, charges and encumbrances.

¹ As defined under the Receivership Order

² As defined under the Receivership Order

Receiver's Borrowing Charge

65. Pursuant to paragraph 20 of the Receivership Order, the Receiver is authorized to borrow up to \$1,000,000, as it considered necessary or desirable. As of the date of this Report, the Receiver has issued two (2) Receiver's certificates for total borrowings of \$150,000.

Deemed Trust Claims

66. Amounts owing to CRA for HST and source deductions have yet to be confirmed. The Receiver understands that the Company's books and records had not been updated for several weeks prior to the Date of Appointment, and the Company's Management advised that source deduction remittances to CRA had not been made since April 2023.

67. The Receiver has requested that CRA perform a trust examination to confirm the amounts outstanding in HST and source deductions.

BIA Claims

68. Unpaid wages and vacation pay: According to the Company's books and records, approximately \$21,990 and \$7,794 in unpaid wages and vacation pay, respectively, are owed to the Company's Former Employees.

69. Pursuant to section 81.4 of the BIA, claims for unpaid wages to a maximum of \$2,000 per employee benefit from priority status as against the Company's current assets, and expense claims of travelling salespeople to a maximum of \$1,000 per employee benefit from the same priority status.

70. Based on the above, the Receiver estimates that the priority claim pursuant to section 81.4 of the BIA is approximately \$12,000.

71. The Receiver understands that the Company did not provide a registered pension plan for its employees. Accordingly, the Receiver is not aware of any amounts owing to former employees pursuant to section 81.6 of the BIA.

Storage Lien Claims

72. The majority of the Company's inventory is held at two (2) 3PL's in Ottawa, which are owned by Wills and Gilmore. According to the Company's books and records, the Company owes Wills and Gilmore \$553,309 and \$164,411, respectively. Given the storage arrears owing to both Wills and Gilmore, the inventory on-hand at each 3PL is subject to a possessory storage lien pursuant to the *RSLA*.

73. The Receiver has entered into separate profit-sharing agreements with both Wills and Gilmore whereby the Receiver and Wills and Gilmore will split the proceeds of the sale of inventory that is on-hand at the 3PL locations.

Unsecured Claims

74. The Receiver understands that the Company had unsecured trade payables and accrued liabilities owing of approximately \$5.6 million as at the Date of Appointment.

75. It is anticipated that BMO and BDC will both incur a significant shortfall and as a result there will be no amounts available for unsecured creditors.

X. RECOMMENDATIONS

76. Based on the foregoing, the Receiver respectfully recommends that the Court issue an order(s):

- (a) Approving this First Report, including the actions and activities of the Receiver set out herein;
- (b) Approving the Purchase Agreement, and authorizing to complete the Proposed Transaction and directing the Receiver to execute such documents and take such additional steps as are necessary to do so;
- (c) Vesting in the Purchaser, as at closing, the purchased assets as identified in the Purchase Agreement, free and clear of all liens, charges, security interests and other encumbrances (other than such permitted encumbrances as may be described in the order); and
- (d) Sealing the Confidential Appendices.

All of which is respectfully submitted on the 7th day of September, 2023.

BDO Canada Limited
in its capacity as Court Appointed Receiver of
7132221 Canada Inc. (o/a Hawktree Solutions)
and not in its personal or corporate capacity



Neil Jones, CPA, CA, CIRP, LIT
Senior Vice-President