This is **Exhibit "F”**
referred to in the Affidavit of John Gibault
sworn before me this 19th day of April, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LaurentianUniversity
UniversitéLaurentienne

# Laurentian University Academic Senate Votes to Approve Certain Program Closures

12 Apr, 2021 | Media Statement

**Sudbury, April 12, 2021 —** Last week, the Laurentian University Academic Senate voted in favour of a series of program closures that have had historically low enrolment. This will allow the University to restructure its operations, enabling a financially sustainable future.

As a result, Laurentian's academic offerings will now be better tailored to the programs that most of our students gravitate towards. The University can also further align its financial resources to ensure that all of its remaining programs are fully supported.

Six senators had been elected to the Senate Mediation Committee on February 9 for the purpose of actively participating in the court-supervised mediation to review and make recommendations as to Laurentian's proposed changes to academic program offerings. At a special in-camera session of the Academic Senate last week, the Senate Mediation Committee provided their peers with the result of their review on programs to be closed. The recommendations of Laurentian and the Committee were approved by Senate.

At a high level, the changes to the academic offerings package includes the following :

- 58 undergraduate programs to be closed and 107 to remain open

  - 34 English-language programs closed
  - 24 French-language programs closed
- 11 graduate programs to be closed and 33 to remain open

We anticipate that approximately 10% of undergraduate students (excluding those studying at the federated universities) will be affected in some way by these program adjustments. We further anticipate that 44 graduate students will be impacted by program closures.

For most students, particularly if they are close to completion, this will mean they will be able to complete their degree making use of all or parts of the modules in terminated programs, either through course substitutions at Laurentian or through letters of permission. No new students will be admitted to these programs. For a small number of students, Laurentian will assist them in transitioning to a related program or another institution.

Applicants in affected programs can reach out to Liaison Services to plan their next steps at info@laurentian.ca. Options exist for all of Laurentian students, and support is available to assist students navigate those academic options.

Students in affected programs are encouraged to reach out to their deans and other leaders to discuss the next steps in their academic path forward:

- Dr. Joël Dickinson, Faculty of Arts, at jdickinson@laurentian.ca
- Dr. Tammy Eger, Faculty of Graduate Studies, at teger@laurentian.ca
- Dr. Ginette Roberge, Faculté d'éducation, at gx_roberge@laurentienne.ca
- Dr. Patrice Milewski, Faculty of Education, at pmilewski@laurentian.ca
- Dr. Dean Millar, Faculty of Science, Engineering and Architecture, at dmillar@laurentian.ca

- Dr. Céline Larivière, Faculty of Health, at clariviere@laurentian.ca
- Dr. Michel Delorme, Faculty of Management, at mdelorme1@laurentian.ca

Laurentian will continue to update its community on next steps in its restructuring on a forward moving basis.

For all the the latest information about the CCAA proceedings, visit https://www.laurentianu.info.

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## List of discontinued English language programmes

Actuarial Science

Anthropology

Archaeology

BA 4 years Concurrent education (Primary-Junior)

BSc 4 years Concurrent education (Primary-Junior)

BFA – Music

BFA – Music Performance

Biomedical Physics

Civil Engineering (first 2 years)

Concurrent Education – Pro year (Primary-Junior)

Ecology

Entrepreneurship

Environmental Geoscience

Environmental Science

Environmental Studies

Geography

International Management

Italian

Labour Studies

Major Restoration Ecology

Mathematics

Midwifery

Modern Languages

Music

Music Studies

Operations

Philosophy

Physics

Political Science

Radiation Therapy – Michener

Restoration Biology

Spanish

Web Data Management

# List of discontinued French language programmes

Droit et politique

Éducation – intermédiaire/supérieur

Études de l'environnement

Études françaises

Génie chimique

Génie mécanique

Génie minier

Géographie

Histoire

Littérature et culture francophone

Marketing (FR)

Mathématiques

Nursing – Boreal

Outdoor Adventure Leadership (FR)

Philosophie

Planification financière

Promotion de la santé

Resources humaines

Sage femme

Science du language

Science économique

Science politique

Théâtre

Zoologie

## List of discontinued graduate programmes

Maîtrise – Histoire – essai

Maîtrise – Histoire – thèse

Maîtrise – Sociologie – essai

Maîtrise – Sociologie – thèse

Masters – Experimental Psychology

Masters – History – essay

Masters – History – Thesis

Masters – Humanities

Masters – Physics

Masters – Sociology – essay

Masters – Sociology – thesis

## Categories

Letter from the President

Media Statement

Updates

This is **Exhibit "G”**
referred to in the Affidavit of John Gibault
sworn before me this 19th day of April, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

FARBER

# Thorneloe University

**Report on Financial Impact of Termination of Federation Agreement and Financial Distribution Agreement on Thorneloe University**

April 19, 2021

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1.1. A. Farber & Partners Inc., a member of Farber Group ("**Farber**") was retained by the law firm of Koskie Minsky ("**KM**") on behalf of its client Thorneloe University ("**Thorneloe**" or "**TU**"), to review:

- the Federation Agreement between Laurentian University ("**Laurentian**" or "**LU**") and Thorneloe dated 1962 ("**Federation Agreement**"); and
- the Financial Distribution Notice between Laurentian and Thorneloe dated May 1, 2019, that amended the Proposed Grant Distribution and Services Fees agreement dated November 10, 1993 between Laurentian and Thorneloe (the "**Financial Distribution Notice**"),

and provide an opinion on:

- whether in Farber's expert opinion termination of the Federation Agreement and the Financial Distribution Notice pursuant to Section 32(1) of the Companies' Creditors Arrangement Act ("**CCAA**") would result in significant financial hardship to Thorneloe, and whether or not termination of these agreements would enhance Laurentian's prospects of a viable compromise or arrangement.

1.2. In order to perform this engagement, I relied on other Farber professionals with extensive experience in insolvency and restructuring, all of whom worked under my direct supervision and control. I have relied on the work of the team to support my review of information related to this matter, and references to "our" and "we" recognize this reliance.

1.3. The hourly rates charged by Farber for professional services provided in this matter range from $375 to $650 for staff and my time is billed at $650 per hour.

1.4. I was asked to provide this expert report in connection with a notice of disclaimer issued by Laurentian to Thorneloe on April 1, 2021 ("**Disclaimer Notice**") disclaiming the Federation Agreement and the Financial Distribution Notice pursuant to Section 32(1) of the CCAA in the CCAA application filed by Laurentian to restructure its affairs ("**CCAA Proceedings**") and as to whether factors required to be considered by Court in ordering disclaimer of a contract as listed in section 32(4) of the CCAA have been satisfied.

1.5. I reserve the right to revise and supplement my analyses, opinions and report to the extent additional relevant information becomes available, or to the extent permitted by the Court in this case.

1.6. Attached as **Appendix 1** to this report is my Acknowledgment of Expert's Duty in accordance with Form 53 of the Courts of Justice Act.

2.1. Based on my review of the documents and evidence produced, including discussions with management, financial and legal advisors of Thorneloe, and from my analyses, education, experience and training, it is my opinion, for reasons more fully articulated in the body of this report, that:

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- Termination of the Federation Agreement will cause serious financial hardship to Thorneloe as a consequence of which Thorneloe itself will have to resort to a formal insolvency process. If terminated, Thorneloe will no longer be eligible to receive government grants which comprise one of its main revenue streams. The financial losses to Thorneloe on account of termination are estimated to be approximately $13.7 million over the next five years;
- Given the size and operations of Thorneloe as compared to Laurentian, termination of the Federation Agreement will have an immaterial impact on overall costs reduction in Laurentian's restructuring process and is unlikely to enhance prospects of Laurentian making a viable Plan in the CCAA Proceedings.

3.1. I am a Certified Public Accountant ("**CPA**") and a Licensed Insolvency Trustee ("**LIT**"), with approximately 5 years' experience in Public Accounting and 31 years' experience Insolvency and Restructuring. I also hold the specialty designation as a Chartered Insolvency and Restructuring Professional ("**CIRP**") from CAIRP.

3.2. I am a partner of Farber since 2000 and co-leader of the firm's restructuring practice. I also lead Farber's international and cross-border initiatives and am a director of BTG Global Advisory. Farber has approximately 250 employees in multiple offices across Canada.

3.3. My practice is diverse and includes assignments such as acting as Monitor, Receiver and Trustee in insolvency proceedings; acting as financial advisor for Representative Counsel, creditor committees, lenders, regulators and other stakeholders, including in significant CCAA cases such as Nortel Networks Corp, U.S. Steel Canada and Sears Canada; due diligence and monitoring engagements; fraud and forensic proceedings to trace and recover assets in US, Canada and internationally.

3.4. I hold graduate and undergraduate business and accounting degrees from University of Witwatersrand in Johannesburg, South Africa.

3.5. I am a Fellow of INSOL International (since 2012), having successfully completed the Global Insolvency Practice Course, which is the pre-eminent advanced educational qualification focusing on international insolvency. I was admitted as a member of the Insolvency Institute of Canada in 2017.

3.6. My Curriculum Vitae is attached as **Appendix 2** to this Report, which sets out additional information about my qualifications.

4.1. The conclusions set out herein are based on my review of documents and information set out in **Appendix 3** to this report and supplemented by various discussions with management and advisors of Thorneloe.

4.2. Our conclusions rely on historical audited financial statements of Thorneloe prepared by KPMG LLP, discussions held with and information provided by Thorneloe's

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management/staff, and the court materials filed by Laurentian in the CCAA Proceedings including reports issued by Ernst & Young Inc. as proposed monitor and monitor for Laurentian ("**Monitor**"); affidavit of Dr. Robert Haché sworn on January 30, 2021 ("**Haché Affidavit**") filed in support of the initial CCAA application and related correspondence/notices issued.

4.3. We reserve the right to revise or supplement our analysis, opinion and report to reflect further findings should we be provided with additional documentation or information.

4.4. Our analysis and this report should be read in conjunction with our disclaimer included in **Appendix 6** of this report.

5.1. My report has been prepared in connection with the Disclaimer Notice issued by Laurentian to Thorneloe on April 1, 2021 disclaiming the Federation Agreement and the Financial Distribution Notice pursuant to section 32 of the CCAA in the CCAA Proceedings.

5.2. We have drawn the following facts from our review of the materials provided as detailed in **Appendix 3.**

5.3. Thorneloe was established in 1961 with historical roots and affiliation to the Anglican Church of Canada with degree-conferring powers. Being a religious university, Thorneloe is not eligible to receive funds from provincial grants available to educational institutions.

5.4. Pursuant to its establishment, Thorneloe entered into the Federation Agreement with Laurentian in 1962 whereby Thorneloe amalgamated with Laurentian to form a single university and ceded its ability to confer degree, independently as a university, to Laurentian for all courses except for courses offered under its School of Theology program to small number of students. The federation arrangement allowed Thorneloe to access provincial grant funding that would be paid to Thorneloe through Laurentian in relation to students taking Thorneloe courses. Laurentian has a similar federated arrangement with Huntington University and University of Sudbury. A copy of the Federation Agreement is attached as **Appendix 4.**

5.5. Thorneloe offers several programs to students including students taking courses at Laurentian through its Ancient Studies, Religious Studies, and Women's, Gender, and Sexuality Studies departments that are related with Laurentian's Faculty of Arts.

[1] The events discussed in the Background section of this report are not intended to represent an exhaustive history of all important facts surrounding the federation of Thorneloe with Laurentian.

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Thorneloe also offers certificates, diploma and bachelor's degree programs in Theology through its School of Theology.

5.6. Thorneloe and Laurentian work in a highly integrated framework as is evident from, *inter alia,* the following:

5.6.1. Pursuant to the Federation Agreement, Thorneloe's degree-conferring powers have been suspended and all students taking courses at Thorneloe (except for the School of Theology courses) receive course credits towards a degree offered by Laurentian;

5.6.2. The Grant Distribution and Service Fees arrangement has existed between Thorneloe and Laurentian since 1993 as subsequently amended by the Financial Distribution Notice which sets out the basis for distribution of government grants that are administered by Laurentian to Thorneloe and payment of service fees by Thorneloe to Laurentian for services provided by Laurentian. Copies of the Proposed Grant Distribution and Services Fees agreement dated November 10, 1993 and Financial Distribution Notice dated May 1, 2019 are attached as **Appendix 5**;

5.6.3. Thorneloe pays 15% of its tuition fees and grants, and approximately 36% material fees received from students enrolled in Thorneloe courses to Laurentian. These amounts are deducted "off the top" by Laurentian;

5.6.4. Further, Laurentian also retains all grants in relation to Laurentian students taking electives at Thorneloe;

5.6.5. Thorneloe's pensions and group benefits are administered through Laurentian and its teaching staff are represented by Laurentian University Faculty Association;

5.6.6. Thorneloe also contributes to Laurentian University Research Fund;

5.6.7. Thorneloe is located on Laurentian's campus and pedestrian access to Thorneloe is through Laurentian;

5.6.8. Thorneloe's buildings are situated on land owned by Laurentian that has been leased to Thorneloe pursuant to a long-term lease agreement dated October 26, 1964 ("**Lease Agreement**") between Laurentian as lessor and Thorneloe as lessee, for a term of 99 years with a further renewable term of 99 years;

5.6.9. All utilities including hydro, IT infrastructure, security, and sewage are shared between Laurentian and Thorneloe; and

5.6.10. Thorneloe provides substantial academic, administrative and governance support to Laurentian in its operations as more fully described in the Affidavit of Dr. John Gibaut.

5.7. The aforesaid arrangement has existed between Thorneloe and Laurentian for over 60 years until, on April 1, 2021, two months after the initial CCAA filing, Laurentian issued the Disclaimer Notice to disclaim the Federation Agreement, and the Grant Distribution and Service Fees arrangement as amended by the Financial Distribution Notice.

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5.8. There are several factors that led to Laurentian's insolvency as determined and detailed in the Monitor's reports. As detailed in the report of the proposed monitor (subsequently appointed as the Monitor) dated February 1, 2021, the factors that led to Laurentian's insolvency included, *inter alia,* the following:

5.8.1. Laurentian has been suffering recurring losses and accumulating deficits over a significant number of years that were first identified in the year 2008-09. As per the Haché Affidavit, the accumulated operational deficits increased from approximately $8.2 million in the financial year 2014-15 to approximately $20 million in the financial year 2019-20[2];

5.8.2. Significant capital expenses were incurred by Laurentian on unsuccessful modernization and expansion programs for its campus including setting up a Barrie campus that had to be subsequently closed. These expansion programs were financed by way of long-term loans and did not yield desired increase in student enrollment and revenue saddling Laurentian with large liabilities;

5.8.3. Laurentian continued to provide financially unsustainable programs that had low student enrolment without revising its course offerings;

5.8.4. Provincially mandated reduction in domestic tuition fees by 10% for the year 2019-20 which continued in the year 2020-21; and

5.8.5. Loss of ancillary revenue from residences, parking facilities, meal plans and facilities offered to students due to impact of COVID-19 pandemic.

5.9. Thorneloe has participated in the Laurentian's CCAA-led mediation proceedings, but these proceedings did not lead to a mutually agreeable arrangement. The details of the discussions at the mediation proceedings are subject to a strict non-disclosure agreement and accordingly have not be discussed herein.

5.10. On April 1, 2021, Laurentian issued the Disclaimer Notice to disclaim the Federation Agreement, and the Grant Distribution and Service Fees arrangement as amended by the Financial Distribution Notice.

[2] Para 8 of the Haché Affidavit.

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6.1. Section 32 of the CCAA, allows a debtor company to disclaim or resilitate any contract or agreement, by way of notice, to which the company is a party after commencement of CCAA proceedings. Under Section 32(2) of the CCAA, such a notice can be challenged by the counterparty to the contract sought to be disclaimed, by applying to Court within 15 days. Pursuant to section 32(4) of CCAA, in deciding whether to order to disclaim or resilitate an agreement, the Court is required to consider *inter alia* the following factors:

*"(a) whether the Monitor approves the disclaimer;*

*(b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and*

*(c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.*"

6.2. In this regard, the report details the potential impact of termination of the Federation Agreement and the Financial Distribution Notice on Thorneloe's operations and whether such termination would enhance the prospects of Laurentian making a viable compromise or arrangement i.e. we have focused on the factors (b) and (c) above. We understand that the Monitor is approving the disclaimer.

*Significant Financial Hardship on Thorneloe*

6.3. The financial impact on Thorneloe of termination of the Federation Agreement and Financial Distribution Notice is discussed in the paragraphs below.

6.4. The termination of the Federation Agreement will divest Thorneloe of its ability to offer courses and programs to students that can be counted as credits towards Laurentian degrees. This will result in a complete loss of tuition fee revenue for Thorneloe from Thorneloe courses offered to Laurentian students.

6.5. Thorneloe will also no longer be eligible to receive government grants which comprises one of the main revenue streams for Thorneloe that allows it to carry on its operations. It is estimated that Thorneloe will suffer an annually recurring loss of revenue and incremental annual costs of at least $2.5 million per annum, which is a significant loss to Thorneloe.

6.6. Thorneloe does not qualify for government grants and without receipt of income from government grants and tuition fees for programs/courses offered to Laurentian students, Thorneloe cannot sustain its operations or continue paying its ongoing costs and liabilities.

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6.7. Thorneloe does not have the ability or infrastructure to operate outside of the Laurentian ecosystem. Termination of the Federation Agreement and Financial Distribution Notice was sprung upon Thorneloe two months after the initial CCAA filing and will essentially result in putting Thorneloe out of business because of its inability to teach students and receive revenues after termination.

6.8. This will necessitate termination of employment by Thorneloe of all of its 28 employees, including 7 full-time faculty members, 12 sessional faculty members, 6 administration staff members and 3 casual staff members (students and academic support staff). A number of Thorneloe's faculty are long serving members with a service tenure of 14 to 21 years. These members will lose their employment and their benefits will also be significantly impaired as a result of any proposed modification to the Pension and Benefit plan on account of termination of the Federation Agreement.

6.9. This will result in Thorneloe incurring substantial shut down costs that are estimated to be approximately $2.2 million (excluding the pension liability) primarily on account of the following:

6.9.1. Severance and termination payments estimated to be approximately $1.5 million;

6.9.2. Disentanglement expenses and professional fees to the extent of approximately $700,000; and

6.9.3. the Pension liability may be a significant, as yet undetermined, potential liability that may arise on the termination of the Federation Agreement.

6.10. The extent of cash outflows that Thorneloe will suffer on account of termination costs and liabilities will deplete its reserve funds, consequently resulting in loss of its recurring revenues of approximately $180,000 per annum from investment income.

6.11. As mentioned above, Thorneloe and Laurentian operate in a highly integrated framework, so termination would also require the parties to incur substantial disentanglement costs for separation of services (such as IT, utilities, security) and supervision of same.

6.12. Further, upon termination, there would be potential loss of value and complications with realization of fixed assets owned by Thorneloe, comprising Thorneloe's academic, residential and other buildings. The land on which Thorneloe's fixed assets are situated has been leased to Thorneloe as lessee by Laurentian as lessor pursuant to the long-term Lease Agreement for a term of 99 years that is renewable for a further term of 99 years subject to the terms therein.

6.13. Thorneloe has invested a significant amount of effort and knowledge in the creation and development of its curriculum and courses. The value of this intellectual property will be impaired if it is unable to earn revenues from these courses. While not quantified in this report, these losses are a significant additional category of damages that Thorneloe will suffer as a result of termination.

6.14. Thorneloe is a creditor for approximately $700,000 in respect of grants and tuition fees collected by Laurentian in respect of Thorneloe courses and not yet remitted to Thorneloe, which relies on this funding to pay its current an ongoing costs. The details of the amounts owed to Thorneloe are provided in the table below:

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| Particulars | Gross $ | LU's Fee | Net $ | NOTES |
|---|---|---|---|---|
| ***Due on March 31, 2021*** | | | | |
| Student wage subsidy | 1,623 | - | 1,623 | |
| Facility Renewal Grant | 28,250 | - | 28,250 | |
| ***Due on April 30, 2021*** | | | | |
| Prior years receivables: Gross Student Fees | 107,157 | - | 107,157 | |
| Gross tuition fees outstanding for Spring 2020 Semester | 22,420 | 3,363 | 19,057 | 1 |
| Gross tuition fees outstanding for Winter 2021 Semester | 454,054 | 68,108 | 385,946 | 1 |
| Gross 2020-21 FW Material Fees | 75,182 | 22,555 | 52,627 | 2 |
| Donations received by LU and not yet forwarded to Thorneloe | 2,000 | - | 2,000 | |
| Grants outstanding (semi-monthly instalment) | 15,930 | - | 15,930 | |
| **TOTAL** | **706,616** | | **612,590** | |

**NOTES:**
(1) 15% service fee has been applied to the gross amount to calculate the net amount
(2) 30% service fee has been applied to the gross amount to calculate the net amount

6.15. While Thorenloe will have a claim in Laurentian's CCAA should the termination of these agreements prevail, the claim will be small in relation to Laurentian's claims pool and the anticipated payout to unsecured creditors in Laurentian's CCAA plan will likely be insignificant and not adequate compensation for losses and damages sustained by Thorneloe.

6.16. Thorneloe will have to contend with significant employee and pension liabilities, which will likely necessitate a formal insolvency filing of its own under the Bankruptcy and Insolvency Act or CCAA.

6.17. The adverse impact on Thorneloe's financial condition upon termination of the Federation Agreement and the Financial Distribution Notice is detailed in the table below:

FARBER

| Particulars | Loss based on adjusted 2019 Financial Statements | Present Value of Future Loss Over Next 5 Years (discounted @ 3%)** | Notes |
|---|---|---|---|
| **Non-Recurring Costs & Liabilities:** | | | |
| Pension Liability and PBGF | Unknown | Unknown | 1, 2 |
| Severance Payments | 1,423,686 | 1,423,686 | 1, 3 |
| Statutory Termination Pay in lieu of Notice | 59,663 | 59,663 | 1 |
| Professional fees | 500,000 | 500,000 | 1, 4 |
| Prior Receivables not paid by LU | 107,156 | 107,156 | 1, 5 |
| Disentanglement costs | 100,000 | 100,000 | 1, 6 |
| **Subtotal of Non-Recurring Costs & Liabilities (excluding pension liability)** | 2,190,505 | 2,190,505 | |
| **Recurring Costs & Liabilities** | | | |
| **Loss of Revenue:** | | | |
| Grants | 568,771 | 2,604,805 | |
| Tuition Fees | 1,710,095 | 7,831,734 | |
| Donations and Other Grants | 37,783 | 173,035 | |
| Investment Income | 183,000 | 838,086 | |
| Residence Fees | 215,470 | 986,790 | 7 |
| Miscellaneous Income | 5,416 | 24,805 | 8 |
| Less: LU Service Fee | (358,086) | (1,639,929) | |
| **Incremental annual costs:** | | | |
| IT Service Charge | 144,179 | 660,299 | 9 |
| **Subtotal of Recurring Costs & Liabilities** | 2,506,628 | 11,479,624 | |
| **TOTAL (prior to pension liability)** | **4,697,133** | **13,670,129** | |

**NOTES:**

** The calculations presented above are an estimate only and the actual losses sustained by Thorneloe may be higher than the estimates. The net present value future loss over the next 5 years does not include adjustment for anticipated growth in revenues/ increase in costs.

**(1)** These are non-recurring payments/receipts and have not been discounted for net present value calculation.

**(2)** The pension liability is presently unknown but may potentially be a large liability that may arise on the termination of the Federation Agreement.

**(3)** Severance payment has been estimated based on amount payable under common law.

**(4)** Professional service costs are an estimate only and may vary depending on the course of proceedings.

**(5)** Prior receivables owed by LU to TU assumed to be collected and held in trust for TU but to be conservative have been included in this schedule.

**(6)** Disentanglement costs are an estimate of costs in relation to separation of services and other utilities including hydro meters, door security system, fire safety systems and supervision of same.

**(7)** Estimate 50% loss in residence revenue because of the meal plan requirement. Residence revenue is estimated at $7,430 pa per student with a total of 58 available residences of which only 50% are estimated to be occupied.

**(8)** Misc. income comprises of parking and vending machine revenue. Assumed 50% reduction in 2019 parking revenue on account of students not taking TU courses and complete loss of vending machine commission.

**(9)** It is assumed that TU will continue to avail computer services provided by LU and pay its share of the costs.

6.18 **TABLE 1**

6.19. The calculations presented above are an estimate only and the actual losses sustained by Thorneloe may be higher than the estimates. The net present value impact of termination over the next 5 years has been shown for illustrative purposes only to demonstrate the losses to Thorneloe over the next 5 years. There was every expectation that Thorneloe would continue to operate with LU as a federation in perpetuity, in which case actual losses will exceed the above estimates by many multiples. Additional damages would also result in respect of its intellectual property, which are not quantified in this report.

6.20. It is estimated that as a consequence of termination, Thorneloe will suffer significant financial losses of approximately $13.7 million over the next 5 years, comprising of approximately $2.2 million non-recurring losses due to termination costs/liabilities (which does not include the pension liability that may be a significant, as yet undetermined, potential liability that may arise on the termination of the Federation Agreement) and approximately $2.5 million of recurring losses due to loss of annual revenues and incremental costs. The net present value impact of the recurring losses is estimated to be approximately $11.5 million over the next 5 years.

*Thorneloe's Immateriality in Laurentian's Overall Restructuring Scheme*

6.21. Termination of the Federation Agreement would have an immaterial impact on the current cost-cutting measures and restructuring efforts of Laurentian, as demonstrated from the financial metrics presented below. Disclaimer of the Federation Agreement will not enhance the prospects of a viable compromise or arrangement being made by Laurentian, as Thorneloe is immaterial to its overall restructuring.

6.22. In the financial year 2020, Thorneloe received approximately $568,770 in grants which is a mere 0.66% of the total grants of approximately $86 million received by Laurentian.

6.23. Thorneloe's revenues from tuition fees in 2020 were approximately $1.5 million whereas Laurentian received $50.5 million in tuition fees. The ancillary revenue earned by Thorneloe in 2020 of approximately $381,000 is only 2.72% of the ancillary revenue of approximately $14 million earned by Laurentian.

6.24. Thorneloe employs only 7 full time faculty whereas Laurentian employs 355 full-time faculty members. The salary and benefits paid by Thorneloe to its faculty members in 2020 was approximately $2.4 million whereas Laurentian paid $134 million to its faculty members during the same period.

6.25. The immateriality of Thorneloe's operations as compared to LU's operations is summarized in the table below:

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| For the year 2020* | Thorneloe (TU) | Laurentian (LU) | TU as % of LU | Notes |
|---|---|---|---|---|
| Grants received | $ 568,771 | $ 86,420,000 | **0.66%** | 1 |
| Tuition Fees | $ 1,570,964 | $ 50,500,000 | **3.11%** | |
| Material Fees | $ 65,623 | | | |
| Subtotal | $ 2,205,358 | $ 136,920,000 | **1.61%** | |
| *Less* : Service Fee | $ (358,086) | | | |
| Net Grants and Tuition Fees | $ 1,847,272 | $ 136,920,000 | **1.35%** | |
| Ancillary Revenue | $ 381,000 | $ 14,000,000 | **2.72%** | |
| Salaries and Benefits | $ 2,440,000 | $ 134,000,000 | **1.82%** | |
| Full-time Faculty | 7 | 355 | **1.97%** | |

**NOTES:**

* The source of information in this table is Thorneloe's financial statements and the financial statements shared by the applicant.

**1**. Of the total grants received, $90,601 was received on account of one-time sustainability grants that will not repeat. These include Northern Sustainability Grant of $76,615 and COVID Grant of $13,986.

6.26. As is evident from the above table, termination of the Federation Agreement and the Financial Distribution Notice will not materially enhance the financial prospects of Laurentian making a viable compromise or arrangement.

6.27. Based on our review and as more fully discussed above, termination would cause terminal fiscal damage to Thorneloe such that its very existence would be jeopardized, necessitating a formal insolvency filing by Thorneloe.

6.28. In contrast, continuation of the Federation Agreement and Financial Distribution Agreement will allow Thorneloe to sustain its operations and related costs while contributing a significant portion of its tuition fees and grant revenues to Laurentian and paying Laurentian applicable service fees. It will also facilitate uninterrupted continuation of courses and studies for students at Thorneloe, avoid any hardship to Thorneloe's staff on account of termination of employment, and prevent significant pension liabilities that may arise for Thorneloe upon termination.

7.1. Accordingly, and as discussed above, it is my opinion that:

- Thorneloe will not be eligible to receive public funding in the form of grants if the termination is allowed. The financial losses to Thorneloe on account of termination are estimated to be approximately $13.7 million over the next five years, excluding any potential significant pension liability that may arise on termination.

FARBER

- The financial impact on and likely shutdown of Thorneloe's operations that will follow termination of Federation Agreement and Financial Distribution Notice will amount to significant financial hardship for Thorneloe and, termination of these agreements would not materially enhance Laurentian's prospects of a viable compromise or arrangement.

| | |
|---|---|
| Allan Nackan, CPA, CA, CIRP, LIT | April 18, 2021<br>Date |

FARBER

*Form 53*

*Courts of Justice Act*

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is Allan Nackan. I live in Thornhill, in the Province of Ontario.
2. I have been engaged by Koskie Minsky on behalf of its client Thorneloe University to provide evidence in relation to the court proceeding referenced in the text of my Report.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
    a) to provide opinion evidence that is fair, objective and non-partisan;
    b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
    c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date April 18, 2021

Signature

Note: This Appendix is provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*

FARBER

## Education & Professional Qualifications

- Bachelor of Commerce, University of Witwatersrand, South Africa, 1983
- Bachelor of Accounting, University of Witwatersrand, South Africa, 1985
- Chartered Accountant (CA), South African Institute of Chartered Accountants, 1988
- Chartered Accountant (CA), Canadian Institute of Chartered Accountants, 1990
- Chartered Insolvency and Restructuring Professional (CIRP), Canada, 1995
- Licensed Insolvency Trustee (LIT), Canada, 1995
- Fellow of INSOL International, 2012
- Chartered Professional Accountant (CPA), Institute of Chartered Accountants of Ontario
- Member of Insolvency Institute of Canada, 2017

## Profile

Allan Nackan is a Partner at Farber and co-leader of the Restructuring and Financial Advisory practice of Farber Financial Group.

His practice focuses on corporate insolvency and restructuring, distressed financial advisory services, cross-border restructuring, fraud investigations and forensic accounting.

Allan is a Fellow of INSOL International, having successfully graduated from their Global Insolvency Practice Course, which is the pre-eminent advanced educational qualification focusing on international insolvency. Allan is one of only eight INSOL Fellows in Canada.

Allan is actively involved in and leads Farber Financial Group's international and cross-border initiatives. He is a director and current Chair of BTG Global Advisory, an international alliance of specialist independent insolvency and financial advisory firms across the globe of which Farber was a founding member—see www.btgga.com.

He acts as court-appointed receiver and interim receiver; as monitor or financial advisor in Companies' Creditor Arrangement Act (CCAA) and Chapter 11 proceedings; as a Trustee under Bankruptcy & Insolvency Act (BIA) proposals; and as a Trustee in Bankruptcy for a wide variety of corporations and their creditors. He applies his analytical skills to help major financial institutions and other lenders with risk and feasibility studies and fulfills various financial advisory roles.

Notable assignments include: acting as financial advisor to FSCO as administrator of the Ontario Pension Benefit Guarantee Fund in CCAA/Chapter 11 filings of Nortel Networks Corp. and Sears Canada Inc.; acting as financial advisor to Representative Counsel to non-union retirees and active employees of U.S. Steel Canada Inc. (a.k.a. Stelco); restructuring and/or liquidation of retail chains such as Tabi International, Clothing for Modern Times (Urban Behaviour & Costa Blanca), The Tall Girl Shop and Movie Gallery Canada (aka Hollywood Video); the restructuring and sale of the largest movie production studio in Toronto; and successfully managing the operations, restructuring or liquidation of numerous manufacturing, distribution, retail, technology, real estate and media businesses.

Broad industry experience also includes cosmetics, retail, textiles, automotive parts, car dealerships; automobile leasing, transport & logistics, metals and mining, media, advertising, printing, software, music, and food distribution industries. Practice specialties also include retail insolvencies, securities firms, forensic accounting & fraud investigations, and cross border restructuring.

Allan's cross-border insolvency experience includes acting as financial advisor to the Superintendent of Financial Services representing Ontario Pension Benefit Guarantee Fund, a major stakeholder in CCAA/Chapter 11 filings by Nortel Networks Limited, which operated in 140 countries and filed concurrent insolvency proceedings in Canada, USA and UK; Chapter 15 proceedings for liquidation of US retail operations of The Tall Girl Shop; and representing a numerous US-secured lenders in Canadian insolvency proceedings.

FARBER

Allan acted as Court-appointed Receiver and Trustee in Bankruptcy of securities firms, and as such was involved in Ashley vs. Marlow Group Private Portfolio Management Inc., a precedent setting case in Ontario on Part XII of the Bankruptcy and Insolvency Act, governing securities firm bankruptcies. He has led numerous insolvency and forensic proceedings to trace and recover assets in US, Canada, the Caribbean and internationally.

Allan has co-chaired numerous educational seminars for professional associations and has spoken and published on topics including: "Cultural Factors Impacting Cross-Border Workouts"; "Challenges in Insolvencies of Multinational Enterprise Groups—A Nortel and OSX case study"; "Retail Industry & Restructuring"; "Practical Strategies for Dealing with Employee Claims in Restructuring Proceedings"; "The use of Stalking Horse Proceedings to Maximize Value in Insolvency Workouts in United States of America and Canada"; "Fraud: Prevention and Recovery"; "Know Your Client/Due Diligence"; and "A Practical Guide to Survive & Thrive". He has published numerous articles on insolvency and restructuring as well as forensic accounting and fraud investigations in publications such as Law Times, Secured Lender, Rebuilding Success, Advanced Manufacturing, The Bottom Line, Plant magazine, and The Globe & Mail.

Allan was Past-President of the Ontario Association of Insolvency & Restructuring Professionals and is an active participant on the Commercial List Users Committee sub-committee that drafts Model Orders used in insolvency proceedings. He is also an active participant on various INSOL International committees.

FARBER

**Documents and Information:**

- Historical Audited Financial Statements of Thorneloe
- Court materials including Monitor's Reports and 13-week cash flow projections filed in the CCAA Proceedings
- Affidavit of Dr. Robert Hache sworn on January 30, 2021
- Federation Agreement between Laurentian and Thorneloe dated 1962
- Proposed Grant Distribution and Services Fees agreement between Laurentian and Thorneloe dated November 10, 1993
- Financial Distribution Notice dated May 1, 2019
- Lease agreement between Laurentian as lessor and Thorneloe as lessee dated October 26, 1964
- Information received pursuant to discussion with Thorneloe management and staff

**Websites:**

- Website of Thorneloe University www.thorneloe.ca/

**Legal Statutes:**

- *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended s32

FARBER

THIS AGREEMENT made in quadruplicate this day of , A.D. 1962:

B E T W E E N :

LAURENTIAN UNIVERSITY OF SUDBURY

hereinafter called "Laurentian University"

OF THE FIRST PART

- and -

THORNELOE UNIVERSITY

hereinafter called "Thorneloe University"

OF THE SECOND PART

WHEREAS Thorneloe University is a Corporation incorporated by Chapter 135 of the Statutes of Ontario, 1960-1961;

AND WHEREAS Laurentian University was incorporated by The Laurentian University of Sudbury Act, 1960, being Chapter 151 of The Statutes of Ontario, 1960, pursuant to the petition of The University of Sudbury, The United Church of Canada, and the Incorporated Synod of the Diocese of Algoma (Anglican) praying for the incorporation of Laurentian University as a non-denominational bilingual institution to provide facilities for instruction in all branches of higher learning, which said Act of Incorporation was amended by Chapter 154 of The Statutes of Ontario, 1961-1962;

AND WHEREAS Laurentian University is empowered by virtue of its said Act of Incorporation to admit into federation or affiliation with it other colleges or universities;

AND WHEREAS Thorneloe University is empowered by

virtue of its said Act of Incorporation to enter into federation or affiliation with other colleges or universities;

AND WHEREAS Thorneloe University is desirous of entering into federation with Laurentian University in accordance with the provisions of the said Acts of Incorporation of Thorneloe University and Laurentian University and upon the terms and conditions hereinafter set forth and Laurentian University has agreed to admit Thorneloe University into federation with it in accordance with the said Acts of Incorporation, and upon the terms and conditions set forth;

AND WHEREAS the University of Sudbury and Huntington University, both of which have heretofore entered into federation with Laurentian University, have consented to the admission of Thorneloe University into such federation;

NOW WITNESSETH that pursuant to the said Acts of Incorporation of Thorneloe University and of Laurentian University and in consideration of the terms, covenants and agreements on the part of the parties hereto to be respectively observed, fulfilled and performed, the parties hereto covenant and agree as follows:

1. Thorneloe Univers[illegible] hereby [illegible] rtue of the said Acts of Incorporation of [illegible] oe Univ.r [illegible] d of Laurentian University admitted into federation [illegible] ith Laurentian University.

2. While this agree ent remains in for[illegible] horneloe University shall suspend all its [illegible]egree-conferri[illegible] ·[illegible]s except the power to grant degrees in Theol gy.

3. Laurentian University agrees to continue all its faculties, schools, institutes, departments and chairs now established in accordance with the provisions of the Act of Incorporation of Laurentian University, and Thorneloe University shall be entitled to give instruction in Theology and Philosophy in accordance with the Acts of Incorporation of Laurentian University and Thorneloe University.

4. Laurentian University agrees that in continuing its faculties, schools, institutes, departments and chairs now established it will do so upon the basis of the Act of Incorporation of Laurentian University by virtue of which Laurentian University is a bilingual, non-denominational university and it will continue the system of bilingual instruction in the respective faculties, schools, institutes, departments and chairs heretofore followed in Laurentian University.

5. All students, including those enrolled in federated universities or colleges who intend to proceed towards degrees or to obtain diplomas, certificates or other academic qualifications at Laurentian University shall register at Laurentian University and must comply with the requirements of Laurentian University for entry and registration in Laurentian University and to become entitled to degrees, diplomas, certificates or other academic qualifications at Laurentian University, must comply with all requirements of Laurentian University. In the case of students enrolled in federated universities or colleges, fees paid shall be apportioned between Laurentian University and such federated universities or colleges as may from time to time be agreed upon between the parties hereto.

6. Thorneloe University shall have disciplinary jurisdiction over and entire responsibility for the conduct of its students in respect of all matters arising or occurring in or upon the buildings and grounds, including residences, occupied by Thorneloe University but in all other cases Laurentian University shall have disciplinary jurisdiction over students registered in it.

7. General facilities provided by Laurentian University such as physical training, health and athletic facilities, buildings and quarters (other than residences) provided for the use of Laurentian University faculty and students shall be available to the faculty and students of Thorneloe University upon the same fee basis as to the faculty and students of Laurentian University.

8. Laurentian University shall allocate and reserve land within its campus which Thorneloe University may acquire and upon which Thorneloe University may construct buildings for teaching, administration, and faculty and students residences, with or without chapels, subject to the prior written approval of Laurentian University as to architectural design and upon such financial arrangements and conditions as to title and tenure as may be agreed upon between Thorneloe University and Laurentian University.

9. Public appeals for financial or other contributions or assistance for Thorneloe University shall be made only with the prior written approval of Laurentian University. A request for money through a Church body to be raised from its

members shall not be considered a public appeal.

10. Thorneloe University and Laurentian University respectively shall retain as their own property all gifts, bequests, devises, scholarships, endowments, or grants of any kind made to them respectively, except as may otherwise be agreed upon between the parties hereto and subject to any trusts which may affect the same.

11. Any federation or affiliation agreements or modifications thereof relating to federation or affiliation with Laurentian University shall be discussed with the universities and colleges federated or affiliated with Laurentian University prior to Laurentian University entering into any such agreements or agreeing to modifications of any such agreements.

12. Both Laurentian University and Thorneloe University declare and express the firm hope and conviction that the relationship between the Universities established by this agreement will be a permanent one and that they and the other universities and colleges which become federated or affiliated with Laurentian University will work together to fulfil the objects of the Act of Incorporation of Laurentian University and to build a great institution of learning which shall forever be bilingual and non-denominational in its character. The parties fully realize that the success of the task which they have set themselves will depend more on mutual understanding, goodwill and co-operation between the institutions now or hereafter associated together in Laurentian University, than upon any

formal agreements.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals under the hands of their proper officers duly authorized in that behalf.

LAURENTIAN UNIVERSITY OF SUDBURY

THORNELOE UNIVERSITY

FARBER

# LAURENTIAN UNIVERSITY FINANCIAL DISTRIBUTION TO FEDERATED UNIVERSITIES

**THESE TERMS OF FINANCIAL DISTRIBUTION**, effective as of the 1st day of May, 2019 (the "**Effective Date**")

**B E T W E E N :**

**LAURENTIAN UNIVERSITY OF SUDBURY**

**("Laurentian University")**

**- and -**

**THORNELOE UNIVERSITY**

**(the "Recipient")**

This Notice is delivered further to the Proposed Grant Distribution and Services Fees document dated November 10, 1993 (the "**1993 Funding Model**") and sets out the terms for the distribution of operating grants to the Recipient and service fees charged to the Recipient from and after the Effective Date. This document amends, restates and replaces in its entirety any prior documentation, oral or written representations and past practices relating to the distribution of grant funding, tuition fees and service fees between Laurentian University and the Recipient, including but not limited to those described under the 1993 Funding Model. No future amendments to the terms set out in this Notice are effective unless confirmed and agreed to in writing, in advance, by Laurentian University.

The Recipient is a separate legal entity established by separate Acts and governed by an independent Board. The Recipient owns its own buildings on land that is owned by Laurentian University and leased to the Recipient by Laurentian University.

The Recipient is recognized under the *Laurentian University Act* by allowing Laurentian University to admit "church-related universities or colleges into federation as colleges of the Faculty of Arts and Science, which church-related universities or colleges have the right to give instruction in philosophy and religious knowledge and in such other subjects as may from time to time be approved by the Faculty of Arts and Science of the University and be consented to by the Senate and Board, and the University shall accept such courses in partial fulfillment of the requirements for a degree under the same academic terms and conditions as would obtain if the instruction were given in University College".

Huntington University, Thorneloe University and the University of Sudbury are each referred to in this Notice as a "Federated University" and are collectively referred as the "**Federated Universities**".

**REVENUE SHARING**

The Federated Universities do not receive funding directly from the government. Laurentian University has historically transferred a portion of the funding it receives from the government to each Federated University according to a set formula, unless otherwise instructed by the government. Since 1993 that formula has been pursuant to the 1993 Funding Model.

As the Recipient is aware, the Province introduced a new university funding model for 2017-2018 (the "**New Funding Model**"). The New Funding Model includes an enrolment-based envelope. Consistent with the enrolment-based envelope, the Province provides each institution with a base level of operating funding determined in accordance with a specific level of eligible enrolment and program of registration.

Laurentian University advanced funds for 2017-18 and 2018-19 in accordance with the 1993 Funding Model, while it considered the effect of any changes.

The purpose of this Notice is to ensure that all funding transferred by Laurentian University to any of the Federated Universities from and after the Effective Date is consistent with the New Funding Model, and that the financial effects of the New Funding Model are recognized and assumed proportionately by each of Laurentian University and the Federated Universities, on the terms set out herein. **The underlying principle is that none of Laurentian University or any of the Federated Universities will subsidize the operations or services of another,** and each will be responsible for covering its own costs. The funding mechanism in place at any given time will be consistent with the funding mechanism between the Province and Laurentian University.

As outlined in Schedule **A**, as at and from the Effective Date, Laurentian University will transfer **grant funding** to each Federated University based on the current and future provincial funding formulas for post-secondary institutions, consistent with the terms of the New Funding Model to which Laurentian University is now subject.

**Tuition fees** are collected by Laurentian University and will be transferred to the Recipient based on enrolment in courses, less the tuition set-aside obligation, as outlined in Schedule **B**.

Laurentian University will be implementing the New Funding Model as at and from the Effective Date. All aspects of funding and the distribution of revenue by Laurentian University to the Federated Universities will be strictly in accordance with this Notice.

**ADMINISTRATIVE SERVICE FEES**

Laurentian University provides direct non-academic administrative services to each Recipient as outlined in Schedule **C**. From and after the Effective Date, an administrative services fee will be charged to the Recipient by Laurentian University calculated in accordance with Schedule **C** based on 15% of shared revenues, being Grant Revenue and Tuition Revenue as such terms are defined on Schedule **A** (the "**Administrative Services Fee**").

The Administrative Services Fee will only partially cover the costs incurred by Laurentian University for a number of non-academic services it provides as set out on Schedule **C**. This formula will be reviewed and, if required, updated by Laurentian University not less than once every three (3) years.

Each Federated University employs its own staff and is, and will continue to be, responsible for its own financial affairs. Laurentian University is the principal employer for administering pension plan and benefits and provides access to these employee benefits to each of the Federated Universities, with each Federated University bearing the sole financial responsibility for all contributions and funding for such employee benefits for its own staff.

**AMENDING THE TERMS OF FINANCIAL DISTRIBUTION TO FEDERATED UNIVERSITIES**

As set out on Schedule **A**, at all times the funding model established between the Province and Laurentian University from time to time will be reflected in the financial distribution model between Laurentian University and each of the Federated Universities. Any modification by the Province in the grant structure or through regular negotiation with the Province through the Strategic Mandate Agreements (SMA) or otherwise with Laurentian University will be correspondingly reflected in the grant allocation calculations by Laurentian University with each of the Federated Universities. If a change occurs, an amendment to the terms contained in this Notice will be provided by Laurentian University to each of the Federated Universities, and become effective. Laurentian University will keep the Recipient informed when the Province implements modifications in the grant structure and formulas.

**LAURENTIAN UNIVERSITY OF SUDBURY**

Per: Pierre Zundel

Name: Dr. Pierre Zundel
Title: Interim President and Vice-Chancellor

## SCHEDULE "A"
## GRANT REVENUE ALLOCATION

Operating grant revenue allocations from Laurentian University to the Federated Universities will be consistent at all times with the Provincial funding formulae for post-secondary institutions.

In accordance with the terms of the New Funding Model, Laurentian University receives a specified amount of operating funding provided through a new Core Operating Grant ("**COG**"). Enrolment will continue to be counted using a single measure of activity-enrolments as measured by Full-time Equivalent enrolments in specific programs. These enrolments will be weighted by program and level of study using the new program weights as provided by the Ministry of Training, Colleges and Universities (the "**Ministry**"). Information on the reallocation of grants is available in the Ministry's University Funding Technical Design Manual.

The total COG provided to Laurentian University annually will be equal to the total Weighted Grant Unit ("**WGU**") at its corridor midpoint multiplied by the average grant per WGU funding determined by the New Funding Model. Under the corridor funding model, Laurentian University will receive the amount of funding with enrolments levels at its corridor midpoint, as long as it remains within its enrolment corridor range of plus or minus 3%.

Should Laurentian University fall above or below the corridor lower threshold, the grant adjustment by the Province will be correspondingly reflected on the grant allocation made by Laurentian University to the Recipient.

Each Federated University will receive Grant Revenue for the COG based upon their relative students' enrolment in programs as reported to the Ministry for 2017-18.

Until SMA3 (or any replacement or modification thereof) is negotiated between Laurentian University and the Province, or there is any change in the funding formula by the Ministry, the **Northern Grant** will remain consistent with the historical allocation.

Until SMA3 (or any replacement or modification thereof) is negotiated between Laurentian University and the Province, or there is a change in the funding formula by the Ministry, the **Performance Grant** will be distributed to each Federated University based upon their relative WGU as a share of gross Laurentian University WGU for 2017-18. This grant is currently under review by the Province, and effective May 1, 2020, Laurentian University will update the grant allocation to be consistent with the Province's determination.

Laurentian University will also continue to transfer to the University of Sudbury its share of the **French Language Grant** and the **Bilingualism Grant** as mandated by the Province and will notify the University of Sudbury if any changes are established by the Province, which will then flow through in a corresponding manner to the amounts distributed by Laurentian University to the University of Sudbury.

The Ministry provides Facilities Renewal Program (FRP) capital funding to institutions through the **Facilities Renewal Grant** based on space standards ("generated space" – the amount of theoretical space a university should have) and the current formulae is under review by the Province. If the funding formulae are modified by the Ministry, Laurentian University will update the grant allocation for each Federated University to be consistent with the Province's funding principles. Unless and until that occurs, the current Grant Revenue allocation will remain unchanged.

## GRANT REVENUE ALLOCATION EFFECTIVE MAY 1, 2019

**2017-2018 Enrolment Data**

| Grant | Laurentian University | U of S | Huntington | Thorneloe | Total Federated | Grand Total |
|---|---|---|---|---|---|---|
| WGU | 16,247.5 | 97.5 | 263.7 | 111.1 | 472.3 | 16,719.8 |

**Grant Revenue Allocation to Federated Universities based upon 2017-18 data and effective May 1, 2019 to April 30th, 2020:**

| Grant | U of S | Huntington | Thorneloe | Total Federated |
|---|---|---|---|---|
| Core | 283,043 | 765,521 | 322,523 | 1,371,087 |
| Performance | 41,075 | 111,093 | 46,805 | 198,972 |
| Northern | 212,816 | 172,832 | 80,462 | 466,185 |
| Bilingualism | 615,185 | 0 | 0 | 615,185 |
| Total Grant Distributed | 1,152,119 | 1,049,446 | 449,790 | 2,651,354 |

FRP funding will continue on the same basis as is currently allocated, pending any change in the funding formula by the Ministry. Prior year's allocations and distributions were as follows:

| CAPITAL GRANTS | TOTAL PROVINCIAL ENVELOPE | TOTAL LU + FEDS | Laurentian 92.98 % | U of S 3.54 % | Huntington 2.04 % | Thorneloe 1.43 % |
|---|---|---|---|---|---|---|
| 2018 | 40,000,000 | 656,308 | 610,235 | 23,299 | 13,389 | 9,385 |
| 2017 | 56,093,200 | 920,300 | 855,694 | 32,671 | 18,744 | 13,161 |
| 2016 | 26,630,000 | 436,900 | 406,229 | 15,510 | 8,913 | 6,248 |
| 2015 | 17,300,000 | 291,800 | 271,315 | 10,359 | 5,953 | 4,173 |
| 2014 | 17,300,000 | 291,800 | 271,315 | 10,359 | 5,953 | 4,173 |

**SCHEDULE "B"**
**TUITION REVENUE DISTRIBUTION**

Tuition fee revenue ("**Tuition Revenue**") resulting from course registrations are received by each Recipient offering the courses, from Laurentian University.

All Tuition Revenue collected from students for course registrations at Federated Universities are transferred by Laurentian University to the Recipient, net of Tuition Set-Aside (TSA). Beginning in 1996/1997 the TSA fund was established in addition to the government's Ontario Student Assistance Program (OSAP). The fund required universities to expend the TSA amount annually to provide financial support to students through bursaries, scholarships, work-study programs and work between academic terms. This is monitored annually by the Ministry.

Laurentian University administers scholarships and bursaries paid from the TSA funds to students registered at all Federated Universities. Laurentian will continue to calculate the TSA percentage annually.

Work study is a component of TSA. Laurentian University will allocate a proportionate share to each Federated University for work study. For clarity, the total amount for work study in 2019-20 will be $50,000. The Recipient will receive a proportionate Work Study share based upon its *pro rata* share of the amount of tuition revenue allocated to it by Laurentian University. The Recipient shall provide supporting information on their use of Work Study funds to Laurentian University in order to allow for reporting to the Ministry.

**SCHEDULE "C"**
**ADMINISTRATIVE SERVICES PROVIDED BY LAURENTIAN UNIVERSITY**

Laurentian University provides services to its students and academic departments through a number of central services. Laurentian University strives to optimize the delivery of cost-effective, flexible and reliable services to all customers.

There exists an understanding between the Recipient and Laurentian University that they will work together, in good faith, to achieve synergistic benefits through administrative capacity and efficiencies.

Consistent with that understanding, Laurentian University provides the following services to the Recipient and the student population: student fees collection and accounting, central computing services, administration of all pension and employee benefit services, security, registrarial functions, library, recruitment and liaison services, student support services (such as but not limited to academic advising, international supports, mental health and wellness, accessibility and counselling services, campus recreation, equity and diversity).

While ensuring efficiency among Laurentian University and the Federated Universities and in promoting elimination of duplication, Laurentian University shall recover the cost of providing services through the payment by each Federated University of an annual Administrative Service Fee. As at and from the Effective Date, the actual administrative cost associated with the provision of these student services by Laurentian University represents approximately 30% of Laurentian University's total annual expenses. For clarity, these costs do not include the provision of any facility costs or administrative costs other than those provided to the Recipient.

The Administrative Services Fee will be deducted annually from the Grant Revenue and Tuition Revenue distributions made by Laurentian University to each Federated University in accordance with Schedule **A**. Effective May 1, 2019, the Administrative Services Fee payable to Laurentian University by each Federated University shall be set at 15% of shared gross revenue with the Recipient (comprised of Grant Revenue and Tuition Revenue), all as set out on Schedule **A**.

Laurentian University and the Recipient will continue to identify opportunities for increased operational capacity and efficiencies through ongoing, successful collaborations in connection with administration services including but not limited to:

1. (Environmental/facility services, (includes sharing of operating costs of facilities, leases, utilities, maintenance, etc.);
2. security services;
3. human resources;
4. procurement;
5. insurance and risk;
6. ancillary services;

7. technology services;
8. financial services;
9. registration, collection and accounting of tuition and ancillary fees;
10. students support services;
11. advancement support and alumni;
12. communications support;
13. francophone support services;
14. Indigenous support services;
15. emergency preparedness

FARBER

Our scope does not constitute an audit conducted in accordance with generally accepted auditing standards, an examination of internal controls or other attestation or review services in accordance with standards established by the Canadian Institute of Chartered Accountants ("**CICA**"). Accordingly, we do not express an opinion or any other form of assurance on the Financial Statements of Thorneloe or any financial or other information, or operating and internal controls of Thorneloe.

Our work was based primarily on information supplied by Thorneloe and its advisors and carried out on the basis that such information is accurate and complete. Thorneloe's information will not be subject to checking or verification procedures, except to the extent expressly stated to form part of the scope of work.

With respect to prospective financial information relative to the opportunity, we will not examine, compile or apply agreed-upon procedures to such information in accordance with standards established by the CICA, and we will not express any assurance of any kind on such information. We will not assist in the development of any assumptions therein. There will usually be differences between estimated and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. We take no responsibility for the achievement of predicted results.

**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

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

***ONTARIO***
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**
Proceeding commenced at Toronto

**AFFIDAVIT OF JOHN GIBAULT**

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Tel: (613) 695-8855 / Fax: 613-695-8580

Lawyers for Thorneloe University

# TAB 11

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**

# AFFIDAVIT OF ALLAN NACKAN
**(SWORN APRIL 19, 2021)**

I, ALLAN NACKAN, of the City of Thornhill, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a partner with A. Farber & Partners Inc., a member of the Farber Group.

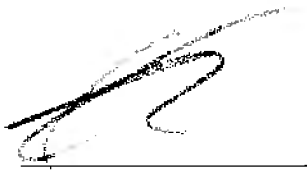
2. I have been retained by Koskie Minsky LLP on behalf of their client Thorneloe University in the above-noted matter to provide an expert opinion report in relation to a motion by Thorneloe University ("**Thorneloe**") under section 32(2) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. c-36 ("**CCAA**") for an order that the two agreements in the Notice of Disclaimer delivered on April 1, 2021 by Laurentian University of Sudbury ("**Laurentian**") are not to be disclaimed or resiliated; namely, the Federation Agreement between Laurentian and Thorneloe dated 1962; and, the Financial

Distribution Notice between Laurentian and Thorneloe dated May 1, 2019, amending the Proposed Grant Distribution and Services Fees agreement between Laurentian, the University of Sudbury, Thorneloe University, and Huntington University dated November 10, 1993.

3. I prepared a report on April 19, 2021, as attached to this Affidavit as **Exhibit "A"**.

4. Attached to my report is my curriculum vitae and Acknowledgement of Expert's Duty.

**SWORN** by **ALLAN NACKAN**, via video-conference from the City of Thornhill, in the Province of Ontario, before me in the City of Toronto, in the Province of Ontario, on this 19th day of April, 2021, in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



**ALLAN NACKAN**

A Commissioner for taking Affidavits, etc.

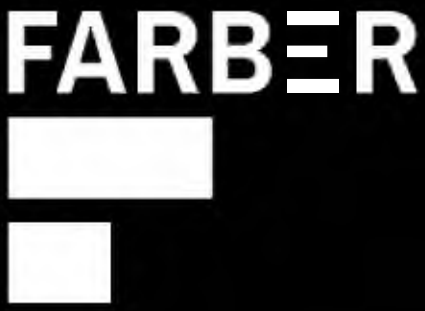
Sydney Edmonds LSO #79946K

This is **Exhibit "A”**

referred to in the Affidavit of Allan Nackan

sworn before me this 19th day of April, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



# Thorneloe University

## Report on Financial Impact of Termination of Federation Agreement and Financial Distribution Agreement on Thorneloe University

April 19, 2021

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1.1. A. Farber & Partners Inc., a member of Farber Group ("**Farber**") was retained by the law firm of Koskie Minsky ("**KM**") on behalf of its client Thorneloe University ("**Thorneloe**" or "**TU**"), to review:

- the Federation Agreement between Laurentian University ("**Laurentian**" or "**LU**") and Thorneloe dated 1962 ("**Federation Agreement**"); and
- the Financial Distribution Notice between Laurentian and Thorneloe dated May 1, 2019, that amended the Proposed Grant Distribution and Services Fees agreement dated November 10, 1993 between Laurentian and Thorneloe (the "**Financial Distribution Notice**"),

and provide an opinion on:

- whether in Farber's expert opinion termination of the Federation Agreement and the Financial Distribution Notice pursuant to Section 32(1) of the Companies' Creditors Arrangement Act ("**CCAA**") would result in significant financial hardship to Thorneloe, and whether or not termination of these agreements would enhance Laurentian's prospects of a viable compromise or arrangement.

1.2. In order to perform this engagement, I relied on other Farber professionals with extensive experience in insolvency and restructuring, all of whom worked under my direct supervision and control. I have relied on the work of the team to support my review of information related to this matter, and references to "our" and "we" recognize this reliance.

1.3. The hourly rates charged by Farber for professional services provided in this matter range from $375 to $650 for staff and my time is billed at $650 per hour.

1.4. I was asked to provide this expert report in connection with a notice of disclaimer issued by Laurentian to Thorneloe on April 1, 2021 ("**Disclaimer Notice**") disclaiming the Federation Agreement and the Financial Distribution Notice pursuant to Section 32(1) of the CCAA in the CCAA application filed by Laurentian to restructure its affairs ("**CCAA Proceedings**") and as to whether factors required to be considered by Court in ordering disclaimer of a contract as listed in section 32(4) of the CCAA have been satisfied.

1.5. I reserve the right to revise and supplement my analyses, opinions and report to the extent additional relevant information becomes available, or to the extent permitted by the Court in this case.

1.6. Attached as **Appendix 1** to this report is my Acknowledgment of Expert's Duty in accordance with Form 53 of the Courts of Justice Act.

2.1. Based on my review of the documents and evidence produced, including discussions with management, financial and legal advisors of Thorneloe, and from my analyses, education, experience and training, it is my opinion, for reasons more fully articulated in the body of this report, that:

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- Termination of the Federation Agreement will cause serious financial hardship to Thorneloe as a consequence of which Thorneloe itself will have to resort to a formal insolvency process. If terminated, Thorneloe will no longer be eligible to receive government grants which comprise one of its main revenue streams. The financial losses to Thorneloe on account of termination are estimated to be approximately $13.7 million over the next five years;
- Given the size and operations of Thorneloe as compared to Laurentian, termination of the Federation Agreement will have an immaterial impact on overall costs reduction in Laurentian's restructuring process and is unlikely to enhance prospects of Laurentian making a viable Plan in the CCAA Proceedings.

3.1. I am a Certified Public Accountant ("**CPA**") and a Licensed Insolvency Trustee ("**LIT**"), with approximately 5 years' experience in Public Accounting and 31 years' experience Insolvency and Restructuring. I also hold the specialty designation as a Chartered Insolvency and Restructuring Professional ("**CIRP**") from CAIRP.

3.2. I am a partner of Farber since 2000 and co-leader of the firm's restructuring practice. I also lead Farber's international and cross-border initiatives and am a director of BTG Global Advisory. Farber has approximately 250 employees in multiple offices across Canada.

3.3. My practice is diverse and includes assignments such as acting as Monitor, Receiver and Trustee in insolvency proceedings; acting as financial advisor for Representative Counsel, creditor committees, lenders, regulators and other stakeholders, including in significant CCAA cases such as Nortel Networks Corp, U.S. Steel Canada and Sears Canada; due diligence and monitoring engagements; fraud and forensic proceedings to trace and recover assets in US, Canada and internationally.

3.4. I hold graduate and undergraduate business and accounting degrees from University of Witwatersrand in Johannesburg, South Africa.

3.5. I am a Fellow of INSOL International (since 2012), having successfully completed the Global Insolvency Practice Course, which is the pre-eminent advanced educational qualification focusing on international insolvency. I was admitted as a member of the Insolvency Institute of Canada in 2017.

3.6. My Curriculum Vitae is attached as **Appendix 2** to this Report, which sets out additional information about my qualifications.

4.1. The conclusions set out herein are based on my review of documents and information set out in **Appendix 3** to this report and supplemented by various discussions with management and advisors of Thorneloe.

4.2. Our conclusions rely on historical audited financial statements of Thorneloe prepared by KPMG LLP, discussions held with and information provided by Thorneloe's

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management/staff, and the court materials filed by Laurentian in the CCAA Proceedings including reports issued by Ernst & Young Inc. as proposed monitor and monitor for Laurentian ("**Monitor**"); affidavit of Dr. Robert Haché sworn on January 30, 2021 ("**Haché Affidavit**") filed in support of the initial CCAA application and related correspondence/notices issued.

4.3. We reserve the right to revise or supplement our analysis, opinion and report to reflect further findings should we be provided with additional documentation or information.

4.4. Our analysis and this report should be read in conjunction with our disclaimer included in **Appendix 6** of this report.

5.1. My report has been prepared in connection with the Disclaimer Notice issued by Laurentian to Thorneloe on April 1, 2021 disclaiming the Federation Agreement and the Financial Distribution Notice pursuant to section 32 of the CCAA in the CCAA Proceedings.

5.2. We have drawn the following facts from our review of the materials provided as detailed in **Appendix 3.**

5.3. Thorneloe was established in 1961 with historical roots and affiliation to the Anglican Church of Canada with degree-conferring powers. Being a religious university, Thorneloe is not eligible to receive funds from provincial grants available to educational institutions.

5.4. Pursuant to its establishment, Thorneloe entered into the Federation Agreement with Laurentian in 1962 whereby Thorneloe amalgamated with Laurentian to form a single university and ceded its ability to confer degree, independently as a university, to Laurentian for all courses except for courses offered under its School of Theology program to small number of students. The federation arrangement allowed Thorneloe to access provincial grant funding that would be paid to Thorneloe through Laurentian in relation to students taking Thorneloe courses. Laurentian has a similar federated arrangement with Huntington University and University of Sudbury. A copy of the Federation Agreement is attached as **Appendix 4.**

5.5. Thorneloe offers several programs to students including students taking courses at Laurentian through its Ancient Studies, Religious Studies, and Women's, Gender, and Sexuality Studies departments that are related with Laurentian's Faculty of Arts.

[1] The events discussed in the Background section of this report are not intended to represent an exhaustive history of all important facts surrounding the federation of Thorneloe with Laurentian.

Thorneloe also offers certificates, diploma and bachelor's degree programs in Theology through its School of Theology.

5.6. Thorneloe and Laurentian work in a highly integrated framework as is evident from, *inter alia,* the following:

5.6.1. Pursuant to the Federation Agreement, Thorneloe's degree-conferring powers have been suspended and all students taking courses at Thorneloe (except for the School of Theology courses) receive course credits towards a degree offered by Laurentian;

5.6.2. The Grant Distribution and Service Fees arrangement has existed between Thorneloe and Laurentian since 1993 as subsequently amended by the Financial Distribution Notice which sets out the basis for distribution of government grants that are administered by Laurentian to Thorneloe and payment of service fees by Thorneloe to Laurentian for services provided by Laurentian. Copies of the Proposed Grant Distribution and Services Fees agreement dated November 10, 1993 and Financial Distribution Notice dated May 1, 2019 are attached as **Appendix 5**;

5.6.3. Thorneloe pays 15% of its tuition fees and grants, and approximately 36% material fees received from students enrolled in Thorneloe courses to Laurentian. These amounts are deducted "off the top" by Laurentian;

5.6.4. Further, Laurentian also retains all grants in relation to Laurentian students taking electives at Thorneloe;

5.6.5. Thorneloe's pensions and group benefits are administered through Laurentian and its teaching staff are represented by Laurentian University Faculty Association;

5.6.6. Thorneloe also contributes to Laurentian University Research Fund;

5.6.7. Thorneloe is located on Laurentian's campus and pedestrian access to Thorneloe is through Laurentian;

5.6.8. Thorneloe's buildings are situated on land owned by Laurentian that has been leased to Thorneloe pursuant to a long-term lease agreement dated October 26, 1964 ("**Lease Agreement**") between Laurentian as lessor and Thorneloe as lessee, for a term of 99 years with a further renewable term of 99 years;

5.6.9. All utilities including hydro, IT infrastructure, security, and sewage are shared between Laurentian and Thorneloe; and

5.6.10. Thorneloe provides substantial academic, administrative and governance support to Laurentian in its operations as more fully described in the Affidavit of Dr. John Gibaut.

5.7. The aforesaid arrangement has existed between Thorneloe and Laurentian for over 60 years until, on April 1, 2021, two months after the initial CCAA filing, Laurentian issued the Disclaimer Notice to disclaim the Federation Agreement, and the Grant Distribution and Service Fees arrangement as amended by the Financial Distribution Notice.

5.8. There are several factors that led to Laurentian's insolvency as determined and detailed in the Monitor's reports. As detailed in the report of the proposed monitor (subsequently appointed as the Monitor) dated February 1, 2021, the factors that led to Laurentian's insolvency included, *inter alia,* the following:

5.8.1. Laurentian has been suffering recurring losses and accumulating deficits over a significant number of years that were first identified in the year 2008-09. As per the Haché Affidavit, the accumulated operational deficits increased from approximately $8.2 million in the financial year 2014-15 to approximately $20 million in the financial year 2019-20[2];

5.8.2. Significant capital expenses were incurred by Laurentian on unsuccessful modernization and expansion programs for its campus including setting up a Barrie campus that had to be subsequently closed. These expansion programs were financed by way of long-term loans and did not yield desired increase in student enrollment and revenue saddling Laurentian with large liabilities;

5.8.3. Laurentian continued to provide financially unsustainable programs that had low student enrolment without revising its course offerings;

5.8.4. Provincially mandated reduction in domestic tuition fees by 10% for the year 2019-20 which continued in the year 2020-21; and

5.8.5. Loss of ancillary revenue from residences, parking facilities, meal plans and facilities offered to students due to impact of COVID-19 pandemic.

5.9. Thorneloe has participated in the Laurentian's CCAA-led mediation proceedings, but these proceedings did not lead to a mutually agreeable arrangement. The details of the discussions at the mediation proceedings are subject to a strict non-disclosure agreement and accordingly have not be discussed herein.

5.10. On April 1, 2021, Laurentian issued the Disclaimer Notice to disclaim the Federation Agreement, and the Grant Distribution and Service Fees arrangement as amended by the Financial Distribution Notice.

[2] Para 8 of the Haché Affidavit.

6.1. Section 32 of the CCAA, allows a debtor company to disclaim or resilitate any contract or agreement, by way of notice, to which the company is a party after commencement of CCAA proceedings. Under Section 32(2) of the CCAA, such a notice can be challenged by the counterparty to the contract sought to be disclaimed, by applying to Court within 15 days. Pursuant to section 32(4) of CCAA, in deciding whether to order to disclaim or resilitate an agreement, the Court is required to consider *inter alia* the following factors:

*"(a) whether the Monitor approves the disclaimer;*

*(b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and*

*(c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.*"

6.2. In this regard, the report details the potential impact of termination of the Federation Agreement and the Financial Distribution Notice on Thorneloe's operations and whether such termination would enhance the prospects of Laurentian making a viable compromise or arrangement i.e. we have focused on the factors (b) and (c) above. We understand that the Monitor is approving the disclaimer.

*Significant Financial Hardship on Thorneloe*

6.3. The financial impact on Thorneloe of termination of the Federation Agreement and Financial Distribution Notice is discussed in the paragraphs below.

6.4. The termination of the Federation Agreement will divest Thorneloe of its ability to offer courses and programs to students that can be counted as credits towards Laurentian degrees. This will result in a complete loss of tuition fee revenue for Thorneloe from Thorneloe courses offered to Laurentian students.

6.5. Thorneloe will also no longer be eligible to receive government grants which comprises one of the main revenue streams for Thorneloe that allows it to carry on its operations. It is estimated that Thorneloe will suffer an annually recurring loss of revenue and incremental annual costs of at least $2.5 million per annum, which is a significant loss to Thorneloe.

6.6. Thorneloe does not qualify for government grants and without receipt of income from government grants and tuition fees for programs/courses offered to Laurentian students, Thorneloe cannot sustain its operations or continue paying its ongoing costs and liabilities.

6.7. Thorneloe does not have the ability or infrastructure to operate outside of the Laurentian ecosystem. Termination of the Federation Agreement and Financial Distribution Notice was sprung upon Thorneloe two months after the initial CCAA filing and will essentially result in putting Thorneloe out of business because of its inability to teach students and receive revenues after termination.

6.8. This will necessitate termination of employment by Thorneloe of all of its 28 employees, including 7 full-time faculty members, 12 sessional faculty members, 6 administration staff members and 3 casual staff members (students and academic support staff). A number of Thorneloe's faculty are long serving members with a service tenure of 14 to 21 years. These members will lose their employment and their benefits will also be significantly impaired as a result of any proposed modification to the Pension and Benefit plan on account of termination of the Federation Agreement.

6.9. This will result in Thorneloe incurring substantial shut down costs that are estimated to be approximately $2.2 million (excluding the pension liability) primarily on account of the following:

6.9.1. Severance and termination payments estimated to be approximately $1.5 million;

6.9.2. Disentanglement expenses and professional fees to the extent of approximately $700,000; and

6.9.3. the Pension liability may be a significant, as yet undetermined, potential liability that may arise on the termination of the Federation Agreement.

6.10. The extent of cash outflows that Thorneloe will suffer on account of termination costs and liabilities will deplete its reserve funds, consequently resulting in loss of its recurring revenues of approximately $180,000 per annum from investment income.

6.11. As mentioned above, Thorneloe and Laurentian operate in a highly integrated framework, so termination would also require the parties to incur substantial disentanglement costs for separation of services (such as IT, utilities, security) and supervision of same.

6.12. Further, upon termination, there would be potential loss of value and complications with realization of fixed assets owned by Thorneloe, comprising Thorneloe's academic, residential and other buildings. The land on which Thorneloe's fixed assets are situated has been leased to Thorneloe as lessee by Laurentian as lessor pursuant to the long-term Lease Agreement for a term of 99 years that is renewable for a further term of 99 years subject to the terms therein.

6.13. Thorneloe has invested a significant amount of effort and knowledge in the creation and development of its curriculum and courses. The value of this intellectual property will be impaired if it is unable to earn revenues from these courses. While not quantified in this report, these losses are a significant additional category of damages that Thorneloe will suffer as a result of termination.

6.14. Thorneloe is a creditor for approximately $700,000 in respect of grants and tuition fees collected by Laurentian in respect of Thorneloe courses and not yet remitted to Thorneloe, which relies on this funding to pay its current an ongoing costs. The details of the amounts owed to Thorneloe are provided in the table below:

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| Particulars | Gross $ | LU's Fee | Net $ | NOTES |
|---|---|---|---|---|
| ***Due on March 31, 2021*** | | | | |
| Student wage subsidy | 1,623 | - | 1,623 | |
| Facility Renewal Grant | 28,250 | - | 28,250 | |
| ***Due on April 30, 2021*** | | | | |
| Prior years receivables: Gross Student Fees | 107,157 | - | 107,157 | |
| Gross tuition fees outstanding for Spring 2020 Semester | 22,420 | 3,363 | 19,057 | 1 |
| Gross tuition fees outstanding for Winter 2021 Semester | 454,054 | 68,108 | 385,946 | 1 |
| Gross 2020-21 FW Material Fees | 75,182 | 22,555 | 52,627 | 2 |
| Donations received by LU and not yet forwarded to Thorneloe | 2,000 | - | 2,000 | |
| Grants outstanding (semi-monthly instalment) | 15,930 | - | 15,930 | |
| **TOTAL** | **706,616** | | **612,590** | |
| **NOTES:** | | | | |
| (1) 15% service fee has been applied to the gross amount to calculate the net amount | | | | |
| (2) 30% service fee has been applied to the gross amount to calculate the net amount | | | | |

6.15. While Thorenloe will have a claim in Laurentian's CCAA should the termination of these agreements prevail, the claim will be small in relation to Laurentian's claims pool and the anticipated payout to unsecured creditors in Laurentian's CCAA plan will likely be insignificant and not adequate compensation for losses and damages sustained by Thorneloe.

6.16. Thorneloe will have to contend with significant employee and pension liabilities, which will likely necessitate a formal insolvency filing of its own under the Bankruptcy and Insolvency Act or CCAA.

6.17. The adverse impact on Thorneloe's financial condition upon termination of the Federation Agreement and the Financial Distribution Notice is detailed in the table below:

| Particulars | Loss based on adjusted 2019 Financial Statements | Present Value of Future Loss Over Next 5 Years (discounted @ 3%)** | Notes |
|---|---|---|---|
| **Non-Recurring Costs & Liabilities:** | | | |
| Pension Liability and PBGF | Unknown | Unknown | 1, 2 |
| Severance Payments | 1,423,686 | 1,423,686 | 1, 3 |
| Statutory Termination Pay in lieu of Notice | 59,663 | 59,663 | 1 |
| Professional fees | 500,000 | 500,000 | 1, 4 |
| Prior Receivables not paid by LU | 107,156 | 107,156 | 1, 5 |
| Disentanglement costs | 100,000 | 100,000 | 1, 6 |
| **Subtotal of Non-Recurring Costs & Liabilities (excluding pension liability)** | 2,190,505 | 2,190,505 | |
| **Recurring Costs & Liabilities** | | | |
| **Loss of Revenue:** | | | |
| Grants | 568,771 | 2,604,805 | |
| Tuition Fees | 1,710,095 | 7,831,734 | |
| Donations and Other Grants | 37,783 | 173,035 | |
| Investment Income | 183,000 | 838,086 | |
| Residence Fees | 215,470 | 986,790 | 7 |
| Miscellaneous Income | 5,416 | 24,805 | 8 |
| Less: LU Service Fee | (358,086) | (1,639,929) | |
| **Incremental annual costs:** | | | |
| IT Service Charge | 144,179 | 660,299 | 9 |
| **Subtotal of Recurring Costs & Liabilities** | 2,506,628 | 11,479,624 | |
| **TOTAL (prior to pension liability)** | **4,697,133** | **13,670,129** | |

**NOTES:**

** The calculations presented above are an estimate only and the actual losses sustained by Thorneloe may be higher than the estimates. The net present value future loss over the next 5 years does not include adjustment for anticipated growth in revenues/ increase in costs.

**(1)** These are non-recurring payments/receipts and have not been discounted for net present value calculation.

**(2)** The pension liability is presently unknown but may potentially be a large liability that may arise on the termination of the Federation Agreement.

**(3)** Severance payment has been estimated based on amount payable under common law.

**(4)** Professional service costs are an estimate only and may vary depending on the course of proceedings.

**(5)** Prior receivables owed by LU to TU assumed to be collected and held in trust for TU but to be conservative have been included in this schedule.

**(6)** Disentanglement costs are an estimate of costs in relation to separation of services and other utilities including hydro meters, door security system, fire safety systems and supervision of same.

**(7)** Estimate 50% loss in residence revenue because of the meal plan requirement. Residence revenue is estimated at $7,430 pa per student with a total of 58 available residences of which only 50% are estimated to be occupied.

**(8)** Misc. income comprises of parking and vending machine revenue. Assumed 50% reduction in 2019 parking revenue on account of students not taking TU courses and complete loss of vending machine commission.

**(9)** It is assumed that TU will continue to avail computer services provided by LU and pay its share of the costs.

6.18 **TABLE 1**

6.19. The calculations presented above are an estimate only and the actual losses sustained by Thorneloe may be higher than the estimates. The net present value impact of termination over the next 5 years has been shown for illustrative purposes only to demonstrate the losses to Thorneloe over the next 5 years. There was every expectation that Thorneloe would continue to operate with LU as a federation in perpetuity, in which case actual losses will exceed the above estimates by many multiples. Additional damages would also result in respect of its intellectual property, which are not quantified in this report.

6.20. It is estimated that as a consequence of termination, Thorneloe will suffer significant financial losses of approximately $13.7 million over the next 5 years, comprising of approximately $2.2 million non-recurring losses due to termination costs/liabilities (which does not include the pension liability that may be a significant, as yet undetermined, potential liability that may arise on the termination of the Federation Agreement) and approximately $2.5 million of recurring losses due to loss of annual revenues and incremental costs. The net present value impact of the recurring losses is estimated to be approximately $11.5 million over the next 5 years.

*Thorneloe's Immateriality in Laurentian's Overall Restructuring Scheme*

6.21. Termination of the Federation Agreement would have an immaterial impact on the current cost-cutting measures and restructuring efforts of Laurentian, as demonstrated from the financial metrics presented below. Disclaimer of the Federation Agreement will not enhance the prospects of a viable compromise or arrangement being made by Laurentian, as Thorneloe is immaterial to its overall restructuring.

6.22. In the financial year 2020, Thorneloe received approximately $568,770 in grants which is a mere 0.66% of the total grants of approximately $86 million received by Laurentian.

6.23. Thorneloe's revenues from tuition fees in 2020 were approximately $1.5 million whereas Laurentian received $50.5 million in tuition fees. The ancillary revenue earned by Thorneloe in 2020 of approximately $381,000 is only 2.72% of the ancillary revenue of approximately $14 million earned by Laurentian.

6.24. Thorneloe employs only 7 full time faculty whereas Laurentian employs 355 full-time faculty members. The salary and benefits paid by Thorneloe to its faculty members in 2020 was approximately $2.4 million whereas Laurentian paid $134 million to its faculty members during the same period.

6.25. The immateriality of Thorneloe's operations as compared to LU's operations is summarized in the table below:

| For the year 2020* | Thorneloe (TU) | Laurentian (LU) | TU as % of LU | Notes |
|---|---|---|---|---|
| Grants received | $ 568,771 | $ 86,420,000 | **0.66%** | 1 |
| Tuition Fees | $ 1,570,964 | $ 50,500,000 | **3.11%** | |
| Material Fees | $ 65,623 | | | |
| Subtotal | $ 2,205,358 | $ 136,920,000 | **1.61%** | |
| *Less* : Service Fee | $ (358,086) | | | |
| Net Grants and Tuition Fees | $ 1,847,272 | $ 136,920,000 | **1.35%** | |
| Ancillary Revenue | $ 381,000 | $ 14,000,000 | **2.72%** | |
| Salaries and Benefits | $ 2,440,000 | $ 134,000,000 | **1.82%** | |
| Full-time Faculty | 7 | 355 | **1.97%** | |

**NOTES:**

* The source of information in this table is Thorneloe's financial statements and the financial statements shared by the applicant.

**1**. Of the total grants received, $90,601 was received on account of one-time sustainability grants that will not repeat. These include Northern Sustainability Grant of $76,615 and COVID Grant of $13,986.

6.26. As is evident from the above table, termination of the Federation Agreement and the Financial Distribution Notice will not materially enhance the financial prospects of Laurentian making a viable compromise or arrangement.

6.27. Based on our review and as more fully discussed above, termination would cause terminal fiscal damage to Thorneloe such that its very existence would be jeopardized, necessitating a formal insolvency filing by Thorneloe.

6.28. In contrast, continuation of the Federation Agreement and Financial Distribution Agreement will allow Thorneloe to sustain its operations and related costs while contributing a significant portion of its tuition fees and grant revenues to Laurentian and paying Laurentian applicable service fees. It will also facilitate uninterrupted continuation of courses and studies for students at Thorneloe, avoid any hardship to Thorneloe's staff on account of termination of employment, and prevent significant pension liabilities that may arise for Thorneloe upon termination.

7.1. Accordingly, and as discussed above, it is my opinion that:

- Thorneloe will not be eligible to receive public funding in the form of grants if the termination is allowed. The financial losses to Thorneloe on account of termination are estimated to be approximately $13.7 million over the next five years, excluding any potential significant pension liability that may arise on termination.

- The financial impact on and likely shutdown of Thorneloe's operations that will follow termination of Federation Agreement and Financial Distribution Notice will amount to significant financial hardship for Thorneloe and, termination of these agreements would not materially enhance Laurentian's prospects of a viable compromise or arrangement.

| | |
|---|---|
| Allan Nackan, CPA, CA, CIRP, LIT | April 18, 2021<br>Date |

FARBER

*Form 53*

*Courts of Justice Act*

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is Allan Nackan. I live in Thornhill, in the Province of Ontario.
2. I have been engaged by Koskie Minsky on behalf of its client Thorneloe University to provide evidence in relation to the court proceeding referenced in the text of my Report.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
    a) to provide opinion evidence that is fair, objective and non-partisan;
    b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
    c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date April 18, 2021

Signature _____

Note: This Appendix is provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*

FARBER

## Education & Professional Qualifications

- Bachelor of Commerce, University of Witwatersrand, South Africa, 1983
- Bachelor of Accounting, University of Witwatersrand, South Africa, 1985
- Chartered Accountant (CA), South African Institute of Chartered Accountants, 1988
- Chartered Accountant (CA), Canadian Institute of Chartered Accountants, 1990
- Chartered Insolvency and Restructuring Professional (CIRP), Canada, 1995
- Licensed Insolvency Trustee (LIT), Canada, 1995
- Fellow of INSOL International, 2012
- Chartered Professional Accountant (CPA), Institute of Chartered Accountants of Ontario
- Member of Insolvency Institute of Canada, 2017

## Profile

Allan Nackan is a Partner at Farber and co-leader of the Restructuring and Financial Advisory practice of Farber Financial Group.

His practice focuses on corporate insolvency and restructuring, distressed financial advisory services, cross-border restructuring, fraud investigations and forensic accounting.

Allan is a Fellow of INSOL International, having successfully graduated from their Global Insolvency Practice Course, which is the pre-eminent advanced educational qualification focusing on international insolvency. Allan is one of only eight INSOL Fellows in Canada.

Allan is actively involved in and leads Farber Financial Group's international and cross-border initiatives. He is a director and current Chair of BTG Global Advisory, an international alliance of specialist independent insolvency and financial advisory firms across the globe of which Farber was a founding member—see www.btgga.com.

He acts as court-appointed receiver and interim receiver; as monitor or financial advisor in Companies' Creditor Arrangement Act (CCAA) and Chapter 11 proceedings; as a Trustee under Bankruptcy & Insolvency Act (BIA) proposals; and as a Trustee in Bankruptcy for a wide variety of corporations and their creditors. He applies his analytical skills to help major financial institutions and other lenders with risk and feasibility studies and fulfills various financial advisory roles.

Notable assignments include: acting as financial advisor to FSCO as administrator of the Ontario Pension Benefit Guarantee Fund in CCAA/Chapter 11 filings of Nortel Networks Corp. and Sears Canada Inc.; acting as financial advisor to Representative Counsel to non-union retirees and active employees of U.S. Steel Canada Inc. (a.k.a. Stelco); restructuring and/or liquidation of retail chains such as Tabi International, Clothing for Modern Times (Urban Behaviour & Costa Blanca), The Tall Girl Shop and Movie Gallery Canada (aka Hollywood Video); the restructuring and sale of the largest movie production studio in Toronto; and successfully managing the operations, restructuring or liquidation of numerous manufacturing, distribution, retail, technology, real estate and media businesses.

Broad industry experience also includes cosmetics, retail, textiles, automotive parts, car dealerships; automobile leasing, transport & logistics, metals and mining, media, advertising, printing, software, music, and food distribution industries. Practice specialties also include retail insolvencies, securities firms, forensic accounting & fraud investigations, and cross border restructuring.

Allan's cross-border insolvency experience includes acting as financial advisor to the Superintendent of Financial Services representing Ontario Pension Benefit Guarantee Fund, a major stakeholder in CCAA/Chapter 11 filings by Nortel Networks Limited, which operated in 140 countries and filed concurrent insolvency proceedings in Canada, USA and UK; Chapter 15 proceedings for liquidation of US retail operations of The Tall Girl Shop; and representing a numerous US-secured lenders in Canadian insolvency proceedings.

Allan acted as Court-appointed Receiver and Trustee in Bankruptcy of securities firms, and as such was involved in Ashley vs. Marlow Group Private Portfolio Management Inc., a precedent setting case in Ontario on Part XII of the Bankruptcy and Insolvency Act, governing securities firm bankruptcies. He has led numerous insolvency and forensic proceedings to trace and recover assets in US, Canada, the Caribbean and internationally.

Allan has co-chaired numerous educational seminars for professional associations and has spoken and published on topics including: “Cultural Factors Impacting Cross-Border Workouts”; “Challenges in Insolvencies of Multinational Enterprise Groups—A Nortel and OSX case study”; “Retail Industry & Restructuring”; “Practical Strategies for Dealing with Employee Claims in Restructuring Proceedings”; “The use of Stalking Horse Proceedings to Maximize Value in Insolvency Workouts in United States of America and Canada”; “Fraud: Prevention and Recovery"; “Know Your Client/Due Diligence”; and “A Practical Guide to Survive & Thrive”. He has published numerous articles on insolvency and restructuring as well as forensic accounting and fraud investigations in publications such as Law Times, Secured Lender, Rebuilding Success, Advanced Manufacturing, The Bottom Line, Plant magazine, and The Globe & Mail.

Allan was Past-President of the Ontario Association of Insolvency & Restructuring Professionals and is an active participant on the Commercial List Users Committee sub-committee that drafts Model Orders used in insolvency proceedings. He is also an active participant on various INSOL International committees.

**Documents and Information:**

- Historical Audited Financial Statements of Thorneloe
- Court materials including Monitor's Reports and 13-week cash flow projections filed in the CCAA Proceedings
- Affidavit of Dr. Robert Hache sworn on January 30, 2021
- Federation Agreement between Laurentian and Thorneloe dated 1962
- Proposed Grant Distribution and Services Fees agreement between Laurentian and Thorneloe dated November 10, 1993
- Financial Distribution Notice dated May 1, 2019
- Lease agreement between Laurentian as lessor and Thorneloe as lessee dated October 26, 1964
- Information received pursuant to discussion with Thorneloe management and staff

**Websites:**

- Website of Thorneloe University www.thorneloe.ca/

**Legal Statutes:**

- *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended s32

FARBER

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THIS AGREEMENT made in quadruplicate this day of , A.D. 1962:

B E T W E E N :

LAURENTIAN UNIVERSITY OF SUDBURY

hereinafter called "Laurentian University"

OF THE FIRST PART

- and -

THORNELOE UNIVERSITY

hereinafter called "Thorneloe University"

OF THE SECOND PART

WHEREAS Thorneloe University is a Corporation incorporated by Chapter 135 of the Statutes of Ontario, 1960-1961;

AND WHEREAS Laurentian University was incorporated by The Laurentian University of Sudbury Act, 1960, being Chapter 151 of The Statutes of Ontario, 1960, pursuant to the petition of The University of Sudbury, The United Church of Canada, and the Incorporated Synod of the Diocese of Algoma (Anglican) praying for the incorporation of Laurentian University as a non-denominational bilingual institution to provide facilities for instruction in all branches of higher learning, which said Act of Incorporation was amended by Chapter 154 of The Statutes of Ontario, 1961-1962;

AND WHEREAS Laurentian University is empowered by virtue of its said Act of Incorporation to admit into federation or affiliation with it other colleges or universities;

AND WHEREAS Thorneloe University is empowered by

virtue of its said Act of Incorporation to enter into federation or affiliation with other colleges or universities;

AND WHEREAS Thorneloe University is desirous of entering into federation with Laurentian University in accordance with the provisions of the said Acts of Incorporation of Thorneloe University and Laurentian University and upon the terms and conditions hereinafter set forth and Laurentian University has agreed to admit Thorneloe University into federation with it in accordance with the said Acts of Incorporation, and upon the terms and conditions set forth;

AND WHEREAS the University of Sudbury and Huntington University, both of which have heretofore entered into federation with Laurentian University, have consented to the admission of Thorneloe University into such federation;

NOW WITNESSETH that pursuant to the said Acts of Incorporation of Thorneloe University and of Laurentian University and in consideration of the terms, covenants and agreements on the part of the parties hereto to be respectively observed, fulfilled and performed, the parties hereto covenant and agree as follows:

1. Thorneloe Univers[illegible] hereby [illegible] rtue of the said Acts of Incorporation of [illegible] oe Univ.r [illegible] d of Laurentian University admitted into federation [illegible] ith Laurentian University.

2. While this agree ent remains in for[illegible] horneloe University shall suspend all its [illegible]egree-conferri[illegible] ·[illegible]s except the power to grant degrees in Theol gy.

3. Laurentian University agrees to continue all its faculties, schools, institutes, departments and chairs now established in accordance with the provisions of the Act of Incorporation of Laurentian University, and Thorneloe University shall be entitled to give instruction in Theology and Philosophy in accordance with the Acts of Incorporation of Laurentian University and Thorneloe University.

4. Laurentian University agrees that in continuing its faculties, schools, institutes, departments and chairs now established it will do so upon the basis of the Act of Incorporation of Laurentian University by virtue of which Laurentian University is a bilingual, non-denominational university and it will continue the system of bilingual instruction in the respective faculties, schools, institutes, departments and chairs heretofore followed in Laurentian University.

5. All students, including those enrolled in federated universities or colleges who intend to proceed towards degrees or to obtain diplomas, certificates or other academic qualifications at Laurentian University shall register at Laurentian University and must comply with the requirements of Laurentian University for entry and registration in Laurentian University and to become entitled to degrees, diplomas, certificates or other academic qualifications at Laurentian University, must comply with all requirements of Laurentian University. In the case of students enrolled in federated universities or colleges, fees paid shall be apportioned between Laurentian University and such federated universities or colleges as may from time to time be agreed upon between the parties hereto.

6. Thorneloe University shall have disciplinary jurisdiction over and entire responsibility for the conduct of its students in respect of all matters arising or occurring in or upon the buildings and grounds, including residences, occupied by Thorneloe University but in all other cases Laurentian University shall have disciplinary jurisdiction over students registered in it.

7. General facilities provided by Laurentian University such as physical training, health and athletic facilities, buildings and quarters (other than residences) provided for the use of Laurentian University faculty and students shall be available to the faculty and students of Thorneloe University upon the same fee basis as to the faculty and students of Laurentian University.

8. Laurentian University shall allocate and reserve land within its campus which Thorneloe University may acquire and upon which Thorneloe University may construct buildings for teaching, administration, and faculty and students residences, with or without chapels, subject to the prior written approval of Laurentian University as to architectural design and upon such financial arrangements and conditions as to title and tenure as may be agreed upon between Thorneloe University and Laurentian University.

9. Public appeals for financial or other contributions or assistance for Thorneloe University shall be made only with the prior written approval of Laurentian University. A request for money through a Church body to be raised from its

members shall not be considered a public appeal.

10. Thorneloe University and Laurentian University respectively shall retain as their own property all gifts, bequests, devises, scholarships, endowments, or grants of any kind made to them respectively, except as may otherwise be agreed upon between the parties hereto and subject to any trusts which may affect the same.

11. Any federation or affiliation agreements or modifications thereof relating to federation or affiliation with Laurentian University shall be discussed with the universities and colleges federated or affiliated with Laurentian University prior to Laurentian University entering into any such agreements or agreeing to modifications of any such agreements.

12. Both Laurentian University and Thorneloe University declare and express the firm hope and conviction that the relationship between the Universities established by this agreement will be a permanent one and that they and the other universities and colleges which become federated or affiliated with Laurentian University will work together to fulfil the objects of the Act of Incorporation of Laurentian University and to build a great institution of learning which shall forever be bilingual and non-denominational in its character. The parties fully realize that the success of the task which they have set themselves will depend more on mutual understanding, goodwill and co-operation between the institutions now or hereafter associated together in Laurentian University, than upon any

formal agreements.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals under the hands of their proper officers duly authorized in that behalf.

LAURENTIAN UNIVERSITY OF SUDBURY

THORNELOE UNIVERSITY

FARBER

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# LAURENTIAN UNIVERSITY FINANCIAL DISTRIBUTION TO FEDERATED UNIVERSITIES

**THESE TERMS OF FINANCIAL DISTRIBUTION**, effective as of the 1st day of May, 2019 (the "**Effective Date**")

**B E T W E E N :**

**LAURENTIAN UNIVERSITY OF SUDBURY**

**("Laurentian University")**

**- and -**

**THORNELOE UNIVERSITY**

**(the "Recipient")**

This Notice is delivered further to the Proposed Grant Distribution and Services Fees document dated November 10, 1993 (the "**1993 Funding Model**") and sets out the terms for the distribution of operating grants to the Recipient and service fees charged to the Recipient from and after the Effective Date. This document amends, restates and replaces in its entirety any prior documentation, oral or written representations and past practices relating to the distribution of grant funding, tuition fees and service fees between Laurentian University and the Recipient, including but not limited to those described under the 1993 Funding Model. No future amendments to the terms set out in this Notice are effective unless confirmed and agreed to in writing, in advance, by Laurentian University.

The Recipient is a separate legal entity established by separate Acts and governed by an independent Board. The Recipient owns its own buildings on land that is owned by Laurentian University and leased to the Recipient by Laurentian University.

The Recipient is recognized under the *Laurentian University Act* by allowing Laurentian University to admit "church-related universities or colleges into federation as colleges of the Faculty of Arts and Science, which church-related universities or colleges have the right to give instruction in philosophy and religious knowledge and in such other subjects as may from time to time be approved by the Faculty of Arts and Science of the University and be consented to by the Senate and Board, and the University shall accept such courses in partial fulfillment of the requirements for a degree under the same academic terms and conditions as would obtain if the instruction were given in University College".

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Huntington University, Thorneloe University and the University of Sudbury are each referred to in this Notice as a "Federated University" and are collectively referred as the "**Federated Universities**".

**REVENUE SHARING**

The Federated Universities do not receive funding directly from the government. Laurentian University has historically transferred a portion of the funding it receives from the government to each Federated University according to a set formula, unless otherwise instructed by the government. Since 1993 that formula has been pursuant to the 1993 Funding Model.

As the Recipient is aware, the Province introduced a new university funding model for 2017-2018 (the "**New Funding Model**"). The New Funding Model includes an enrolment-based envelope. Consistent with the enrolment-based envelope, the Province provides each institution with a base level of operating funding determined in accordance with a specific level of eligible enrolment and program of registration.

Laurentian University advanced funds for 2017-18 and 2018-19 in accordance with the 1993 Funding Model, while it considered the effect of any changes.

The purpose of this Notice is to ensure that all funding transferred by Laurentian University to any of the Federated Universities from and after the Effective Date is consistent with the New Funding Model, and that the financial effects of the New Funding Model are recognized and assumed proportionately by each of Laurentian University and the Federated Universities, on the terms set out herein. **The underlying principle is that none of Laurentian University or any of the Federated Universities will subsidize the operations or services of another,** and each will be responsible for covering its own costs. The funding mechanism in place at any given time will be consistent with the funding mechanism between the Province and Laurentian University.

As outlined in Schedule **A**, as at and from the Effective Date, Laurentian University will transfer **grant funding** to each Federated University based on the current and future provincial funding formulas for post-secondary institutions, consistent with the terms of the New Funding Model to which Laurentian University is now subject.

**Tuition fees** are collected by Laurentian University and will be transferred to the Recipient based on enrolment in courses, less the tuition set-aside obligation, as outlined in Schedule **B**.

Laurentian University will be implementing the New Funding Model as at and from the Effective Date. All aspects of funding and the distribution of revenue by Laurentian University to the Federated Universities will be strictly in accordance with this Notice.

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**ADMINISTRATIVE SERVICE FEES**

Laurentian University provides direct non-academic administrative services to each Recipient as outlined in Schedule **C**. From and after the Effective Date, an administrative services fee will be charged to the Recipient by Laurentian University calculated in accordance with Schedule **C** based on 15% of shared revenues, being Grant Revenue and Tuition Revenue as such terms are defined on Schedule **A** (the "**Administrative Services Fee**").

The Administrative Services Fee will only partially cover the costs incurred by Laurentian University for a number of non-academic services it provides as set out on Schedule **C**. This formula will be reviewed and, if required, updated by Laurentian University not less than once every three (3) years.

Each Federated University employs its own staff and is, and will continue to be, responsible for its own financial affairs. Laurentian University is the principal employer for administering pension plan and benefits and provides access to these employee benefits to each of the Federated Universities, with each Federated University bearing the sole financial responsibility for all contributions and funding for such employee benefits for its own staff.

**AMENDING THE TERMS OF FINANCIAL DISTRIBUTION TO FEDERATED UNIVERSITIES**

As set out on Schedule **A**, at all times the funding model established between the Province and Laurentian University from time to time will be reflected in the financial distribution model between Laurentian University and each of the Federated Universities. Any modification by the Province in the grant structure or through regular negotiation with the Province through the Strategic Mandate Agreements (SMA) or otherwise with Laurentian University will be correspondingly reflected in the grant allocation calculations by Laurentian University with each of the Federated Universities. If a change occurs, an amendment to the terms contained in this Notice will be provided by Laurentian University to each of the Federated Universities, and become effective. Laurentian University will keep the Recipient informed when the Province implements modifications in the grant structure and formulas.

**LAURENTIAN UNIVERSITY OF SUDBURY**

Per: Pierre Zundel

Name: Dr. Pierre Zundel
Title: Interim President and Vice-Chancellor

**SCHEDULE "A"**
**GRANT REVENUE ALLOCATION**

Operating grant revenue allocations from Laurentian University to the Federated Universities will be consistent at all times with the Provincial funding formulae for post-secondary institutions.

In accordance with the terms of the New Funding Model, Laurentian University receives a specified amount of operating funding provided through a new Core Operating Grant ("**COG**"). Enrolment will continue to be counted using a single measure of activity-enrolments as measured by Full-time Equivalent enrolments in specific programs. These enrolments will be weighted by program and level of study using the new program weights as provided by the Ministry of Training, Colleges and Universities (the "**Ministry**"). Information on the reallocation of grants is available in the Ministry's University Funding Technical Design Manual.

The total COG provided to Laurentian University annually will be equal to the total Weighted Grant Unit ("**WGU**") at its corridor midpoint multiplied by the average grant per WGU funding determined by the New Funding Model. Under the corridor funding model, Laurentian University will receive the amount of funding with enrolments levels at its corridor midpoint, as long as it remains within its enrolment corridor range of plus or minus 3%.

Should Laurentian University fall above or below the corridor lower threshold, the grant adjustment by the Province will be correspondingly reflected on the grant allocation made by Laurentian University to the Recipient.

Each Federated University will receive Grant Revenue for the COG based upon their relative students' enrolment in programs as reported to the Ministry for 2017-18.

Until SMA3 (or any replacement or modification thereof) is negotiated between Laurentian University and the Province, or there is any change in the funding formula by the Ministry, the **Northern Grant** will remain consistent with the historical allocation.

Until SMA3 (or any replacement or modification thereof) is negotiated between Laurentian University and the Province, or there is a change in the funding formula by the Ministry, the **Performance Grant** will be distributed to each Federated University based upon their relative WGU as a share of gross Laurentian University WGU for 2017-18. This grant is currently under review by the Province, and effective May 1, 2020, Laurentian University will update the grant allocation to be consistent with the Province's determination.

Laurentian University will also continue to transfer to the University of Sudbury its share of the **French Language Grant** and the **Bilingualism Grant** as mandated by the Province and will notify the University of Sudbury if any changes are established by the Province, which will then flow through in a corresponding manner to the amounts distributed by Laurentian University to the University of Sudbury.

The Ministry provides Facilities Renewal Program (FRP) capital funding to institutions through the **Facilities Renewal Grant** based on space standards ("generated space" – the amount of theoretical space a university should have) and the current formulae is under review by the Province. If the funding formulae are modified by the Ministry, Laurentian University will update the grant allocation for each Federated University to be consistent with the Province's funding principles. Unless and until that occurs, the current Grant Revenue allocation will remain unchanged.

## GRANT REVENUE ALLOCATION EFFECTIVE MAY 1, 2019

**2017-2018 Enrolment Data**

| Grant | Laurentian University | U of S | Huntington | Thorneloe | Total Federated | Grand Total |
|---|---|---|---|---|---|---|
| WGU | 16,247.5 | 97.5 | 263.7 | 111.1 | 472.3 | 16,719.8 |

**Grant Revenue Allocation to Federated Universities based upon 2017-18 data and effective May 1, 2019 to April 30th, 2020:**

| Grant | U of S | Huntington | Thorneloe | Total Federated |
|---|---|---|---|---|
| Core | 283,043 | 765,521 | 322,523 | 1,371,087 |
| Performance | 41,075 | 111,093 | 46,805 | 198,972 |
| Northern | 212,816 | 172,832 | 80,462 | 466,185 |
| Bilingualism | 615,185 | 0 | 0 | 615,185 |
| Total Grant Distributed | 1,152,119 | 1,049,446 | 449,790 | 2,651,354 |

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FRP funding will continue on the same basis as is currently allocated, pending any change in the funding formula by the Ministry. Prior year's allocations and distributions were as follows:

| CAPITAL GRANTS | TOTAL PROVINCIAL ENVELOPE | TOTAL LU + FEDS | Laurentian 92.98 % | U of S 3.54 % | Huntington 2.04 % | Thorneloe 1.43 % |
|---|---|---|---|---|---|---|
| 2018 | 40,000,000 | 656,308 | 610,235 | 23,299 | 13,389 | 9,385 |
| 2017 | 56,093,200 | 920,300 | 855,694 | 32,671 | 18,744 | 13,161 |
| 2016 | 26,630,000 | 436,900 | 406,229 | 15,510 | 8,913 | 6,248 |
| 2015 | 17,300,000 | 291,800 | 271,315 | 10,359 | 5,953 | 4,173 |
| 2014 | 17,300,000 | 291,800 | 271,315 | 10,359 | 5,953 | 4,173 |

**SCHEDULE "B"**
**TUITION REVENUE DISTRIBUTION**

Tuition fee revenue ("**Tuition Revenue**") resulting from course registrations are received by each Recipient offering the courses, from Laurentian University.

All Tuition Revenue collected from students for course registrations at Federated Universities are transferred by Laurentian University to the Recipient, net of Tuition Set-Aside (TSA). Beginning in 1996/1997 the TSA fund was established in addition to the government's Ontario Student Assistance Program (OSAP). The fund required universities to expend the TSA amount annually to provide financial support to students through bursaries, scholarships, work-study programs and work between academic terms. This is monitored annually by the Ministry.

Laurentian University administers scholarships and bursaries paid from the TSA funds to students registered at all Federated Universities. Laurentian will continue to calculate the TSA percentage annually.

Work study is a component of TSA. Laurentian University will allocate a proportionate share to each Federated University for work study. For clarity, the total amount for work study in 2019-20 will be $50,000. The Recipient will receive a proportionate Work Study share based upon its *pro rata* share of the amount of tuition revenue allocated to it by Laurentian University. The Recipient shall provide supporting information on their use of Work Study funds to Laurentian University in order to allow for reporting to the Ministry.

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**SCHEDULE "C"**
**ADMINISTRATIVE SERVICES PROVIDED BY LAURENTIAN UNIVERSITY**

Laurentian University provides services to its students and academic departments through a number of central services. Laurentian University strives to optimize the delivery of cost-effective, flexible and reliable services to all customers.

There exists an understanding between the Recipient and Laurentian University that they will work together, in good faith, to achieve synergistic benefits through administrative capacity and efficiencies.

Consistent with that understanding, Laurentian University provides the following services to the Recipient and the student population: student fees collection and accounting, central computing services, administration of all pension and employee benefit services, security, registrarial functions, library, recruitment and liaison services, student support services (such as but not limited to academic advising, international supports, mental health and wellness, accessibility and counselling services, campus recreation, equity and diversity).

While ensuring efficiency among Laurentian University and the Federated Universities and in promoting elimination of duplication, Laurentian University shall recover the cost of providing services through the payment by each Federated University of an annual Administrative Service Fee. As at and from the Effective Date, the actual administrative cost associated with the provision of these student services by Laurentian University represents approximately 30% of Laurentian University's total annual expenses. For clarity, these costs do not include the provision of any facility costs or administrative costs other than those provided to the Recipient.

The Administrative Services Fee will be deducted annually from the Grant Revenue and Tuition Revenue distributions made by Laurentian University to each Federated University in accordance with Schedule **A**. Effective May 1, 2019, the Administrative Services Fee payable to Laurentian University by each Federated University shall be set at 15% of shared gross revenue with the Recipient (comprised of Grant Revenue and Tuition Revenue), all as set out on Schedule **A**.

Laurentian University and the Recipient will continue to identify opportunities for increased operational capacity and efficiencies through ongoing, successful collaborations in connection with administration services including but not limited to:

1. (Environmental/facility services, (includes sharing of operating costs of facilities, leases, utilities, maintenance, etc.);
2. security services;
3. human resources;
4. procurement;
5. insurance and risk;
6. ancillary services;

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7. technology services;
8. financial services;
9. registration, collection and accounting of tuition and ancillary fees;
10. students support services;
11. advancement support and alumni;
12. communications support;
13. francophone support services;
14. Indigenous support services;
15. emergency preparedness

Our scope does not constitute an audit conducted in accordance with generally accepted auditing standards, an examination of internal controls or other attestation or review services in accordance with standards established by the Canadian Institute of Chartered Accountants ("**CICA**"). Accordingly, we do not express an opinion or any other form of assurance on the Financial Statements of Thorneloe or any financial or other information, or operating and internal controls of Thorneloe.

Our work was based primarily on information supplied by Thorneloe and its advisors and carried out on the basis that such information is accurate and complete. Thorneloe's information will not be subject to checking or verification procedures, except to the extent expressly stated to form part of the scope of work.

With respect to prospective financial information relative to the opportunity, we will not examine, compile or apply agreed-upon procedures to such information in accordance with standards established by the CICA, and we will not express any assurance of any kind on such information. We will not assist in the development of any assumptions therein. There will usually be differences between estimated and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. We take no responsibility for the achievement of predicted results.

**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

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

***ONTARIO***
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF ALLAN NACKAN**

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Lawyers for Thorneloe University

# TAB 12

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**

# AFFIDAVIT OF ALLAN NACKAN
**(SWORN APRIL 28, 2021)**

**I, ALLAN NACKAN**, of the City of Thornhill, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a partner with A. Farber & Partners Inc., a member of the Farber Group. This affidavit is sworn further to my affidavit of April 19, 2021.

2. Attached hereto and marked as **Exhibit "A"** a copy of the report I prepared entitled "Supplementary Report of Farber, dated April 28, 2021, in relation to Monitor's Report delivered on April 26, 2021.

3. I swear this Affidavit in good faith and in support of a motion for an order that the Federation Agreement and the Financial Distribution Notice are not to be disclaimed or resiliated, and for no other or improper purpose.

**SWORN** by **ALLAN NACKAN**, via video-conference from the City of Thornhill, in the Province of Ontario, before me in the City of Toronto, in the Province of Ontario, on this 19th day of April, 2021, in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

A Commissioner for taking Affidavits, etc.

Sydney Edmonds LSO #79946K

**ALLAN NACKAN**

This is **Exhibit "A”**

referred to in the Affidavit of Allan Nackan

sworn before me this 28th day of April, 2021.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

FARBER

# Thorneloe University

**Supplementary Report in relation to Monitor's Report delivered on April 26, 2021**

April 28, 2021

1.0 EXECUTIVE SUMMARY ..... 1
2.0 INTRODUCTION ..... 2
3.0 BACKGROUND ..... 3
4.0 ANALYSIS AND FINDINGS ..... 3
5.0 CONCLUSION ..... 7

APPENDIX 1 COPY OF EMAIL TO THE MONITOR

FARBER

## 1.0 Executive Summary

- The Monitor served its Third Report at 5:00pm on April 26, 2021. This Third Report contains important information on Laurentian's cash position, revised cash flow forecasts for the stay extension contemplated, and pre and post Restructuring multi-year projections. This information was not available at the time of our Expert Report dated April 19, 2021.

- Based on our review of the Monitor's Report and the attached financial projections, Laurentian is not facing the immediate liquidity crisis on May 1, 2021 that is being represented to the Court. It is projected that there is sufficient liquidity through to the week of June 12 to June 18, 2021, without the additional DIP funds.

- The cash flows do not support the urgent need for the Amended DIP Financing on May 1, 2021. Therefore, there is no compelling reason that would necessitate termination of the federated arrangement with Thorneloe on May 1, 2021.

- Laurentian's Post Restructuring multi-year projections, contain the following provisions:

    - Setting aside approximately $7 million per year for "Sustainability Measures"; and

    - Spending $28.5 million over a period of next 5 years on completion of "Deferred Contribution Obligations", of which $16 million is projected to be spent in financial year 2021-2022.

  Based on discussion with the Monitor, more detailed backup for these estimates/provisions is not readily available and has not been shared with us.

- Based on our preliminary review, these estimates are conservative and, in any event general in nature. These should not be set aside in a year when Laurentian is projecting an operating deficit, although we recognize that certain amounts (not quantified) will have to be spent in 2021-2022.

- The potential financial impact of terminating Thorneloe's federated arrangement on the multi year Projections was $1.8 million for the year ended April 30, 2020, which is immaterial to Laurentian, as discussed in our Expert Report.

- Disclaimer of the Thorneloe's federated arrangement will result in significant financial hardship and the insolvency of Thorneloe, as discussed in our Expert Report.

FARBER

## 2.0 INTRODUCTION

2.1. A. Farber & Partners Inc., a member of Farber Group ("**Farber**") was retained by the law firm of Koskie Minsky ("**KM**") on behalf of its client Thorneloe University ("**Thorneloe**" or "**TU**"), to review:

- the Federation Agreement between Laurentian and Thorneloe dated 1962 ("**Federation Agreement**"); and
- the Financial Distribution Notice between Laurentian and Thorneloe dated May 1, 2019, that amended the Proposed Grant Distribution and Services Fees agreement dated November 10, 1993 between Laurentian and Thorneloe (the "**Financial Distribution Notice**"),

and provide an opinion on:

- whether in Farber's expert opinion termination of the Federation Agreement and the Financial Distribution Notice pursuant to Section 32(1) of the CCAA would result in significant financial hardship to Thorneloe, and whether or not termination of these agreements would enhance Laurentian's prospects of a viable compromise or arrangement.

2.2. In this regard, Farber presented an expert report dated April 19, 2021 (the "**Expert Report**") in connection with a notice of disclaimer issued by Laurentian to Thorneloe on April 1, 2021 (the "**Disclaimer Notice**") disclaiming the Federation Agreement and the Financial Distribution Notice pursuant to Section 32(1) of the CCAA .

2.3. This report is to supplement the Expert Report (the "**Supplementary Report**") on account of additional information provided in the Monitor's Third Report dated April 26, 2021 filed in the CCAA Proceedings including the Monitor's cash flow variance analysis, pre- and post-restructuring multi-year projections, revised cash flow forecast, and materials filed in the Disclaimer Proceedings (defined below) and the CCAA Proceedings (the "**Monitor's Third Report**"). The Supplementary Report should be read in conjunction with the Expert Report.

2.4. The documentation that I have relied upon in preparing this report is noted by way of footnotes.

2.5. We reserve the right to revise or supplement our analysis, opinion and report to reflect further findings should we be provided with additional documentation or information.

2.6. All capitalized terms used in the Supplementary Report that have not been defined herein, will have the same meaning as defined in the Expert Report.

FARBER

## 3.0 BACKGROUND[1]

3.1. The Disclaimer Notice was challenged by Thorneloe before the Court under Section 32(2) of the CCAA (the "**Disclaimer Proceedings**"). The Disclaimer Proceedings are currently ongoing.

3.2. Laurentian had availed of debtor-in-possession ("**DIP**") financing ("**Initial DIP Financing**") in the principal amount of $25 million from Firm Capital Mortgage Fund Inc. (the "**DIP Lender**") that was approved by the Court and the stay of proceedings in Laurentian's CCAA Proceedings is effective until April 30, 2021. A motion to seek extension of stay on proceedings in the CCAA Proceedings is scheduled for April 29, 2021.

3.3. Laurentian is seeking an amendment to the Initial DIP Financing to increase the principal amount available under the DIP facility by a further $10 million (the "**Amended DIP Financing**"). One of the conditions of the Amended DIP Financing is that the Disclaimer Notice should become "*effective, binding and final on May 1, 2021*" (the "**Disclaimer Deadline**").[2]

3.4. Further, we note from the Monitor's Third Report that in the Monitor's view, Laurentian is unlikely to be able to complete a viable plan of compromise or arrangement without the Disclaimer Notice[3].

3.5. The Supplementary Report has been prepared to consider the additional financial information that has been presented in the Monitor's Third Report and its impact on relief being sought on April 29, 2021 by Laurentian.

## 4.0 ANALYSIS AND FINDINGS

### Laurentian's Cash Flow Variance Analysis and Requirement for Additional DIP Financing

4.1. Based on the Monitor's Cash Flow Variance Analysis for the 6-weeks ended April 16, 2021[4] (the "**Variance Analysis**"), there have been a number of positive variances in Laurentian's cash balances totaling $18 million with an ending cash balance of $31.8 million available for Laurentian as on April 16, 2021. The Monitor has commented in the report that the positive variance in available cash relates primarily to delays in processing invoices as well as the deferral of expenditures (i.e.timing differences). With positive variances in Laurentian's cash balance to the extent of $18 million for

[1] The events discussed in the Background section of this report are not intended to represent an exhaustive history of all-important facts surrounding the CCAA Proceedings and the Disclaimer Proceedings.

[2] DIP Amendment Term Sheet dated April 19, 2021.

[3] Monitor's Third Report dated April 26,2021, para 169

[4] Appendix "E" to the Monitor's Third Report.

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the period ended April 16, 2021, Laurentian enters the next phase of its restructuring with $31.8 million in the bank.

4.2. A Revised Cash Flow Forecast[5] has been presented in the Monitor's Third for a 20-week period between April 17, 2021 to September 3, 2021 (the "**Revised Cash Flow**"). The Revised Cash Flow projects that Laurentian will have an ending cash balance of $21.6 million on April 30, 2021. This amount is before receipt of any additional advances under the Amended DIP Financing being sought on the April 29, 2021 motion.

4.3. We also note from the Revised Cash Flow that Laurentian's ending cash balance over the 20-week period never falls below $7.4 million (see week 17 ending August 13, 2021).

4.4. The Revised Cash Flow confirms that Laurentian has sufficient cash balances to sustain itself into June 2021. In fact, the first draw down on the Amended DIP Financing of $6 million is only projected to occur during the week of June 12 to June 18, 2021. The remaining balance of the Amended DIP Financing of $4 million is only projected to be drawn later during the week of July 10 to July 16, 2021.

4.5. The Revised Cash Flow, which has been reviewed and approved by the Monitor, confirms that there is no immediate need to access the Amended DIP Financing at the Disclaimer Deadline of May 1, 2021.

4.6. Additionally, no cogent explanation or evidence has been provided in these proceedings as to why the DIP Lender is insistent on the Disclaimer Deadline.

### Laurentian's Pre-Restructuring Projections

4.7. The Pre-Restructuring Multi-Year Projections[6] (the "**Pre-Restructuring Projections**") forecast a deficit of approximately $42.9 million for the year 2021-22 and annual projected deficits in the range of $25 million to $26 million for the subsequent years until 2025-26.

4.8. The Pre-Restructuring Projections operating deficit is calculated after making provision for the following:

4.8.1. A Provision for Sustainability Measures of approximately $7 million per year (the "**Sustainability Provision**"). The Monitor notes that this provision is estimated at 5% of annual revenues and is being set aside for new governance, operational controls and processes, investment in development of new course programs and recruitment of students and establishing a reserve to avoid a future liquidity crisis;

4.8.2. Completion of Deferred Contribution Obligation (the "**Deferred Contribution Obligation**") estimated at $16 million for the year 2021-22 and $3.1 million annually thereafter i.e., a total of $28.5 million over a period of 5 years; and

---

[5] Appendix "F" to the Monitor's Third Report.

[6] Appendix "A" to the Monitor's Third Report.

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4.8.3. Restructuring Costs estimated at $6 million for the year 2021-22.

4.9. Farber sent an email to the Monitor on April 27, 2021 requesting more details for the items referenced at 4.8.1 and 4.8.2 above. A copy of the email sent to the Monitor is attached as **Appendix 1**.

4.10. In our discussion with the Monitor, we were presented with a business case for Laurentian to set aside additional amounts in its annual operating budget for the Sustainability Measures referenced. However, the Monitor advised that they could not provide detailed support for the quantum of the Sustainability Provision. The Monitor also advised that certain amounts will have to be spent in 2021-22 to establish new governance, operational and financial controls but Laurentian is not able to provide detailed support for the quantum of the Sustainability Provision.

4.11. In our view, the Sustainability Provision of $7.092 million for 2021-22 has the effect on deepening Laurentian's operational deficit for the year. The actual spending during 2021-22 will likely be less than $7 million and discretionary spending on items such as new course development or for creation of reserve for a future liquidity crisis could be deferred to subsequent financial years when operating surpluses are projected, especially given Laurentian is currently not operating under regular circumstances.

4.12. Further, the Deferred Contribution Obligation is estimated at approximately $16 million for the year 2021-22 and $3.1 million annually thereafter in the Pre-Restructuring Projections. This has been presented as Laurentian's estimated cost to complete research or other committed projects. The funding for these projects was received in advance, prior to filing of the CCAA, and were apparently co-mingled with receipts from its operations and expended by Laurentian to fund its operational costs.[7] The Monitor explains that research is core to the operations of the university and that graduate students are relying on this funding to complete their degrees. While we understand the rationale for them wanting to complete research projects, the Monitor was unable to provide more detailed backup for estimates which total of $28.5 million over a period of 5 years, nor does there appear to be a centralized system to track and reliably forecast this.

4.13. The effect of the Sustainability Provision and the Deferred Contribution Obligation for 2021-22 has increased Laurentian's projected operating deficit by approximately $23.2 million.

### Laurentian's Post-Restructuring Projections

4.14. The Monitor's Third Report also provides a Post-Restructuring Multi-Year Projection[8] ("**Post-Restructuring Projection**") which is calculated by adjusting the Pre-Restructuring Projection deficit for the following:

4.14.1. Laurentian has generated significant savings from its negotiations with Laurentian University Faculty Association ("**LUFA**") and Laurentian University

[7] Paras 166 to 168 of the Proposed Monitor's Pre-Filing Report dated January 30, 2021.

[8] Appendix "B" to the Monitor's Third Report.

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Staff Union ("**LUSU**") which range from approximately $30.3 million to $33.5 million annually.

This has substantially reduced Laurentian's forecast operational deficit from $42.9 million to $12.5 million in the year 2021-22 and results in a go-forward operational surplus of approximately between $7.7 million to $8.5 million annually thereafter.

4.14.2. Further, the Post-Restructuring Projection assumes "Forecast Savings from Feds" in the average amount of approximately $7.2 million annually for the next 5 years. This represents purported improvements in operating surplus / (deficit) assuming the Notices of Disclaimer become effective on May 1, 2021 and LU retains all of the revenues that were historically a flow through to all 3 Federated Universities (defined below).

- The additional revenues that Laurentian hope to gain by eliminating the Federated Universities as competition, is not assured to realize the additional revenue that Laurentian projects here.
- We note that Thorneloe makes up only a small portion of the net amounts that flow through to the Federated Universities. Specifically, in the year ended April 30, 2020, a total of $7.7 million in grants, tuition fees and material fees, net of administrative fees has flowed through Laurentian to the Federated Universities comprising: $3.7 million to University of Sudbury, $2.1 million to Huntington University ("**Huntington**") and $1.8 million to Thorneloe, (collectively, referred to as the "**Federated Universities**").[9]
- We understand that Laurentian and Huntington have already entered into a transition agreement on April 16, 2020 whereby Huntington has, *inter alia*, agreed to not oppose the notice of disclaimer issued to it and has agreed to discontinue its current courses and programs.
- University of Sudbury has made public its intention to become an independent Francophone university. They will not be offering any courses to students in the upcoming term.

4.15. The potential financial impact of terminating Thorneloe's federation agreement on the Post Restructuring Projections, is immaterial, as discussed at length in our Expert Report. Further, the flow through from Laurentian to Thorneloe for the year ended April 30, 2020 was $1.8 million.

4.16. Also, in respect of the 2021-22 year, Laurentian has not adequately detailed the quantum of the provisions and estimates referenced in 4.8. As a result, the actual operating deficit could be substantially lower than projected by Laurentian.

4.17. The impact of flow through to Thorneloe through Laurentian in 2021-22 should not be the solution to bridging their single year operating deficit, given the significant financial

[9] Appendix "C" to the Monitor's Third Report.

hardship this would cause to Thorneloe and would result in Thorneloe's insolvency as explained in the Expert Report.

## 5.0 CONCLUSION

5.1. Accordingly, and as discussed above, it is my opinion that:

- Laurentian is not facing the immediate liquidity crisis on May 1, 2021 that is being represented to the Court.
- It is projected by Laurentian that there is sufficient liquidity through to the week of June 12 to June 18, 2021 even without the additional $10 million Amended DIP Financing. Therefore, there is no compelling reason that would necessitate termination of the federated arrangement with Thorneloe on May 1, 2021.
- From a financial perspective, Laurentian and DIP Lender have not provided sufficient information to support the need for Disclaimer Deadline of May 1, 2021.

Allan Nackan, CPA, CA, CIRP, LIT

April 28, 2021
Date

FARBER

## APPENDIX 1 COPY OF EMAIL TO THE MONITOR

## Megha Sharma

**From:** Hylton Levy
**Sent:** Tuesday, April 27, 2021 3:24 PM
**To:** Sharon Hamilton (Sharon.S.Hamilton@ca.ey.com)
**Cc:** Allan Nackan; Megha Sharma
**Subject:** Laurentian University - Monitors Third Report

**Importance:** High

Hi Sharon,

Hope you are doing well.

In reviewing the Monitors Third Report, we had a few questions/queries that we would appreciate receiving the Monitors response on:

1. In Appendix "A", there is a provision for sustainability measures calculated at 5% of LU's revenues (Note 2). Could you please provide us specific details of the necessary go forward expenditures relating to these reserves? It would also be helpful if you were able to provide the expense, the timing of the expense and the amount required to be funded from this annual reserve. Additionally, does LU plan on fully spending the annual reserve in its entirety on a go forward basis?

2. In Appendix "A", LU has estimated costs to complete research projects or other committed projects in its Completion of Deferred Contributions Obligations (Note 3). Could you please provide further details of the research projects and *other committed projects* these amounts refer to going forward? It would also be beneficial in understanding the basis for LU wanting to commit to these costs on a go forward basis.

We look forward to your response to these questions and comments. With extremely tight timelines, it would be very helpful if you were able to answer these questions this afternoon/early evening.

Thanks and Regards,
Hylton

FARBER

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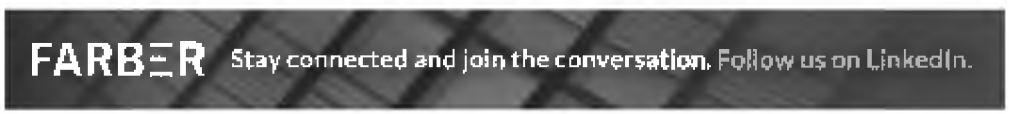


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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**
**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURY**

Applicant

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

***ONTARIO***
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

Proceeding commenced at Toronto

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Lawyers for Thorneloe University

614

# TAB 13

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**

**AFFIDAVIT OF DR. ROBERT HACHÉ**
(sworn April 21, 2021)

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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 this role since July 2019.

2. As such, I have knowledge of the matters hereinafter deposed to, save 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 pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**" and such proceedings, the "**CCAA Proceedings**"), for an order substantially in the form of the draft order attached as Tab 3 of the Motion Record that, among other things:

   (a) extends the stay of proceedings from April 30, 2021 until August 31, 2021;

   (b) approves term sheets that LU has entered into with two of its labour partners;

   (c) approves the Transition Agreement entered into with Huntington University ("**Huntington**"), being one of the Federated Universities (as defined below) following the issuance of the Notice of Disclaimer to Huntington; and

   (d) approves an amendment to the DIP Facility between LU, as borrower, and Firm Capital Corporation, as lender, and a corresponding increase to the DIP Lender's Charge over LU's property.

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 "**Act**"). LU is also a registered charity pursuant to the *Income Tax Act*. Where capitalized terms are used in this Affidavit and not otherwise defined, they are as previously defined 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 be recognized 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 primarily focuses on undergraduate programming, with approximately 8,200 total domestic and international undergraduate students (approximately 6,250 full-time equivalents) enrolled in the 2020-21 fall semester. LU also has a strong graduate program, with approximately 1,100 total domestic and international graduate students (approximately 830 full-time equivalents) enrolled during the 2020-21 fall semester.

8. Of the approximately 6,250 full-time undergraduate students enrolled in the 2020-21 Fall semester, 1256 full-time equivalent students, or approximately 20% are enrolled in French

language programs offered at LU (including the three Federated Universities which have 16.8 full-time equivalent French-language students, or 1.3% of the total French-language student population at Laurentian).

9. Over 12% of the student population at Laurentian self-identifies as Indigenous.

10. Although LU's overall enrolment numbers for full-time equivalent undergraduate students has decreased over the past several years, LU's track record in attracting French-speaking students has steadily increased. In particular, in the 2016 Fall Term, there were 1037 full-time equivalent undergraduate students enrolled in French-language programs. That number has increased to 1256 in the 2020 Fall Term. The increase has been steady over several years, meaning that this particular year's enrolment was not a one-off aberration. Two programs which have seen the largest increase in demand are Psychology (French) and Social Work (French).

11. 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.

12. 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 these CCAA Proceedings, approved a stay of proceedings for the initial 10-day period (the "**Stay Period**") and granted certain Court ordered super-priority charges. Attached hereto as **Exhibit "A"** is a copy of the Initial Order and the related Endorsement issued by Chief Justice Morawetz.

13. On February 10, 2021, the comeback hearing on notice to all affected parties was held, which resulted in the issuance of an amended and restated initial order (the "**Amended and Restated Initial Order**") which, among other things, approved a debtor-in-possession interim financing arrangement in the amount of $25 million (the "**DIP Facility**") and extended the Stay Period to April 30, 2021. Attached hereto as **Exhibit "B"** is a copy of the Amended and Restated Initial Order and the related Endorsements issued by Chief Justice Morawetz.

14. Throughout these CCAA Proceedings, LU has operated in accordance with the Amended and Restated Initial Order and has attempted to minimize the impact of these CCAA Proceedings on students and other stakeholders, recognizing that a restructuring of this nature creates uncertainty.

## III. APPEAL OF SEALING ORDER AND OUTCOME

15. Both the Initial Order and the Amended & Restated Initial Order contained a sealing order in respect of two confidential exhibits (the "**Confidential Exhibits**") to the Initial Haché Affidavit. The Confidential Exhibits contained a letter from the Ministry of Colleges and Universities (the "**MCU**") to LU dated January 21, 2021 and a letter from LU to the MCU dated January 25, 2021.

16. The Court issued a Supplementary Endorsement on February 26, 2021 containing the detailed reasons for granting the sealing order.

17. On March 4, 2021, the Ontario Confederation of University Associations, LUFA and the Canadian Union of Public Employees (collectively, the "**Appellants**") served notices of

motion seeking leave to appeal the sealing order from the Court of Appeal for Ontario (the "**Court of Appeal**").

18. The Appellants filed their motion record and factum on March 15, 2021. LU and the Monitor both filed responding facta on March 17, 2021.

19. On March 31, 2021, the Court of Appeal released its decision, denying leave to appeal. A copy of the reasons of the Court of Appeal is attached hereto as **Exhibit "C"**.

## IV. OPERATIONS OF LU SINCE INITIAL ORDER

20. As set out in the Initial Haché Affidavit, one priority of LU during these CCAA Proceedings has been to minimize student disruption to the greatest extent possible. Accordingly, LU has focused on maintaining its ordinary operations during the Stay Period. All student classes have continued (virtually, due to the ongoing COVID-19 pandemic and in accordance with public health guidelines) without disruption. All students will be completing their courses this term in the normal course.

21. Immediately after the Initial Order was issued, LU commenced communications with its various stakeholders, including students, faculty and other employees, suppliers, research-granting agencies, and donors. Letters were emailed to certain of these stakeholder groups informing them of the commencement of the CCAA Proceedings.

22. LU also launched websites at www.laurentianu.info and www.ulaurantienne.info to provide further information to stakeholders, including a detailed list of frequently asked questions and answers, contact information for support services for students, faculty, and staff, and a method to contact LU by email for other information. The information on the

website has been periodically updated as a result of questions received from various parties. LU has also issued several follow-up communications to keep stakeholders informed to the greatest extent possible.

23. As expected, LU has received a significant volume of telephone calls and emails from stakeholders. Many of these inquiries have sought information regarding what will happen after April 30, 2021, as well as details on certain research grants and other restricted funds and how the obligations associated with these will be treated in the CCAA Proceedings. LU (with the assistance of the Monitor) has spent considerable time and resources responding to these inquiries in a timely manner and providing information if available and able to be disclosed.

24. Recently, LU opened registration for Spring term courses, which term commences on May 3, 2021. In light of the uncertainty with respect to LU's ability to continue operations subsequent to April 30, 2021 if agreements with stakeholders had not been achieved, LU allowed students to register for Spring courses without requiring any deposits to be paid. Provided LU obtains the Order sought on April 29, 2021, fees for Spring term courses will be due by May 7, 2021. In addition, LU: (i) has acquired Huntington University's rights to the Gerontology program, subject to the Order sought on this motion being granted; and (ii) has entered into an agreement with the University of Sudbury to teach six Indigenous Studies courses in the Spring term. Two of the courses in the acquired Gerontology program are also planned to be taught in the Spring term online commencing May 3, 2021. Plans for the delivery of all of these courses are currently underway and will be finalized in the coming days.

25. Additionally, in view of the amount of DIP financing that was required for the first three months of this proceeding, LU implemented new fiscal restraint policies, in collaboration with the Monitor, to monitor expenses and ensure that only critical and necessary expenses are authorized during the pendency of the CCAA Proceedings. Whereas LU previously had a decentralized system for approving expenses, provided they were within annual budget limits, LU now requires senior leadership approval for most expenditures before they are incurred. This represents a significant change to LU's historical practice, and such change was necessary to ensure that LU can manage its operations within the limits of the DIP financing made available during the CCAA Proceedings.

## V. MEDIATION PROCESS AND RESTRUCTURING EFFORTS

26. In the Initial Haché Affidavit, I outlined LU's intention to seek the appointment of a neutral third-party mediator (the "**Court-Appointed Mediator**") to oversee negotiations with respect to the various restructuring initiatives necessary for LU to achieve financial sustainability, including, among other things: (a) a full review and restructuring of academic programs and (b) a reduction in the number of employees including full-time faculty. The Initial Haché Affidavit also outlined the need to undertake a number of other critical steps in the restructuring, including as it relates to the Federated Universities.

27. On February 5, 2021, the Monitor, LU and LUFA attended before the Court at a case conference in accordance with the Endorsement dated February 1, 2021. In connection with that case conference, and with the agreement of the parties in attendance, the Court issued an order (the "**Mediator Appointment Order**") and endorsement appointing the

Honourable Justice Sean Dunphy of the Ontario Superior Court of Justice as the Court-Appointed Mediator.

28. Since February 5, 2021, the Court-Appointed Mediator has dedicated himself to overseeing discussions between the parties in the mediation process (the "**Mediation**"). Parties have voluntarily participated in the Mediation and, to my knowledge, no party objected to same.

29. The initial focus of the Mediation was on negotiating agreements between LU and its labour partners and academic stakeholders that were foundational to achieve the cost savings required for LU to continue operating as a going concern beyond April 30, 2021. The alternative was a cessation of operations at that time. Negotiations in the Mediation process have primarily involved LU and:

(a) a committee of representatives elected by the Senate (the "**Senate Sub-Committee**"), to address the academic restructuring, as discussed below;

(b) each of the Federated Universities;

(c) the Laurentian University Faculty Association ("**LUFA**"), the bargaining unit representing the faculty members; and

(d) the Laurentian University Staff Union ("**LUSU**"), the bargaining unit representing non-faculty staff.

30. In addition, the Mediation has included the pre-filing lenders to LU, being Royal Bank of Canada, Toronto-Dominion Bank and Bank of Montreal which, together, are owed in excess of $100 million.

31. Several other stakeholders expressed an interest in participating in the Mediation, either within the formal process, or otherwise. To date, the Court-Appointed Mediator determined that Mediation discussions should be focused on the parties listed above, in view of the cost-savings that were required to be achieved if LU was to continue in operations after April 30, 2021.

32. The Mediation has involved an intensive process conducted on a near-daily basis, on weekends and holidays, involving the main Mediation parties outlined in paragraph 29 above, in an effort to achieve immediate and significant cost reductions as part of LU's operational restructuring. In connection with the negotiations during Mediation, each of the parties exchanged Mediation briefs as well as voluminous information and documents on an ongoing basis.

33. The Mediation schedule included a resolution deadline of April 1, 2021, as a result of a number of time-sensitive factors including: (i) the maturity date for LU's DIP Facility of April 30, 2021 and the need to have sufficient time to negotiate an extension to, and increase of, the DIP financing for the period thereafter, subject to the outcome of the Mediation including whether LU would be able to satisfy the DIP Lender as to the terms of, and pre-conditions to, any increased funding; (ii) the commencement of the Spring academic term on May 3, 2021; (iii) the fact that incoming (new) and current students would be making decisions relating to the Fall 2021 academic year and must have certainty whether LU would still be operating and, if so, which programs and courses would be available for registration; (iv) the filling of faculty and sessional positions for courses to be offered in the Spring Term; (v) the allocation of faculty members to Fall 2021 programs and courses, which was dependent upon the outcome of the Mediation and the resulting

program and cost reductions; and (vi) the cost reductions achieved in the Mediation would need to inform the availability and quantum of further DIP funding for the period beyond April 30, 2021.

34. Because the Mediation discussions were conducted pursuant to the confidentiality provisions contained in the Mediator Appointment Order, LU cannot disclose the specific discussions that took place during the Mediation. Where resolutions were achieved through the Mediation, it was as a result of those mediation parties demonstrating an extraordinary commitment to the Mediation process to ensure that necessary agreements could be reached to permit LU to continue to operate, and to position LU for the next phase of its restructuring process.

35. As described further below, I am pleased to report that LU has reached agreements with several of the key Mediation parties listed above.

36. LU expects that discussions with a broader group of its significant creditors regarding the potential terms of a Plan of Arrangement will evolve as the Mediation process continues. With the cost-savings achieved through the Mediation to date, and provided the Notices of Disclaimer (defined below) become effective on May 1, 2021 and the Order sought by LU is granted, LU will be able to expand its focus and engage in more active discussions with all of its other stakeholders, including those who previously expressed an interest in participating in the Mediation.

## VI. ACADEMIC RESTRUCTURING

37. One of the first issues for LU to address as part of its operational and financial review was a full review and restructuring of LU's academic programming. While this aspect of the

restructuring has been completed, subject to any step that may have to be taken through the Commissioner appointed under the FLSA (as defined below) to de-register two Masters degrees listed thereunder, details are provided for the benefit of all stakeholders and the Court.

38. As explained in greater detail in the Initial Haché Affidavit, the academic program mix that, until recently, had been offered by LU, was not financially prudent. In particular:

(a) LU offered 166 undergraduate programs and 43 graduate programs. Approximately 25% of students were enrolled in the top five programs, approximately 62% were enrolled in the top 25 programs and 83% were enrolled in the top 50 programs;

(b) when considering individual courses (each program offers multiple courses), the issues were magnified. Of the 951 course sections offered by LU in the Winter 2021 semester for undergraduate and graduate combined:

(i) 164 sections (17.2%) had five students or fewer enrolled;

(ii) 147 sections (15.5%) had between six to ten students enrolled;

(iii) 198 sections (20.8%) had between eleven to twenty students enrolled;

(iv) 238 sections (25.0%) had between twenty-one and forty students enrolled; and

(v) 204 sections (21.5%) had over forty students enrolled; and

(c) regardless of the low number of students enrolled in a course, LU employed a faculty member to instruct that course.

39. Over time, students' interest in academic programs have changed and LU needed to update its program and course offerings to reflect those changing interests, to achieve economic sustainability, and to stay competitive among other post-secondary institutions.

40. Because LU has a bi-cameral governance structure and the Senate is responsible for the academic policy of LU, changes to the academic programming necessarily involved the Senate. One of the key objectives for the Mediation that was achieved was an agreement approved by Senate on the academic restructuring.

41. In order to fully participate in the Mediation, at a meeting of Senate held on February 9, 2021 pursuant to a Resolution that was passed, the Senate appointed the Senate Sub-Committee to represent it in the Mediation. The Senate Sub-Committee retained independent legal counsel, Mario Forte of Goldman Sloan Nash & Haber LLP.

42. Pursuant to the Resolution approved by Senate, the Senate Sub-Committee was comprised of six Senators as follows:

(a) three faculty members, at least one of whom is teaching in a French-language program, and at least one who is teaching from an Indigenous perspective;

(b) two students, who cannot be from the same student association; and

(c) one Dean, University Librarian, or Academic Associate Vice-President.

43. The Senate Sub-Committee had the following Terms of Reference:

(a) the six members are to take part in Mediation sessions, at the call of the Court-Appointed Mediator.

(b) the six members are to represent Senate at the Mediation session, and not their respective units.

(c) the six members will report regularly to Senate Executive and Senate as permitted based on the confidentiality provisions in the Mediator Appointment Order

44. The composition of the Senate Sub-Committee met the criteria outlined in the Resolution approved by Senate on February 9, 2021 and reflected the bilingual and tricultural mandate of LU. Mediation discussions with the Senate Sub-Committee focused on two key objectives: (i) identifying the appropriate program and course closures, and (ii) considering a faculty and department restructuring to streamline operations and remove efficiencies. Each of these are discussed further below.

45. In the discussion of the Academic Restructuring below, specific details provided by LU's Registrar, Dr. Serge Demers, have supplemented my personal knowledge and I verily believe such information to be true.

***A. Program and Course Closures***

46. LU's approach to the academic restructuring was guided by four foundational principles:

(a) LU must be positioned for both financial sustainability in the short term and financial success in the longer term, whereby LU is able to invest in growth areas and create cash reserves to provide a necessary financial buffer;

(b) LU must continue to meet its mandate of being a bilingual and tri-cultural post-secondary organization in Northern Ontario providing access to post-secondary education in Northern Ontario and in the City of Greater Sudbury;

(c) LU must focus on programs and courses that are in higher demand today and are expected to be in the future, with appropriate levels of academic staffing across categories, with a process to re-evaluate student demands in the future; and

(d) post-restructuring, LU must continue to pursue its vision of being a leading comprehensive research-engaged university for Northern Ontario that builds and contributes to the economies and communities of Northern Ontario.

47. Bearing these principles in mind, LU undertook an extensive analysis of its current programming and then identified specific programs and courses that were recommended for closure. The methodology for this viability analysis, and its conclusions regarding program and course closures, is detailed below.

48. This analysis was shared with the Senate Sub-Committee and, after extensive ongoing discussions with and input from the Senate Sub-Committee over the course of many weeks, a comprehensive list of the program and course closures was finalized and presented to the full Senate for approval, as discussed further below. These program and course changes have now been implemented.

**Viability Analysis of LU's Programs**

49. As part of the academic restructuring, LU conducted an analysis of program viability by considering the revenue and costs of LU's program delivery. This analysis was conducted based on the premise that, at a minimum, programs need to reflect enough student interest to cover the expenses to sustain delivery of the program.

50. Ideally, programs would be positive economic drivers for LU. However, LU also took into account that, for a certain subset of programs with a direct link to LU's mission, such programs should operate despite not satisfying the self-funding threshold.

51. LU's analysis included a calculation of the number of students required to cover the costs associated with sustaining the delivery of courses and programs.

**Identification of Undergraduate Programs and Courses for Closure**

Programs

52. Based on the analysis described above, LU reviewed all 166 undergraduate programs offered and identified numerous programs for closure that were not financially sustainable.

53. During its review process, LU took into consideration a number of factors. First, LU conducted a high-level estimate of the costs to offer the program by comparing the number of credits required to complete the program against the number of students currently enrolled in the program. Generally, if enrollments are high, a larger number of required credits for each program will be financially sustainable. If enrollments are low, the program can sustain fewer required credits.

54. Ultimately, LU determined an acceptable cut-off student-to-credit ratio for English-language programs and for French-language programs. For French-language programs, LU concluded that a lower student-to-credit ratio is appropriate because of the additional grant funding received by LU that is specifically allocated towards the delivery of French-language programs at LU.

55. In addition to the student-to-credit ratios, LU considered:

    (a) historical enrollment trends when comparing enrollment data from Fall 2015 to enrollment data in Fall 2020 (while accounting for outliers);

    (b) the ability of the program to appeal to a broad range of students, including domestic and international students; and

(c) the overall cost to deliver the program (special equipment and related overhead, number of sections required, laboratories, buildings and whether the program is delivered on or off the main campus).

56. Finally, because LU also has partial designation as a Public Service Agency under the FLSA for programs leading to certain degrees, the FLSA was also considered by LU and the Senate Sub-Committee during the program review and analysis. The effect of the program closures as it relates to Regulation O. Reg. 398/93 *Designation of Public Service Agencies* (the "**Regulation**") are discussed in more detail below.

57. As a result of this analysis, LU identified 38 English-language programs and 27 French-language programs that, based on the criteria described above, were considered unsustainable going forward and were identified for closure. This meant there are 63 remaining English-language programs and 38 remaining French-language programs that are financially sustainable.

58. Notwithstanding that student enrollment in specific programs fluctuates constantly as students declare and change majors, at the time of this writing, the number of programs identified for closure represents 39% of the total undergraduate programs offered by LU, but only approximately 7.5% of LU's current undergraduate students will be affected by the closure of these programs, either directly or indirectly. This represents approximately 772 undergraduate students (557 in English-language programs and 215 in French-language programs). Further, only a subset of the affected undergraduate students will be affected in the sense that their program is closed and there may be no program at LU that they would consider switching over to (i.e. midwifery or radiation therapy). Some of the

affected students will only be partially affected. That could include, as an example, a student who is currently enrolled in a double major consisting of Mathematics (closed) and History (offered).

59. LU is committed to ensuring that each of its students has an academic path towards completion of a degree and has worked diligently to identify those paths for all affected students.

60. As an initial matter, LU has delivered a message to all students advising them to communicate with their respective Deans or other key advisors, who are being made available to help assist any students affected by the program closures. The Deans or the other key advisors who were tasked with being the contact for students in specific affected programs can reach out to students individually and provide students with the various options available to them if their program has closed.

61. The terminated programs are not being offered for the Fall 2021 term. This means that new students are no longer permitted to enroll in any of the closed programs. With respect to students currently enrolled in these programs, LU will commit to providing resources to ensure that these students are able to finish their studies in the existing program with minimal disruption, to the greatest extent possible. Alternatively, LU will accommodate and work with any current students who want to transfer to other programs at LU or a similar program at another university.

62. A significant amount of work was done to identify each individual undergraduate student affected, their program of study, and their potential pathways available to them which were identified by the respective Deans.

63. Finally, as noted above, LU offers certain French-language programs leading to degrees flowing from its partial designation as a Public Service Agency pursuant to the FLSA and the Regulations thereunder, with respect to certain French-language programs leading to specific degrees. LU was the first bilingual university in Ontario to be recognized and designated under the FLSA, which occurred on July 1, 2014. Partial designation under the FLSA with respect to specific programs outlined in a Regulation was obtained by LU in 2014 as part of its continuing commitment to provide French-language education and services to students in Northern Ontario. Pursuant to section 9(2) of the FLSA, a Regulation made under the FLSA that applies to a university is not effective without the university's consent.

64. The current Regulation under the FLSA relating to LU outlines programs leading to the following 13 degrees, which LU agreed to offer in French: Bachelor of Commerce (B.Comm.), Bachelor of Education (B.Ed.), Bachelor of Physical and Health Education (B.P.H.E.), Bachelor of Science (B.Sc.), Bachelor of Science in Nursing (B.Sc.N.), Bachelor of Social Work (B.S.W.), Bachelor of Arts (B.A.), Bachelor of Health Sciences (B.H.Sc.), Doctor of Philosophy (Ph.D.) in Human Studies, Master of Human Kinetics (M.H.K.), Master of Social Work (M.S.W.), Master of Arts (M.A.), and Master of Health Sciences (M.H.Sc.).

65. Of the 13 degrees listed in the Regulation, two Masters degrees will no longer be offered by LU as a result of the academic restructuring: the Master of Arts and Master of Human Kinetics.

(a) with respect to the Master of Arts, neither the English nor the French-language degree will continue to be offered, because the programs leading to the Masters degree in History and the Masters degree in Sociology have historically had low enrollment. Existing students are expected to be able to continue their program, subject to the availability of a supervisor; and

(b) with respect to the Master of Human Kinetics, the French-language degree will no longer be offered due to **no** enrollment over the past few years and the suspension of the program in July 2020, prior to the commencement of the CCAA Proceedings. However, LU is considering whether it can offer a small number of courses that could be delivered in conjunction with other Masters programs in French, to increase overall enrollment levels. A request was also submitted to the Senate Academic Planning Committee ("**ACAPLAN**"), the committee responsible for the development of academic planning, to ensure that LU's program offerings are consistent with LU's overall purpose and mission, to reopen as a bilingual program, with the thesis in French and the theory courses in English.

66. LU is proud of its mandate as a bilingual and tri-cultural post-secondary institution, which includes the preservation of French language degrees and the Francophone culture at the university as a whole. The fact that LU no longer plans to offer programs leading to these two specific degrees (one of which has zero enrolment) does not alter LU's commitment under the FLSA, or its commitment to students who wish to study in French. LU will continue to offer French-language programming leading to the other 11 French-language degrees listed in the Regulation to the FLSA. In addition, LU offers additional French-language programs that are not listed in the Regulation to the FLSA, such as the M.SC.Inf.

(Maitrise en sciences infirmieres). LU is committed to working continuously to update our French-language degree programs in a manner that reflects the evolution in demand of francophone students at LU, as such demands change over time and new fields and qualifications emerge.

67. The steps taken as part of the academic restructuring will, in fact, allow LU to focus more of its resources on programs, including French-language programs, than it was able to do prior to the commencement of the CCAA Proceedings. The Regulation is subject to a periodic review process by ACAPLAN, the Senate, and the Quality Assurance Council, an independent body responsible for assuring the quality of all programs leading to degrees and graduate diplomas in Ontario universities.

68. As part of its restructuring within this CCAA Proceeding, LU will undertake a review, and anticipates seeking amendments to various legislation affecting it, including but not limited to the provisions of the *Laurentian University of Sudbury Act*. These amendments will be sought in order to reflect the current situation and LU's structure upon emergence from this CCAA Proceeding. That review of relevant legislation will include a discussion with the Commissioner appointed under the FLSA, to review the Regulation relating to LU under the FLSA, and seek an amendment and de-registration with respect to the two French-language programs leading to degrees that are referenced above. This should not be viewed as a change in direction by LU, but rather, a modernization of programs and degrees that reflect what francophone students are interested in taking at LU.

69. Continuing to offer some French-language programs with consistent very low enrollment or virtually no enrollment is not financially feasible and is not consistent with the funding that LU receives for French-language programs.

70. The effect of termination of a program means that students may no longer enroll in that program to obtain a degree in the program. For all programs that were terminated, the associated minor was also terminated. However, in many cases, courses in that program will continue being offered as introductory, first-year programs, but not in the upper years. In some other cases, where a course in a closed program is required for a different program that is kept open, that course will continue being offered and can be taken by anyone who meets the prerequisites.

71. For example, there are 14 students enrolled in all 4 years of the Philosophy program. No new student can now enroll in a Philosophy major or minor unless they already have all the courses required for it. However, there will still be certain Philosophy courses being offered on a go-forward basis, which are popular elective courses for students at LU.

Courses

72. In addition to the termination of low-enrollment programs, LU undertook a review of the number of courses and course sections to be offered going forward. This review involved not only the 65 undergraduate programs to be terminated, but courses offered in the 101 undergraduate programs that will remain open.

73. In order to reach an optimal set of courses (and the optimal number of sections offered for each course – courses can be offered in multiple sections, which denote the day, time, location and instructor teaching the course) to offer going forward, each faculty Dean at

LU was consulted. They were asked to examine each course and determine whether it was mandatory in programs that were to remain open. Deans were provided with the list of sections offered in each course over the past two years (Fall, Fall/Winter, Winter, Spring terms) and the enrollment in each section. They were also provided with the list of programs identified for termination.

74. Courses attached to terminated programs were labeled as 'Do not offer', unless they were:

(a) very high enrollment courses;

(b) mandatory in another program; or

(c) part of the requirements for the Bachelor of Science. For example, first-year Calculus and certain Physics courses will continue to be offered, with Math and Science faculty members teaching such courses.

75. Courses in programs to remain open were examined in order to determine whether they were mandatory in a program or an elective. Where there were multiple sections of the course offered during the year, the Deans were asked to validate that it was the correct number of section offerings, based on enrollment in different terms. A similar analysis was completed for the number of lab sections to maximize remaining resources.

76. The resulting analysis provided an optimal set of courses offered on a yearly basis that ensures all students will be able to meet their degree requirements to graduate in a timely manner and offers electives balancing the levels of student interest with the advancement of knowledge in their respective programs.

77. The list of remaining courses are not the only courses that will be offered going forward. Individual departments and schools will be able to cycle courses from time to time and from year to year, based on the expertise available at the time, as long as the total credits in the unit remain within the optimal section analysis. The process of cycling courses is routine at LU. Historically, all the courses available were not always offered depending on the available expertise at particular times.

78. Moving forward, to ensure that the necessary processes are in place to constantly re-evaluate current and future student demands for programming, under the leadership of the Provost and Vice-President Academic, the Registrar will flag programs with low enrolment. Meetings will be set up with the appropriate Dean to review enrolment numbers and the Dean will discuss strategies to address declining program demand with the appropriate School Council. Further program reviews will be conducted by the Senate Academic Planning Committee and programs will be reviewed every seven years through the Quality Assurance Council.

79. In addition, LU has the benefit of leadership at the highest levels of the University overseeing its French-language programs in that each of myself as President, the Provost and Vice-President Academic, and the Registrar are francophone in addition to many other committed leaders, faculty and staff. Further, two of LU's four Deans in the reduced administrative structure are francophone.

**Identification of Graduate Programs for Closure**

80. LU's analysis of its graduate programs identified 11 programs (4 in French; 7 in English) for closure which will impact approximately 3.7% of the current graduate student enrollment.

81. LU identified these programs for closure because they each have ten (10) or fewer students enrolled in the program, with four (4) of the eleven (11) programs having only one (1) student enrolled. Further, LU does not expect enrollment levels to materially increase in these programs. Due to these low enrollment levels, LU is of the view that continuing to offer these programs is unsustainable.

82. No new students will be enrolled in the graduate programs scheduled for closure. The students currently in those programs will be "taught out". However, few courses are expected to be required as most courses are taken in the first year of a Masters program. It is expected that the majority of the students in the Masters programs scheduled for closure will be working on their thesis research project or major paper/essay.

83. Therefore, we expect to identify a pathway for the majority of these students to complete their graduate degree at LU, if they choose.

84. Graduate students at LU in programs that are closing have been invited to information sessions facilitated by the Vice-President Research, Graduate Studies Office, Deans, and Graduate Program Coordinators to discuss pathways for them to complete their degree at LU. The intent is to identify a pathway for each impacted graduate student to be able to complete their degree at LU.

85. We know that a number of graduate students have been impacted by faculty redundancies, since graduate students in doctoral programs and thesis-based masters programs are required to have a faculty supervisor. The Vice-President Research, Deans, and Graduate Program Coordinators are meeting with the impacted graduate students and their supervisors to discuss all options for them to complete their degree at LU. Some redundant faculty members may be eligible to become Professor Emeritus and others may request an Adjunct Faculty appointment at LU. Emeritus Professors and Adjunct Professors can continue to supervise students at LU in a voluntary capacity. In other cases, an alternative supervisor at LU may be identified. In situations where a qualified supervisor is not available at LU, the Vice-President Research and Graduate Studies Office will work with each graduate student to facilitate transfer to another university.

86. The closure of these Masters programs will allow LU to focus on its continuing graduate programming, including the three recent additions to the program roster (Masters of Forensic Science, Masters of Forensics/Biology, and Masters of Engineering (fast track)) that are expected to continue to see additional demand from prospective graduate students.

87. LU currently offers ten Doctoral programs and no closures are recommended. Doctoral programs tend to offer fewer courses and Doctoral students typically complete courses in the first year and spend the next 2-3 years conducting original research in preparation for a dissertation.

88. Furthermore, graduate students who have applied to closed programs will each be individually contacted before the end of April. To begin, the faculty supervisor will be contacted to determine if there is a suitable alternative graduate degree at Laurentian that

they would be willing to supervise the student in. The student will then be contacted and provided details on the alternative offer.

89. In situations where an alternative offer at LU is not practical or not of interest to the graduate student, the Graduate Studies Office will work with the student and their supervisor to facilitate an alternate pathway at another university.

90. LU will continue to offer 24 Masters programs and 10 PhD programs, for a total of 34 graduate programs following the program closures.

***B. Faculty and Department Restructuring***

91. As part of the academic restructuring, LU also undertook an analysis to consider the restructuring of its faculties and departments to streamline operations and eliminate inefficiencies.

92. Prior to the faculty and department restructuring, LU was organized into six Faculties that each had a Dean overseeing the Faculty. There are currently 35 schools and departments. To create administrative efficiencies, LU proposed several changes. First, the structure of Faculties was recommended to reduce from six to four, as summarized below:

| **Faculty Structure Pre Restructuring** | **Faculty Structure Post Restructuring** |
|---|---|
| Faculty of Arts | Faculty of Arts |
| Faculty of Education | Faculty of Education and Health |
| Faculty of Health | |
| Faculty of Management | Faculty of Management |

| | |
|---|---|
| Faculty of Science, Engineering and Architecture | Faculty of Science, Engineering and Architecture |
| Faculty of Graduate Studies | Closed<br>(Graduate activities to report to the Vice-President Research as Office of Graduate Studies) |

93. Within each Faculty, there were further restructuring changes undertaken. A summary of the various changes is attached hereto as **Exhibit "D"**.

94. In addition, when developing the reorganized structure for the Faculties, LU sought to reduce the overall number of Departments and Schools within the Faculties in order to enhance program delivery and introduce operational efficiencies by offering students centralized support systems. LU considered all possible changes to enhance operational efficiencies where possible within each Faculty.

95. The significant reduction in the number of departments will allow for an increase in the effectiveness and efficiency of academic supports for students and enhance academic flexibility.

***C. Senate Approval***

96. The extensive analysis undertaken by LU as described above was carried out with the active involvement and input of the Senate Sub-Committee. In both its review of the proposed course and program closures and the proposed faculty and department restructuring, the Senate Sub-Committee provided multiple rounds of feedback through questions and suggestions. This included extensive information and document exchange between LU and the Senate Sub-Committee. The active and thoughtful involvement of the Senate Sub-Committee was critically important to the academic restructuring process.

97. As an initial step in the academic restructuring, on March 16, 2021, the Senate held a meeting whereby it voted to terminate 19 programs for historical reasons. Of these 19 programs, there were 9 undergraduate English-language programs, 7 undergraduate French-language programs, and 3 graduate programs (1 French). Each of these programs had been changed in recent years but had not been formally terminated by the Senate. By way of example, in 2014-15, LU's Bachelor of Commerce program changed to a Bachelor of Business Administration. Although the Bachelor of Commerce program was no longer offered, it had never previously been formally terminated by the Senate. Several of these 19 programs formed part of LU's proposed program closures and accordingly were not terminated as a result of the Senate Sub-Committee's recommendation. These terminations were the result of a several months-long process initiated by ACAPLAN to identify the list of programs that should be terminated, and would have proceeded regardless of the CCAA proceeding being commenced. Attached hereto as **Exhibit "E"** is a list of the programs terminated by Senate at the March 16, 2021 meeting.

98. As to the remainder of the proposed program and course closures, the Senate Sub-Committee prepared an *in camera* Report to the Senate Executive Committee and Senate containing a summary of its review of the academic restructuring and its corresponding recommendations. The Sub-Committee Report made the following recommendations:

(a) that Senate approve the termination of 34 English-language undergraduate programs, 24 French-language undergraduate programs, 7 English-language graduate programs, and 4 French-language graduate programs;

(b) that LU's approach to arrive at an optimal set of course sections to be offered in future years be endorsed;

(c) that the faculty and department restructuring be approved by Senate; and

(d) that Senate approve certain program-specific changes.

99. An *in camera* Senate meeting was held on April 6, 2021 in which the Senate Sub-Committee presented the Sub-Committee Report to the Senate (the "**April 6 Senate Meeting**"). At the April 6 Senate Meeting, a resolution was passed by Senate accepting the recommendations of the Senate Sub-Committee and, accordingly, approving LU's academic restructuring. A copy of the resolution passed at the April 6 Senate Meeting is attached hereto as "**Exhibit F**".

100. This was a significant milestone for LU to accomplish, given that approval of an academic restructuring from the Senate was necessary to ensure LU's sustainability.

### *D. Transition Plans for Students*

101. LU has taken proactive steps to ensure that affected students are informed of the various options available to them, in the hope that they will choose to continue their education at LU. The respective Deans and other key advisors have been made available to communicate with students on a case-by-case basis to ensure individual academic needs are being addressed.

**Midwifery**

102. LU made the decision to close the Midwifery program due to the financial costs associated with running that program that could not adequately be met by funding received from the MCU and the Ministry of Health pursuant to a transfer payment agreement. MCU funds

the academic/university component of the Midwifery program while the Ministry of Health and Long-Term Care funds the clinical components of the Midwifery program.

103. As financial support to post-secondary institutions generally is subject to the prerogative of the Province and Midwifery is an expensive program to run (relative to other programs), it is difficult for LU to solely rely on grant funding to continue operating the program. Further compounding matters is the fact that the MCU has imposed an annual cap of 30 new students that may be accepted into the Midwifery program at LU, which limits its potential growth. LU offered Midwifery in English and French, and the enrollment cap applied to both programs overall. LU, together with McMaster and Ryerson University (the other two Ontario universities that offer Midwifery programming), has advocated in recent years for increased funding for this program but has been unsuccessful to date.

104. To accommodate Midwifery students, LU is communicating options to help them make informed decisions about their academic future. LU is committed to ensuring that Midwifery students impacted by the restructuring will be able to complete their Midwifery degree or to select an alternative program at LU.

105. Students who are completing their 4th year in the Midwifery program will complete a clerkship course between May 1 and August 31. A sessional instructor will be available to support the students and students will graduate with a degree from LU in Midwifery.

106. Students who are completing their 3rd year in the Midwifery program will complete the remainder of their courses at McMaster or Ryerson with ‘Letters of Permission’ from LU and graduate with an LU degree. The students will not need to physically relocate, as the course will be taught through virtual distance learning, together with a potential in-person

intensive clinical skills course. Further, placements can be completed in the Sudbury/Northern Ontario region. There will be tutorials in French to support francophone students.

107. For students in their 1st or 2nd year in the Midwifery program, LU will help facilitate transfers to McMaster or Ryerson and students would graduate with degrees from McMaster or Ryerson. There will be virtual learning opportunities and placements can be completed in the Sudbury/Northern Ontario region, such that physical relocation may not be necessary. For francophone students, tutorials in French will be provided. Alternatively, LU has informed these students of the relevant contacts to discuss a potential program transfer within LU.

**Indigenous Studies**

108. On April 12, 2021, the Laurentian University Native Education Council ("**LUNEC**") passed Motion CM 21-14 which requested that LU explore the possibility of teaching courses in Indigenous Studies during the Spring term that had previously been taught at the University of Sudbury ("**SU**"), so that affected students could continue to obtain required credits. In consultation with LUNEC, LU and SU began discussions to facilitate this request.

109. On April 16, 2021, LU and SU entered into an interim Term Sheet to enable LU to teach six Indigenous Studies courses during the Spring term, as per the recommendation of LUNEC. A copy of the Term Sheet is attached hereto as **Exhibit "G"**.

110. LU will continue to engage in consultation with LUNEC during the Spring and Summer terms in order to consider and determine how best to ensure the ongoing delivery of Indigenous education at LU, as well as continue discussions with SU.

111. Moving beyond the Spring Term, LU is committed to ensuring that the approximately 140 students who were registered in the Indigenous Studies program at SU have access to courses rooted in Indigenous perspectives already offered through the Faculty of Arts in a variety of disciplines. LU will continue to engage with LUNEC to explore ideas surrounding the development of an Indigenous Perspectives program that would complement the already well-established Bachelor of Indigenous Social Work and Master of Indigenous Relations programs offered at LU.

**Gerontology**

112. As described further below, LU has acquired Huntington's rights to the Gerontology program to ensure that those students will continue to be able to obtain an LU degree in Gerontology.

## VII. TERM SHEETS WITH LABOUR PARTNERS

### *A. LUFA*

113. LUFA represents approximately 612 faculty members, including 355 full-time faculty members (including seven employees currently on a leave of absence from LU), 221 sessional faculty members or health care professionals and five full-time counsellors. In addition, there are 31 individuals who are staff or students of LU who also teach a sessional/clinical course. The number of sessional employees varies from term to term depending on need.

114. As outlined in the Initial Haché Affidavit, salaries and benefits across all employee groups represent the single largest expense item for LU on an annual basis.

115. LUFA and the Board of LU are parties to a Collective Agreement (the "**LUFA CA**"), with a three-year term which expired on June 30, 2020. Pursuant to the provisions of the LUFA CA, the agreement automatically continues year-to-year unless notice is provided that either LUFA or LU intends to terminate or amend the LUFA CA. In February 2020, LUFA provided LU with a notice to bargain. Pursuant to Article 13.15.3 of the LUFA CA, the agreement automatically remains in force during any period of negotiation.

116. Prior to the CCAA Proceedings, LU and LUFA were engaged in bargaining with respect to a new collective agreement. Pursuant to the Mediator Appointment Order, those negotiations continued within the Mediation.

117. LU identified that, as a result of the academic restructuring and the need to reduce expenses, a reduction in a substantial number of faculty would have to occur. Accordingly, LU sought in the Mediation to: (i) mutually agree on the number and the list of the faculty to be terminated; (ii) address various aspects of the existing LUFA CA and negotiate a new collective agreement; and (iii) amend LU's Pension Plan (as defined below) to minimize the risk of special payments arising, and to avoid a potential wind-up of the Pension Plan in the event that LU was not able to successfully restructure.

118. LU and LUFA have been engaged in extensive Mediation over the past two months, with the assistance of the Mediator and the Monitor. This has included voluminous information and document exchanges, near-daily Mediation sessions with the Court-Appointed Mediator, and the exchange of comprehensive Mediation briefs.

119. Leading to the Mediation's target resolution deadline of April 1, LU and LUFA were involved in monumental efforts to reach an agreement. Although the April 1 deadline passed without final documentation signed, the parties were sufficiently close on the key terms that negotiations continued to explore whether a deal could be reached.

120. On April 7, 2021, LU and LUFA signed a Term Sheet setting out the key terms and conditions agreed to by the parties (the "**LUFA Term Sheet**"). A redacted copy of the LUFA Term Sheet is attached hereto as **Exhibit "H**".

121. The key terms of the LUFA Term Sheet are summarized below:

(a) LU and LUFA have negotiated a new collective agreement with a five-year term expiring on June 30, 2025;

(b) 116 full-time Faculty positions were identified on a confidential Schedule and have been declared redundant (the "**Terminated Faculty Members**");

(c) the Terminated Faculty Members who are teaching courses in the Winter 2021 academic term have an effective termination date of May 15, 2021 to allow for marking of final exams, papers, and communicating grades;

(d) the Terminated Faculty Members who are not teaching courses in the Winter 2021 academic term have an effective termination date of April 30, 2021;

(e) any Faculty members who elected early retirement would receive certain non-financial incentives over and above those contained in the LUFA CA;

(f) effective May 1, 2021, each Faculty member's salary would be decreased by 5%;

(g) the Faculty member workload for Science, Engineering, and Architecture is increased from the existing LUFA CA;

(h) each Faculty member will take five unpaid furlough days during the 2021-22, 2022-23, and 2023-24 academic years;

(i) the RHBP and the SuRP (both as defined and described further below) would be terminated; and

(j) LU and LUFA agreed to a Term Sheet regarding Pension Plan issues (as described further below) which forms part of the LUFA Term Sheet.

122. On April 12, 2021, LU provided notice to the Terminated Faculty Members (excluding faculty members who took early retirement under the Retirement Incentive) that their employment was being terminated.

123. On April 13, 2021, the LUFA Term Sheet was ratified in a vote by the LUFA members.

***B. LUSU***

124. LUSU represents approximately 268 LU staff employees, which includes all employees in clerical, technical, administrative, service, and security work.

125. LU and LUSU are parties to a Collective Agreement that expires on June 30, 2024 (the "**LUSU CA**").

126. LU engaged in extensive Mediation with LUSU with the assistance of the Monitor, and the involvement of the Mediator. These negotiations were with the aim of achieving cost reductions to further LU's efforts to attain financial sustainability, and to effect the changes required following the academic restructuring and the reduction in faculty.

127. On April 5, 2021, following intensive negotiation, LU and LUSU entered into a Term Sheet setting out the key terms and conditions agreed to following negotiations, including the number and the list of employees to be reduced (the "**LUSU Term Sheet**"). A redacted copy of the LUSU Term Sheet is attached hereto as **Exhibit "I"**.

128. The key terms of the LUSU Term Sheet are summarized below:

(a) the total number of LUSU members terminated would be 42 (the "**Terminated LUSU Members**");

(b) the Terminated LUSU Members would have an effective termination date of April 30, 2021;

(c) the Terminated LUSU Members would have preferential recall rights for a two-year period following the date of termination;

(d) the RHBP and SuRP would be terminated; and

(e) LU and LUSU agreed to a Term Sheet regarding Pension Plan issues (as described further below) which forms part of the LUSU Term Sheet.

129. On April 12, 2021, LU provided notice to the Terminated LUSU Members that their employment was being terminated.

130. On April 13, 2021, the LUSU Term Sheet was ratified in a vote by the LUSU members.

### *C. Outstanding Grievances*

131. As described in the Initial Haché Affidavit, at the commencement of these CCAA Proceedings, there were 102 outstanding grievances filed by LUFA (the "**Existing Grievances**"). The Mediator Appointment Order provided that the Existing Grievances

would be addressed as part of the Mediation, and the DIP Lender required that these be addressed prior to April 30, 2021. Pursuant to the DIP Amendment that is sought on this motion, and in recognition of the time involved by LU and LUFA in negotiating the LUFA Term Sheet, the DIP Lender has agreed to extend the date by which the Existing Grievances must be resolved to May 31, 2021. A process has been agreed to by the parties, with the assistance of the Monitor, whereby those can be determined.

132. Pursuant to the LUFA Term Sheet, LU and LUFA agreed that new grievances arising since the commencement of the CCAA Proceedings for non-monetary issues or those not involving the expenditure of money (such as accommodation, denial of tenure, or unjust dismissal) would not be stayed as a result of the CCAA Proceedings and could proceed to resolution or determination in the ordinary course.

133. The LUFA Term Sheet also provides that unresolved grievances advancing to mediation-arbitration can be referred to an expedited process.

***D. Binding Arbitration for Remaining Issues Under LUFA CA***

134. Despite the best efforts of LU and LUFA, certain terms of the existing collective agreement that were to be addressed in the Mediation were not resolved as part of the LUFA Term Sheet. In order to ensure a timely resolution of these issues, the LUFA Term Sheet provides that issues specifically identified therein which stipulate that by agreement of the parties they are to be determined through binding arbitration shall, once determined and if applicable, constitute amendments to the collective agreement. Binding arbitration with respect to these outstanding issues is to take place before Mr. William Kaplan and will be completed by June 18, 2021.

135. The outstanding issues subject to binding arbitration are:

(a) LU's ability to cancel sessional contracts and the terms upon which it may do so;

(b) the application of coordinator credits;

(c) the cost for a Faculty member to "buy-out" teaching in a given year;

(d) the terms upon which courses may be cancelled due to low enrollment;

(e) pregnancy, parental and adoption leave;

(f) the Faculty Personnel Committees;

(g) the scope of ability of LU to outsource LUFA bargaining unit work;

(h) the nomination process for Senior Academic Administrators;

(i) reimbursement for the workload of union executives; and

(j) the time it takes to pay a Faculty member for supervisory work.

### *E. Administration Redundancies and Changes*

136. The remainder of LU's full-time employees who are not represented by a union include approximately 23 senior leadership employees, and 111 administrative and professional staff, most of which are in managerial roles. The managerial and non-managerial employees are considered part of an informal association that LU recognizes as the Laurentian University Administrative and Professional Staff Association ("**LUAPSA**"). LUAPSA has an executive committee that meets with LU on occasion and LU solicits feedback from the LUAPSA executive committee regarding matters that affect employees that are in positions falling under the LUAPSA umbrella.

137. In addition to the termination of LUFA and LUSU positions, LU's non-union employees (including executive and managerial employees) experienced terminations as well. In total, 37 non-union employees (24 of which were in management and executive positions) were terminated in this process, including through the Faculty and Department restructuring that LU undertook as described above.

138. Most of the common amendments to the LUFA and LUSU collective agreements described above were applied to the LUAPSA group, Senior Leaders, and Designated Executives, including the following:

(a) the continuation of a 3% salary roll-back;

(b) ensuring there is an equitable distribution of salary reductions;

(c) removal of the gym benefit;

(d) reduced availability of the tuition exemption;

(e) termination of the RHBP and the SuRP; and

(f) further amendments to the Pension Plan consistent with the changes to LUFA and LUSU members of the Pension Plan.

## VIII. FEDERATED UNIVERSITIES

### *A. Background*

139. LU has operated within a federated school structure whereby it has contractual affiliations with three independent universities under the overall LU umbrella: SU (defined above), the University of Thorneloe ("**Thorneloe**") and Huntington University ("**Huntington**" and, together with SU and Thorneloe, the "**Federated Universities**").

The Federation Agreements and Indentures

140. LU's relationship with the Federated Universities was formalized in Federation Agreements signed with each of SU, Thorneloe, and Huntington (collectively, the "**Federation Agreements**"). LU entered into a Federation Agreement with each of SU and Huntington on September 10, 1960, and with Thorneloe in 1962. The Federation Agreements were attached as Exhibits "K", "M", and "P" to the Initial Haché Affidavit and the terms of same were outlined therein, and are not repeated again.

141. In addition to the Federation Agreements, LU has indenture agreements with each of the Federated Universities pursuant to which the Federated Universities lease certain land owned by LU and are permitted to construct buildings and student housing. The relevant agreements are: (i) an Indenture between LU and SU dated April 9, 1965; (ii) an Indenture between LU and Huntington dated July 3, 1964; and (iii) an Indenture between LU and Thorneloe dated October 26, 1964, (collectively, the "**Indentures**"), which were attached as Exhibits "L", "N", and "Q" to the Initial Haché Affidavit, with the terms of same outlined, and are not attached again.

142. Each of the Indentures contain provisions addressing what happens to the leased lands and the buildings thereon in the event the Indenture is terminated.

Funding the Federated Universities

143. The Federated Universities do not receive funding directly from the provincial government. Instead, LU has historically transferred a portion of the funding it receives from the

provincial government to each Federated University according to a set formula between LU and the specific Federated University.

144. The formula for the distribution of funding to the Federated Universities has changed over time. Since May 1, 2019, the parties have operated in accordance with the Financial Distribution Notices delivered by LU to each of the Federated Universities (the "**Financial Distribution Notices**"). The Financial Distribution Notices set out the terms for the distribution of operating grants to the Federated Universities and service fees charged by LU to the Federated Universities from and after May 1, 2019.

145. The Financial Distribution Notices provide that LU will transfer funds to each of the Federated Universities in accordance with the new university funding model introduced by the Province in 2017 (the "**New Funding Model**"). The New Funding Model adopted an enrolment-based approach, where the Province would provide each post-secondary organization with a base level of operating funding determined in accordance with a specific level of eligible enrolment and program of registration. The Financial Distribution Notices were intended to try to align the financial relationship of LU and the Federated Universities with the New Funding Model.

146. The Financial Distribution Notices also provide that, in exchange for the provision of non-academic administrative services by LU to the Federated Universities, each of the Federated Universities would be assessed a charge by LU in the amount of 15% of relevant revenues, being grant revenue and tuition revenue as defined in the Financial Distribution Notices (the "**Administrative Services Fee**"). The Administrative Services Fee is intended to partially cover the costs incurred by LU for a number of non-academic services

it currently provides to the Federated Universities, which include but are not limited to: (i) student fee collection and accounting; (ii) central computing services; (iii) administration of all pension and employee benefits; (iv) campus security; and (v) student support services.

147. Before the Financial Distribution Notices were delivered to the Federated Universities, LU met with both the administration for the Federated Universities and the Boards of the Federated Universities to explain the basis for the change to the funding formula.

Enrolment at the Federated Universities

148. As of the Fall 2020 academic term, there were 417 students enrolled in full-time and part-time programs through the Federated Universities (271 full-time equivalents). This includes 91 full-time and part-time students at Thorneloe (62.8 full-time equivalents), 108 full-time and part-time students at SU (69.6 full-time equivalents), and 163 full-time and part-time students at Huntington (103.2 full-time equivalents). The remainder of the students enrolled at the Federated Universities are enrolled in programs jointly offered by the Federated Universities. Attached hereto as **Exhibit "J"** is a breakdown of enrollment for the Federated Universities from 2018-20 drawn from enrollment data submitted to MCU each fall.

149. The historical and contractual relationships between LU and the Federated Universities are described in greater depth in the Initial Haché Affidavit.

### *B. Negative Financial Impact of the Federated University Model on LU*

150. Arising out of its solvency and these CCAA Proceedings, LU has undertaken a full review of its operational model. That review has also necessitated a review and reconsideration of the future viability of the relationship between LU and the Federated Universities.

151. While there is strong affinity within the LU community for the Federated Universities, LU's review of the federated model demonstrated that it comes at significant financial cost to LU.

152. I am advised by Normand Lavallee, the Associate Vice-President, Financial Services at LU and do verily believe, that LU transferred approximately $7.7 million in Fiscal Year 2020 as a result of LU students taking programs and courses through the Federated Universities, when those students could be taking all programs and courses through LU directly. Indeed, at present, a main function of SU and Thorneloe is to provide electives in the Faculty of Arts for LU students (while also providing some core programming to students in programs such as Indigenous Studies).

153. Specifically, in Fiscal Year 2020, LU transferred to the Federated Universities approximately $3.5 million in in total grants, $5.3 million in net tuition, and $0.3 million in material fees. In sum, in Fiscal Year 2020, LU transferred approximately $9.1 million in tuition, grants, and fees to the Federated Universities, which was offset by a 15% service fee of approximately $1.4 million, for a net transfer from LU to the Federated Universities of approximately $7.7 million. A summary of LU's payments to the Federated Universities is attached hereto as **Exhibit "K"**.

154. This is revenue that can and needs to stay within LU, given LU's current liquidity challenges. LU's Faculty of Arts has the ability and capacity to offer alternative electives

to its students, such that there is no need for the resulting loss in revenue to LU in doing so. Since students enrolled in programming offered by the Federated Universities could otherwise be accommodated and enrolled in programs offered by LU, a substantial portion of the grant revenue represents lost revenue for LU.

155. The unfortunate reality is that the federated relationships are no longer financially sustainable for LU. Although the Federation Agreements express a "hope" that the federated relationships will be permanent, the parties always recognized that the Federation Agreements might be ended at some point. First, the Act specifically contemplates that LU's federated relationships might be dissolved or suspended. In addition to that, the Indentures also include specific provisions for what happens to the Federated Universities' land and buildings in the event that a party "withdraws" from the Federation Agreement. So, while the aspirational goal of all parties – including LU – was that the federated relationships would continue indefinitely, that was not a term of the agreements and it was recognized that the goal might not be achievable.

### *C. Mediation with the Federated Universities*

156. Based on LU's academic restructuring and financial situation, LU determined that it is necessary to terminate LU's agreements and relationship with the Federated Universities. That intention was initially referenced at paragraph 295 of the Initial Haché Affidavit sworn in support of the Initial Order.

157. LU engaged in extensive Mediation with the Federated Universities. In light of the historical significance of the relationship between LU and the Federated Universities, LU sought to achieve a mediated resolution which would formally terminate the relationship

on terms that would allow the historical legacy and identities of the Federated Universities to be maintained, as set out in the Initial Hache Affidavit.

158. On March 12, 2021, SU made a public announcement, in tandem with the Assembly of the Francophonie in Ontario (the "**AFO**"), that its Board of Regents had decided to form an independent, French-language school.

### *D. Notices of Disclaimer*

159. A negotiated termination of LU's relationship with each of the Federated Universities was not achieved.

160. Accordingly, on April 1, 2021, LU delivered Notices to Disclaim or Resiliate to each of the Federated Universities, pursuant to section 32 of the CCAA (the "**Notices of Disclaimer**"). The Notices of Disclaimer disclaim the Federation Agreements and the Financial Distribution Notices with each of the Federated Universities and will become effective on May 1, 2021. Copies of each of the Notices of Disclaimer to SU, Thorneloe, and Huntington are attached hereto as **Exhibits "L"**, **"M"**, and **"N"**.

161. LU has not taken any steps that would extinguish the right of any of the Federated Universities to continue to exist, or to have a continued presence and create a historic legacy on campus. In particular, LU took no steps relating to the buildings operated by each of the Federated Universities on land owned by LU, including administration buildings and student residences. LU is prepared to work cooperatively with each of the Federated Universities regarding their physical buildings – it is only the federated relationship giving rise to the delivery of academic programs and the transfer of funds by LU for same that cannot continue.

162. On April 11, 2021, SU requested reasons in writing for issuing the Notice of Disclaimer pursuant to section 32(8) of the CCAA. A copy of SU's request is attached hereto as **Exhibit "O"**. I am advised by LU's external counsel D.J. Miller of Thornton Grout Finnigan LLP ("**TGF**") and verily believe that, following an exchange of communications, SU's counsel confirmed that, subject to LU delivering its Motion Record for the April 29, 2021 motion on Monday, April 19, 2021 (which, together with the Initial Haché Affidavit would include the reasons for the Disclaimer), no response to SU's letter was required.

163. In view of an Affidavit served on LU by SU during the evening of April 18, 2021 that was in French and required translation, and a Supplementary Motion Record served by Thorneloe on April 19, 2021, LU was not in a position to finalize and serve its Motion Record on April 19, 2021, as intended. LU's external counsel therefore sent SU's counsel a letter dated April 19, 2021 providing a response to the request made pursuant to section 32(8) of the CCAA. Annexed hereto and marked as **Exhibit "P"** is a copy of that letter.

164. As discussed further below, each of Thorneloe and SU have brought motions opposing the Notices of Disclaimer. Since it is a condition of the DIP Amendment (defined below) and the availability of a further $10 million in DIP financing that the Disclaimers become effective on May 1, 2021, it will be necessary to determine the motions brought by Thorneloe and SU at the return of the Applicant's motion on April 29, 2021. In addition, steps taken following the implementation of the academic restructuring of LU and the necessity to finalize the program and course offerings for Fall 2021 within the timeline of the academic calendar year, as outlined in the Initial Haché Affidavit, require that the issue be determined by April 30, 2021. The Spring term commences on May 3, 2021 which necessitates the removal of courses from the available online catalogue for Thorneloe.

Each of Huntington and SU have already requested that LU remove the courses on offer in the program catalogue for the Spring term that they would have otherwise taught.

### *E. Transition Agreement with Huntington University*

165. After the Notice of Disclaimer was issued to Huntington on April 1, 2021, LU and Huntington continued discussions with respect to next steps. LU and Huntington reached agreement on transition terms arising from LU's termination of their federated relationship.

166. On April 5, 2021, LU and Huntington entered into a Term Sheet (the "**Huntington Term Sheet**") outlining the terms upon which the parties had reached an agreement and would enter into definitive documentation. On April 16, 2021, LU and Huntington entered into a Transition Agreement the ("**Huntington Transition Agreement**") formalizing the terms contained in the Huntington Term Sheet. Attached hereto as **Exhibit "Q"** is a copy of the Huntington Transition Agreement. LU's costs for the services described on Schedule "A" have been redacted. The parties will reach agreement on which of the services will continue to be provided prior to the effective date as defined in the agreement.

167. The Huntington Transition Agreement includes the following terms:

(a) Huntington will not oppose the Notice of Disclaimer;

(b) Huntington will cease to have the ability or responsibility to deliver academic courses or programs as credit towards LU degrees, and LU will no longer transfer funding to Huntington on any basis;

(c) If Thorneloe and/or SU are permitted to continue to receive funding from LU to teach courses or programs and receive funding from Laurentian, Huntington shall be similarly entitled, at its election;

(d) Huntington's current courses and programs will be discontinued by LU and LU will offer those students who are affected enrollment in other courses or programs offered by LU;

(e) Huntington will transfer to LU its rights relating to the Gerontology program in consideration for LU's assumption of Huntington's retiree wind-up liabilities under the Pension Plan;

(f) Huntington will pay the amount of $1,200,000 into the Pension Plan in respect of the wind-up deficit for its active and deferred members by no later than June 30, 2021, which amount will be notionally segregated for the benefit of such Huntington members until such time as Huntington former members who elect to receive commuted value transfer payments receive their final installment of such commuted value payments. Huntington will receive a release from LU for its obligations under the Pension Plan, upon receipt of the $1,200,000 payment and the transfer of the Gerontology program;

(g) Huntington will continue to maintain its building and related facilities for its own benefit and use on LU's land. In turn, LU agrees that the Transition Agreement and the terms thereof do not trigger the termination rights under the Indenture;

(h) LU will continue to provide certain services to be determined prior to the effective date of the agreement to Huntington, based on pricing agreed to by the parties for those services; and

(i) Huntington will cease to be a participating employer in the Pension Plan and the RHBP effective on June 30, 2021.

168. I am advised by Simon Deschenes of Eckler Ltd. ("**Eckler**"), the Pension Plan's actuary, and verily believe that:

(a) the consideration paid by Huntington is expected to be sufficient to fund the wind-up deficiency relating to the Huntington Pension Plan members at the end of five years assuming the economic assumptions in effect as at March 1, 2021 materialize over the period and as such, it is a reasonable amount in satisfaction for releasing Huntington from further obligations under the Pension Plan; and

(b) under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (together with its Regulations, the "**PBA**"), employers have five years to fund a wind-up deficiency on termination of a pension plan. Payments in respect of a wind-up deficiency do not crystallize when a participating employer ceases participating in a pension plan if the pension plan is ongoing.

169. Under the Huntington Transition Agreement, by virtue of Huntington agreeing to contribute $1,200,000 into the Pension Plan by June 30, 2021, the risk to the Pension Plan that Huntington will be unable to make future payments is removed.

### *F. Further Discussions with SU and Thorneloe*

170. Following SU's press release on March 12, 2021 that it intended to become a unilingual (francophone) university and seek degree-granting authority, on April 12, 2021, SU sent a letter to LU requesting that all French-language programs offered by LU be transferred to SU. A copy of the letter in French (along with an unofficial English translation) is attached hereto as **Exhibit "R"**.

171. The same day, LU's counsel responded by letter to SU and advised that LU was fully committed to its status as a bilingual and tri-cultural institution that provides strong, comprehensive academic programs in both English and French, and therefore would not be transferring any French-language programs to SU. A copy of the letter is attached hereto as **Exhibit "S"**.

172. On April 14, 2021, in a further effort to consensually resolve the termination of LU's Federation Agreements with SU and Thorneloe, LU delivered to each of SU and Thorneloe an open settlement offer in the form of a Transition Agreement. These were delivered on the basis that they are not without prejudice settlement offers, and would be included in the motion materials that LU intended to file, for the benefit of the Court and interested parties. Copies of the open offers delivered to SU and Thorneloe in the form of Transition Agreements are attached hereto as **Exhibits "T"** and **"U"** (together, the "**SU and Thorneloe Settlement Offers**").

173. The SU and Thorneloe Settlement Offers were similar in form to the Huntington Transition Agreement. As with the Huntington Transition Agreement, the aim of the SU and Thorneloe Settlement Offers was to provide terms that would allow SU and Thorneloe to maintain a historic legacy on campus and continue to independently operate their own buildings after the end of the federated relationship, while also recognizing LU's severe financial restraints.

174. In particular, the SU and Thorneloe Settlement Offers provided that: (i) SU and Thorneloe will cease to have the ability or responsibility to deliver academic courses or programs as credit towards LU degrees, and LU will no longer transfer funding to SU or Thorneloe on

any basis; (ii) LU would offer those students who are affected enrollment in other courses or programs offered by LU; (iii) each of SU and Thorneloe would continue to maintain their buildings and related facilities for their own benefit and use on LU's land; and (iv) LU would continue to provide certain services to SU and Thorneloe, based on a pricing schedule agreed to by the parties for those services.

175. Additionally, similar to the terms of the Huntington Transition Agreement, SU and Thorneloe would cease participation in the Pension Plan and RHBP no later than June 30, 2021, with SU and Thorneloe remaining responsible for the funding of their proportionate share of the Pension Plan termination deficit with the goal of purchasing annuities from a life insurance company within a 15-year period. Under the terms of the SU and Thorneloe Settlement Offers, SU and Thorneloe would be required to fund the wind-up deficiency attributable to their own employees and retirees over a 15-year term, or earlier if required under the PBA, with accelerated contributions required within 5 years in respect of members who may be eligible and who elect lump sum commuted value transfers.

176. LU did not receive any response from SU and Thorneloe to the open Settlement Offers.

### *G. SU and Thorneloe Motions Opposing the Disclaimers*

177. On April 14, 2021, SU delivered a Motion Record including the Affidavit of Pierre Riopel sworn April 14, 2021 (the "**Riopel Affidavit**") in opposition to the Notice of Disclaimer issued to SU.

178. On April 15, 2021, Thorneloe delivered a Motion Record containing the Affidavit of Sydney Edmonds (the "**Edmonds Affidavit**") opposing the Notice of Disclaimer issued to Thorneloe (together, the "**Disclaimer Motions**").

179. Thorneloe's Motion Record was initially served without its main Affidavit. On April 19, 2021, Thorneloe served a Supplemental Motion Record with the Affidavit of John Gibaut sworn April 19, 2021 (the "**Gibaut Affidavit**") and the Affidavit of Allan Nackan sworn April 19, 2021 (the "**Nackan Affidavit**").

180. I have reviewed the Disclaimer Motions, including the Riopel Affidavit, Edmonds Affidavit, Gibaut Affidavit, and Nackan Affidavit.

181. The Disclaimer Motions are largely premised on the argument that the Notices of Disclaimer will cause SU and Thorneloe significant financial hardship.

182. While LU is cognizant that the Notices of Disclaimer will have financial consequences for the Federated Universities, the unfortunate reality is that the termination of the federated relationships, and the revenue that will remain with LU as a result, is a necessary component of a successful restructuring of LU.

183. As noted above, LU transferred approximately $7.7 million last year to the Federated Universities. The effect of the Notices of Disclaimer is that revenue for the teaching of students will now stay within LU. Given LU's insolvency, and clearly strained liquidity situation, that is revenue that will be crucial to a successful restructuring, including LU's ability to put forward any Plan of Arrangement that would be acceptable to creditors and could therefore be approved.

184. For that reason, the Thorneloe Disclaimer Motion is misguided when it focuses on the relative proportion of LU's tuition fees, grants, and other costs that are attributable to Thorneloe. LU's ability to put forward a successful Plan relies on finding absolute dollar savings wherever possible – not just from those areas that make up the largest proportion of LU's budget. The $7.7 million in revenue for last year (and any corresponding relative amounts in future each year) that will be made available by the Notices of Disclaimer is, contrary to the allegations in the Thorneloe Disclaimer Motion, far from "immaterial" to that effort.

185. Moreover, the termination of the federated relationships forms part of a larger strategy by LU to reduce and consolidate the number of programs and courses offered to students, and to focus on those that generate sufficient enrollment and demonstrate financial viability.

186. To the extent that the Disclaimer Motions suggest that the federated relationships can be saved by a simple tweaking of the funding formula, rather than a full disclaimer, that is not the case based on the situation that currently exists. As outlined very extensively in both this Affidavit and the Initial Haché Affidavit, LU is facing a severe economic crisis that led to its insolvency. As a result, LU and its operational structure is in full overhaul mode. That is demonstrated by the drastic changes described above regarding both LU's academic programming and its employees.

187. The changes to the Federated Universities' relationships are similarly significant and critical. The structural challenge presented by the federated relationships is not an issue that can be resolved with tweaks to the existing order. As discussed above, LU previously attempted that type of incremental change by making adjustments to the funding formula

in 2019. It was not sufficient. From LU's perspective, we have exhausted our options, including two months of discussions during the Mediation, leading to our termination of the federation relationships.

188. The Notices of Disclaimer are further necessary because additional funding under the Amended DIP Facility will be required in order for LU to continue in operations during the period of the requested stay extension. The DIP Amendment contains a number of Conditions to Funding that must be satisfied before additional funds will be made available under the Amended DIP Facility. One of those Conditions to Funding is that each of the Notices of Disclaimer become effective, binding, and final on May 1, 2021 (30 days after they were issued in accordance with the relevant time period under the CCAA).

189. I am advised by Jonathan Mair of the DIP Lender, and do verily believe, that the DIP Lender has made clear that the satisfaction of this Condition to Funding is essential to the DIP Lender's willingness to advance further funds under the Amended DIP Facility.

190. As described further below, the availability of funds under the Amended DIP Facility is a necessity for LU. The original $25 million available under the original DIP Facility has been fully drawn an is insufficient for the period of the requested stay extension. If LU is to continue operating in the ordinary course while it successfully restructures its operations, it will require access to funds under the Amended DIP Facility.

191. Given LU's need for funding, and the DIP Lender's Conditions to Funding, it is critical to LU's restructuring efforts that the Notices of Disclaimer become effective as of May 1, 2021.

192. To be clear, LU does not take the decision to end its federated relationships lightly and regrets that it is necessary. As noted above, there is a strong affinity within the LU community for the Federated Universities and LU is committed to honouring that legacy. To that end, LU has made every effort (within its financial constraints) to smooth the transition for the Federated Universities. That has included the negotiation of the Huntington Transition Agreement described above, and our offer to settle with SU and Thorneloe on similar terms.

193. LU recognizes that some students will be affected by the Notices of Disclaimer and will have a transition plan in place to minimize any disruption to these students. In particular, all students enrolled at a program offered through the Federated Universities have been offered the opportunity to transfer to a program offered by LU. LU will undertake a full assessment of each program offered by the Federated Universities to transfer relevant credits already taken to the students' new programs. LU will ensure that any students enrolled in programming offered by the Federated Universities could be transferred to a program at LU and that such students can complete their degree without exceeding the expected 90 credits (for a three-year degree) or 120 credits (for a four-year degree).

194. To the extent the Riopel Affidavit is suggesting that LU is using the Notices of Disclaimer as an improper way to obtain ownership of the buildings that SU paid to construct, let me be clear that that is not the case. LU has no specific desire to take over the SU (or Thorneloe) buildings. Indeed, as reflected in the open settlement offers LU delivered to SU and Thorneloe, LU specifically contemplates and would agree to the Federated Universities continuing to operate their buildings and would, in fact, offer to continue to provide certain services if arrangements are agreed to. That remains the case.

195. Finally, in response to the Riopel Affidavit's statement that, as a result of the Notices of Disclaimer, SU will have to pay the annual upkeep on its buildings of approximately $400,000, I note that it is already the case that SU is responsible for upkeep costs related to its buildings, and that is not a result of the Notices of Disclaimer.

## IX. PROVINCIAL ACTIONS WITH RESPECT TO NOSM AND HEARST

196. On April 15, 2021, the Province of Ontario tabled Bill 276 in the Legislature containing Schedule 16 titled the *Northern Ontario School of Medicine University Act*, *2021* which 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. LU will engage in discussions with MCU with respect to the timing and impact of any such plan, including as it relates to buildings currently occupied by NOSM on LU's campus.

197. NOSM does not contribute to LU's financial sustainability, as tuition and other funds collected by LU on behalf of NOSM are effectively a "flow-through". LU does provide certain services to NOSM, and the transition of any such services will form part of the discussions if the intended bills that have been introduced are passed, including as to timing.

198. NOSM and MCU are aware of the terms of the CCAA and the Amended and Restated Initial Order, including the stay as it relates to the existing Business of LU during the CCAA Proceedings.

199. The Université de Hearst is a University affiliated with LU that offers undergraduate French-language degree programs, covering areas of study such as history, sociology,

philosophy, psychology, French, and geography for Northern Ontario's Franco-Ontarian community. It has approximately 100 students in total, spread between three campuses located in Hearst, Kapuskasing, and Timmins.

200. On April 15, 2021, as part of the same omnibus bill, Bill 276 referred to above, schedule 28 of the legislation included the *Université de Hearst Act, 2021* which is intended to grant status as an independent university to the Université de Hearst. Similar to the NOSM bill, the Hearst bill does not include any timeline or any regulations that would be required to bring such a plan to fruition, such that the Université de Hearst could become an independent degree-granting institution. LU will engage in discussions with MCU with respect to the timing and impact of any such plan.

## X. POST-EMPLOYMENT BENEFITS

201. As further explained in the Initial Haché Affidavit, LU is the administrator of three post-employment benefit plans for its employees, the employees of the Federated Universities, and the employees of certain other participating employers: (i) the Retirement Plan for Laurentian University and its Federated and Affiliated Universities (the "**Pension Plan**"), (ii) the Supplemental Retirement Plan (the "**SuRP**"), and (iii) a Retirement Health Benefits Plan (the "**RHBP**").

### *A. The Pension Plan*

202. The last valuation conducted in respect of the Pension Plan was as of January 1, 2020 and was filed with the Financial Services Regulatory Authority of Ontario ("**FSRA**") in December 2020. The valuation demonstrated that the Pension Plan is 104.7% funded on a

going-concern basis (99% including the provision for adverse deviation), 85.4% funded on a solvency basis and 65.8% funded on a wind-up basis.

**i. Pension Order of March 17, 2021**

203. Except for employees hired after September 24, 2017, members of the Pension Plan who are no longer employed by LU or any of the participating employers are entitled to commute their pension entitlements at any age and at any time prior to commencing receipt of their pension. LU's practice historically has been to transfer members' commuted value entitlements out of the Pension Plan as a single lump-sum.

204. LU determined that its historical practice could create a risk to the long-term sustainability of the Pension Plan and, depending on the outcome of these proceedings, could result in unfairness to retired members and continuing members of the Pension Plan. LU, in its fiduciary capacity as administrator of the Pension Plan, decided to change its administrative practice so that going forward it would transfer commuted value entitlements in two installments in accordance with the PBA. Under the PBA, the first installment is made based on the transfer ratio disclosed in the Pension Plan's most recently filed actuarial valuation report, currently 65.8% (the "**Transfer Ratio**"), and the remainder of the commuted value is to be paid out within 5 years. This change in historical practice was necessary to ensure all members of the Pension Plan were treated equitably and even-handedly.

205. As of February 1, 2021, 27 members of the Pension Plan had either recently made an election to receive 100% of their lump-sum commuted value transfer that was yet to be processed, or had recently received forms indicating that they could receive 100% of their commuted value transfer paid out as a single lump-sum (the "**Interim CV Applicants**").

In order to fulfill its fiduciary duty as administrator of the Pension Plan to treat all members equally and with an even-hand, LU brought a motion on March 15, 2021 seeking an order permitting it to apply the Transfer Ratio to the Interim CV Applicants' commuted value transfer requests.

206. On March 17, 2021, the Court granted an Order approving the application of the Transfer Ratio to the Interim CV Applicants (the "**Pension Order**").

207. Pursuant to the Pension Order, every Interim CV Applicant was given 30 days from the date they were notified of the Pension Order to elect or confirm their election to receive a commuted value transfer payable at the Transfer Ratio, or to receive a deferred or immediate monthly pension benefit payable from the Pension Plan. If an Interim CV Applicant did not respond within that window, the Interim CV Applicants would be deemed to have elected an immediate or deferred monthly pension benefit. On March 18, 2021, the Interim CV Applicants were provided with a copy of the Pension Order as well as a letter setting out their election options and indicating that the deadline for response was April 19, 2021. A copy of a sample letter is attached hereto as **Exhibit "V"**.

208. As of April 16, 2021, 16 of the 27 Interim CV Applicants had either made or confirmed their pension election in response to the Pension Order.

209. The Pension Order also confirmed that LU's payment due in respect of an assessment owing to the Pension Benefits Guarantee Fund ("**PBGF**") pursuant to the PBA for the Pension Plan in the amount of $919,234.66 ($851,143.20, plus provincial tax of $68,091.46) for the July 1, 2019 - June 30, 2020 plan year, and the incremental PBGF assessment due for the July 1, 2018 - June 30, 2019 plan year estimated to be $288,723.53

($267,336.60, plus provincial tax of $21,386.93) were pre-filing obligations and therefore stayed under the Amended and Restated Initial Order. The stay only applies to the LU portion (91.6%) of these payments based on LU's *pro rata* share of the Pension Plan's solvency liabilities, and not to the portion attributable to other participating employers.

**ii. Retirement Incentive**

210. On March 28, 2021 LU launched a Retirement Incentive Program for faculty members (the "**Retirement Incentive**") following discussions with LUFA. Under the Retirement Incentive, retirement-eligible faculty members could provide an irrevocable notice of intention to retire as of April 30, 2021 if not teaching, or May 15, 2021, if teaching, in exchange for certain non-economic benefits. Under the Retirement Incentive, faculty members would, among other things, be eligible to elect a commuted value payment option in respect of their Pension Plan entitlements. A copy of the March 28, 2021 Retirement Incentive memo is attached hereto as **Exhibit "W"**.

**iii. Ongoing Pension Plan Administration**

211. Given its limited operational capacity, LU has prioritized the administration of pension elections of the Interim CV Applicants and faculty members retiring under the Retirement Incentive, and continues to work closely with the Pension Plan's third-party administrator and advisors to address the large volume of interest around the Pension Plan generated by the CCAA Proceedings.

**iv. Pension Term Sheet**

212. As part of LU's negotiations in the mediation with LUFA and LUSU, LU sought amendments to the Pension Plan to ensure that it would be sustainable moving forward and that LU's funding obligations to the Pension Plan would not jeopardize LU's financial viability after the conclusion of the CCAA Proceedings.

213. Over the past two months, the Pension Plan's actuary, Eckler, undertook comprehensive modelling to assess what changes to the Pension Plan are required in order to ensure that LU contributions to the Pension Plan are predictable, to limit the risk of special payments arising in the future and to ensure the Pension Plan's long-term sustainability.

214. The Pension Plan amendments that were formulated based on the Eckler modelling include changes to the availability of commuted value transfers, changes to the Pension Plan benefit formula described below, and associated changes to the Pension Plan's governance structure. These changes are set out in a term sheet dated April 7, 2021 between LU and each of LUFA and LUSU (the "**Pension Term Sheet**"), which forms part of the LUFA Term Sheet and LUSU Term Sheet.

### A. Pension Plan Amendments

215. Pursuant to the Pension Term Sheet, the Pension Plan will be amended as follows:

(a) Availability of Commuted Value Transfers: Going forward, commuted value transfer payments will cease to be available for terminated members of the Pension Plan who have attained their early retirement date (the first day of July coincident with or next following their 55$^{th}$ birthday) upon leaving employment. For employees who have not attained their early retirement date upon termination of employment, commuted value transfers will be offered on a one-time basis in accordance with PBA requirements. Limiting commuted value transfers from the Pension Plan to those required by the PBA preserves the capital that remains in the Pension Plan over the long term and, in turn, improves the long-term viability of the Pension Plan. These changes do not impact the value of terminating members' Pension Plan entitlements, only the form of the payment.

Certain transitional measures were put in place: (i) LU faculty members who provided an irrevocable notice of intention to retire pursuant to the Retirement Incentive are able to elect to receive a commuted value transfer regardless of their age, provided the election is made before May 15, 2021, and (ii) deferred vested members whose Pension Plan membership was terminated in the past and who at the time of termination of membership were advised that they could elect a commuted value transfer at any time in the future will be given a one-time option to elect a commuted value transfer. The commuted value payments will be made in two installments as described above for any member of these groups who elected a commuted value.

LU is in the process of preparing the amendments to the Pension Plan to give effect to the changes to the commuted value transfer rules. LU intends to file these Pension Plan amendments with the FSRA and Canada Revenue Agency prior to May 1, 2021.

(b) Modified Early Retirement Provisions: Currently, the Pension Plan allows all members to retire on an unreduced early retirement pension at age 62. If a member retires before that, their pension is reduced by 0.5% per month from age 62. The age 62 early retirement date is eliminated for LUFA members and Senior Leaders and Designated Executives effective July 1, 2021 for members who have not yet reached age 62 on July 1, 2021. Effective July 1, 2021, if these members retire early, their pension entitlements will be actuarially reduced from their normal retirement date. LUSU members and other employees who participate in the Pension Plan will continue to be eligible for unreduced early retirement at age 62,

but if they retire earlier than that, their pension will be actuarially reduced from age 62.

(c) Receipt of Pension While Employed: Effective July 1, 2021, members of the Pension Plan will no longer be entitled to commence receipt of their pension from the Pension Plan while employed after their normal retirement date, except as required under the *Income Tax Regulations* C.R.C., c. 945 ("**ITR**").

(d) Freeze Best Average Pensionable Earnings: Under the current terms of the Pension Plan, "Best Average Pensionable Earnings", which is the five-year average of a Pension Plan member's highest average earnings, is used to calculate members' defined benefit pension entitlements. The Pension Plan is being amended to freeze Best Average Pensionable Earnings on June 30, 2021.

(e) Career Average Earnings Benefit Formula & Integration with Enhanced CPP: Effective July 1, 2021, members of the Pension Plan will accrue benefits based on a career average earnings formula (i.e., based on pensionable earnings in each year of credited service) and not on the best average earnings formula described above. Members' benefits will be integrated with the increased pensionable earnings ceiling under the enhanced Canada Pension Plan, in advance of the Canada Pension Plan enhancement being fully implemented in 2025.

(f) Post-Retirement Indexation: For service on and after July 1, 2021, post-retirement indexation will not be provided unless granted in accordance with the Pension Plan's new Benefits and Funding Policy.

(g) Contributions: Starting July 1, 2021, members will contribute an average of 8% of pensionable earnings to the Pension Plan. LU will also contribute a minimum of 8% of pensionable earnings to the Pension Plan.

(h) Benefits and Funding Policy: The Pension Term Sheet included the key terms of a Benefits and Funding Policy which will be developed in respect of the Pension Plan and which will govern the financial management of the Pension Plan, including how contributions to the Pension Plan are used to build reserves and grant benefit improvements to Pension Plan members, such as pre-retirement and post-retirement indexation.

**B. Pension Plan Governance**

216. As explained above, LU, LUFA and LUSU have agreed to establish a Benefits and Funding Policy for the Pension Plan, the key terms of which are set out in the Pension Term Sheet. The Benefits and Funding Policy is intended to ensure that excess contributions are used to build reserves in the Pension Plan and to establish the funded status conditions that must be met before benefit improvements may be granted.

217. Under the Benefits and Funding Policy, benefit improvements may only be granted if: (i) the Pension Plan is at least 95% funded on a solvency basis; (ii) the Pension Plan is at least 105% funded on a going concern basis, including provision for adverse deviation, (iii) the granting of any benefit improvement does not cause the funded status of the Pension Plan to fall below 90% on a solvency basis or 103% on a going concern basis, including provision for adverse deviation, and (iv) the benefit improvement poses a low risk of requiring total contributions to exceed 16% of pay. No benefit improvements can be

granted until at least July 1, 2025 so that reserves can build in, and help stabilize, the Pension Plan.

218. LU, LUFA and LUSU have also agreed to establish a new Joint Committee on the Benefits and Funding Policy and Long-Term Sustainability (the "**Joint Committee**"). In accordance with the Pension Term Sheet, the mandate of the Joint Committee is to: (i) monitor and advise the Pension Committee on the administration and implementation of the Benefits and Funding Policy, and (ii) study possible long-term sustainability options for the Pension Plan.

219. The membership and terms of reference of the Pension Committee, which is an existing fiduciary committee in respect of the Pension Plan, are also to be changed as outlined in the Pension Term Sheet. The changes incorporate the Benefits and Funding Policy and Joint Committee into the governance structure of the Pension Plan, and remove the Federated Universities from the Pension Committee. In addition to LU, LUFA, and LUSU, the non-union employees represented by LUAPSA have a non-voting role on the Pension Committee.

### C. Supplemental Retirement Plan ("SuRP")

220. The SuRP provided an additional retirement benefit which was afforded to LU's high-earning employees. The SuRP provided benefits over the maximum amounts payable from the Pension Plan under ITR restrictions. No other employer, other than LU, participates in the SuRP.

221. The SuRP was unfunded and unsecured. SuRP benefits were paid out of LU's annual operating budget. SuRP payments were expected to cost LU $262,744.87 in 2021, and the

SuRP represented an accrued benefit obligation of approximately $3,063,000 on LU's financial statements.

222. All payments from the SuRP ceased on February 1, 2021.

223. LU reached agreement with LUFA and LUSU as part of the Mediation that the SuRP would be terminated. LU is in the process of terminating the SuRP.

**D. Retiree Health Benefit Plan**

224. As described in the Initial Haché Affidavit, the RHBP provides qualifying retirees and their surviving spouses reimbursement of certain healthcare expenses up to a maximum annual subsidy. The annual subsidy differs by employee group and whether the retiree has single or family coverage. The RHBP is typically used to reimburse participants' health benefit premiums for private or other group medical insurance or qualifying medical expenses. As of January 30, 2021, 358 retirees and surviving spouses (including retirees from the Federated Universities and other participating employers) qualified for the RHBP.

225. The RHBP is funded by contributions from active employees and by LU, the Federated Universities, and three other employers. As of January 30, 2021, 866 employees were contributing to the RHBP.

226. All payments to retirees and their surviving spouses from the RHBP ceased on February 1, 2021.

227. Contributions to the RHBP were historically deposited in LU's general operating account and tracked as a liability in its accounting records. All contributions to the RHBP since late December 2020 have been deposited into a segregated account for the RHBP.

228. LU reached agreement with LUFA and LUSU as part of the Mediation that the RHBP would be eliminated. LU is working to terminate the RHBP and refund contributions made to the segregated account since it was established in December 2020.

## XI. AFO MOTION

229. On March 31, 2021, the AFO brought a motion seeking, among other things, that LU engage in consultations regarding any restructuring plan that may impact the status or use of French, and enter into negotiations with the AFO and SU regarding any alternative proposal that may be brought forward for LU's consideration.

230. LU and the AFO and representatives of other parties including the Monitor attended a Case Conference before Chief Justice Morawetz on April 1, 2021 and a second Case Conference on April 6, 2021.

231. I am advised by LU's external counsel, D.J. Miller of TGF and do verily believe that a portion of the relief sought by AFO on its motion was resolved by way of a negotiated Consent Order, subject to a case conference being arranged to confirm the terms of the Order and have same issued. Upon any Order being signed on consent of the parties, it will be delivered to the Service List in this proceeding.

## XII. COMMUNICATIONS WITH STAKEHOLDERS

### *A. Students*

232. LU has provided regular communications to students throughout the CCAA Proceedings, including FAQ documents and direct email communications to all students. In addition, LU created a dedicated website where all information relating to the CCAA Proceedings

is located. The dedicated LU website for the CCAA Proceedings also has a link to direct students to the website maintained by the Monitor.

233. As described further above, in response to the program and course closures that have been approved by the Senate, LU has taken proactive steps to communicate to those students affected. The Deans (and other key advisors) have been made available to communicate with their respective students on an individual basis to develop personalized academic plans moving forward.

***B. Donors***

234. LU's legal counsel has been in contact with counsel for certain major donors to LU. LU's legal counsel has advised that LU was engaged in time-sensitive Mediation to achieve critical milestones that would permit LU to continue operating. It advised that if these milestones were achieved, LU would engage in discussions with the donors during Phase Two of the restructuring, which would include a detailed operational review of all systems, policies, and procedures to ensure that LU utilizes the processes and support that the donors have offered and can expect.

235. LU recognizes the work that will be required to re-establish confidence with its donors and other stakeholders in the community and will do everything possible to accomplish that during Phase 2 of this restructuring and in the future.

***C. Research Granting Agencies***

236. LU has also received correspondence from several research-granting agencies, including the Wildlife Conservation Society and the Quebec Secretariat for Canadian Relations. LU's legal counsel has responded by advising that LU, with the assistance of the Monitor,

is undertaking a review in respect of all research grants received by LU. However, at this time, LU is not able to address any particular funds that may have been received prior to the commencement of the CCAA proceedings. A copy of the letter to the Quebec Secretariat for Canadian Relations is attached hereto as **Exhibit "X"**.

237. I am advised by LU's Vice-President Research, Dr. Tammy Eger, and verily believe to be true, that LU has been in regular communication with the tri-agencies (the Natural Sciences and Engineering Research Council, the Social Sciences and Humanities Research Council and the Canadian Institutes of Health Research (collectively, the "**Tri-Agencies**")) throughout the CCAA Proceedings. Reports on the status of grants held from the Tri-Agencies have been provided along with information on the segregated bank account for research funds. Based on the exchange of information, the Tri-Agencies agreed to release new research funds in March and April to LU. Future payments will be determined subject to LU obtaining the Order that is sought on this motion.

238. Similar meetings were held with MITACS, the Ontario Center for Innovation, and Natural Resources Canada who have also agreed to release new research funds to LU.

239. Meetings have also been held with the Canadian Foundation for Innovation ("**CFI**"), who are waiting to hear if LU will continue to operate beyond April 30th prior to making a final decision on approvals for LU to resume spending CFI grant funds.

240. In the next phase of the CCAA proceeding beginning May 1, 2021, the Vice-President Research and Executive Financial Advisor to the President will continue to meet with research funders to provide an update on research account balances and management of research funds in order to rebuild trust and build back LU's research enterprise.

241. LU faculty continue to apply for and receive research grants.

242. LU is expected to be able to provide further findings regarding its review and reconciliation of research funds as the CCAA Proceedings progress.

***D. Pre-Filing Lenders***

243. LU's significant lenders, Toronto-Dominion Bank, Royal Bank of Canada, and the Bank of Montreal (collectively, the "**Lenders**") are collectively owed in excess of $100 million and requested participation in the Mediation. While the Mediation to date has primarily focused on negotiations for cost-cutting measures and creating operational efficiencies in the delivery of programs and services, the Lenders have participated in the Mediation and have received certain confidential information shared within the Mediation and in accordance with the terms of the confidential Mediation process.

244. In addition, LU's legal counsel, the Monitor and its counsel have met with the Lenders and their counsel and advisors over the last several weeks and have provided information and documentation as same is available.

245. On April 21, 2021, counsel to Royal Bank of Canada ("**RBC**") delivered a letter to Thornton Grout Finnigan, copying the Monitor, its counsel and counsel to the other Lenders. The letter requests certain information in respect of steps that are expected to occur after the stay extension motion that will assist RBC in making an informed decision regarding its position on the motion and requests consultation on certain key steps. Attached hereto as **Exhibit "Y"** is a copy of the letter from RBC.

246. LU will continue to respond to the information requests from the lenders and all stakeholders. If LU receives the Order sought on this motion, including the increased DIP funding to continue operations, LU expects to further engage with the Lenders with respect to the restructuring steps contemplated by LU in the next phase of the CCAA proceeding, the framework and terms for any Plan of Arrangement that may be developed, and the potential sources of recovery for creditors under any such Plan. When a motion is brought seeking a Claims Process Order, which we expect will be in May, all parties will have an opportunity to make submissions on the form of such Order and the claims process.

**E. MCU**

247. LU has kept MCU, and the Special Advisor appointed by MCU, apprised of all steps taken by LU during the CCAA Proceedings, other than confidential communications relating to the Mediation.

248. On March 19, 2021 MCU made a public announcement relating to $106.4 million of COVID relief funding being provided to various universities and colleges in Ontario. LU did not receive any allocation of such funds. In public statements made by the Minister of MCU following the announcement, it was made clear that it was not an oversight and that LU was expected to address its long-term financial sustainability through the CCAA Proceedings.

249. With the significant milestones achieved by LU and its stakeholders as part of the CCAA Proceedings to date, LU expects to be well positioned to demonstrate its long-term financial sustainability as part of its discussions with MCU in the next phase of the CCAA Proceeding.

## XIII. CASH FLOW FORECAST

250. A cash flow forecast for the period of the requested stay extension has been developed, is being finalized and reviewed by the Monitor. This cash flow forecast reflects the impact of the faculty and staff reductions outlined in the LUFA Term Sheet and the LUSU Term Sheet.

251. The cash flow forecast will be attached to a Monitor's Report that the Monitor will be serving and filing prior to the motion.

## XIII. INCREASE TO DIP FINANCING

252. In the Amended and Restated Initial Order, the Court approved the DIP Term Sheet between LU and Firm Capital Corporation ("**FCC**") dated January 29, 2021 (the "**DIP Term Sheet**") in the principal amount of $25 million (the "**DIP Facility**"), as well as granting a charge over LU's Property securing the DIP Facility (the "**DIP Lender's Charge**").

253. LU has drawn on the full $25 million available pursuant to the DIP Facility. Based on a review of the Revised Cash Flow Forecast, and in consultation with the Monitor, LU has determined that, without additional financing, LU will be unable to fund its operations for the period of the requested stay extension without the requirement for additional DIP funding.

254. Accordingly, on April 19, 2021, LU and FCC entered into an Amended DIP Term Sheet (the "**DIP Amendment**"), pursuant to which FCC agreed to increase the maximum principal amount available under the DIP Facility by a further $10,000,000 subject to the

terms and conditions described therein (the "**Amended DIP Facility**"). A copy of the DIP Amendment is attached hereto as **Exhibit "Z"**.

255. The key terms of the DIP Amendment are as follows:

(a) the DIP Lender will make available to LU additional funds up to a maximum principal amount of $10 million in accordance with the Cash Flow Forecast;

(b) the Amended DIP Facility has a maturity date of August 31, 2021;

(c) interest accrues at the same rate as pursuant to the original DIP Term Sheet, which amounts are reflected in the Cash Flow Forecast;

(d) a Loan Amendment Fee that is earned and payable to the DIP Lender on the date that the Court approves the DIP Amendment reflects the same percentage rate on the principal amount of the loan as the original DIP Term Sheet;

(e) an increase to the super-priority charge on all of the current and future assets, undertakings, and property of LU to the amount of $35,000,000 (the "**DIP Lender's Charge**") that is only subordinate to: (i) the Administration Charge up to the maximum of $1.25 million; (ii) the Directors' Charge up to the maximum of $2 million (with such further amount to be subordinate to the DIP Lender's Charge); and (iii) any valid purchase money security interests, including the registrations made under the *Personal Property Security Act* (Ontario); and

(f) customary terms and covenants for a DIP Facility in a CCAA proceeding.

256. Funding under the DIP Amendment is also conditional on the satisfaction of certain Conditions to Funding specified in the Amended DIP Term Sheet which include the

granting of an Order for the relief sought by LU in its motion to be heard on April 29, 2021. LU worked with its counsel and the Monitor in determining the quantum of the DIP Amendment and the DIP Lender's Charge. I have been advised that the Monitor supports the DIP Amendment and the increase to the DIP Lender's Charge.

## XIV. NEXT STEPS IN RESTRUCTURING

257. The first 90 days of the CCAA Proceeding have been characterized by intense negotiations in the Mediation leading to the various term sheets that are referred to herein, as well as stabilizing the operations, putting new systems and controls in place for cash expenditures, ensuring that communications were delivered to students including new applicants, faculty, staff, and other employees, donors, research granting agencies, and community stakeholders. LU's main focus since the commencement of the CCAA Proceedings has been to ensure that all existing students would be able to continue and complete their current academic year, with minimal disruption.

258. The urgent restructuring changes that have been undertaken on campus since February 1, 2021 were necessary in order to position LU to be able to continue in operation beyond April 30, 2021 and be poised for future financial sustainability. These changes are disruptive and unsettling for many stakeholders, including most directly the faculty and staff who recently received notices of termination. These changes have also placed additional burdens on remaining faculty and staff.

259. The next phase of the CCAA Proceedings will be the pursuit of value for all stakeholders from all available sources, and the re-building of confidence and relationships with students, faculty, staff, donors and research-granting agencies, lenders, the communities

we serve, and all stakeholders. We appreciate that this re-building process will take some time, but we are committed to doing whatever it takes to regain any ground that may have been lost through past events or this proceeding.

260. One of the commitments that will be undertaken by LU, which is embodied in the Term Sheets signed with each of LUFA and LUSU, is a thorough review of all operational and governance matters within the entire University in order to identify and implement best practices for the future. To this end, LU will be engaging, through my office as President, an external advisor with sector expertise to undertake an extensive review of all areas. This process will include consultation with LU's stakeholders and will be open and transparent.

261. Another aspect that will be undertaken if the requested stay extension is granted is a detailed assessment of all real estate owned by LU, and buildings leased to other parties. The purpose of the review will be to determine what assets may exist that could be monetized for the benefit of stakeholders, or that could create future financial efficiencies for the benefit of LU and its stakeholders. This process will also be undertaken with the assistance of external parties, including those with sector expertise.

262. Provided the Order sought by LU is granted, LU expects to bring a motion seeking a Claims Process Order in May, in order to identify the universe of claims that may exist and seek to have all claims determined. During this time LU will also develop the framework for a Plan of Arrangement, so that when all possible sources of recovery for creditors have been identified, a Plan can be put to creditors.

## XV. STAY EXTENSION

263. LU seeks an extension of the Stay Period until August 31, 2021.

264. The stay extension is required to enable LU to continue operating in the ordinary course while engaging in discussions with the aim of achieving collective resolutions with all of its stakeholders, as well as undergoing an extensive overhaul of its operational and governance systems to promote efficiencies and accountability, and streamline operations.

265. The Revised Cash Flow Forecast demonstrates that LU will have sufficient liquidity to meet its obligations during the proposed extension to the Stay Period, provided that the increase to the DIP Facility is approved.

266. LU has acted and continues to act diligently and in good faith in respect of all matters relating to these CCAA Proceedings.

267. In the circumstances, I do not believe that any creditor will suffer material prejudice as a result of the extension of the Stay Period.

## XVI. CONCLUSION

268. LU seeks an Order under the CCAA, in the proposed form of order attached at Tab 3 in LU's Motion Record.

269. This affidavit is sworn in support of LU's motion for, among other things, an extension to the Stay Period, approval of certain agreements entered into by LU, an increase to the DIP Lender's Charge, and in opposition to the motions brought by SU and Thorneloe in respect of the Disclaimers, and for no other or improper purpose.

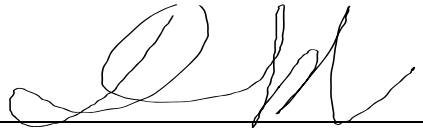
SWORN before me via videoconference by ROBERT HACHÉ located in the City of Sudbury, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 21st day of April, 2021, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.

Commissioner for Taking Affidavits

Derek Harland
LSO#: 79504N

**DR. ROBERT HACHÉ**

This is Exhibit “A” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

Court File No. CV-21-___656040_____-00CL

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

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| THE HONOURABLE CHIEF | ) | MONDAY, THE 1ST |
| | ) | |
| JUSTICE MORAWETZ | ) | DAY OF FEBRUARY, 2021 |

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

**INITIAL ORDER**

**THIS APPLICATION**, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day by videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

**ON READING** the affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits thereto (the "**Haché Affidavit**"), the pre-filing report of the proposed monitor, Ernst & Young Inc. ("**EY**"), dated January 30, 2021 (the "**Pre-Filing Report**"), and on hearing the submissions of counsel for the Applicant, counsel for EY and those other parties listed on the Counsel Slip, and on reading the consent of EY to act as the monitor (the "**Monitor**");

**SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

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.

**NON-APPLICANT STAY PARTY**

3. **THIS COURT ORDERS** that the Laurentian University Students General Association (the "**SGA**") shall be referred to herein as a "**Non-Applicant Stay Party**". Although not an applicant under the CCAA, the Non-Applicant Stay Party shall enjoy certain of the benefits and protections provided herein and be subject to the restrictions as expressly hereunder set out.

**APPLICATION**

4. **THIS COURT ORDERS AND DECLARES** that the Applicant is insolvent and is a company to which the CCAA applies.

**POSSESSION OF PROPERTY AND OPERATIONS**

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business and deal with its assets, including the businesses and assets of the other entities, partnerships and joint ventures in which the Applicant has a direct or indirect interest, and is authorized to continue to provide services to such parties in respect of which it is currently providing services, in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to use the cash management system currently in place, as described in the Haché Affidavit, which for greater

certainty includes any segregated bank accounts now existing (together with any segregated accounts established pursuant to paragraph 7, the "**Cash Management System**"), and that any present or future bank or institution providing the Cash Management System to the Applicant shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, except to the extent that such terms are expressly modified by this Order or with the consent of the Applicant, the Monitor and any applicable bank or financial institution providing a Cash Management System, and shall be, solely in its capacity as provider of the Cash Management System only, an unaffected creditor under any plan or arrangement filed by the Applicant under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System on or after the date of this Order.

7. **THIS COURT ORDERS** that (a) any segregated bank accounts established by the Applicant from and after December 1, 2020, to hold funds received by it on the condition that such funds be used for a specific purpose in respect of a particular aspect of the Applicant's Business, including without limitation, funds provided to the Applicant for the purpose of research projects (including grants, awards or other similar funds), funds received in respect of restricted donations or endowments, and employee and employer contributions to benefit plans (collectively, the "**Segregated Funds**") shall be used for such specific purpose, and (b) from and after the date of this Order, the Applicant may establish additional segregated bank accounts, including trust accounts if necessary, to hold any additional Segregated Funds that are received by the Applicant under such agreed upon arrangements, and the Segregated Funds shall not form part of the Applicant's Property.

8. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, employee and retiree benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit

plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Applicant, ordinary course pension benefits or contributions, vacation pay, expenses and any director fees and expenses, payable on or after the date of this Order, in each case for costs incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements for current and future employees (but not including any payments to former employees or retirees in respect of the SuRP and the RHBP, as such terms are defined in the Haché Affidavit, or termination or severance payments, which are hereby stayed), and all other payroll processing and servicing expenses;

(b) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other similar amounts that are owing or may be owed to students or student associations of the Applicant, whether such amounts are as a result of the reimbursement of tuition fees, ancillary fees or otherwise, provided that such rebates, refunds or other similar amounts are subject to the existing policies and procedures of the Applicant;

(c) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts payable to students in respect of student scholarship, bursary or grants; and

(d) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

9. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business (including the value thereof) including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order or payments to obtain the release of goods or delivery of services contracted for prior to the date of this Order.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) until further order of this Court, all outstanding and future normal course contributions to or payments in respect of the Pension Plan, as defined in the Haché Affidavit, in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

(c) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of

the date of this Order (including for greater certainty in respect of the interest rate swap transactions); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

**RESTRUCTURING**

12. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to continue negotiations with stakeholders in an effort to pursue all restructuring options.

**NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

13. **THIS COURT ORDERS** that until and including February 11, 2021, or such later date as this Court may subsequently order (the "**Stay Period**"), no proceeding or enforcement process in or out of any court or tribunal or other forum, whether arising by contract (including pursuant to any collective agreement) or otherwise (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall:

(a) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on;

(b) exempt the Applicant from compliance with any statutory or regulatory provisions relating to health, safety or the environment;

(c) affect such investigations, actions, suits or proceedings by a regulatory body as are specifically permitted by Section 11.1 of the CCAA;

(d) prevent the filing of any registration to preserve or perfect a security interest;

(e) prevent the registration of a claim for lien; or

(f) prevent any actions that are permitted by Section 34(8) of the CCAA.

**LIMITED STAY IN RESPECT OF THE NON-APPLICANT STAY PARTY**

15. **THIS COURT ORDERS** that during the Stay Period, no Person shall (a) commence or continue any Proceeding or enforcement process, (b) terminate, repudiate, make any demand, accelerate, alter, amend, declare in default, exercise any options, rights or remedies, or (c) discontinue, fail to honour, alter, interfere with or cease to perform any obligation, pursuant to or in respect of any agreement, lease, sublease, license or permit with respect to which the Non-Applicant Stay Party is a party, borrower, principal obligor or guarantor, by reason of:

(a) the Applicant being insolvent or having made an application to this Court under the CCAA;

(b) the Applicant being a party to this proceeding or taking any steps related thereto; or

(c) the stay granted pursuant to this paragraph 15; and

(d) any default or cross-default arising from the matters set out in the foregoing subparagraphs,

except with the written consent of the Applicant and the Monitor, or with leave of this Court.

**NO INTERFERENCE WITH RIGHTS**

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant or the Non-Applicant Stay Party or take any steps to interrupt or interfere with the operation of the

Business or the continued use of the Property of the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicant, including the members of the Board of Governors of the Applicant (the "**Board**") with respect to any claim against the directors, officers or the Board that arose before the date of this Order and that relates to any obligations of the Applicant whereby the directors, officers or the Board are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until

a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

20. **THIS COURT ORDERS** that the Applicant shall indemnify its directors, officers and the Board against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer, director or member of the Board, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. **THIS COURT ORDERS** that the directors, officers and Board of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $2,000,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 32 and 34 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors, officers and the Board shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

**APPOINTMENT OF MONITOR**

23. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicant in the preparation of the Applicant's cash flow statements and any other reporting to the Court or otherwise;

(d) be at liberty to participate in discussions with representatives of the Ministry of Colleges and Universities ("**MCU**") and such other representatives of Provincial or Federal government agencies, at any time on all aspects of this proceeding and the Applicant's restructuring, subject to such terms of confidentiality as may be appropriate in the Monitor's assessment and in consultation with the Applicant;

(e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, wherever situate, in order to assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(g) perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property of the Applicant, or any property of the Non-Applicant Stay Party, and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the proposed DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicant's counsel and advisors in connection with the CCAA proceedings (collectively, the "Restructuring

Advisors") together with independent counsel to the Board ("**Board Counsel**") shall each be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Restructuring Advisors and Board Counsel. Notwithstanding the foregoing, the fees and disbursement of Board Counsel paid by the Applicant from and after the date of this Order shall not exceed the aggregate amount of $250,000, plus HST, pending further Order of the Court.

30. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. **THIS COURT ORDERS** that the Restructuring Advisors shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $400,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Restructuring Advisors, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 32 and 34 hereof.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

32. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Directors' Charge (collectively, the "**Charges**" and each individually, a "**Charge**") as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $400,000); and

Second –Directors' Charge (to the maximum amount of $2,000,000).

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

34. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, construction liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except for any Person who is a "secured creditor" as defined in the CCAA that has not been served with the Notice of Application for this Order.

35. **THIS COURT ORDERS** that the Applicant shall be entitled, on a subsequent attendance on notice to those Persons likely to be affected thereby, to seek an increase to the amounts, to seek additional charges and to seek priority of the Charges ahead of any Encumbrance over which the Charges have not obtained priority under this Order.

36. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

37. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

38. **THIS COURT ORDERS** that, notwithstanding anything else contained herein and pending further Order of the Court, the Property subject to the Charges herein shall not include the Segregated Accounts.

**SERVICE AND NOTICE**

39. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail and the Sudbury Star a notice containing the information prescribed under the CCAA, and (ii) within five days of the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1,000 (excluding any individual employees, former employees with pension and/or retirement savings or benefits plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plan), and (C) prepare a list showing the names and addresses of those

creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

40. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure*, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/Laurentian.

41. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

42. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

43. **THIS COURT ORDERS** that the Applicant and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

**SEALING PROVISION**

44. **THIS COURT ORDERS** that Confidential Exhibits "**EEE**" and "**FFF**" of the Haché Affidavit are hereby sealed pending further order of the Court, and shall not form part of the public record.

**GENERAL**

45. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

46. **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.

47. **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.

48. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

49. **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.

CHIEF JUSTICE G.B. MORAWETZ

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 0 1 2021

PER / PAR:

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-_____-00CL

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

**INITIAL ORDER**

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Lawyers for the Applicant

**CITATION:** Laurentian University of Sudbury, 2021 ONSC 659
**COURT FILE NO.:** CV-21-656040-00CL
**DATE:** 2021-02-01

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** **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**

**BEFORE:** Chief Justice G.B. Morawetz

**COUNSEL:** *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

*Ashley John Taylor* and *Elizabeth Pillon*, for the Monitor

*Peter J. Osborne*, for the Board of Governors

*Natasha MacParland*, Lender Counsel to the Applicant

*Pamela L.J. Huff* and *Aryo Shalviri*, for Royal Bank of Canada

*Stuart Brotman* and *Dylan Chochla*, for Toronto Dominion Bank

*Martin R. Kaplan* and *Vern W. DaRe*, for Firm Capital Mortgage Fund Inc., DIP Lender

*Michael Kennedy*, Labour Counsel for the Applicant

*George Benchetrit*, for Bank of Montreal

**HEARD:** February 1, 2021

**ENDORSEMENT**

**Introduction**

[1] Laurentian University of Sudbury ("LU" or the "Applicant") seeks certain relief pursuant to an order (the "Initial Order") under the *Companies' Creditors Arrangement Act* (the "CCAA").[1]

[2] LU is a publicly funded, bilingual and tricultural postsecondary institution in Sudbury, Ontario. Since inception, LU has provided higher education to the community of Sudbury and Northern Ontario at large and is an integral part of the economic fabric of the Northern Ontario community.

[3] As a result of many years of recurring operational deficits in the millions of dollars, and notwithstanding LU's recent efforts to improve its financial stability, LU is experiencing a liquidity crisis and is insolvent.

[4] LU submits that it requires the protection of the Court and the relief available under the CCAA so that it can financially and operationally restructure itself in order to emerge as a financially sustainable university for the benefit of all its stakeholders.

[5] The facts with respect to this application are briefly summarized below and more fully set out in the Affidavit of Dr. Robert Haché sworn January 30, 2021, filed in support of this application (the "Haché Affidavit").[2]

[6] For the following reasons, the Interim Order is granted.

**Overview of the Applicant**

[7] 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, as amended by S.O. 1961-62, c. 154 (the "LU Act") and is a registered charity pursuant to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

[8] The governance structure of LU is bicameral. The Board of Governors (the "Board"), the President, and the 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.

[9] LU primarily focuses on undergraduate programming, with approximately 8,200 total domestic and international undergraduate students (approximately 6,250 full-time equivalents) enrolled in the 2020-21 academic year. LU has five undergraduate faculties, each of which offer

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[1] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

[2] Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Haché Affidavit. All references to currency in this factum are to Canadian dollars, unless otherwise noted.

programs in both English and French, and students can choose from 132 undergraduate programs to enroll in.

[10] LU also has a graduate program, with approximately 1,098 total domestic and international graduate students enrolled during the 2020-21 academic year. LU offers 43 Masters and PhD programs in a variety of disciplines.

[11] LU has a federated school structure whereby it has formal affiliations with several independent universities under the overall LU umbrella: the University of Sudbury, the University of Thorneloe, and Huntington University. The Federated Universities are integrated into LU, however, each of the Federated Universities are separate legal entities and are governed by Boards that are independent of LU.

[12] LU is one of the largest employers in the Greater Sudbury area. As at December 30, 2020, LU employed approximately 1,751 people, of which approximately 758 are full-time employees. Total salaries and benefits represent the single largest expense item for LU on an annual basis (approximately $134 million of $201 million in total expenses during fiscal year 2019-20).

[13] Approximately 612 LU employees are represented by the Laurentian University Faculty Association ("LUFA"). Approximately 268 non-faculty staff are represented by the Laurentian University Staff Union ("LUSU").

[14] LUFA and the Board of LU are parties to a Collective Agreement (the "LUFA CA"), with a three-year term that expired on June 30, 2020.

[15] Since April 2020, LU and LUFA have been engaged in bargaining with respect to a new collective bargaining agreement.

[16] On July 1, 2018, LUSU and LU entered into a Collective Agreement that was set to expire on June 30, 2021 (the "LUSU CA").

**Assets and Liabilities**

[17] LU does not prepare interim financial statements. The most recent audited statements for the year ended April 30, 2020, are attached to the Haché Affidavit.

[18] As at April 30, 2020, LU had assets with a book value totaling approximately $358 million, of which approximately $33 million is comprised of current assets such as cash and short-term investments, accounts receivable, and other current assets. The remaining assets of LU consist primarily of investments in LU's segregated endowment fund ($53 million) and capital assets ($272 million), comprising LU's land and buildings.

[19] As at April 30, 2020, LU had liabilities with a book value totaling approximately $322 million, comprised of: (i) approximately $43 million of current liabilities; (ii) approximately $168 million of deferred contributions; and (iii) approximately $110 million in long-term liabilities.

**LU's Liquidity Crisis and Insolvency**

[20] LU has experienced recurring operational deficits in the millions of dollars each year for a significant period of time. These operational deficits have led to the accumulated deficit in the operational fund of LU of approximately $20 million at the end of 2019-20 fiscal year. In the current 2020-21 fiscal year, LU projects a further operational deficit of $5.6 million.

[21] LU takes the position that it is insolvent and absent the relief sought in the Initial Order, will run out of cash to meet payroll in February.

[22] LU advises that it has a number of structural issues that are causing financial challenges and that need to be resolved to ensure long-term stability, including:

(a) The terms of the LUFA CA are above market in several respects, and that issue is exacerbated by the tenuous labour relationship between LU and LUFA;

(b) Operationally, the structure of the academic programming offered by LU and the distribution of enrollment among the programs offered is flawed and must be addressed; and

(c) With its current cost structure, it costs more for LU and the Federated Universities to educate each student than the average for all Ontario universities by approximately $2,000 per student, per year.

[23] LU submits that the financial challenges that LU faces are significant and, absent fundamental change, LU's short-term and long-term financial and operational sustainability are at risk.

**Objective of CCAA Filing**

[24] As part of its restructuring strategy, LU intends to implement long-term financial stability initiatives including, among other things:

(a) A review of the breadth of academic programs offered at LU and their enrollment levels;

(b) A re-evaluation of the Federated Universities model;

(c) Negotiations with LU's unions regarding what LU must look like in the future and ensuring that a restructured LU can be aligned with collective agreements that will facilitate its future sustainability;

(d) Identification of opportunities for future revenue generation;

(e) Refinement of the student experience at LU to continue providing a top-notch education; and

(f) Consideration of options for addressing current and long-term indebtedness.

**Law and Analysis**

[25] The CCAA applies to a "debtor company" whose liabilities exceed $5 million. A "debtor company" is defined, *inter alia*, as a "company" that is "insolvent" or that has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*.[3]

[26] The CCAA defines "company" to include, among other things, a company incorporated by or under an Act of the legislature of a province.[4]

[27] The Applicant is incorporated under an act of the legislature of the Province of Ontario, the LU Act, and therefore is a "company" for the purposes of the CCAA.[5] Further, as a not-for-profit, non-share capital corporation, the Applicant falls under the *Corporations Act* (Ontario).[6]

[28] There have been several CCAA proceedings commenced in respect of not-for-profit corporations, such as *Canadian Red Cross Society*[7] and *The Land Conservancy of British Columbia*.[8]

[29] I am satisfied that the Applicant's status as a not-for-profit, non-share capital corporation does not impact the applicability of the CCAA to the Applicant.

**Insolvency**

[30] The insolvency of a debtor is assessed at the time of the filing of the CCAA application. While the CCAA does not define "insolvent", the definition of "insolvent person" under the BIA is commonly referenced by the Court in assessing whether an applicant is a debtor company in the context of the CCAA.[9] The BIA defines "insolvent person" as follows:[10]

> "insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and
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> (i) who is for any reason unable to meet his obligations as they generally become due,

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[3] R.S.C. 1985, c. B-3 ("BIA").
[4] CCAA, s. 2(1).
[5] S.O. 1960, c. 151, as amended by S.O. 1961-62, c. 154.
[6] R.S.O. 1990, c. C.38.
[7] *Canadian Red Cross Society*, 2000 CarswellOnt 3269 (S.C.).
[8] *TLC, The Land Conservancy of British Columbia, Re*, 2014 BCSC 97 at paras. 14-18.
[9] *Stelco Inc. (Re)*, 2004 CarswellOnt 1211 (S.C.) at paras. 21-22 [*Stelco*].
[10] BIA, s. 2.

(ii) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(iii) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

[31] The tests for "insolvent person" under the BIA are disjunctive. A company satisfying either (i), (ii) or (iii) of the test is considered insolvent for the purposes of the CCAA.[11]

[32] In addition to the foregoing tests, in *Stelco*, Farley J. held that a financially troubled corporation is insolvent if it is reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring.[12]

[33] Based on the evidence set out in the Haché Affidavit and as summarized in the Report of Ernst & Young Inc., the Proposed Monitor, I find that the Applicant is plainly insolvent and faces a severe liquidity crisis.

[34] I also find that the Applicant is a "debtor company" to which the CCAA applies.

**Stay of Proceedings**

[35] Pursuant to section 11.02(1) of the CCAA, a Court may grant an order staying all proceedings in respect of a debtor company for a period of not more than ten days, provided that the Court is satisfied that circumstances exist to make the order appropriate.

[36] The Applicant submits that it is just and appropriate to grant a stay of proceedings. The Applicant submits that it requires a stay of proceedings in order to provide it with the breathing room necessary to financially and operationally restructure itself in order to emerge as a sustainable and long-term financially viable university to continue providing quality post-secondary education in Northern Ontario.

[37] The Proposed Initial Order provides for a stay of proceedings in favour of the Applicant's current and future directors and officers who may subsequently be appointed. The Applicant submits that the stay in favour of the current and future directors and officers is critical to retain the involvement of the Board and key officers who have knowledge that will assist the Applicant in negotiating with stakeholders and implementing a restructuring plan. I accept this submission.

[38] The Applicant also seeks a limited stay in respect of the Laurentian University Students General Association (the "Non-Applicant Stay Party" or "the SGA"). The stay in respect of the

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[11] *Stelco, supra* note 9 at para. 28.
[12] *Stelco, supra* note 9 at para. 26.

Non-Applicant Stay Party is limited to preventing any person from: (i) commencing proceedings against the Non-Applicant Stay Party, (ii) terminating, repudiating, making any demand or otherwise altering any contractual relationships with the Non-Applicant Stay Party or enforcing any rights or remedies, or (iii) discontinuing or ceasing to perform any obligations under any contractual agreements with the Non-Applicant Stay Party, resulting from the commencement of this CCAA proceeding by the Applicant, the stay of proceedings granted to the Applicant and any default or cross-default arising due to the foregoing.

[39] CCAA courts have, on numerous occasions, extended the initial stay of proceedings to non-applicants.[13] The Court's authority to grant such an order is derived from its broad jurisdiction under ss. 11 and 11.02(1) of the CCAA to make an initial order on "any terms that [the Court] may impose." It is well-established that it is appropriate for the Court to extend the protection of the stay of proceedings to third party entities where such parties are integrally and closely interrelated to the debtor companies' business or where doing so furthers the primary purpose of the CCAA, being the successful restructuring of an insolvent company.[14]

[40] In particular, where the business operations of a group of entities are inextricably intertwined, such as where there are agreements among the entities, guarantees provided by certain entities in the group in respect of the obligations of other entities in the group or shared cash management systems, courts have found it necessary and appropriate to extend a stay in respect of non-applicant parties.[15]

[41] In the present circumstances, the Applicant has provided a written guarantee in respect of a credit facility obtained by the Non-Applicant Stay Party. If counterparties were to exercise remedies due to the Applicant's insolvency, it would disrupt the Non-Applicant Stay Party and have financial implications for the Applicant.

[42] In my view, it is desirable to avoid disruption to the Non-Applicant Stay Party which is particularly critical given the Applicant's status as an operating university and its overarching aim in this CCAA proceeding to avoid or minimize any disruption to students resulting from the commencement of this proceeding. In furtherance of this objective, the Non-Applicant Stay Party will be essential to ensuring students are given all of the information and resources they need to stay informed. The Non-Applicant Stay Party will play a crucial role in maintaining an open dialogue between the Applicant and the interests/concerns of all students.

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[13] For example, *Sino-Forest Corporation (Re)*, 2012 ONSC 2063; *Canwest Global Communications Corp, Re*, 2009 CarswellOnt 6184 (S.C.) [*Canwest*]; *Cinram International Inc (Re*), 2012 ONSC 3767 [*Cinram*].
[14] *Cinram, ibid* at paras. 61-65.
[15] *Tamerlane Ventures Inc., Re*, 2013 ONSC 5461 at paras. 20-21; *Cinram, ibid* at paras. 61-65.

[43] I am satisfied that extending a limited stay of proceedings to the Non-Applicant Stay Party will allow it to continue fulfilling its intended role and providing the myriad of other key services it provides to the Applicant's students.

**Pre-Filing and Post-Filing Payments**

[44] The Proposed Initial Order allows the Applicant to continue to make certain pre-filing and post-filing payments, including express authorization to:

(a) pay all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other amounts that are owing or may be owed to students (directly, or to the student associations of the Applicant on behalf of students), in each case, subject to the policies and procedures of the Applicant; and

(b) pay all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts payable to students in respect of student scholarship, bursary or grants.

[45] The Applicant intends on operating in the ordinary course during this CCAA proceeding and minimizing the disruption to students as much as possible. To facilitate this, the Applicant must be able to process certain rebates owing to students and continue to provide students with scholarship and bursary money that is critical to their ongoing studies. Some students must pay tuition prior to the receipt of funding from the Ontario Student Assistance Program (OSAP). Upon receipt of OSAP funding, the Applicant reimburses the students who receive such funding. In many instances, scholarship, bursary and grant money has been committed and is critical to students in need of financial aid to fund their education.

[46] If the Applicant is unable to continue to process such payments, vulnerable students may be irreparably harmed. Many of these students are younger than 19 years of age, and therefore particularly vulnerable. In addition, a change to the manner in which these financial aspects are addressed by the Applicant with their students could create immediate emergencies and disruption to their ability to continue their studies.

[47] The proposed Monitor supports the inclusion of this provision and I am satisfied that it is reasonable in the circumstances.

**The Administration Charge**

[48] The Applicant requests that this Court grant a super-priority Administration Charge on the Property (as defined in the proposed form of the Initial Order) in favour of the Proposed Monitor, counsel to the Proposed Monitor, the Applicant's counsel and advisors, and independent counsel to the Board. At the initial hearing the Administration Charge was requested in the amount of $400,000, and the Applicant will seek to increase it to $1.25 million pursuant to a proposed Amended and Restated Initial Order on the Comeback Hearing. Section 11.52 of the CCAA provides the Court with statutory jurisdiction to grant the Administration Charge.

[49] In *Canwest Publishing*, Pepall, J. (as she then was) considered section 11.52 of the CCAA and identified the following non-exhaustive list of factors the Court may consider when granting an administration charge:

(a) the size and complexity of the business being restructured;

(b) the proposed role of the beneficiaries of the charge;

(c) whether there is an unwarranted duplication of roles;

(d) whether the quantum of the proposed charge appears to be fair and reasonable;

(e) the position of the secured creditors likely to be affected by the charge; and

(f) the position of the monitor.[16]

[50] The Applicant submits that the Administration Charge is warranted, necessary, and appropriate in the circumstances, given that:

(a) the proposed restructuring will require the extensive involvement of the professional advisors subject to the Administration Charge;

(b) the professionals subject to the Administration Charge have contributed, and will continue to contribute, to the restructuring of the Applicant;

(c) there is no unwarranted duplication of roles so the professional fees associated with these proceedings will be minimized;

(d) the Administration Charge will rank in priority to the DIP Charge and the Directors' Charge; and

(e) the Proposed Monitor believes that the proposed quantum of the Administration Charge is reasonable.

[51] Further, the Applicant has limited the quantum of the Administration Charge that it seeks approval of to what is reasonably necessary for the first ten days of the CCAA proceedings.

[52] The proposed Monitor supports the requested relief.

[53] I am satisfied that the Administrative Charge is reasonable in the circumstances.

**The Directors' Charge**

[54] The Applicant requests that this Court also grant a priority charge in favour of the Applicant's current and future directors and officers in the amount of $2 million (the "Directors' Charge"). The Applicant will seek to increase the Directors' Charge at the comeback hearing to

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[16] *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 at para. 54; *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037 at para. 58.

$5 million, $3 million of which will rank subordinate to the DIP Charge. The Directors' Charge protects the current and future directors and officers against obligations and liabilities they may incur as directors and officers of the Applicant after the commencement of the CCAA proceedings, except to the extent that any such claims or the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct.

[55] The Applicant has certain insurance policies in place (as defined in the Haché Affidavit); however, the Applicant is concerned that the directors and officers may be unwilling to continue in their roles with the Applicant absent the Court granting the Directors' Charge. The Directors' Charge will only be available to the extent that any claim or liability is not covered by any applicable D&O insurance and in the event that the Applicant's D&O insurance does not respond to claims against the directors and officers.

[56] Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the Directors' Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.[17]

[57] In approving a similar charge in *Canwest*, Pepall J. applied section 11.51 of the CCAA and noted the Court must be satisfied with the amount of the charge and that it is limited to obligations the directors and officers may incur after the commencement of the proceedings, so long as adequate insurance cannot be obtained at a reasonable cost.[18]

[58] The proposed Monitor supports the relief requested.

[59] I am satisfied that the Directors' Charge is reasonable in the circumstances because: (i) the Applicant will benefit from the active and committed involvement of the directors and officers, who have considerable institutional knowledge and valuable experience and whose continued participation will help facilitate an effective restructuring, (ii) the Applicant cannot be certain whether the existing insurance will be applicable or respond to any claims made, and the Applicant does not have sufficient funds available to satisfy any given indemnity should its directors and officers need to call upon such indemnities, (iii) the Directors' Charge does not secure obligations incurred by a director as a result of the directors' gross negligence or wilful misconduct, and (iv) the Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances.

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[17] CCAA, section 11.51.
[18] *Canwest, supra* note 17 at paras. 46 and 48.

**Sealing Provision**

[60] Pursuant to the *Courts of Justice Act* (Ontario), this Court has the discretion to order that any document filed in a civil proceeding be treated as "confidential", sealed and not form part of the public record."[19]

[61] In *Sierra Club of Canada v. Canada (Minister of Finance)*, Iacobucci J. set out that a sealing order should only be granted when:

> (a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternatives measures will not prevent the risk; and
>
> (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.[20]

[62] The Applicant requests that, in the Initial Order, this Court seal Confidential Exhibits "FFF" and "GGG" to the Haché Affidavit. These documents relate to correspondence between the Applicant and the Ministry of Colleges and Universities (the "Ministry"). The documents contain information with respect to the Applicant and certain stakeholders of the Applicant, including various rights or positions that stakeholders of the Applicant may take either inside or outside of a CCAA proceeding, which could jeopardize the Applicant's efforts to restructure.

[63] If the Confidential Exhibits are not sealed, the Applicant submits that stakeholders may react in such a way that jeopardizes the viability of the Applicant's restructuring. As such, the salutary effects of the sealing order, which provides the Applicant with the best possible chance to effect a restructuring, far outweigh the deleterious effects of not disclosing the correspondence between the Applicant and the Ministry.

[64] I have reviewed the Confidential Exhibits and I accept the submissions of the Applicant and grant the sealing request.

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[19] *Courts of Justice Act*, R.S.O. 1990, c C.43, s. 137(2). See also *Target Canada Corp (Re)*, 2015 ONSC 1487 at paras. 28 – 30.

[20] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522 at para. 53.

**The Requested Relief Sought is Reasonably Necessary**

[65] Pursuant to s. 11.001, the relief sought on an initial application is to be limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during the initial stay period.[21]

[66] The stated purpose of s. 11.001 is to "limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players."[22]

[67] For the purposes of relief sought on this initial hearing, I accept the facts as stated in the Haché affidavit.

[68] The financial information required pursuant to s. 10(2) of the CCAA has been provided.

[69] I am satisfied the Ernst & Young Inc. is qualified to act as Monitor.

**Disposition**

[70] The requested relief complies with s. 11.001 of the CCAA in that it is limited to relief that is reasonably necessary for the continued operation of the applicant in the ordinary course of business. The Initial Order is granted in the form presented and it has been signed by me.

[71] The comeback hearing is to be held by Zoom on Wednesday, February 10, 2021 at 9:00 a.m.

**Court-Appointed Mediator**

[72] Finally, LU is also seeking an Order for the appointment of a mediator by the Court (the "Court-Appointed Mediator") to oversee negotiations with respect to the various restructuring initiatives necessary for the Applicant to achieve a successful restructuring.

[73] If appointed, the Applicant expects the Court-Appointed Mediator to assist with (i) negotiations related to the review and restructuring of the academic programs and (ii) the collective agreement between the Applicant and LUFA.

[74] The Applicant is of the view that the need for the appointment of a mediator by the court is urgent and a high priority item.

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[21] CCAA, s. 11.001, 11.02(1) and (3).
[22] *Lydian International Limited (Re)*, 2019 ONSC 7473 at paras. 22-26.

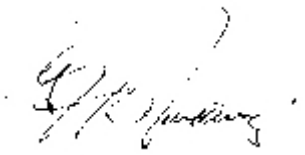
[75] The proposed Monitor is of the view that the appointment of a Court-Appointed Mediator is critical to ensure that LU, LUFA and the other negotiating parties have the best possible opportunity to succeed.

[76] It is the Proposed Monitor's view that it is necessary that the Court-Appointed Mediator be someone who is independent and objective, has experience in both insolvency matters as well as collective agreements and labour negotiations, someone who will appreciate the urgency with which the mediation must be conducted and have the time available to dedicate to it. Finally, in the Proposed Monitor's view, a sitting or recently retired judge meeting these characteristics would be preferable. The Proposed Monitor asks that the appointment be made by the court on an urgent basis.

[77] I appreciate and acknowledge the points put forth by counsel to both the Applicant and the Proposed Monitor. However, prior to determining this issue, in my view it is necessary to provide LUFA with an opportunity to make submissions.

[78] In recognition of the compressed timeline in these proceedings, it is desirable to determine this issue at the earliest opportunity and, in any event, not later than the comeback hearing on February 10, 2021.

[79] If LU, LUFA and the Proposed Monitor wish to address this matter prior to February 10, 2021, a case conference can be scheduled with me through the Commercial List Office.



CHIEF JUSTICE G.B. MORAWETZ

**Date:** February 1, 2021

This is Exhibit “B” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

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

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

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| THE HONOURABLE CHIEF | ) | THURSDAY, THE 11TH |
| | ) | |
| JUSTICE MORAWETZ | ) | DAY OF FEBRUARY, 2021 |

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

**AMENDED AND RESTATED INITIAL 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 amending and restating the Initial Order (the "**Initial Order**") issued on February 1, 2021 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein 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 30, 2021 and the Exhibits thereto (the "**Haché Initial Affidavit**"), the Pre-filing Report of Ernst & Young Inc. (the "**Monitor**") dated January 30, 2021, the First Report of the Monitor dated February 7, 2021 (the "**First Report**") 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 Angela Maharaj sworn February 9, 2021, the Affidavit of Service of Derek Harland sworn February 4, 2021, and on reading the consent of Ernst & Young Inc. to act as the Monitor,

**SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Haché Initial Affidavit.

**NON-APPLICANT STAY PARTY**

**THIS COURT ORDERS** that the Laurentian University Students General Association (the "**SGA**") shall be referred to herein as a "**Non-Applicant Stay Party**". Although not an applicant under the CCAA, the Non-Applicant Stay Party shall enjoy certain of the benefits and protections provided herein and be subject to the restrictions as expressly hereunder set out.

**APPLICATION**

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is insolvent and is a company to which the CCAA applies.

**PLAN OF ARRANGEMENT**

4. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

**POSSESSION OF PROPERTY AND OPERATIONS**

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business and deal with its assets, including the businesses and assets of the other entities, partnerships and joint ventures in which the Applicant has a direct or indirect interest, and is authorized to continue to provide services to such parties in respect of which it is currently providing services, in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel

and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to use the cash management system currently in place, as described in the Haché Initial Affidavit, which for greater certainty includes any segregated bank accounts now existing (together with any segregated bank accounts established pursuant to paragraph 7, the "**Cash Management System**"), and that any present or future bank or institution providing the Cash Management System to the Applicant shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, except to the extent that such terms are expressly modified by this Order or with the consent of the Applicant, the Monitor and any applicable bank or financial institution providing a Cash Management System, and shall be, solely in its capacity as provider of the Cash Management System only, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System on or after the Initial Filing Date.

7. **THIS COURT ORDERS** that (a) any segregated bank accounts established by the Applicant from and after December 1, 2020, to hold funds received by it on the condition that such funds be used for a specific purpose in respect of a particular aspect of the Applicant's Business, including without limitation, funds provided to the Applicant for the purpose of research projects (including grants, awards or other similar funds), funds received in respect of restricted donations or endowments, and employee and employer contributions to benefit plans (collectively, the "**Segregated Funds**") shall be used for such specific purpose, and (b) from and after the date of this Order, the Applicant may establish additional segregated bank accounts, including trust accounts if necessary, to hold any additional Segregated Funds that are received by the Applicant under such agreed upon arrangements, and the Segregated Funds shall not form part of the Applicant's Property.

8. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order, in all cases subject to the availability of financing under the DIP Term Sheet (as defined below):

(a) all outstanding and future wages, salaries, employee and retiree benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Applicant, ordinary course pension benefits or contributions, vacation pay, expenses and any director fees and expenses, payable on or after the date of this Order, in each case for costs incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements for current and future employees (but not including any payments to former employees or retirees in respect of the SuRP and the RHBP, as such terms are defined in the Haché Initial Affidavit, or termination or severance payments, which are hereby stayed), and all other payroll processing and servicing expenses;

(b) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other similar amounts that are owing or may be owed to students or student associations of the Applicant, whether such amounts are as a result of the reimbursement of tuition fees, ancillary fees or otherwise, provided that such rebates, refunds or other similar amounts are subject to the existing policies and procedures of the Applicant;

(c) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts payable to students in respect of student scholarship, bursary or grants; and

(d) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

9. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business (including the value thereof) including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order or payments to obtain the release of goods or delivery of services contracted for prior to the date of this Order,

provided that, to the extent such expenses were incurred prior to the date Initial Filing Date, the Applicant shall only be entitled to pay such amounts if they are determined by the Applicant, in consultation with the Monitor, to be necessary to the continued operation of the Business or preservation of the Property and such payments are approved in advance by the Monitor.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) until further order of this Court, all outstanding and future normal course contributions to or payments in respect of the Pension Plan, as defined in the Haché Initial Affidavit, in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

(c) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the date of this Order (including for greater certainty in respect of the interest rate swap transactions); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

**PENSION PLAN**

13. **THIS COURT ORDERS** that the Applicant's obligation to make special payments (whether pursuant to the Ontario *Pension Benefits Act*, RSO 1990, c. P-8 and regulations made thereunder or to the terms of the Pension Plan, as such term is defined in the Haché Initial Affidavit, and whether in respect of the Applicant's own employees and former employees or in respect of the employees and former employees of the other employers participating in the

Pension Plan as set out in the Haché Initial Affidavit) in respect of the defined benefit component of the Pension Plan (such payments being the "**Special Payments**"), shall be suspended effective on and after February 1, 2021 for the duration of this CCAA proceeding, subject to further Order of this Court. For greater certainty, the suspension of Special Payments hereunder does not constitute a disclaimer or termination by the Applicant of any component of the Pension Plan, nor does it constitute an acknowledgment of any obligation by the Applicant to make Special Payments relating to employers other than the Applicant.

14. **THIS COURT ORDERS** that for the duration of this proceeding, no Person (as hereinafter defined), including employees and former employees of the Applicant (or the surviving spouse of any such person) entitled to a benefit under the defined benefit component of the Pension Plan (whether or not such member was represented by a union when the member was employed by the Applicant) or the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario, shall commence any action or other proceeding in connection with the suspension of the Special Payments or because the Applicant has not made the Special Payments.

15. **THIS COURT ORDERS** that the Applicant and each of its respective directors, officers, officials, and agents shall not incur any obligation or liability, whether by way of debt, damages for breach of any duty whether statutory, fiduciary, common law or otherwise, or for breach of trust, as a result of the suspension of the Special Payments in accordance with the terms of this Order.

16. **THIS COURT ORDERS** that if any claim, lien, charge or trust, including deemed trust, arises as a result of the suspension of the Special Payments, no such claim, lien charge or trust, including deemed trust, shall have priority over the Charges (as hereinafter defined) in this proceeding, or in any subsequent receivership, interim receivership or bankruptcy of the Applicant.

**RESTRUCTURING**

17. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its Business or operations, and to dispose of redundant or non-material assets not exceeding $50,000 in any one transaction or $250,000 in the aggregate. Notwithstanding the foregoing, the Applicant shall not cease, downsize or shut down any parts of its Business if such action would cause any current students of the Applicant to be unable to continue and complete courses that they are already enrolled in, subject to further Order of the Court;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as they deem appropriate;

(c) vacate, abandon or quit any leased premises and disclaim or resiliate any real property lease and any ancillary agreements relating to any leased premises, subject to paragraphs 11 and 18 of this Order;

(d) disclaim arrangements or agreements of any nature whatsoever with whomever, whether oral or written, as the Applicant deems appropriate, with the Monitor's consent or pursuant to further Order of the Court, in accordance with Section 32 of the CCAA;

(e) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(f) pursue all avenues and to engage in discussions with key stakeholders of the Applicant in an effort to give effect to an operational restructuring of the Applicant;

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of its business (the "**Restructuring**").

18. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days' prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the

landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

19. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

20. **THIS COURT ORDERS** that until and including April 30, 2021, or such later date as this Court may subsequently order (the "**Stay Period**"), no proceeding or enforcement process in or out of any court or tribunal or other forum, whether arising by contract or otherwise (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

21. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the

Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended, including any existing, pending or future information requests made to the Applicant under the *Freedom of Information and Protection of Privacy Act*, except with the written consent of the Applicant and the Monitor, or leave of this Court, including, without limitation, by way of terminating, making any demand, accelerating, amended or declaring in default, sweeping any cash in the Applicant's bank accounts (if available), exercising any option, right or remedy or taking any enforcement steps under or in respect of any agreement or agreements with respect to which the Applicant is a party, borrower, principal obligor or guarantor, by reason of:

(a) the Applicant being insolvent or having made an application to this Court under the CCAA;

(b) the Applicant being a party to this proceeding or taking any steps related thereto; or

(c) any default or cross-default arising from the matters set out in the foregoing subparagraphs,

provided that nothing in this Order shall:

(a) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on;

(b) exempt the Applicant from compliance with any statutory or regulatory provisions relating to health, safety or the environment;

(c) affect such investigations, actions, suits or proceedings by a regulatory body as are specifically permitted by Section 11.1 of the CCAA;

(d) prevent the filing of any registration to preserve or perfect a security interest;

(e) prevent the registration of a claim for lien; or

(f) prevent any actions that are permitted by Section 34(8) of the CCAA.

**LIMITED STAY IN RESPECT OF THE NON-APPLICANT STAY PARTY**

22. **THIS COURT ORDERS** that during the Stay Period, no Person shall (a) commence or continue any Proceeding or enforcement process, (b) terminate, repudiate, make any demand, accelerate, alter, amend, declare in default, exercise any options, rights or remedies, or (c) discontinue, fail to honour, alter, interfere with or cease to perform any obligation, pursuant to or in respect of any agreement, lease, sublease, license or permit with respect to which the Non-Applicant Stay Party is a party, borrower, principal obligor or guarantor, by reason of:

(a) the Applicant being insolvent or having made an application to this Court under the CCAA;

(b) the Applicant being a party to this proceeding or taking any steps related thereto; or

(c) the stay granted pursuant to this paragraph 22; and

(d) any default or cross-default arising from the matters set out in the foregoing subparagraphs,

except with the written consent of the Applicant and the Monitor, or with leave of this Court.

**NO INTERFERENCE WITH RIGHTS**

23. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant or the Non-Applicant Stay Party or take any steps to interrupt or interfere with the operation of the Business or the continued use of the Property of the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

24. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from

discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

26. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicant, including the members of the Board of Governors of the Applicant (the "**Board**") with respect to any claim against the directors, officers or the Board that arose before the date of this Order and that relates to any obligations of the Applicant whereby the directors, officers or the Board are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

27. **THIS COURT ORDERS** that the Applicant shall indemnify its directors, officers and the Board against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer, director or member of the Board, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. **THIS COURT ORDERS** that the directors, officers and Board of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $5,000,000, as security for the indemnity provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

29. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors, officers and the Board shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

**APPOINTMENT OF MONITOR**

30. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) liaise with and assist the Applicant and the Assistants with respect to all matters relating to the Applicant's Business, the Applicant's Property and the Restructuring, and such other matters as may be relevant to the proceedings herein;

(c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;

(d) advise the Applicant in the preparation of the Applicant's cash flow statements and any other reporting to the Court or otherwise;

(e) be at liberty to participate in discussions with representatives of the Ministry of Colleges and Universities ("**MCU**") and such other representatives of Provincial or Federal government agencies, at any time on all aspects of this proceeding and the Applicant's restructuring, subject to such terms of confidentiality as may be appropriate in the Monitor's assessment and in consultation with the Applicant;

(f) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender (as defined below) and its counsel on a weekly basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

(g) advise the Applicant in its development of the Plan and any amendments to the Plan;

(h) assist the Applicant, to the extent required by the Applicant, with the holding and administering of a creditors' meeting for voting on the Plan;

(i) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, wherever situate, in order to assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

32. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property of the Applicant, or any property of the Non-Applicant Stay Party, and shall take no part whatsoever in the management or supervision of the management of the Business and shall not,

by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental legislation, unless it is actually in possession.

34. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

35. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or the Initial Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order or the Initial Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicant's counsel and advisors in connection with the CCAA proceedings (collectively, the "Restructuring Advisors") together with independent counsel to the Board ("**Board Counsel**") shall each be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Restructuring Advisors and Board Counsel. Notwithstanding the foregoing, the fees and disbursement of Board Counsel paid by the Applicant from and after the date of this Order shall not exceed the aggregate amount of $250,000, plus HST, pending further Order of the Court.

37. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. **THIS COURT ORDERS** that the Restructuring Advisors shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $1,250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Restructuring Advisors, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

**DIP FINANCING**

39. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Firm Capital Mortgage Fund Inc., or its assignee (the "**DIP Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed $25,000,000, unless permitted by further Order of this Court.

40. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicant and the DIP Lender dated as of January 29, 2021 (the "**DIP Term Sheet**") attached as Exhibit "HHH" to the Haché Initial Affidavit, subject to such minor amendments as may be acceptable to the Applicant and the DIP Lender and approved by the Monitor.

41. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents and other definitive documents (collectively, the "**DIP Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms of the DIP Term Sheet, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the DIP Documents, as and when the same become due, and are to be performed, notwithstanding any other provision of this Order.

42. **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 "A" (the "**Real Property**"), and the DIP Lender's Charge shall not secure any obligation that exists between the Applicant and the DIP Lender before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the DIP Documents;

(b) upon the occurrence of an event of default under the DIP Documents or the DIP Lender's Charge or upon the Maturity Date (as defined in the DIP Term Sheet), the DIP Lender, upon 14 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 Term Sheet, the DIP Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant, to make, demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the 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.

44. **THIS COURT ORDERS AND DECLARES** that, unless otherwise agreed by the DIP Lender, the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any other or similar proceeding that may be commenced by the Applicant with respect to any advances made under the DIP Documents.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

45. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge and the DIP Lender's Charge (collectively, the "**Charges**" and each individually, a "**Charge**") as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $1,250,000);

Second – Directors' Charge (to the maximum amount of $2,000,000);

Third – DIP Lender's Charge (to the maximum amount of $25,000,000); and

Fourth – Directors' Charge (to the maximum amount of $3,000,000).

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

47. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, construction liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

48. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also

obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

49. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the DIP Documents shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges or the execution, delivery or performance of the DIP Documents; and

(c) the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the DIP Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

51. **THIS COURT ORDERS** that, notwithstanding anything else contained herein and pending further Order of the Court, the Property subject to the Charges herein shall not include the Segregated Funds.

**SERVICE AND NOTICE**

52. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail and the Sudbury Star a notice containing the information prescribed under the CCAA, and (ii) within five days of the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1,000 (excluding any individual employees, former employees with pension and/or retirement savings or benefits plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plan), and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

53. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure*, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/Laurentian.

54. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

55. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

56. **THIS COURT ORDERS** that the Applicant and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

**SEALING PROVISION**

57. **THIS COURT ORDERS** that Confidential Exhibits "**EEE**" and "**FFF**" of the Haché Initial Affidavit, are hereby sealed pending further order of the Court, and shall not form part of the public record.

**GENERAL**

58. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

59. **THIS COURT ORDERS** that upon the registration in the Land Titles Division of the Real Property of the DIP Lender's Charge in the form prescribed in the *Land Titles Act* or the

*Registration Reform Act*, or both, as applicable, the Land Registrar is hereby directed to register the DIP Lender's Charge on title of the Real Property.

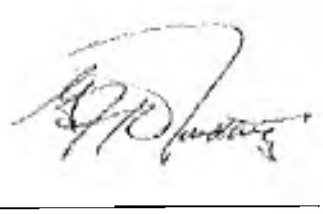
60. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

61. **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.

62. **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.

63. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. **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.



CHIEF JUSTICE G.B. MORAWETZ

**Schedule "A"**
**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 |

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)**
Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

**THORNTON GROUT FINNIGAN LLP**
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Lawyers for the Applicant

**CITATION:** Laurentian University of Sudbury, 2021 ONSC 1121
**COURT FILE NO.:** CV-21-656040-00CL
**DATE:** 2021-02-11

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** **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**

**BEFORE:** Chief Justice G.B. Morawetz

**COUNSEL:** *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

*Ashley Taylor, Elizabeth Pillon* and *Ben Muller*, for the Monitor

*Peter J. Osborne* and *David Salter*, for the Board of Governors

*Pamela L.J. Huff* and *Aryo Shalviri*, for Royal Bank of Canada

*Stuart Brotman* and *Dylan Chochla*, for Toronto Dominion Bank

*Vern W. DaRe*, for Firm Capital Mortgage Fund Inc., DIP Lender

*Michael Kennedy*, Labour Counsel for the Applicant

*Charles Sinclair*, *Susan Philpott* and *Clio Godkewitsch*, Insolvency Counsel for Laurentian University Faculty Association ("LUFA")

*David Wright*, Labour Counsel for LUFA

*Tracey Henry* and *Brendon Scott*, for Laurentian University Staff Union

*Alex McFarlane* and *Lydia Wakulowsky*, for Northern Ontario School of Medicine

*Daniel Loberto*, for Queen's University

*André Claude*, for University of Sudbury

*Joseph Bellissimo*, for Huntington University

*Andrew J. Hatnay* and *Sydney Edmonds*, for Thorneloe University

*Linda H-C. Chen*, for the Information and Privacy Commissioner of Ontario

*Gale Rubenstein* and *Bradley Wiffen*, Counsel for Financial Services Regulatory Authority

*Murray Gold* and *James Harnum*, for Ontario Confederation of University Faculty Associations

*George Benchetrit*, for Bank of Montreal

*Shahana Kar*, for Her Majesty the Queen in Right of Ontario

*Guneev Bhinder*, for Canada Foundation for Innovation

*James MacLellan*, for Zurich Insurance Company Ltd.

*Tushara Weerasoriya* and *Stephen Brown-Okruhlik*, for St. Joseph's Health Centre of Sudbury

*Mark Baker* and *Andriy Luzhetskyy*, for Laurentian University Students' General Association

**HEARD:** February 11, 2021

**ENDORSEMENT**

[1] The Amended and Restated Order has been signed.

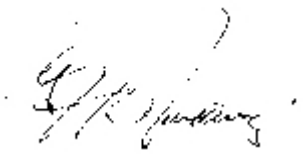
[2] The Stay Period is extended until April 30, 2021.

[3] The stay of proceedings includes any actions taken pursuant to any collective agreement.

[4] Confidential Exhibits "EEE" and "FFF" of the Haché Initial Affidavit are to remain sealed. This issue will be addressed the way of a supplementary endorsement.

[5] The Service and Notice issues contained at paragraphs 57 – 62 of the draft order have been deleted.

[6] Detailed reasons reflecting the foregoing will follow, most likely, on February 12, 2021.



CHIEF JUSTICE G.B. MORAWETZ

**Date:** February 11, 2021

**CITATION:** Laurentian University of Sudbury, 2021 ONSC 1098
**COURT FILE NO.:** CV-21-656040-00CL
**DATE:** 2021-02-12

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** **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**

**BEFORE:** Chief Justice G.B. Morawetz

**COUNSEL:** *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

*Ashley Taylor, Elizabeth Pillon* and *Ben Muller*, for Ernst & Young Inc., Monitor

*Peter J. Osborne* and *David Salter*, for the Board of Governors

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*André Claude*, for University of Sudbury

*Joseph Bellissimo*, for Huntington University

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*George Benchetrit*, for Bank of Montreal

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*Guneev Bhinder*, for Canada Foundation for Innovation

*James MacLellan*, for Zurich Insurance Company Ltd.

*Tushara Weerasoriya* and *Stephen Brown-Okruhlik*, for St. Joseph's Health Centre of Sudbury

*Mark Baker* and *Andriy Luzhetskyy*, for Laurentian University Students' General Association ("LUSGA")

**HEARD:** February 10, 2021

**DETERMINED:** February 11, 2021

**REASONS:** February 12, 2021

## ENDORSEMENT

### Background

[1] On February 1, 2020, an Initial Order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C–36, as amended (the "CCAA") was granted, the effect of which was to provide Laurentian University of Sudbury ("LU" or the "Applicant") protection under the CCAA.

[2] At the time of seeking the Initial Order, LU indicated that it intended to seek additional relief at the comeback hearing, upon notice to affected parties, pursuant to a more fulsome order (the "Amended and Restated Initial Order").

[3] The Applicant filed a factum in respect to both the relief sought in the Initial Order and the relief to be sought at the comeback hearing.

[4] The facts to support the requested relief for the Initial Order and for the comeback hearing were set out in the Affidavit of Dr. Robert Haché, sworn January 30, 2021 (the "Haché Affidavit").

Additional evidence was provided in the form of the Report of the Proposed Monitor dated January 30, 2021, and the First Report of the Monitor dated February 7, 2021.

[5] In granting the Initial Order, I made certain findings of fact, including:

i. the Applicant falls under the *Corporations Act*, R.S.O. 1990, c. C.38;

ii. the Applicant's status as a not-for-profit, non-share capital corporation does not impact the applicability of the CCAA to the Applicant;

iii. the Applicant is insolvent;

iv. the Applicant is a "debtor company" to which the CCAA applies;

v. the financial information required pursuant to s. 10(2) of the CCAA was provided;

vi. Ernst & Young Inc. is qualified to act as Monitor;

vii. the requested relief was limited to relief that was reasonably necessary for the continued operation of the Applicant in the ordinary course of business.

[6] The Initial Order provided for relief which included:

i. a stay of proceedings pursuant to s. 11.02(1) of the CCAA, which stay also covered the LUSGA;

ii. authorization to make certain pre-filing and post-filing payments;

iii. the granting of a super priority Administration Charge on the Property (as defined in the Initial Order) in favour of the Monitor, counsel to the Monitor, the Applicant's counsel and advisors, and independent counsel to the Board in the amount of $400,000;

iv. the granting of a priority charge in favour of the Applicant's current and future directors and officers ("Directors and Officers") in the amount of $2 million (the "Directors' Charge"); and

v. a Sealing Order in respect of Confidential Exhibits "EEE" and "FFF" to the Haché Affidavit, relating to correspondence between the Applicant and the Ministry of Colleges and Universities (the "Ministry").

[7] The Endorsement of February 1, 2021, also referenced that LU sought an order for the appointment of a Mediator by the Court (the "Court-Appointed Mediator") to oversee negotiations with respect to the various restructuring initiatives necessary for the Applicant to achieve a successful restructuring.

[8] At the conclusion of a case conference held on February 5, 2021, the Honourable Justice Sean Dunphy was appointed as Court-Appointed Mediator.

[9] At this comeback hearing, the Applicant sought, among other things, the following relief:

i. an extension of the stay of proceedings to April 30, 2021;

ii. approval of a debtor in possession facility (the "DIP Facility") in the amount of $25 million and a DIP Lender's Charge (defined below) to secure the DIP Facility;

iii. an increase in the Administration Charge from $400,000 to $1.25 million; and

iv. an increase in the Directors' Charge from $2 million to $5 million (the increase of $3 million was not to have priority over the DIP Charge).

[10] In its First Report, the Monitor states that since the date of the Initial Order, the Applicant has focused on maintaining normal day-to-day operations. Student classes are continuing (virtually due to the pandemic) with no disruption.

[11] In addition, the Applicant has commenced communications with its various stakeholders. It has launched a website to provide further information to stakeholders, including a detailed list of frequently asked questions and answers, contact information for support services for students, faculty and staff, and a method to contact LU by email for other information.

[12] The Monitor also reports that the Applicant does not anticipate any material change in the weekly Cash Flow Forecast for the period from January 30, 2021 to April 30, 2021 (the "Cash Flow Forecast"), attached to the First Report.

[13] The Monitor also reports that the Applicant is in urgent need of funding in order to permit it to continue operations. LU, through its legal counsel, approached external lenders that specialize in real estate and infrastructure-based lending, including debtor-in-possession financing. The inquiries embarked upon by LU resulted in LU receiving nonbinding draft term sheets from three potential lenders. The Applicant and the Monitor reviewed the terms submitted by the prospective lenders and after further negotiations, the Applicant executed the term sheet (the "DIP Term Sheet") with Firm Capital Corporation. Subsequently, Firm Capital Corporation assigned its interest to Firm Capital Mortgage Fund Inc. (the "DIP Lender").

[14] The material terms of the DIP Facility are set out at paragraph 34 of the Monitor's report.

[15] The Monitor comments that the Applicant will be unable to maintain operations and address its operational and financial restructuring needs without access to DIP financing.

[16] The Monitor states that it is of the view that the Applicant's request for approval of DIP Financing and the DIP Term Sheet is required and reasonable.

**Stay Extension**

[17] The Monitor is of the view that the requested extension is appropriate for the following reasons:

a. the extension will provide comfort to LU students that the Applicant will continue in the ordinary course for the duration of the winter semester;

b. the Applicant requires the extension in order to conduct a mediated negotiation with its stakeholders; and

c. the Applicant continues to operate in good faith and with due diligence since the date of the Initial Order.

[18] In addition, based on the Cash Flow Forecast, and with the approval of the DIP Term Sheet and the DIP lender's charge ("DIP Lender's Charge"), the Monitor is of the view that the Applicant should have sufficient liquidity to fund its operations until April 30, 2021.

[19] The Monitor supports the Applicant's request for an order extending the stay to April 30, 2021.

**Pension and Benefit Plans**

[20] The Applicant administers three employee pension and benefit plans: (a) a registered defined benefit pension plan (the "DB Pension Plan"); (b) a supplementary unfunded retirement plan (the "SURP"); and (c) a retirement health benefits plan (the "RHBP").

[21] The proposed Amended and Restated Order requests a stay of the payment of any pre-filing or post-filing special payments to the DB Pension Plan to assist LU with its current liquidity crisis.

[22] The Monitor reports that while the Applicant will have access to funding through the DIP Facility, that funding is limited and is only projected to be sufficient to fund operations through to the end of the current academic term. Given the Applicant's overall liquidity constraints, the Monitor is of the view that permitting a stay of special payments to the DB Pension Plan during the stay period is appropriate and reasonable.

***Freedom of Information and Protection of Privacy Act***

[23] The proposed Amended and Restated Order provides for a stay of any existing, pending or future information requests to the Applicant pursuant to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 ("FIPPA").

[24] The Monitor reports that the Applicant expects to receive a significant increase in volume of FIPPA information requests and that the Applicant does not have the resources to deal with the increased volume. The Applicant is of the view that it must focus all of its efforts in either serving the needs of students or supporting the operational restructuring process.

[25] The Monitor expects that there will continue to be substantial disclosure of information to all stakeholders through materials filed in the CCAA proceedings as well as additional communications from LU directly to stakeholders. Given the anticipated distraction that would result in attempting to deal with these requests, the Monitor is of the view that extending the stay to FIPPA requests is reasonable in the circumstances.

**Super Priority Charges**

[26] The proposed Amended and Restated Initial Order provides for the following super priority charges (collectively, the "Charges") on current and future assets of the Applicant, in the following order:

a. first, the Administration Charge (up to a maximum amount of $1.25 million);

b. second, the Directors' Charge (up to a maximum amount of $2 million);

c. third, the DIP Lender's Charge (up to a maximum of $25 million); and

d. fourth, the Directors' Charge (up to an additional $3 million for a total maximum Directors' Charge amount of $5 million).

[27] The Applicant's secured creditors are primarily comprised of subcontractors who registered construction liens and equipment lessors. These parties have been served with notice of the comeback motion and the relief sought at the comeback motion will provide for the Charges to rank in priority to these potential claims.

[28] The Administration Charge and the proposed Amended and Restated Initial Order provide for a charge up to $1.25 million in favour of counsel and advisors to the Applicant, the Monitor, the Monitor's independent counsel and independent counsel to the Board as security for the professional fees and disbursements incurred prior to and after the commencement of the CCAA proceedings.

[29] The Monitor is of the view that the proposed Administration Charge is reasonable and appropriate in the circumstances.

**DIP Lender's Charge**

[30] In addition to the approval of the DIP Term Sheet, the proposed Amended and Restated Initial Order provides for the creation of a super priority charge in the amount of $25 million to match the maximum allowable borrowing amount proposed in the DIP Term Sheet. The DIP Lender's Charge will be secured by all Property (as defined in the Amended and Restated Initial Order) of the Applicant.

[31] The Monitor notes that the DIP Lender's Charge is a condition of the DIP Financing.

[32] The Monitor further reports the Applicant is in urgent need of the financing to fund operations and is of the view that the DIP Lender's Charge is appropriate and reasonable.

**Directors' Charge**

[33] The proposed Amended and Restated Initial Order provides for the amount not to exceed $5 million to secure the indemnity in favour of the current and future directors and officers of the Applicant against obligations and liabilities that they may incur as Directors and Officers for actions taken after the commencement of the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of such Directors' or Officers' gross negligence or wilful misconduct.

[34] The Directors and Officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any insurance policy.

[35] The DIP Term Sheet provides that a Directors' Charge may only rank ahead of the DIP Lender's Charge to a maximum of $2 million. Accordingly, the Applicant proposes that $2 million of the Directors' Charge rank behind the Administration Charge and ahead of the DIP Lender's Charge, with the balance of $3 million ranking behind the DIP Lender's Charge.

[36] The Monitor has reviewed the calculation of the Directors' Charge, taking into account the amount of LU's payroll, current service pension contributions and vacation pay and notes that the Directors' Charge is less than the quantum of such amounts that will accrue during the CCAA proceedings.

[37] The Monitor is of the view that the Directors' Charge is required and is reasonable in the circumstances.

**Conclusions of the Monitor**

[38] In its conclusions, the Monitor states that it supports the relief sought by the Applicant in the proposed Amended and Restated Initial Order.

**Oral Submissions**

[39] A number of oral submissions were made by various parties, but no additional evidence was filed at the comeback hearing.

[40] I note that a number of these submissions, while of interest, were not germane to the relief being sought on this motion.

[41] Counsel also expressed concerns with respect to the scope of proposed language in paragraph 17(b) of the Amended and Restated Order. Counsel referenced certain protections which arise by way of tenure and academic freedom.

[42] Counsel also raised concerns with respect to the Sealing Order which formed part of the Initial Order. Counsel submitted that the relevant portions of the Haché Affidavit (paragraphs 284 – 291) did not establish the basis for a Sealing Order. This submission was echoed by a number of other counsel, including for the Ontario Confederation of University Faculty Associations, the Northern Ontario School of Medicine, the Laurentian University Staff Union, and CUPE.

[43] In addition, counsel indicated that he wished to reserve all rights to cross-examine Dr. Haché on his Affidavit. However, no such relief was requested on this motion. Should the need arise, this issue can be revisited by any interested party.

[44] A reservation of rights was also raised with respect to a potential trust claim for former retirees in respect of the RHBP, as referenced in paragraph 8(a) of the proposed Amended and Restated Initial Order. This reservation of rights is noted.

[45] Counsel on behalf of LUFA and Mr. Gold, on behalf of the Ontario Confederation of University Faculty Associations (the "Associations"), raised concerns about the absence of the Ministry in these proceedings. Although this issue is of interest to LUFA and the Associations and perhaps other stakeholders, it does not, in my view, impact the issues that have to be determined on this comeback motion.

[46] Mr. Gold also raised questions as to whether LU is insolvent. The evidence before me at the time of granting the Initial Order was sufficient for me to find that LU was insolvent. There is nothing in the evidence before me on this comeback hearing that would alter this finding.

[47] Mr. Gold also requested that the extension of the stay be restricted to the end of February, namely February 26, 2021. He reasoned that this timeline could result in the participation of the Ministry.

[48] Counsel on behalf of St. Joseph's Continuing Care and St. Joseph's Health Care Centre raised a concern that the granting of the CCAA charges may give rise to a default under St. Joseph's financing arrangements with, among others, Royal Trust. This issue was addressed by the affected parties and they are content with the following being included as part of my endorsement. Details of Royal Trust's financing of St. Joseph's and the negative covenant relating to encumbrances on the fee simple are set out at paragraphs 192 – 194 of the Haché Affidavit. Royal Trust has been served with these materials and has not objected to the granting of the charges. If St. Joseph's and Royal Trust need to, they may come back before this Court to discuss issues relating to their loan agreement. For greater certainty, this does not constitute a comeback or any reservation of rights with respect to the DIP Charge granted.

[49] Mr. McFarlane, on behalf of the Northern Ontario School of Medicine, submitted that all references to timing provisions in the proposed Initial Restated Order at paragraphs 59, 60 and 61 should be deleted. He reasoned that restructurings are unpredictable and issues may arise at the last moment.

[50] Counsel on behalf of CUPE supported the position put forth by Mr. Sinclair, counsel to LUFA, that there is gratuitous language in paragraph 20 of the proposed Amended and Restated

Order. In particular, counsel objected to the inclusion of the words ("including pursuant to any collective agreement") which addresses the stay of proceedings. The inclusion of these words is not necessary. The jurisprudence establishes that a stay of proceedings is to be broadly interpreted. Paragraph 20 is broad enough and is interpreted as establishing that the stay of proceedings includes any actions taken in respect of any collective agreement.

[51] Counsel on behalf of CUPE also made reference to paragraph 17(b) of the proposed Amended and Restated Order which permits the Applicant to terminate the employment of such of its employees or temporarily lay off such of its employees as they deem appropriate. This language is contained in the Commercial List Model Order and reflects the current state of the jurisprudence.

[52] Counsel representing the Information and Privacy Commissioner raised concerns with respect to the stay provisions extending to requests made to the Applicant under the FIPPA. Concerns were expressed with respect to the overly broad language of this provision.

[53] Counsel on behalf of the Ministry of the Attorney General advised that she had not been provided with any instructions on this motion.

[54] Counsel on behalf of Royal Bank of Canada did not oppose the requested relief.

[55] In reply, counsel for LU, on the issue of the Sealing Order, submitted that there had been full and clear disclosure in the Affidavit of Dr. Haché with respect to the necessity and the need for the sealing provision. Counsel added that the Monitor is fully aware of the contents of the documents and supports the view that the sealing provision should be maintained.

## LAW AND ANALYSIS

### Stay Period and Scope of Stay

[56] Section 11.02(2) of the CCAA provides the authority to extend the stay beyond the initial 10 day stay period. The burden of proof on such an application is on the Applicant.

[57] I am satisfied that the Applicant has established that circumstances exist that make the order appropriate and further that the Applicant is acting in good faith and with due diligence.

[58] In my view it is reasonable and appropriate to grant the request of the Applicant, supported by the Monitor, to extend the stay, until April 30, 2021.

[59] In arriving at this conclusion, I have taken into account that the key stakeholders are participating in a mediation with a Court-Appointed Mediator, which mediation will focus on the key aspects of any proposed restructuring. It is both necessary and important that the Applicant should focus on its proposed restructuring If this restructuring is to be successful, it will have to be largely completed by the end of April 2021. With the approval of the DIP Facility, the Applicant will have liquidity to the end of this period. It is my expectation that the Monitor will file periodic reports with the Court and these reports will provide updates to interested stakeholders. To the

extent that any party is of the view that issues relating to the Stay Period should be brought to the attention of the Court, they can schedule such an attendance. The ability to schedule such an attendance addresses the concerns raised by Mr. Gold to the effect that the Stay Period should not extend beyond the end of February, 2021.

[60] With respect to whether the Amended and Restated Initial Order should provide that information requests made under the FIPPA be stayed, I accept the view expressed by the Applicant and the Monitor that the Applicant expects to receive a high volume of FIPPA requests at this time and the limited resources of the Applicant should not be diverted from its restructuring efforts. I also accept that the Monitor will, during this period, provide alternative means through which information can be obtained.

[61] However, I am unable to determine at this stage of the proceeding as to whether it would be appropriate to extend this specific provision of the stay for an indefinite period of time. I am prepared to continue the stay on the understanding that the Information and Privacy Commissioner can request that this issue be revisited in 30 days. Any request for reconsideration can be made through the Monitor and if the matter remains unresolved, a hearing on this issue can be expedited.

[62] With respect to the request that the court authorize the termination of employees as the Applicant deems appropriate, this provision has been fundamental to CCAA proceedings and is broadly worded to facilitate a restructuring (see: *Windsor Machine and Stamping Limited, Re*, Amended and Restated Initial Order dated September 2, 2008 and *Windsor Machine and Stamping Limited, Re*, 2009 CarswellOnt 4471 at para. 23; and *Aveos Fleet Performance Inc.*, Initial Order dated March 19, 2012 and *Aveos Fleet Performance Inc./Aveos Performance aéronautique inc.* (*Arrangement relatif à* [2013] QCCS 5924.

[63] I also note that the Applicant has acknowledged the challenges that will be faced in this aspect of the restructuring, including as it relates to tenure. The Applicant has also acknowledged the existence of the LUFA collective agreement which was entered into on July 1, 2017, which initial term expired on June 30, 2020, and remains in force during any negotiating period.

[64] The Applicant also points out that the relief sought will not substantially alter the LUFA collective agreement. Indeed, the collective agreement does not prevent employees from being terminated and specifically allows that they may be terminated in certain circumstances, which include redundancy and financial exigency.

[65] I am satisfied that the requested relief is not inconsistent with the provisions of s. 33 of the CCAA. The Applicant has addressed this issue at paragraphs 74 – 75 of its factum. Nor is it inconsistent with the provisions of section 18(b) of *An Act to incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151, which provides that the Board has the sole discretion to terminate faculty (Application Record – Vol. 2A, Tab 8A, p. 251).

**Special Payments**

[66] The Applicant requests that the Amended and Restated Initial Order stay any outstanding pre-filing special payments to the pension plan. I am satisfied that the liquidity crisis facing LU

and restrictions on the use of the DIP Facility is such that it is necessary to stay any outstanding pre-filing or post-filing special payments to the pension plan. This will assist the Applicant with its severe liquidity crisis. This stay is limited to the special payments and does not apply to the Applicant's regular (ordinary course) contributions to the pension plan.

**The CCAA Charges**

**Administration Charge**

[67] The Applicant requests that an Administration Charge be granted super priority on the Property in the increased amount.

[68] Section 11.5 of the CCAA provides the court with statutory jurisdiction to grant the Administration Charge.

[69] In *CanWest Publishing Inc./Publications CanWest Inc., (Re)*, 2010 ONSC 222 at para. 54, Pepall J (as she then was) identified the following non-exhaustive list of factors the court may consider when granting an administration charge:

a. the size and complexity of the business being restructured;

b. the proposed role of the beneficiaries of the charge;

c. whether there is an unwarranted duplication of roles;

d. whether the quantum of the proposed charge appears to be fair and reasonable;

e. the position of the secured creditors likely to be affected by the charge; and

f. the position of the monitor.

[70] I am satisfied that the Administration Charge is warranted, necessary, and appropriate in the circumstances, given that the proposed restructuring will require the extensive involvement of professional advisors and there does not appear to be an unwarranted duplication of roles, so that the professional fees will be minimized. I also note that the Monitor is supportive of the proposed quantum of the Administration Charge.

[71] Based on the forecasted costs and the Cash Flow Forecast for the professionals covered under the Administration Charge, I am satisfied that the requested relief should be granted.

**DIP Facility and DIP Charge**

[72] The Applicant seeks approval of the DIP Facility and also seeks a super priority charge on the Property in the amount of $25 million, subject to the terms of the DIP Term Sheet. The DIP Charge is proposed to rank behind the Administration Charge (up to a maximum amount of $1,250,000) and the Directors' Charge (up to a maximum of $2 million), but ahead of all other

interests in the Property of the Applicant, save and except properly perfected purchase money security interest on specific equipment.

[73] The evidence establishes that the Applicant is facing a liquidity crisis and that absent additional financing, the Applicant will be unable to meet payroll at the end of February.

[74] The evidence also establishes that a competitive process involving multiple potential DIP lenders was entered into, following which the Applicant secured the DIP Facility from the DIP Lender pursuant to the DIP Term Sheet.

[75] The Applicant's access to the DIP Facility is conditional upon an order of the court approving the DIP Term Sheet and the DIP Facility and granting the DIP Charge.

[76] Section 11.2 of the CCAA provides the Court with authority to approve the DIP Facility and the DIP Charge. Section 11.2(2) also provides the court with authority to order that the DIP charge rank in priority over the claim of any secured creditor of the company.

[77] Section 11.2 (4) sets out the factors to be considered by the court in deciding whether to grant a super priority charge in respect of DIP financing.

[78] I have concluded that it is appropriate to approve the DIP Facility and the DIP Charge. In arriving at this conclusion, I have taken into account that the notice requirements under s. 11.2(1) have been met; the Applicant has immediate liquidity needs and it is apparent that the Applicant cannot obtain alternative financing outside of these CCAA proceedings; the terms of the DIP Term Sheet resulted from an arms-length negotiation; the DIP Facility is necessary in order for the Applicant to implement its restructuring plan and without it, the Applicant will not be able to continue operations.

[79] In my view, the quantum of the DIP Facility is reasonable and appropriate. I also note that the Monitor is of the view that the DIP Term Sheet and DIP Charges are appropriate and limited to what is reasonably necessary in the circumstances.

**Directors' Charge**

[80] A Directors' Charge in the amount of $2 million was granted at the initial hearing. The Applicant seeks to increase the Directors' Charge to $5 million, $3 million of which will rank subordinate to the DIP Charge.

[81] Section 11.51 of the CCAA provides the court with the jurisdiction to grant a directors' charge in an amount the court considers appropriate, provided notice is given to the secured creditors likely to be affected by it. In order to grant a directors' charge, the court must be satisfied of the following factors:

a. notice has been given to the secured creditors likely to be affected by the charge;

b. the amount is appropriate;

c. the applicant could not obtain adequate indemnification insurance for the directors at a reasonable cost; and

d. the charge does not apply in respect of any obligation incurred by directors as a result of the directors' gross negligence or wilful misconduct. (see: *Jaguar Mining Inc., Re,* 2014 ONSC 494 at para. 45).

[82] I am satisfied that the Directors' Charge is reasonable in the circumstances. In arriving at this conclusion, I accept the submissions that the Applicant will benefit from the active and committed involvement of the Directors and Officers; the Applicant cannot be certain whether the existing insurance will be applicable or respond to any claims made; the Directors' Charge is not to secure obligations incurred by the Directors as a result of gross negligence or wilful misconduct, and the Monitor is of the view that the Directors' Charge is reasonable and appropriate.

**Confidential Exhibits – Sealing Order**

[83] A Sealing Order was granted at the initial hearing.

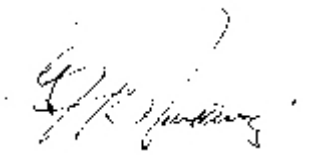
[84] A number of parties raised concerns with respect to the Sealing Order at the comeback hearing. In view of the expiration of the Stay Period on February 11, 2021, it was necessary to determine this comeback motion no later than that date. In order to address the sealing provision, I require additional time. Accordingly, the sealing order in respect of Confidential Exhibits "EEE" and "FFF" to that Haché Affidavit will remain in effect pending the issuance of a Supplementary Endorsement addressing this issue.

**Provisions in the Draft Order Relating to the Objection Deadline**

[85] Paragraphs 57 - 62 of the proposed Initial and Restated Order purport to establish deadlines to file materials for court hearings. The *Rules of Civil Procedure* address this issue. I acknowledge the concerns raised by Mr. McFarlane that the establishment of strict deadlines may not be practical in the context of a time sensitive restructuring. There is always the possibility that events dictate that materials have to be filed on the eve of the hearing. I expect that counsel will cooperate with each other to minimize the delivery of any last-minute materials, but I also acknowledge that in certain circumstances this may be unavoidable. In the circumstances, I have determined that it is not necessary or desirable to include the proposed paragraphs 57 - 62.

**INITIAL AND RESTATED ORDER**

[86] In accordance with my brief endorsement of February 11, 2021, I modified the proposed Initial and Restated Order to reflect the foregoing. The signed order was provided to the Commercial List Office on February 11, 2021, for distribution to the parties.



CHIEF JUSTICE G.B. MORAWETZ

**Date:** February 12, 2021

**CITATION:** Laurentian University of Sudbury, 2021 ONSC 1453
**COURT FILE NO.:** CV-21-656040-00CL
**DATE:** 2021-02-26

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** **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**

**BEFORE:** Chief Justice G.B. Morawetz

**COUNSEL:** *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan* and *Derek Harland*, for the Applicant

*Ashley Taylor, Elizabeth Pillon* and *Ben Muller*, for Ernst & Young Inc., Monitor

*Peter J. Osborne* and *David Salter*, for the Board of Governors

*Pamela L.J. Huff* and *Aryo Shalviri*, for Royal Bank of Canada

*Stuart Brotman* and *Dylan Chochla*, for Toronto Dominion Bank

*Vern W. DaRe*, for Firm Capital Mortgage Fund Inc., DIP Lender

*Michael Kennedy*, Labour Counsel for the Applicant

*Charles Sinclair*, *Susan Philpott* and *Clio Godkewitsch*, Insolvency Counsel for Laurentian University Faculty Association ("LUFA")

*David Wright*, Labour Counsel for LUFA

*Tracey Henry* and *Brendon Scott*, for Laurentian University Staff Union

*Alex McFarlane* and *Lydia Wakulowsky*, for Northern Ontario School of Medicine

*Daniel Loberto*, for Queen's University

*André Claude*, for University of Sudbury

*Joseph Bellissimo*, for Huntington University

*Andrew J. Hatnay* and *Sydney Edmonds*, for Thorneloe University

*Linda H-C. Chen*, for the Information and Privacy Commissioner of Ontario

*Gale Rubenstein* and *Bradley Wiffen*, Counsel for Financial Services Regulatory Authority

*Murray Gold* and *James Harnum*, for Ontario Confederation of University Faculty Associations

*George Benchetrit*, for Bank of Montreal

*Shahana Kar*, for Her Majesty the Queen in Right of Ontario

*Guneev Bhinder*, for Canada Foundation for Innovation

*James MacLellan*, for Zurich Insurance Company Ltd.

*Tushara Weerasoriya* and *Stephen Brown-Okruhlik*, for St. Joseph's Health Centre of Sudbury

*Mark Baker* and *Andriy Luzhetskyy*, for Laurentian University Students' General Association ("LUSGA")

*Miriam Martin*, for Canadian Union of Public Employees ("CUPE")

**SUPPLEMENTARY ENDORSEMENT**

[1] This Supplementary Endorsement to the Endorsement of February 12, 2021, addresses a challenge to the Sealing Order granted in the Initial Order of February 1, 2021. The Sealing Order covers Confidential Exhibits "EEE" and "FFF" (the "Exhibits") to the affidavit of Dr. Robert Haché, sworn January 30, 2021 (the "Haché Affidavit").

[2] "EEE" is a letter from the Ministry of Colleges and Universities (the "Ministry") to Laurentian University ("LU") dated January 21, 2021. "FFF" is a letter from LU to the Ministry dated January 25, 2021.

[3] LU contends that the Exhibits contain information with respect to LU and certain of its stakeholders, including various rights or positions that stakeholders or LU may take either inside or outside of these CCAA proceedings, the disclosure of which could jeopardize LU's efforts to restructure.

[4] Counsel to LU submits that the salutary effects of the Sealing Order far outweigh the deleterious effects of not disclosing the correspondence between LU and the Ministry.

[5] The position of LU is supported by the Monitor. The Monitor is fully aware of the state of negotiations, not only as between LU and the Ministry, but also between LU and various stakeholders, including the Laurentian University Faculty Association ("LUFA").

[6] Submissions in opposition to the Sealing Order were made by counsel on behalf of LUFA, the Ontario Confederation of University Faculty Associations ("OCUFA"), the Northern Ontario School of Medicine and Laurentian University Staff Union.

[7] The essence of the submissions in opposition to the Sealing Order was to the effect that there was no evidence that would suggest that the Sealing Order is necessary to protect a valid commercial interest. Therefore, there was no evidentiary basis on which to grant the Sealing Order.

[8] Mr. Gold, on behalf of OCUFA, took the position that the Sealing Order is not justified and is speculative in nature and it would be a dangerous precedent to seal the documents, just on the basis that they are not helpful to LU's position.

[9] It is necessary to take into account that the position of the Ministry in these proceedings, if any, is unknown.

[10] However, it is clear that Dr. Alan Harrison has been appointed as Special Advisor by the Ministry. His mandate is to provide advice and recommendations to the Ministry with respect to the current financial state of LU and its path to return to financial sustainability.

[11] It is also clear that the Honourable Justice Sean Dunphy is the Court-Appointed Mediator in these proceedings and a critical aspect of the mediation is the relationship between LU and its stakeholders, including LUFA.

[12] Section 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides the court with the discretion to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

[13] In *Sierra Club of Canada* v. *Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 (S.C.C.), Iacobucci, J. set out that a Sealing Order should only be granted when:

> (a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[14] The Supreme Court identified three important elements subsumed under the first branch of the above test. First, the risk in question must be real and substantial, in that the risk is well grounded in evidence and imposes a serious threat to the commercial interest in question. Second, a "commercial" interest must be an interest that goes beyond harm to the private commercial interests of a person or business. To qualify as an "important commercial interest", the interest must be one that can be expressed in terms of a public interest in confidentiality. Third, the phrase

"reasonable alternative measures" requires the court to consider not only whether reasonable alternatives to a confidentiality order are available, but also to restrict the order as much as is reasonably possible while preserving the commercial interest in question.

[15] The evidence of Dr. Haché can be summarized as follows:

(i) LU is insolvent;

(ii) LU has been completely transparent with the Ministry regarding the financial challenges it faces, has provided details to the Ministry regarding its financial situation and the outcome if the efforts undertaken by LU to resolve its concerns cannot achieve the required results;

(iii) LU has highlighted the benefits that it provides to the community of Northern Ontario and the costs and risks associated with attempting an informal restructuring outside of a proceeding and the costs and risks associated with the potential CCAA restructuring;

(iv) in the days and weeks leading up to this CCAA application, LU has been in frequent communication with the Ministry, members of the Treasury Board and senior staff members at the Ministry of Finance;

(v) LU has been in continuous dialogue with the Ministry and intends to continue this dialogue throughout the CCAA proceedings.

[16] Dr. Haché has not been cross-examined, although a number of parties at the comeback hearing reserved rights to cross-examine him at some point in the future.

[17] I have reviewed the Exhibits in detail.

[18] Firstly, the evidence as contained in the Haché Affidavit outlines that there has been continuous communication between LU and the Ministry with respect to the financial crisis currently facing LU. As such, the Ministry is well aware that a real-time solution to the crisis must be found if LU is to survive and continue operations beyond the current academic year. The crisis is real and immediate. The role, if any, that the Ministry will play is at this moment uncertain.

[19] In my view, the disclosure of the Exhibits, at this time, could be detrimental to any potential restructuring of LU. As such, the risk in disclosing the Exhibits is real and substantial and imposes a serious risk to the future viability of LU. I also note that it is speculative to conclude that the Exhibits contain information that is not helpful to LU's position.

[20] Secondly, it seems to me that the "commercial" interest related to the Exhibits transcends the direct commercial interests of LU. It involves the entire LU community, including the faculty, students, employees, third-party suppliers, and the City of Greater Sudbury and the surrounding area. It is of paramount importance to all of these groups that all efforts to restructure LU be explored. In order to do so, it is necessary to maintain the confidentiality of the Exhibits. The

disclosure of the Exhibits, at this time, could undermine the restructuring efforts being undertaken by LU.

[21] Thirdly, I am required to consider whether there are any reasonable alternatives to a confidentiality order affecting the Exhibits. At this time the stakeholders are involved in a mediation being conducted by Justice Dunphy. It could very well be that negotiations are at a sensitive stage or will shortly be at a sensitive stage. In my view, it would not be appropriate, at this time, to implement any alternative to a confidentiality order, as to do so could negatively impact the mediation efforts being conducted by Justice Dunphy.

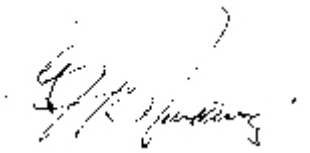
[22] At this stage of the proceedings, I am satisfied that it is in the interests of all stakeholders that the Mediator be provided with an adequate opportunity to consult with the various stakeholders in order to ascertain whether or not common ground can be found on which to formulate a restructuring of LU.

[23] I am satisfied that the first branch of the test has been met.

[24] I am also satisfied, based on the evidence, that the salutary effects of the Sealing Order outweigh its deleterious effects, which in this context, includes the public interest in accessing the Exhibits. Thus, the second branch of the test is satisfied.

**Disposition**

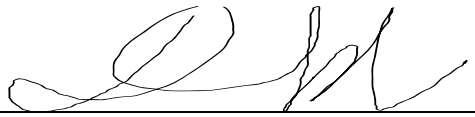
[25] Accordingly, I conclude that LU has satisfied the test set forth in *Sierra Club* and that it is necessary to maintain the confidentiality of the Exhibits and the existing provision in the Amended and Restated Order providing for the sealing of the Exhibits.



CHIEF JUSTICE MORAWETZ

**Date:** February 26, 2021

This is Exhibit “C” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

# COURT OF APPEAL FOR ONTARIO

CITATION: Laurentian University of Sudbury (Re), 2021 ONCA 199
DATE: 20210331
DOCKET: M52287

Hoy, Pepall and Zarnett JJ.A.

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

Murray Gold and James Harnum, for the moving party the Ontario Confederation of University Faculty Associations

Susan Philpott and Charles Sinclair, for the moving party the Laurentian University Faculty Association

Miriam Martin, for the moving party the Canadian Union of Public Employees

D.J. Miller, Scott McGrath and Derek Harland, for the responding party Laurentian University of Sudbury

Ashley Taylor, Elizabeth Pillon and Zev Smith, for the responding party Ernst & Young Inc., acting as the Monitor

Heard: in writing

Motion for leave to appeal from the order of Chief Justice Geoffrey B. Morawetz of the Superior Court of Justice, dated February 26, 2021.

REASONS FOR DECISION

[1] Laurentian University of Sudbury (“Laurentian”) is a publicly funded, bilingual and tricultural post-secondary institution, serving domestic and international undergraduate and graduate students. Due to recurring operational deficits, it has encountered a liquidity crisis and is insolvent.

[2] Laurentian sought and obtained protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C.36 (“CCAA”), to permit it to restructure, financially and operationally, in order to emerge as a sustainable university for the benefit of all stakeholders. Among the stated reasons for Laurentian’s CCAA application was what it described as unsustainable “academic costs”, which Laurentian attributes in part to the terms of its collective agreement with its faculty members.

[3] Two unions representing Laurentian employees - the Laurentian University Faculty Association (“LUFA”) and the Canadian Union of Public Employees (“CUPE”) - and the Ontario Confederation of University Faculty Associations (“OCUFA”), an umbrella organization representing faculty associations, seek leave to appeal the decision of the CCAA judge, dated February 26, 2021, which continues a sealing order over two documents that Laurentian filed on its application for CCAA protection.

[4] Having reviewed the written submissions of the parties and the sealed documents, we refuse leave for the reasons that follow.

**Background**

[5] On February 1, 2021, the CCAA judge made an order (the "Initial Order"), granting Laurentian initial relief under the CCAA.

[6] Four days later, on February 5, 2021, the CCAA judge made an order appointing Dunphy J. as mediator to conduct a confidential mediation among Laurentian's key stakeholders. The mediation is intended to address various issues concerning Laurentian's restructuring, including a new collective agreement with LUFA, which represents 612 Laurentian faculty, accounting for 60% of the university's payroll. LUFA supported the appointment of the mediator.

[7] The Initial Order contained a sealing provision. At the comeback hearing, there was opposition to it. The CCAA judge continued the sealing provision in the Amended and Restated Order, dated February 11, 2021, on an interim basis, pending a supplementary endorsement.

[8] The sealing provision, which was identical in both orders, covers two exhibits (Exhibits "EEE" and "FFF") to the affidavit by Dr. Robert Haché, which was filed in support of Laurentian's request for the Initial Order. Dr. Haché is the President, Vice-Chancellor and CEO of Laurentian.

[9] The sealing provision states that the Exhibits "are herby sealed pending further order of the Court, and shall not form part of the public record". Both the

Initial Order and the Amended and Restated Order provide that any interested party may apply on seven days' notice to vary or amend the order.

[10] The sealed Exhibits consist of two letters. Exhibit "EEE" is a letter from the Ministry of Colleges and Universities ("Ministry") to Laurentian, dated January 21, 2021. Exhibit "FFF" is a letter from Laurentian to the Ministry, dated January 25, 2021. Laurentian has described the letters as containing "information with respect to [Laurentian] and certain of its stakeholders, including various rights or positions that stakeholders or [Laurentian] may take either inside or outside of these CCAA proceedings, the disclosure of which could jeopardize [Laurentian's] efforts to restructure."

[11] None of the moving parties sought to cross-examine Dr. Haché on his affidavit or the communications between Laurentian and the Ministry.

[12] The CCAA judge released his supplementary endorsement on February 26, 2021, continuing the sealing provision. The effect of the sealing provision is that both the broader public and the parties to the CCAA proceeding are prevented from accessing the Exhibits.

[13] The CCAA judge held that the sealing provision was authorized under s. 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and by the application of the principles in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002

SCC 41, [2002] 2 S.C.R. 522. According to *Sierra Club*, at para. 53, a confidentiality or sealing order should only be granted when:

> (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[14] The CCAA judge summarized the evidence in Dr. Haché's affidavit and noted that he had reviewed the Exhibits in detail. He indicated that the evidence, as contained in Dr. Haché's affidavit, outlines that there has been continuous communication between Laurentian and the Ministry with respect to Laurentian's financial crisis, and that the government is well aware that a real-time solution must be found if Laurentian is to survive. He noted that "the role, if any, that the Ministry will play is at this moment uncertain."

[15] Considering the first branch of the *Sierra Club* test, he concluded that disclosure of the Exhibits, "<u>at this time</u>, could be detrimental to any potential restructuring of [Laurentian]" (emphasis added). Accordingly, "the risk in disclosing the Exhibits is real and substantial and poses a serious risk to the

future viability of [Laurentian].” He also noted that “it is speculative to conclude that the Exhibits contain information that is not helpful to [Laurentian’s] position.”

[16] He found that the commercial interest was that of the entire Laurentian community, including the faculty, students, employees, third-party suppliers and the City of Greater Sudbury and the surrounding area; that it is of paramount importance to these groups that all efforts to restructure Laurentian be explored; and that it is necessary to maintain the confidentiality of the Exhibits in order to do so. He reiterated that “[t]he disclosure of the Exhibits, at this time, could undermine the restructuring efforts being undertaken by [Laurentian]” (emphasis added).

[17] He was not satisfied that there were any reasonable alternatives to a sealing order over the Exhibits. Stakeholders were involved in the mediation and the negotiations could or could shortly be at a sensitive stage. It would not be appropriate to implement any alternative to a confidentiality order. To do so could negatively impact the mediation efforts.

[18] Turning to the second branch of the *Sierra Club* test, the CCAA judge was also satisfied, based on the evidence, that the salutary effects of the sealing provision outweighed its deleterious effects, including the public interest in accessing the Exhibits.

**Leave Test**

[19] Section 13 of the CCAA provides that any person dissatisfied with an order or a decision made under the CCAA may appeal from the order or decision with leave. Leave to appeal in CCAA proceedings is to be granted sparingly and only where there are serious and arguable grounds that are of real and significant interest to the parties. This cautious approach is a function of several factors.

[20] First, a high degree of deference is owed to discretionary decisions made by judges supervising CCAA proceedings, who are "steeped in the intricacies of the *CCAA* proceedings they oversee". Appellate intervention is justified only where the "supervising judge erred in principle or exercised their discretion unreasonably": *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, 78 C.B.R. (6th) 1, at paras. 53 to 54.

[21] Second, CCAA proceedings are dynamic. It is often "inappropriate to consider an exercise of discretion by the supervising judge in isolation of other exercises of discretion by the judge in endeavouring to balance the various interests": *Edgewater Casino Inc. (Re)*, 2009 BCCA 40, 51 C.B.R. (5th) 1, at para 20.

[22] Third, CCAA restructurings can be time sensitive. The existence of, and delay involved in, an appeal can be counterproductive to a successful restructuring.

[23] In addressing whether leave should be granted, the court will consider four factors, specifically whether:

(a) the proposed appeal is *prima facie* meritorious or frivolous;

(b) the points on the proposed appeal are of significance to the practice;

(c) the points on the proposed appeal are of significance to the action; and

(d) whether the proposed appeal will unduly hinder the progress of the action.

See: *Nortel Networks Corp. (Re)*, 2016 ONCA 332, 130 O.R. (3d) 481, at para. 34.

**Leave is Not Warranted**

[24] As we will explain, we refuse to grant leave because the proposed appeal is not *prima facie* meritorious, granting leave would unduly hinder the progress of the action, and the proposed appeal is not of significance to the action. This is not an appropriate case for this court to explore issues of significance to the practice relating to the granting of sealing orders in the CCAA context.

**Leave Not *Prima Facie* Meritorious**

[25] The moving parties raise three questions for determination on their proposed appeal, which we paraphrase as follows:

> 1. Did the CCAA judge err in focussing solely on Laurentian's assertion of an important commercial interest without balancing the various competing interests applicable to a sealing order?

> 2. Did the CCAA judge err in granting the sealing provision without a sufficient evidentiary foundation?
>
> 3. Did the CCAA judge err in concluding that the sealing provision was justified as a result of speculative concerns about the impact that disclosure of the Exhibits that were sealed would have on the CCAA restructuring process?

[26] A significant plank of the moving parties' argument is that the sealing provision denies access to the sealed documents to parties to the CCAA process on the ostensible ground that the documents might have an impact on the positions those parties choose to take vis-à-vis the restructuring. They argue that the importance of the documents to the formulation of their positions is the exact reason why they should have access to the documents, not a justification for denying access to them.

[27] We note that one of the moving parties, OCUFA, is not a creditor of Laurentian and is apparently not participating in the court-ordered mediation, the aim of which is a consensual restructuring. It is not clear in what sense OCUFA is a party to the CCAA proceeding or is in any different position than any other member of the public who may be interested in the court-filed materials. Yet the moving parties do not differentiate, in their proposed appeal questions or in the relief they propose to seek, between the entitlements of OCUFA to obtain the documents and those of the other moving parties. In other words, although reference is made to the denial of access to "litigants", the underlying theory of

the moving parties actually starts and stops with the proposition that there should be no sealing order at all.

[28] We are not persuaded that the proposed appeal, challenging what is a discretionary order, is *prima facie* meritorious.

[29] The CCAA judge set out the *Sierra Club* test in his reasons. Contrary to the submissions of the moving parties, he was well aware that *Sierra Club* required him to balance the deleterious effects of the sealing order.

[30] In earlier reasons, the CCAA judge noted that if the restructuring is to be successful, it will have to be largely completed by the end of April 2021. The timeline is exceptionally short. In exercising his discretion, the CCAA judge concluded that the risk to the potential restructuring of Laurentian within this extremely tight timeframe if the Exhibits were disclosed outweighed other relevant interests.

[31] The moving parties were (and are) concerned that they understand the Ontario government's position in relation to the restructuring, yet they did not seek to cross-examine Dr. Haché. The CCAA judge, who reviewed the Exhibits, strove to address that concern, carefully signaling that "the role, if any, that the Ministry will play is at this moment uncertain." Alive to concerns about fairness, he also signaled to the parties that it would be "speculative to conclude that the Exhibits contain information that is not helpful to [Laurentian's] position."

[32] The moving parties have expressed particular concern that the sealing order creates an informational imbalance that may hurt them in the mediation process. Nothing before us suggests that the moving parties who are participating in the court-ordered mediation (which appears to be only LUFA) have been hampered by any informational imbalance. The judicial mediator, who was appointed by the CCAA judge, is a bulwark against unfair treatment in the mediation. Should the judicial mediator have concerns that the moving parties have been hampered in the mediation by an informational imbalance or a perceived informational imbalance, it is open to him to raise them with the CCAA judge within the parameters of the February 5, 2021 order appointing the mediator.

[33] Nor do we see anything in the sealing provision that would prevent a party from making a request to the CCAA judge, at the appropriate time, for relief on appropriate terms. As noted, the sealing provision is expressly subject to "further order of the Court". The CCAA judge in his reasons of February 26 said only that an alternative to the sealing provision was not appropriate "at this time".

[34] In seeking leave, the moving parties have raised questions about how s. 2(d) of the *Charter of Rights and Freedoms* comes into play, as one of the purposes of the mediation is to conclude a new collective agreement with LUFA. But they do not dispute Laurentian's submission that this issue was not argued

below. It is difficult to fault the CCAA judge for not weighing a competing interest that was not asserted before him.

[35] The moving parties also say that the CCAA judge failed to advert to the impact his ruling would have on freedom of expression. We are satisfied he did take that factor into account, as he mentions it in setting out the test and later says that the deleterious effects include “the public interest in accessing the Exhibits.”

[36] The second and third questions raised by the moving parties ask the court to revisit an issue raised before the CCAA judge. He described the essence of the submissions made to him by those opposing the sealing order as there being no evidence that the sealing order was necessary to protect a valid commercial interest.

[37] The CCAA judge was satisfied that there was a sufficient evidentiary basis. He based his conclusion that disclosing the Exhibits posed a serious risk to the restructuring on his review of the Exhibits and Dr. Haché’s evidence. The moving parties are correct that Dr. Haché did not opine in his affidavit that disclosure of the Exhibits posed a serious risk to the viability of the restructuring. But Dr. Haché’s evidence describes something of the dynamics at play and is clear as to Laurentian’s dire position and the timeframe within which the restructuring must be completed, if it is to be successful. It provided the foundation on which the

Monitor, an officer of the court, supported Laurentian's position that disclosure posed a serious risk, and the CCAA judge, who has extensive experience in CCAA restructurings, concluded that disclosure posed a serious risk. The CCAA judge exercised his judgment, based on an evidentiary record.

[38] The fact the proposed appeal is not *prima facie* meritorious weighs significantly against granting leave.

**Appeal Would Hinder Progress of the Action**

[39] As we have said, this restructuring is on an exceptionally short timeline. We are told that the mediation is ongoing, with sessions occurring daily. There is urgency to being able to reach a successful restructuring by the end of April, in light of Laurentian's financial position and the need for certainty regarding the next academic year. There is too great a risk that an appeal would be a distraction from restructuring efforts and thus would unduly hinder the progress of the action, which also weighs significantly against granting leave.

**No Significance to the Action**

[40] Given the involvement of a court-appointed mediator and that it is open to the CCAA judge to revisit the sealing provision and possibly revoke it or limit its impact by allowing the parties to the CCAA proceeding to access the sealed documents, the significance of the proposed appeal to the action is insufficient to justify leave.

**Significance to the Practice**

[41] The facts of this case highlight some novel and interesting questions about the application of the *Sierra Club* test in the CCAA context.These include questions about granting sealing orders over information filed in support of the application for protection under the CCAA, the granting of sealing orders where interests under s. 2(d) of the *Charter* are arguably at play, and about the application of sealing orders to parties and stakeholders involved in the restructuring efforts. However, given our view of the merits of the proposed appeal and the other factors, this is not the appropriate case in which to explore these issues.

**Disposition**

[42] Leave to appeal is refused. In the circumstances, there shall be no order as to costs.

This is Exhibit “D” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

**Table 1: Changes to Faculties pre and post Laurentian restructuring**

| Faculty Structure<br>Pre Restructuring | Faculty Structure<br>Post Restructuring |
|---|---|
| Faculty of Arts | Faculty of Arts |
| Faculty of Education | Faculty of Education and Health |
| Faculty of Health | |
| Faculty of Management | Faculty of Management |
| Faculty of Science, Engineering and Architecture | Faculty of Science, Engineering and Architecture |
| Faculty of Graduate Studies | Closed<br>(Graduate activities to report to the Vice-President Research) |

| **Table 2: Summary of Reorganization of Schools and Departments with the Faculty of Arts** | |
|---|---|
| **Pre Restructuring<br>School/Department Structure** | **Post Restructuring<br>School/Department Structure** |
| School of Northern and Community Studies | **All programs closed** |
| Economics | School of Liberal Arts |
| English | School of Liberal Arts |
| Études françaises | **Closed** (FSL as a program will remain) |
| Geography | **All Programs Closed** |
| History | School of Liberal Arts |
| Law & Justice | School of Liberal Arts |
| Modern Languages | **All Programs Closed** |
| Music | **All Programs Closed** |
| Philosophy | **All Programs Closed** |
| Political Science | **All Programs Closed** |
| Psychology | School of Liberal Arts |
| Sociology | School of Liberal Arts |

| **Table 3: Summary of Reorganization of Schools and Departments with the Faculty of Education and Health** | |
|---|---|
| Pre Restructuring<br>School/Department Structure | Post Restructuring<br>School/Department Structure |
| School of Nursing<br>École de sciences infirmières | School of Nursing and Allied Health Professions<br>École de sciences infirmières et des professions de la santé |
| École d'orthophonie | |
| School of Social Work<br>École de service social | |
| School of Indigenous Relations | School of Indigenous Relations |
| School of Kinesiology and Health Sciences<br>École de kinésiologie et des sciences de la santé | School of Kinesiology and Health Sciences<br>École de kinésiologie et des sciences de la santé |
| School of Rural and Northern Health | |
| School of Midwifery | Closed |
| School of Education | School of Education<br>École d'éducation |
| École des sciences de l'éducation | |
| Centre for Academic Development | Centre for Academic Development** |
| ** LU is considering making the Centre for Academic Development a standalone auxiliary unit. | |

| **Table 4: Summary of Reorganization of Schools and Departments in the Faculty of Management** | |
|---|---|
| Pre Restructuring<br>School/Department Structure | Post Restructuring<br>School/Department Structure |
| School Sport Administration (SPAD) | School of Sports Management |
| Department Accounting | School of Business Administration |
| Department Finance & Operations | |
| Department Marketing & Management | |

| **Table 5: Summary of Reorganization of Schools and Departments in the Faculty of SEA** | |
|---|---|
| Pre Restructuring School/Department Structure | Post Restructuring School/Department Structure |
| Harquail School of Earth Sciences | Harquail School of Earth Sciences |
| Bharti School of Engineering | Bharti School of Engineering & Computation |
| Department of Mathematics and Computer Science (Computer Science programs only) | |
| McEwen School of Architecture | McEwen School of Architecture |
| Department of Forensic Science | School of Biological, Chemical & Forensic Sciences |
| Department of Biology | |
| Department of Chemistry & Biochemistry | |
| Department of Mathematics and Computer Science | Closed (some math courses retained and computer science programs to remain in Bharti School) |
| School of the Environment | Closed (Masters in Science Communications retained) |
| Department of Physics | Closed and all programs in it closed |

This is Exhibit “E” referred to in the
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A Commissioner for taking affidavits

**Programs terminated by Senate at the meeting on March 16, 2021**

Programs that have changed, but the original program was never terminated/Programmes qui ont changé, mais le programme initial n'a pas été supprimé

| **Program to be terminated/Program à supprimer** | **Program changed to…/Programme changé à...** | **Year of change/Année du changement** |
|---|---|---|
| Bachelor of Commerce (EN) – not SPAD | Bachelor of Business Administration | 2014-15 |
| Baccalauréat en commerce (FR) | Baccalauréat en administration des affaires | 2014-15 |
| Liberal Science (EN) | Interdisciplinary Science | 2019-20 |
| Sciences libérales (FR) | Sciences pluridisciplinaires | 2019-20 |
| Masters of Engineering – Natural Resources (EN) | Masters of Engineering | 2018-19 |
| Bachelor of Education (1 year) (EN) | Bachelor of Education (2 years) | 2015-16 |
| Baccalauréat en education (1 an) | Baccalauréat en education (2 ans) | 2015-16 |
| Labour Studies | Workplace and Labour Studies | 2019-20 |
| Women's Studies | Women's, Gender and Sexuality Studies | 2016-17 |
| Native Studies | Indigenous Studies | 2013-14 |
| Human Development (MA and MSc) | Interdisciplinary Health (MA and MSc) | 2013-14 |
| Développement humain (MA et MSc) | Santé interdisciplinaire | 2013-14 |
| Native Social Work | Indigenous Social Work | 2012-13 |

Programs that have had admissions suspended, but never terminated/Programmes qui ont les admissions suspendues, mais jamais supprimés

| **Program to be terminated/Programme à supprimer** | **Date of last admission/Dernière date d'admission** |
|---|---|
| EBusiness (EN) | 2016 |
| Biochimie-biotechnologie (FR) (spécialisation) | 2017 |
| B.A. Éducation (FR) (concentration) | 2014 |
| Science politique (FR) (spécialisation) | 2018 |
| Ethics (Huntington) (EN) - concentration | 2018 |
| Santé publique (FR) (concentration, majeure, spécialisation, certificat) | 2015 |

This is Exhibit “F” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

**WHEREAS** on February 1, 2021, Laurentian University commenced a court proceeding for a formal restructuring to be undertaken pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**") wherein a stay of proceedings was granted to April 30, 2021 (the "**Stay Period**") and debtor-in-possession financing ("**DIP Financing**") was approved by the Court to permit Laurentian University to continue its operations and pay expenses in accordance with its cash flow forecast during the Stay Period, and;

**WHEREAS** on February 5, 2021, the Honourable Chief Justice Geoffrey Morawetz granted an Order appointing the Honourable Justice Sean Dunphy as the Court-Appointed Mediator in the CCAA proceeding (the "**Mediator Appointment Order**"), and;

**WHEREAS** the Laurentian University Senate, at its regular February 2021 meeting, passed a resolution electing Malek Abou-Rabia, Éric Gauthier, Jay Patel, Brent Roe, Amanda Schweinbenz and Jennifer Straub (collectively, the "**Senate Mediation Committee**") to represent the Senate in mediation conducted under the supervision of Justice Dunphy based on the following terms of reference: i) The six members are to take part in mediation sessions, at the call of Justice Dunphy; ii) The six members are to represent Senate at the session, and not their respective units; iii) The six members will report regularly to Senate Executive and Senate as permitted based on the confidentiality provisions in the Mediator Appointment Order, and;

**WHEREAS** the Senate Mediation Committee retained Mario Forte of Goldman Sloan Nash & Haber LLP to act as independent counsel to the Senate Mediation Committee and advise it during the mediation sessions, and;

**WHEREAS** the Senate Mediation Committee received extensive materials including a Mediation Brief and Supplemental Mediation Brief delivered by the Administration, met with Justice Dunphy and representatives of the Administration on six occasions through Zoom videoconference and exchanged numerous written questions and answers, comments and clarifications with the Administration during and between the various meetings, including as it related to the methodology and analysis to support the review being undertaken, and;

**WHEREAS** the Senate Mediation Committee considered the provisions of the *French Language Services Act* and the Regulation thereunder relating to Laurentian, as well as considered Laurentian's tricultural mandate, in undertaking its review of programs and in preparing its report, and;

**WHEREAS** the Senate Mediation Committee was presented with, commented on, and adjusted the Administration's initial list of programs proposed for termination, the initial list of sections to be offered that maximizes current resources, as well as a proposal of Faculty and Department/School reorganizations, all of which fall within the Senate purview, and;

**WHEREAS** Laurentian University is committed to providing ongoing high quality post-secondary education, in English and in French, while playing an important role towards meeting the Truth and Reconciliation Calls to Action, and;

**WHEREAS** the Senate Mediation Committee also discussed various ideas to restructure programs that some Departments/Schools will continue to offer;

**BE IT RESOLVED,**

**THAT** the Senate Mediation Committee recommends that the Senate terminate 69 programs, including 28 offered in French and 41 offered in English, as well as the restructuring of the current Departments/Schools into a new Faculty structure, as outlined in the following omnibus report, which the Senate Mediation Committee recommends that the Senate accept.

**BE IT FURTHER RESOLVED,**

**THAT** the Senate Mediation Committee recommends to Senate that the programs in the current School of Kinesiology and Health Studies be examined by its members over the next 12 months in order to conform to a 120-credit degree structure, including normalizing the credit values attached to activity courses, and;

**THAT** the Senate Mediation Committee recommends to Senate that the programs in the current School of Nursing/École des sciences infirmières be examined by its members over the next 12 months as to the current practice of placements, both the number and environment of them, and;

**THAT** the Senate Mediation Committee recommends to Senate that the undergraduate program in the current École d'orthophonie be examined by its members over the next 12 months to modify the requirements given the termination of Études françaises programs.

Passed this _____ day of April, 2021 as

MOVED BY: _____
signature

SECONDED BY: _____
Signature

ATTENDU QUE le 1er février 2021, l'Université Laurentienne a entamé une procédure judiciaire en vue d'une restructuration formelle à entreprendre en vertu de la Loi sur les arrangements avec les créanciers des compagnies ("LACC"), dans le cadre de laquelle une suspension des procédures a été accordée jusqu'au 30 avril 2021 (la "période de suspension") et un financement du débiteur-exploitant ("financement du débiteur-exploitant") a été approuvé par la Cour afin de permettre à l'Université Laurentienne de poursuivre ses activités et de payer ses dépenses conformément à ses prévisions pendant la période de suspension, et ;

ATTENDU QUE le 5 février 2021, l'honorable juge en chef Geoffrey Morawetz a rendu une ordonnance nommant l'honorable juge Sean Dunphy à titre de médiateur nommé par la Cour dans le cadre de la procédure de la LACC (l' "ordonnance de nomination du médiateur"), et ;

ATTENDU QUE le Sénat de l'Université Laurentienne, lors de sa réunion régulière de février 2021, a adopté une résolution élisant Malek Abou-Rabia, Éric Gauthier, Jay Patel, Brent Roe, Amanda Schweinbenz et Jennifer Straub (collectivement, le "Comité de médiation du Sénat") pour représenter le Sénat lors de la médiation menée sous la supervision du juge Dunphy selon le mandat suivant : i) Les six membres participeront aux séances de médiation, à la demande du juge Dunphy ; ii) Les six membres représenteront le Sénat aux séances, et non leurs unités respectives ; iii) Les six membres feront régulièrement rapport à l'exécutif du Sénat et au Sénat, comme le permettent les dispositions relatives à la confidentialité contenues dans le décret de nomination du médiateur ; et ;

ATTENDU QUE le Comité de médiation du Sénat a retenu les services de Mario Forte de Goldman Sloan Nash & Haber LLP pour agir à titre de conseiller indépendant du Comité de médiation du Sénat, et le conseiller pendant les séances de médiation, et ;

ATTENDU QUE le Comité de médiation du Sénat a reçu des documents détaillés, y compris un mémoire de médiation et un mémoire de médiation supplémentaire, fournis par l'Administration, a rencontré le juge Dunphy et des représentants de l'Administration à six reprises par vidéoconférence Zoom, et a échangé de nombreuses questions et réponses écrites, des commentaires et des clarifications avec l'Administration pendant et entre les diverses réunions, y compris en ce qui concerne la méthodologie et l'analyse à l'appui de l'examen entrepris, et ;

ATTENDU QUE le Comité de médiation du Sénat a tenu compte des dispositions de la Loi sur les services en français et de son règlement d'application concernant la Laurentienne, ainsi que du mandat triculturel de la Laurentienne, lors de l'examen des programmes et de la préparation de son rapport ; et

ATTENDU QUE le Comité de médiation du Sénat a reçu la liste initiale des programmes proposés par l'administration, la liste initiale des sections à offrir qui maximise les ressources actuelles, ainsi qu'une proposition de réorganisation des facultés et des départements/écoles, qui relèvent toutes de la compétence du Sénat, et qu'il a formulé des commentaires et des ajustements à cet égard ; et

ATTENDU QUE l'Université Laurentienne s'est engagée à offrir en permanence une éducation postsecondaire de haute qualité, en anglais et en français, tout en jouant un rôle important pour répondre aux appels à l'action de la Commission de vérité et réconciliation du Canada ; et

ATTENDU QUE le Comité de médiation du Sénat a également discuté de diverses idées pour restructurer les programmes que certains départements/écoles continueront d'offrir ;

QU'IL SOIT RÉSOLU

QUE le Comité de médiation du Sénat recommande que le Sénat mette fin à 69 programmes, y compris 28 programmes offerts en français et 41 programmes offerts en anglais, ainsi qu'à la restructuration des départements/écoles actuels en une nouvelle structure professorale, tel que décrit dans le rapport omnibus suivant, que le Comité de médiation du Sénat recommande que le Sénat accepte.

QU'IL SOIT EN PLUS RÉSOLU

QUE le Comité de médiation du Sénat recommande au Sénat que les programmes de l'actuelle École de kinésiologie et d'études de la santé soient examinés par ses membres au cours des 12 prochains mois afin de se conformer à une structure de diplôme de 120 crédits, y compris la normalisation de la valeur des crédits rattachés aux cours d'activités, et ;

QUE le Comité de médiation du Sénat recommande au Sénat que les programmes de l'actuelle School of Nursing/École des sciences infirmières soient examinés par ses membres au cours des 12 prochains mois quant à la pratique actuelle des stages, tant au niveau du nombre que de l'environnement de ceux-ci, et ;

QUE le Comité de médiation du Sénat recommande au Sénat que le programme de premier cycle de l'actuelle École d'orthophonie soit examiné par ses membres au cours des 12 prochains mois afin de modifier les exigences compte tenu de la fin des programmes d'Études françaises.

Adopté ce _____ jour d'avril 2021.

PROPOSÉ PAR : _____
signature

APPUYÉ PAR : _____
Signature

This is Exhibit “G” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

**TERM SHEET BETWEEN UNIVERSITY OF SUDBURY ("USUDBURY") AND LAURENTIAN UNIVERSITY OF SUDBURY ("LAURENTIAN") WITH RESPECT TO INDIGENOUS COURSES FOR THE SPRING 2021 TERM**

Laurentian and USudbury have a common goal of ensuring that students are unaffected, to the extent possible, by changes that are occurring during the restructuring pursuant to the *Companies Creditors' Arrangement Act* ("**CCAA**"). Further to the letter of Laurentian dated April 13, 2021 referring to Motion CM 21-14 passed by the Laurentian University Native Education Council ("**LUNEC**") on April 12, 2021, Laurentian has been requested to explore the possibility of teaching courses in Indigenous Studies during the Spring Term so that affected students can obtain required credits.

FOR CONSIDERATION RECEIVED, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the terms of this binding Term Sheet in order to facilitate Laurentian's teaching of Indigenous Studies courses during the Spring Term only, on the following terms and conditions:

1. Teaching courses in the Spring Term is at the request of the Indigenous community, including as reflected in the LUNEC resolution dated April 12, 2021. Laurentian will continue to engage with the Indigenous community and LUNEC during the Spring and Summer terms in order to consider and determine how best to ensure the ongoing delivery of Indigenous education at Laurentian. The terms set out in this email relate to the one-time delivery of these distance-learning courses for the Spring term only. Laurentian remains open to discussing a longer-term solution with USudbury, which will involve continued engagement with LUNEC and Indigenous stakeholders.

2. USudbury will immediately grant an exclusive license to Laurentian at a one-time total cost to Laurentian of $10, together with payment of the total amount of $1,050 in compensation for course cancellation fees paid recently by USudbury to its sessional teachers, for all rights to teach the Relevant Courses (defined below) and for all course materials (in any format) used in the teaching of the Relevant Courses including testing and assignment materials, that will be needed for Laurentian to teach the following six (6) courses for the Spring term only:

   i) **INDG-1016EL-10**

   ii) **INDG-1116EL-12**

   iii) **INDG-1117EL-12**

   iv) **INDG-2285EL-12**

   v) **INDG-3105EL-12**

   vi) **INDG-3116EL-12**

   (collectively, the "**Relevant Courses**").

3. No other compensation will be paid or provided by Laurentian to USudbury or anyone else in respect of Laurentian's teaching of the Relevant Courses for the Spring Term. Laurentian will pay the relevant sessional instructors who teach the Relevant Courses in the Spring Term in the ordinary course in accordance with Laurentian's relevant contracts and collective agreement.

4. Nothing in this Term Sheet precludes USudbury from filing a Proof of Claim as part of a Claims Process within the CCAA proceeding, including in respect of the Disclaimer of the Federation Agreement by Laurentian. For greater certainty, nothing in this Agreement constitutes a waiver by USudbury of any claim to damages or losses from having allowed Laurentian to teach the Relevant Courses.

5. Laurentian will not offer the course having code INDG-1017EL-10 as there is zero enrolment.

6. All course materials for the Relevant Courses will be delivered by USudbury to Laurentian by close of business on Friday, April 16, 2021 on a best-efforts basis, to allow preparations to be in place for teaching on May 3, 2021. At the completion of the Spring term, these course materials must be either returned or destroyed by Laurentian, at the option of USudbury, with no copies to be kept in Laurentian's possession.

7. As INDG-1016EL-10 is a paper-based course and not online, USudbury will provide a hard copy (PDF) of all course materials to Laurentian.

8. The Relevant Courses will be taught as distance courses, and all will be taught by sessionals. No aspect of this Term Sheet constitutes an assumption of any obligations by Laurentian from USudbury of any kind. This Term Sheet grants a license only to Laurentian with respect to the Relevant Courses, including course materials, for the Spring Term only.

9. The contract between Laurentian and the sessionals teaching the Relevant Courses will be in accordance with Laurentian's collective agreement with LUFA.

10. USudbury will provide to Laurentian the names and contact information of the previous sessional teachers of the Relevant Courses by 12:00 P.M. on Friday, April 16, 2021.

11. USudbury confirms, represents and warrants, as a condition to Laurentian entering into this agreement, that it has full ownership and all other rights including intellectual property rights to all aspects of the Relevant Courses including all course materials, and the delivery of these Relevant Courses by Laurentian using the existing course materials will not infringe upon any other person's rights in doing so.

12. Any communications to be issued by Laurentian or USudbury with respect to this matter will be provided to the other in advance, to ensure that there is no inconsistent or confusing messaging being provided to students.

13. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

[Signature page to follow]

DATED at Sudbury this 16th day of April, 2021.

Laurentian University of Sudbury
Name: Robert Haché
Title: President and Vice-Chancellor

University of Sudbury
Name: John Meehan
Title: President and Vice-Chancellor

DATED at Sudbury this 16th day of April, 2021.

_____

Laurentian University of Sudbury
Name: Robert Haché
Title: President and Vice-Chancellor

_____

University of Sudbury
Name: John Meehan
Title: President and Vice-Chancellor

This is Exhibit “H” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

**LAURENTIAN UNIVERSITY FACULTY ASSOCIATION**
**MEDIATION TERM SHEET**

**DATED APRIL 7, 2021**

The below sets out the key financial terms and conditions agreed to following negotiations between Laurentian University of Sudbury ("**Laurentian**") and the Laurentian University Faculty Association ("**LUFA**") in the confidential mediation overseen by Mr. Justice Sean Dunphy, the Court-appointed mediator in the CCAA proceedings of Laurentian (in such capacity, the "**Mediator**").

For greater certainty, this term sheet and its schedules reflect certain key terms and conditions required by Laurentian to become a financially sustainable post-secondary organization, in terms of monetary value and stability of overall operations.

| | |
|---|---|
| **Term of Collective Agreement** | The collective agreement shall have a five-year term commencing on July 1, 2020 up to and including June 30, 2025. |
| **Faculty Member Termination** | The parties agree that the total number of Full-Time Faculty Members who will be terminated or who elect to retire pursuant to the Retirement Election below is 116 Faculty Members, including 6 members of Administration. The agreed-upon confidential list of Faculty Members who will be terminated is attached hereto as Confidential Schedule "**A**" (the "**Terminated Faculty Members**"). |
| **Effective Termination Date** | The effective termination date of the Terminated Faculty Members for those teaching courses in this academic term shall be May 15, 2021, to allow for marking of final exams, papers and communicating grades. For all Terminated Faculty Members who are not teaching courses in this academic term, the effective termination date shall be April 30, 2021. |
| **Retirement Election** | Faculty Members may elect, by irrevocable written notice provided on or before April 9, 2021, that any Faculty Members intend to retire (the "**Retiring Faculty Members**").<br><br>The effective termination date of the Retiring Faculty Members for those teaching courses in this academic term shall be May 15, 2021, to allow for marking of final exams, papers and communicating grades. For all Retiring Faculty Members who are not teaching courses in this academic term, the effective termination date shall be April 30, 2021. |
| **Notice to Faculty Members** | The parties agree to develop mutually acceptable communications to be delivered to the Terminated Faculty Members. |

**Terms of Termination of Faculty Members**

Terminated Faculty Members shall be entitled to file a claim in the CCAA claims process in respect of all entitlements relating to their employment or former employment with Laurentian in accordance with their entitlement under the collective agreement and the terms of the CCAA.

**Treatment of Retiring Faculty Members**

Retiring Faculty Members shall be entitled to receive the following:

(i) A claim in the CCAA claims process in accordance with their entitlement under the collective agreement and the terms of the CCAA;

(ii) Access to office space for up to June 30, 2023. The office provided shall be at the discretion of the Dean, and may be shared office space;

(iii) Emeritus Status (as defined in the Collective Agreement), if eligible and alternatively adjunct status if eligible, such determinations to be made on a reasonably expedited basis;

(iv) To be added to the sessional roster in the applicable Department/School and be given priority for one three credit course for which no member has establishment, for which they have taught at least once in the past 3 years, to be paid at the overload rate;

(v) Continued library privileges;

(vi) Until June 30, 2023, the ability to maintain their current status with respect to supervision of students and will be paid when the graduate student completes a thesis in accordance with article 5.40.8;

(vii) Their name appearing on the University website for their Department as long as they are either engaged as a sessional instructor and/or with respect to supervision of students;

(viii) Until June 30, 2023, with 100% of the premium cost to be at the cost of the retiree, the option to maintain Laurentian Health Benefits (Health & Dental) subject to Manulife approval;

(ix) Their name included in the next service ceremony for Laurentian; and

(x) Retiring Members shall be advised that the option to commute the value of their pension at the wind-up transfer ratio remains available to them at this time but may not be available in the future.

**Claims of Terminated Faculty Members**

Any and all claims that each of the Terminated Faculty Members listed in Confidential Schedule "**A**" has against Laurentian shall be dealt with solely as part of a claims process in the CCAA proceedings.

It is further agreed that a Terminated Faculty Member shall have no further or other rights against Laurentian pursuant to the collective agreement or otherwise upon termination, save and except as it relates to the registered pension plan and the terms of the collective agreement as amended herein. In the event of an inconsistency between the collective agreement and this Term Sheet, this Term Sheet shall be paramount.

**Termination of Counsellor**

The parties agree that the one counsellor listed in confidential Schedule "**B**" to this term sheet shall be terminated (the "**Terminated Counsellor**"), with an effective termination date of April 30, 2021.

**Terms of Termination of Counsellor**

The Terminated Counsellor shall be entitled to file a claim in the CCAA claims process in respect of all entitlements relating to their employment or former employment with Laurentian, which claim shall be in accordance with their employment contract with the University and the terms of the CCAA.

**Centre for Academic Excellence**

Laurentian will agree to terminate 1 academic advisor position.

**Salary Adjustments to Faculty Members**

As per Schedule "**C**", effective May 1, 2021, each of the Faculty Members' salary shall be decreased by five percent (5%).

**Year 1** (July 1, 2020 – June 30, 2021)

(i) ATB to Base Salary: 0%
(ii) Annual Progress-Through-the-Ranks: $0
(iii) Promotion and Additional Qualifications: $2,900

**Year 2** (July 1, 2021 – June 30, 2022)

(i) ATB to Base Salary: 0%
(ii) Annual Progress-Through-the-Ranks: $0
(iii) Promotion and Additional Qualifications: $2,900

**Year 3** (July 1, 2022 – June 30, 2023)

(i) ATB to Base Salary: 1%
(ii) Annual Progress-Through-the-Ranks: $2,900
(iii) Promotion and Additional Qualifications: $2,900

**Year 4** (July 1, 2023 – June 30, 2024)

(i) ATB to Base Salary: 1%
(ii) Annual Progress-Through-the-Ranks: $2,900
(iii) Promotion and Additional Qualifications: $2,900

**Year 5** (July 1, 2024 – June 30, 2025)

(i) ATB to Base Salary: 1%
(ii) Annual Progress-Through-the-Ranks: $2,900
(iii) Promotion and Additional Qualifications: $2,900

Each member of the bargaining unit will take 5 unpaid furlough days in each of 2021-22, 2022-23 and 2023-24 to be processed as one day per month between July and November.

Laurentian will ensure that there is an equitable distribution of salary reductions among LUFA, LUAPS and Senior Leaders over the term of the collective agreement.

**Professional Development**

As per Schedule "**D**", upon execution of this Term Sheet, all existing professional development balances allocated to each of the Faculty Members shall be zero.

Allocation of professional development funds shall resume on July 1, 2021, in accordance with the terms of the collective agreement.

**Faculty Member Workload**

As per Schedule "**E**", the maximum normal teaching load for each academic year shall be two and one-half (2 ½) full-year courses or fifteen (15) credit equivalents in all Faculties.

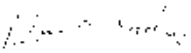
**Other Amendments to Collective Agreement**

Please refer to the attached Schedules "**F**" to "**EE**" to this Term Sheet for other amendments to the Collective Agreement.

| | |
|---|---|
| **Binding Arbitration** | Issues specifically identified within Schedules "**F**" to "**EE**" which stipulate that by agreement of the parties they are to be determined through binding arbitration shall, once determined and if applicable, constitute amendments to the collective agreement. Such binding arbitration shall take place before William Kaplan and will be completed by June 18, 2021. |
| **Grievances** | The parties agree that grievances for non-monetary issues or those not involving the expenditure of money such as accommodation, denial of tenure or unjust dismissal, which arise on or after February 1, 2021 shall not be stayed as a result of the CCAA proceeding, and may proceed in the ordinary course. |
| **Entire Agreement** | This Term Sheet and its Schedules constitute the entire agreement between the parties pertaining to the subject matter of this Term Sheet. For greater certainty, in the event that this Term Sheet and the Schedules conflict, this Term Sheet shall be paramount. |
| **Governing Law** | The terms of settlement and amendments to the collective agreement set out in this Term Sheet shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario. While the stay of proceedings remains in force, the CCAA Court shall have the exclusive jurisdiction to determine any action arising under this agreement and the parties hereby attorn to the exclusive jurisdiction thereof. Nothing in this agreement derogates from the exclusive jurisdiction conferred on the Ontario Labour Relations Board or a labour arbitrator by the *Labour Relations Act*, 1995, S.O. 1995, c.1-Schedule A for non-monetary matters during the currency of the stay of proceedings, and for all matters upon emergence or termination of the CCAA proceeding. |
| **Amendments** | This Term Sheet, once executed, shall only be modified in writing and upon signature by the parties hereto. |
| **Notices** | All notices, requests, consents and other communications delivered pursuant to the terms of this Term Sheet shall be contained in a written instrument and may be delivered in person or sent by internationally recognized overnight courier or by email. |

[**Remainder of the page intentionally left blank**]

**LAURENTIAN UNIVERSITY OF SUDBURY**

Per:  c/s
Name: Robert Haché
Title: President and Vice-Chancellor
I have the authority to bind the Corporation.

**LAURENTIAN UNIVERSITY FACULTY ASSOCIATION**

Per: c/s
Name: David Wright
Firm: Ryder Wright Blair & Holmes LLP
Title: Chief Negotiator and Counsel

I have the authority to bind LUFA.

**Schedule "A"**

**List of Terminated LUFA Members**

See the attached password-protected spreadsheet.

**Schedule “B”**

**List of Terminated Counsellor**

See the attached password-protected spreadsheet.

**Schedule "C"**

**Salary**

**The parties agree to the following:**

Each member of the bargaining unit will take 5 furlough days in each of 2021-22, 2022-23 and 2023-24 to be processed as one day per month between July and November.

**The parties agree to amend the following language in Article 8.10**

8.10.1 The salary of each Member shall be composed of the base salary of each Member as of June 30, 2020 as modified by the following items:

a) For July 1, 2020, a scale increase of **zero percent (0%)** of the Member's regular salary.

b) For July 1, 2020, **no Progress-Through-The-Ranks** increment or merit award for the evaluation carried out for the year 2019-20.

c) Additional qualification increments shall be awarded pursuant to Article 8.30 – Additional Qualifications Increments in an amount of $2,900.

d) Promotion increments shall be awarded according to Articles 8.15 – Progress-Through-The-Ranks Increments regardless of breakpoints.

8.10.2 The salary of each Member shall be composed of the base salary of each Member as of M**ay 1**, 2021 as modified by the following items:

(a) For **May 1**, 2021, a scale decrease of five percent (5%) of the Member's regular salary.

(b) For July 1, 2021, no Progress-Through-The-Ranks increment or merit award for the evaluation carried out for the year 2020-21.

(c) Additional qualification increments shall be awarded pursuant to Article 8.30 – Additional Qualifications Increments in an amount of $2,900.

(d) Promotion increments shall be awarded according to Articles 8.15 – Progress-Through-The-Ranks Increments regardless of breakpoints.

8.10.3 The salary of each Member shall be composed of the base salary of each Member as of June 30, 2022 as modified by the following items:

(a) For July 1, 2022, a scale increase of one percent (1%) of the Member's regular salary.

(b) For July 1, 2022, a Progress-Through-The-Ranks increment for the evaluation carried out for the year 2021-2022 as described in Article 8.20 – Procedures for the Award/Denial of a Progress-Through-The-Ranks Increment. The Progress-Through-The-Ranks increments shall have a value of two thousand nine hundred dollars ($2,900).

(c) Additional qualification increments shall be awarded pursuant to Article 8.30 – Additional Qualifications Increments in an amount of $2,900.

(d) Promotion or Merit increments shall be awarded according to Articles 8.15 – Progress-Through-The-Ranks Increments and Article 8.25 – Merit Increments, regardless of breakpoints.

8.10.4 The salary of each Member shall be composed of the base salary of each Member as of June 30, 2023 as modified by the following items:

(a) For July 1, 2023, a scale increase of one percent (1%) of the Member's regular salary.

(b) For July 1, 2023, a Progress-Through-The-Ranks increment for the evaluation carried out for the year 2022-2023 as described in Article 8.20 – Procedures for the Award/Denial of a Progress-Through-The-Ranks Increment. The Progress-Through-The-Ranks increments shall have a value of two thousand nine hundred dollars ($2,900).

(c) Additional qualification increments shall be awarded pursuant to Article 8.30 – Additional Qualifications Increments in an amount of $2,900.

(d) Promotion or Merit increments shall be awarded according to Articles 8.15 – Progress-Through-The-Ranks Increments and Article 8.25 – Merit Increments, regardless of breakpoints.

8.10.5 The salary of each Member shall be composed of the base salary of each Member as of June 30, 2024 as modified by the following items:

(a) For July 1, 2024, a scale increase of one percent (1%) of the Member's regular salary.

(b) For July 1, 2024, a Progress-Through-The-Ranks increment for the evaluation carried out for the year 2023-2024 as described in Article 8.20 – Procedures for the Award/Denial of a Progress-Through-The-Ranks Increment. The Progress-Through-The-Ranks increments shall have a value of two thousand nine hundred dollars ($2,900).

(c) Additional qualification increments shall be awarded pursuant to Article 8.30 – Additional Qualifications Increments in an amount of $2,900.

(d) Promotion or Merit increments shall be awarded according to Articles 8.15 – Progress-Through-The-Ranks Increments and Article 8.25 – Merit Increments, regardless of breakpoints.

**Schedule "D"**

**Professional Development Expenditures**

The parties agree that Professional Development Expenditures, as per Articles 4.70.1 and 6.45.1, will not be allocated and/or paid out for the 2020-2021 academic year. In addition, any outstanding balances from previous years will not be carried over.

It is understood that this measure will be applied equally to the Professional Development Allowances contractually provided to any Senior Academic Administrators or applicable Laurentian University Administrative and Professional Staff.

**Schedule "E"**

**Workload Across All Faculties**

**The parties agree to amend the following language in Article 5.40.4 (a):**

(a) Teaching Members: In the assignment of teaching loads by the Deans, in consultation with the academic Departments/Schools, the maximum normal teaching load per academic year shall be ~~two (2) full courses or twelve (12) credit equivalents in the Faculty of Science, Engineering and Architecture and~~ two and one-half (2 ½) full courses or fifteen (15) credit equivalents in all ~~other~~ Faculties.

**Schedule "F"**

**Laurentian University Research Fund (LURF)**

**The parties agree to suspend obligations under 6.25.1 for the term of this Collective Agreement.**

**Schedule "G"**

**LURF Additional Fund**

**The parties agree to suspend obligations under 6.25.2 for the term of this Collective Agreement.**

**Schedule "H"**

**Cancellation for Sessionals**

**Laurentian requests to amend the following language in Article 4.52.1 (d):**

Cancellation Articles shall be used only where there is good reason to believe that enrolment levels may be vulnerable. In the event that a sessional contract is cancelled within 15 days of the course start date, of a cancellation the Employer shall:

> Attempt to find work of equivalent value for which the Sessional Member is qualified; and failing this
>
> Shall pay a cancellation fee of fifteen percent (15%) of the agreed salary as outlined in the Letter of Appointment.
>
> Members who conduct instruction through distance education delivery modes shall be paid two hundred and fifty dollars ($250).

Sessional Members shall accrue Sessional Seniority for all cancelled courses once they have achieved establishment. Cancelled courses shall not count toward establishment.

**The parties agree to have this issue addressed by way of binding arbitration.**

**Schedule "I"**

**Gym Memberships**

**The parties agree to delete articles 4.60.1 and 8.60.1 of the Collective Agreement. It is further understood that other employee groups shall not receive a free or preferential rate for access to the Physical Education Centre.**

**4.60.1** Sessional Members and their spouse and dependants as defined for full-time Members are eligible for Physical Education Centre (Sudbury Campus) membership and locker for the academic year in which they are employed, subject to the payment of the annual service fee and locker rental fee as established by the Division of Physical Education.

**8.60.1** As of the effective date of appointment, all full-time Members, their spouses and dependants as defined in Article 8.50 – Tuition Fee Exemption and Spousal Library Card shall be eligible for free Physical Education Centre membership subject to the payment of an annual service fee and locker rental fee as established by the Division of Physical Education.

**As a result of the above, the following articles are moot and Laurentian and LUFA agree that any references to fees and access to the Physical Education Facilities and/or any subsidies for other gym memberships should be deleted. These include:**

Article 4.60.2 - (Gym Membership for Sessional Members teaching at the Barrie Campus)
Article 5.90.3 (d) - (Retirees)
Article 10.10.18 (e) – Members terminated through Redundancy
Article 10.15.22 (e) – Members terminated through Financial Exigency

~~**4.60.2** Sessional Members teaching at the Barrie campus will be reimbursed by the University up to two hundred and fifty dollars ($250) for an individual gym membership, or five hundred dollars ($500) for a family gym membership, upon production of receipts.~~

~~**5.90.3** Members retired from this University shall retain:~~

~~(d) The same eligibility for free Physical Education Centre membership for themselves, their spouses and their dependants as full-time Members, as per Article 8.60 – Physical Education Facilities.~~

~~**10.10.18** All Members who are on tenured or three (3) year probationary appointments, and whose appointments are terminated pursuant to this Article (Redundancy) shall have rights as set out hereafter:~~

~~(e) Eligibility for themselves and their dependants for exemption from tuition and Physical Education fees until suitable alternative employment is secured or for three (3) years in the case of a Member on a three (3) year probationary appointment or for five (5) years in the case of a tenured Member if suitable alternative employment has not been secured.~~

~~**10.15.22** All tenured and probationary Members whose appointments are terminated pursuant to this Article shall have rights as set out hereafter:~~

~~(e) Eligibility for themselves and their dependants for exemption from tuition and Physical Education fees until suitable alternative employment is secured or for three (3) years, whichever is less.~~

**Schedule "J"**

**Letter of Understanding – Revenue Stream Creation**

[INTENTIONALLY WITHDRAWN]

**Schedule "K"**

**Tuition Exemption**

**The parties agree to amend the following language in Articles 8.50:**

8.50.1 The following shall be eligible for Tuition Fee Exemption.

(a) All full-time Members as of the effective date of appointment and all retired full-time Members.

(b) Spouses and dependants of all full-time Members, ~~of retired full-time Members, of deceased retired Members~~ and of Members who died while in the full-time employ of the University. Dependants include wife and husband (including common-law relationships), children up to the age of twenty-six (26) years (including natural, step, and adopted children, wards and other children for whom the Member is the primary caregiver).

8.50.2 Exemption from tuition fees is subject to the following conditions:

(a) A student must remain in good standing as defined by the Registrar's Office in order to qualify for tuition exemption. In the event of loss of good standing, the same course(s) or an equivalent one(s) may be taken at the student's expense in order to reinstate good standing and eligibility.

(b) Students who are eligible for an exemption from tuition fees are not exempted from the payment of incidental fees.

(c) To the extent that a grant is specifically given to defray tuition a student who receives a grant is not eligible for exemption from tuition fees.

(d) To the extent that tuition is reduced by a Laurentian University tuition scholarship, the student is not eligible for exemption from tuition fees. Where the funds are from an outside source this condition does not apply.

(e) International tuition fees will only be covered up to the rate of domestic tuition fees. The remaining balance is the responsibility of the student.

**Schedule "L"**

**Redundancy**

[INTENTIONALLY WITHDRAWN].

**Schedule "M"**

**Coordinator Credits**

**Laurentian has requested to eliminate paragraph two in Article 5.40.4 (a):**

~~Effective July 1st, 2017 the current practices (2014-2017) regarding the application of coordinator credits and student supervision shall not change.~~

**Laurentian has requested to amend 5.40.3 (b) (v) as follows:**

All non-instructional work, including coordination duties, with a credit weighting or stipend and a code identifying the nature of the work.

**The parties agree that this issue will be dealt with by way of binding arbitration.**

**Schedule "N"**

**Course Buyouts**

**Laurentian requests to amend the following language in Article 5.40.10 (b):**

In order to promote scholarly activity, as defined by section B) Scholarly Activity of Article 5.15 – Rights, Responsibilities and Duties of Academics within the University, a Member may have her/his teaching/library service workload altered. Requests for workload reductions as a result of other paid activity shall be considered in accordance with the provisions of Article 7.35 – Voluntary Reduced Workload. However, contract research where the Member is paid a stipend not to exceed twenty thousand dollars ($20,000) for her/his services may be considered under this provision.

(b) With compensation to the University: A Member with a regular teaching load may elect to buy-out of up to fifteen (15) credits of teaching load over five (5) years, not to exceed six (6) credits per year, or the equivalent of professional library service in order to concentrate on research activities. It is acknowledged that certain grants may require a reduction in teaching loads exceeding fifteen (15) credits. The buyout must be applied for no later than February 1 of the year preceding the academic year for which it is requested and the Dean/University Librarian shall not unreasonably refuse such request. The Dean/University Librarian shall communicate her/his decision by April 1. A Member taking advantage of this provision will be ineligible to receive an overload course during the same period. The buy-out shall be charged to the Faculty Member at the total rate of pay for established sessionals plus 12%. ~~cover the actual cost (including benefits) to replace the teaching/professional library work but shall not exceed the overload or sessional rate of pay as appropriate.~~ A Member shall not be refused such a request for two (2) consecutive years.

**The parties agree to have this issue addressed by way of binding arbitration.**

**Schedule "O"**

**Low Enrollment Courses**

**Laurentian requests to amend the following language in Article 5.40.4 and 5.40.7:**

The composition of the workload of Members may vary with their discipline, and will take into account the capabilities of the Members, the need to maximize their potential and any obligations placed on them within the University's operations, consistent with the terms of this Collective Agreement. In the assignment of teaching loads, the Deans, in consultation with the Departments/Schools, shall consider not only the number of courses taught by a Member, but the size and type of such courses as well as administrative and other duties. Members' workloads shall also be subject to the following maximum norms for assigned workloads.

d. The Parties agree that it is mutually beneficial to allow Members to bank or owe teaching credits as outlined below. The banking or owing of teaching credits will be permitted in the following cases:

    i. The Member proposes to arrange a teaching-reduced or teaching-free term for the purposes of scholarly activity

    ii. The total credit value of the Member's normal assigned teaching load deviates by not more than six (6) credits from the normal maximum teaching load

    iii. The Member undertakes academic supervision of an individual student pursuant to Article 5.40.8 (h)

    iv. Courses assigned as part of the Member's normal workload are cancelled due to low enrolment. ~~zero enrolment~~

5.40.7 Once assigned, workloads shall not be altered except in cases of emergency. If a proposed workload must be altered, such alteration will be taken into consideration in the annual performance evaluation. However, alterations for reasonable program requirements and low enrolment may be made within 30 days of the start of the term in which the course is being offered.

If the Dean, for non-emergency reasons, deems it necessary to alter the workload of a Member once it has been assigned, the Dean must obtain the agreement of the Member.

Any alteration to a Member's workload, including any associated overload payments shall be communicated to each Member of the Department/School within five (5) working days after the Member has been formally notified of the change.

Notwithstanding the provisions of this Article, when an assigned course(s) is cancelled because of low enrolment ~~zero registration~~ in the course(s) there arises an obligation on the part of the Member to undertake additional work in order to maintain fairness and equity within the Department/School. The nature and extent of such work shall be determined in

discussions between the Member, the Chair of the Department/School and the Dean. In the event that the Member was scheduled to receive an overload stipend such a stipend should be reduced appropriately. In the case where additional work assigned is in the form of a course, such course shall be one the Member has taught in the last two (2) years, unless otherwise agreed to by the Member.

**The parties agree to have this issue addressed by way of binding arbitration.**

**Schedule "P"**

**Additional Matters for Binding Arbitration**

**The parties agree the following matters will be sent for binding arbitration:**

1. Pregnancy, Parental and Adoption Leaves
2. Faculty Personnel Committees
3. Outsourcing
4. Senior Academic Administrators – nomination process
5. Reimbursement for workload of union executives

## Schedule “Q”

## New Course Preparation

**The parties agree to suspend the language in Article 5.40.8 (d) for the duration of this agreement.**

## Schedule "R"

## Thesis Supervision

**The parties agree to amend the following language in Article 5.40.8:**

(g) Full-time Members teaching in programs where the preparation of a thesis is mandatory for students have an obligation to participate in the thesis supervision provided that they are qualified to do so. However, the Parties agree that the close working relationship desirable for the successful preparation of a thesis is best achieved under conditions that allow for mutual choice on the part of the Member and the student before entering the supervisor/student relationship.

(h) ~~Notwithstanding Article 5.40.6 (e) above, w~~ When a Member undertakes academic supervision of an individual student in a program offered by Laurentian University, ~~when such work is over and above the normal workload,~~ such supervisory work shall be recognized upon its successful defence or completion as follows:

| **Supervisory work** | **~~Credit value~~** | **Monetary value ~~at $1,000 / credit~~** |
|---|---|---|
| PhD Thesis | ~~3~~ | $3,000 |
| Master's Thesis or Advanced Practicum in Social Work | ~~1~~ | $1,000 |
| PhD or Master's Research Project, Research Essay, Directed Reading Seminar or Independent Study | ~~½~~ | $500 |
| Undergraduate Thesis or School of Architecture Master's Thesis | ~~⅓~~ | $333 |
| Undergraduate Directed Reading Seminar or Independent Study where mandatory | ~~¼~~ | $250 |

(i) The above ~~credits~~ compensation may be shared by agreement between two (2) or more Members who have contributed to the thesis or other supervision. In cases of disagreement, the Dean shall arbitrate the proportions.

(ii) ~~A Member's teaching credits for individual supervisions as outlined in this paragraph can be accumulated towards a reduction of the Member's normal teaching load to a maximum of three (3) credits release per academic year. Unused credits can be carried over to subsequent years. The scheduling of the reduction shall be with the mutual agreement of the Member and her/his Dean.~~

(iii) ~~Alternatively,~~ Members ~~may~~ will be paid the ~~credit~~ monetary value accumulated for any supervisory work in their professional expenditure account. ~~At any time, Members may transfer the monetary value of the accumulated credits into their professional development expenditure account.~~

(iv) Once the supervisory work has been completed, it shall be the responsibility of the Member to report such completion to the Dean on a form co-signed by her/his Chair/Director. The Dean's Office shall ~~either register the credit on the Member's workload credit account to be created in Datatel or~~ arrange for the transfer ~~the~~ of funds to the Member's professional development expenditure account within 60 days of approval.~~, as the Member directs~~.

(v) Based on existing program requirements, the Dean shall identify those programs which have mandatory supervisory needs as per Article 5.40.8 (g) above. Any Member planning to supervise an individual student in another program ~~for credit~~ under this paragraph needs the prior authorization of the Dean.

~~(vi) Research Chairs shall be eligible for the monetary value only in Articles 5.40.8 (h) (i) to 5.40.8 (h) (iv) above.~~

The parties agree that the sole issue of whether the transfer of funds pursuant to paragraph (h)(iv) above will be processed within 30 or 60 days of approval will be addressed by way of binding arbitration.

**Schedule "S"**

**Expedited Mediation and Arbitration Processes**

**The parties agree on the following letter of understanding, which would expire on June 30, 2025:**

EXPEDITED MED-ARBITRATION

1. The parties may be represented by legal counsel for the expedited med-arbitration dates;
2. The parties will agree to up to four (4) dates for expedited med-arbitration for each year of the term of the Collective Agreement;
3. At least sixty (60) days prior to each expedited med-arbitration date the parties will agree on the grievances to be dealt with on that day;
4. The parties will schedule up to three (3) grievances to be heard on each expedited med-arbitration date.
5. Forty-five (45) days prior to each expedited med-arbitration date a party may make requests for production of documents from the other party. Disclosure will be provided within fifteen (15) days.
6. Each grievance proceeding to expedited med-arbitration will be heard and determined on the basis of written briefs prepared by the parties as supplemented by brief oral arguments.
7. The parties will exchange written briefs at least fourteen (14) days in advance of the expedited med-arbitration.
8. The parties` written briefs for each expedited med-arbitration will contain a summary of the facts the party will rely on, a copy of all documents that the party will rely on in support of its case, as well a written argument in summary form and a copy of all cases on which the party relies. The briefs will be sent to the med-arbitrator seven (7) days in advance of the med-arbitration date.
9. In the event that a party does not deliver its written brief within the time required under paragraph 7 above, or with the content required under paragraph 7 above, the other party may, at its sole discretion cancel the med-arbitration date.
10. Any procedural disputes shall be resolved by the arbitrator assigned to the med-arbitration date in question on an expedited basis.
11. Awards arising out of this process are non-precedential and may not be referred to or relied upon by the Parties in any other proceedings unless mutually agreed otherwise. Negotiated settlements may or may not be precedential as agreed by the parties.

12. The med-arbitration will be heard by the following Arbitrators on a rotational basis: William Kaplan, Sheri Price, Elizabeth McIntyre and Brian Sheehan.

**Schedule "T"**

**Existing Practices**

[INTENTIONALLY WITHDRAWN]

**Schedule "X"**

**Transparency and Oversight**

**The parties agree on the following actions to be taken by the University in response to the Union's concerns on transparency and oversight:**

1. Laurentian will jointly propose that the *Laurentian University of Sudbury Act* be amended to permit up to 2 faculty to be voting members of the Board as soon as practicable;
2. Laurentian will undertake a governance review, including with the assistance of an experienced external advisor;
3. Legislative amendments to permit (1) will be included as part of any Plan of Arrangement.

**Schedule "Y"**

**The parties agree to the following changes:**

**Definitions- Article 1.30**

(j) University Librarian shall mean the University Librarian duly appointed or the University Librarian's designate ~~the officer in charge of the University Library and Archives.~~

Professional Practice for Librarians and Archivists shall mean contribution to the selection, development and implementation of strategic directions, priorities, policies, procedures and standards for the resources and services offered by the Library and the Archives.

**Academic Workload- 5.40**

5.40.3 (c) Establishing the Professional Practice Component of Individual Workloads – Librarians

(a) In considering the professional practice component of individual workloads, relevant factors include the following, as applicable:

1. Development, management and evaluation of information resource collections;
2. Provision of specialized and general reference services;
3. Appraisal, acquisition, control, storage, preservation and conservation of information
   resources and collections;
4. Management of material library resources;
5. Selection, development, implementation and management of information systems designed to enable access to library services and resources, build digital collections, and facilitate scholarly communication;
6. Provision of information literacy and curriculum support including programming, collaboration, instruction and teaching;
7. Faculty outreach and liaison, including participation in research and support for scholarly communication;
8. Evaluation, measurement and analysis of user needs and library services and resources;
9. Research services, extension, and other activities related to programs at the University; and
10. Any other relevant activities.

**Schedule "Z"**

**The parties agree that the Retiree Health Benefits Plan (RHBP) will cease to exist and all Collective Agreement references will be eliminated. Faculty members shall be entitled to file claims as part of any CCAA claims process for the amount of contributions made by the faculty member to the RHBP.**

## Schedule "AA"

## RECALL RIGHTS

**The parties agree to amend the following language in articles 10.10.18 (b) and 10.15.22 (b):**

a) Full-time Members

Any full-time Member whose employment is terminated through the insolvency proceedings in Court file CV- 21-656040-00CL will have the rights provided in Article 10.10 ~~10.10.18(b)~~ and shall be granted recall rights to any new academic positions created and any academic vacancies which arise at the University in accordance with the conditions, processes and timeframes set out in Article 10.10.18(b) as amended below.

(b) Members who have not reached the normal retirement age shall be granted, in order of seniority, first ~~First~~right of refusal ~~of~~to all academic vacancies within Laurentian University for which they have academic competence ~~as judged by the Vice-President, Academic and Provost in consultation with the Department/School to which the individual is to be appointed~~unless the Employer can substantiate that the post cannot be filled by the member or by a re-arrangement of the duties of other members of the same academic unit for a period of three (3) years for a Member on a three (3) year probationary appointment and five (5) years for a tenured Member from the effective date of termination. Individuals who accept such positions shall return to the University at the rank they held when their appointments were terminated, with full recognition for years of service at Laurentian. Disputes arising out of these recall procedures are referable to the grievance and arbitration process set out in this Collective Agreement.

Individuals who are recalled pursuant to this Article shall have up to thirty (30) days to accept such recall offer, and shall terminate their alternative employment and take up the offered post, as soon as they are contractually able to do so but in no instance later than six (6) months after accepting the recall offer.

b) Sessional Members

Sessional members shall have the right to remain on the roster and exercise roster, seniority and establishment rights for any courses they have earned seniority or establishment rights with respect to, or which are substantially similar to courses for which they earned seniority and establishment rights. Sessional members shall have the right to exercise roster, seniority and establishment rights in any Department/School which offers any such courses regardless of whether they earned their seniority and establishment rights in the Department or School now offering such courses.

Article 4.15.8 shall not apply.
Despite Article 4.15.6, for the duration of the renewed Collective Agreement, where no other member has establishment rights, establishment rights shall not be specific to the medium, location and language of course for all members who have earned establishment rights prior to April 30, 2021.

Notice of all sessional contracts to be filled will be provided on a University wide basis.

**Schedule "BB"**

LUFA agrees to the following:

a) To withdraw any claim for monetary relief in the Unfair Labour Practice complaint.

b) To withdraw the Judicial Review Application.

**Schedule "CC"**
**Counsellors**

**The parties agree on the following actions to be taken by the University in response to the Union's concerns regarding Counsellors:**

**Counsellors**

Upon the completion of negotiations of a first collective agreement for the newly certified Counsellors, the University will enter into a Memorandum of Settlement respecting such negotiations, and attaching the resulting agreement to the LUFA Collective Agreement.

The parties shall make such amendments to the terms of the LUFA Collective Agreement as are required to give effect to the terms of the Memorandum of Settlement respecting the Counsellors bargaining unit.

Article 2.15.1 will be amended to add as a 4th paragraph that the bargaining unit includes:

- All persons employed by Laurentian University in the job classification of Counsellors, save and except, managers and persons above the rank of manager and for persons any bargaining agent held bargaining rights as of April 9, 2020.

## Schedule "DD"

**Article 9.20 – Term of Office of Chairs/Directors**

**The parties agree to changes to the following language in article 9.20:**

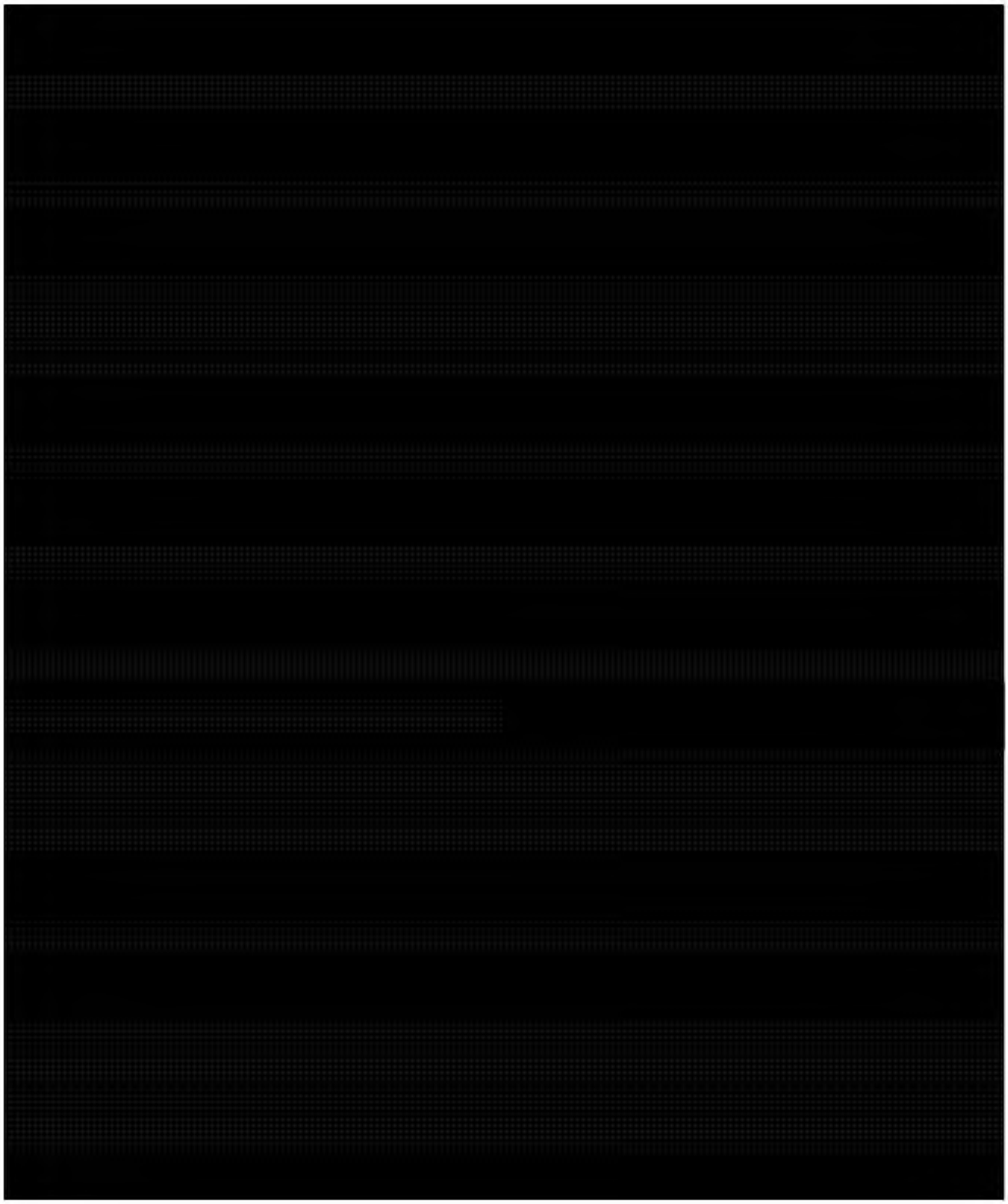
9.20.2

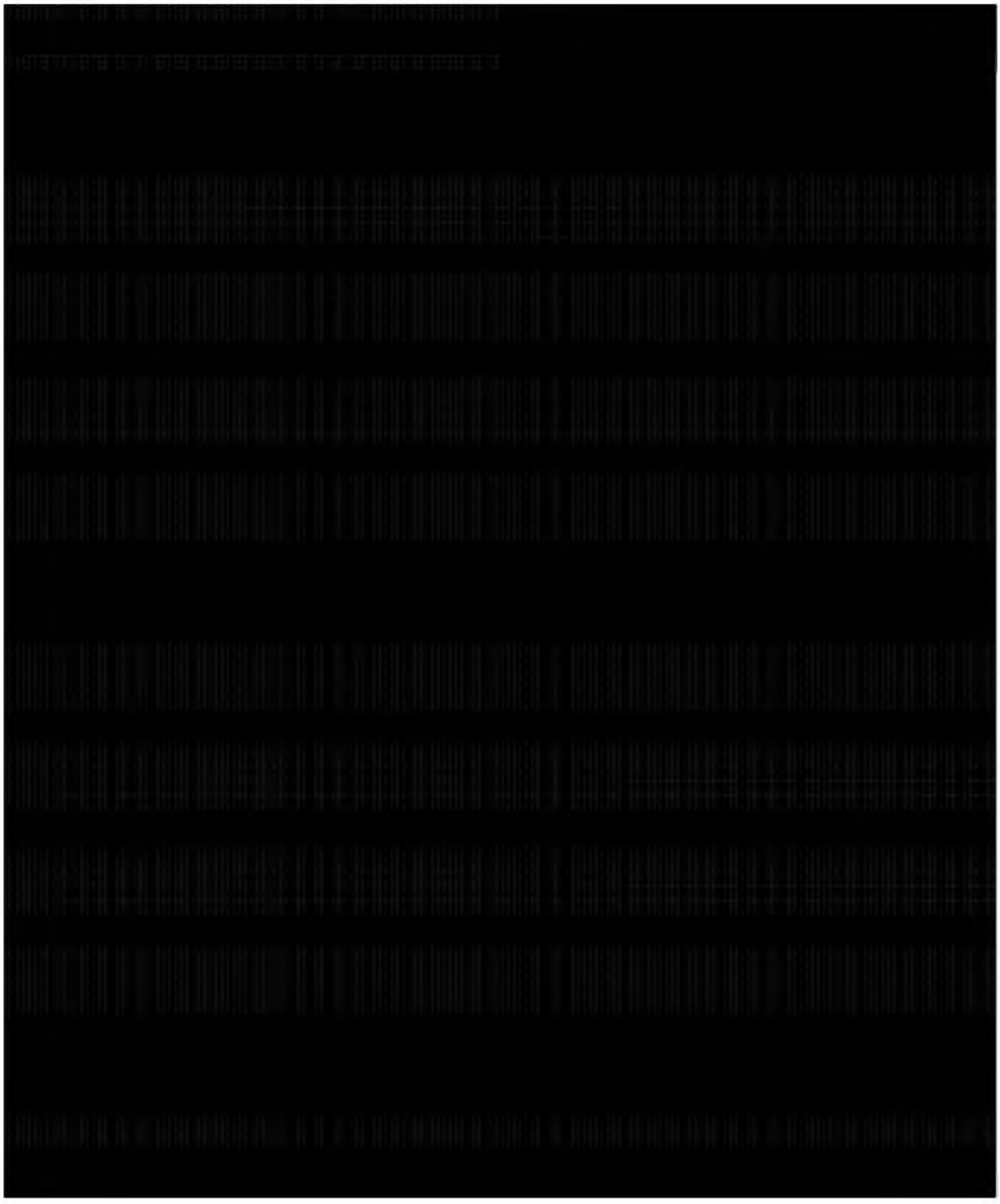
Should Chairs/Directors not be able to carry out their duties for ~~four (4)~~ ***six (6)*** months or less, the Chairs/Directors shall make provision for the take-over of their duties in consultation with the Department/School and Dean/University Librarian.

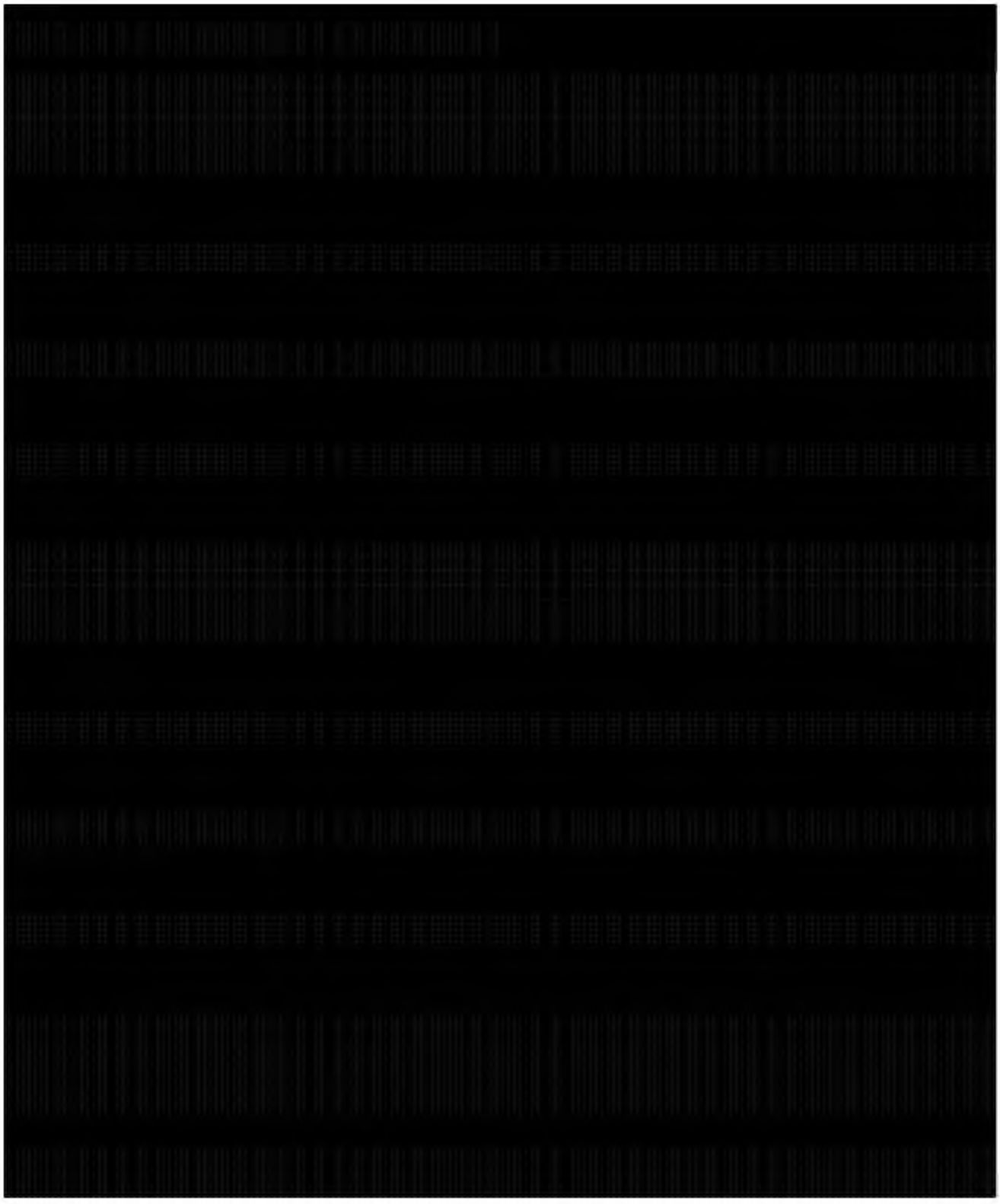
9.20.3

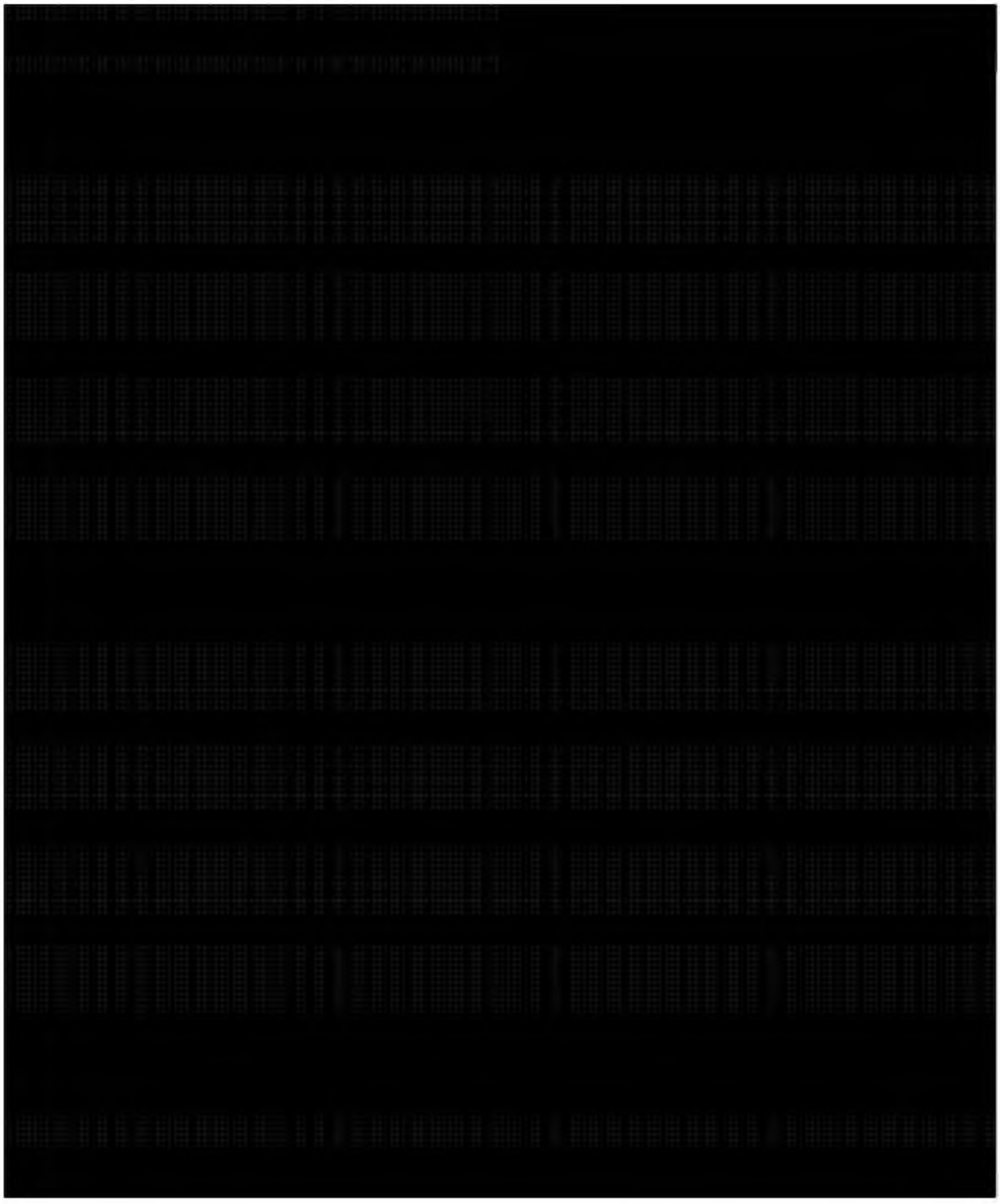
If the absence is for a period of longer than ~~four (4)~~ ***six (6)*** months, the Chairs/Directors shall relinquish her/his title and a new Chair/Director shall be selected according to the procedures set out in Article 9.15 – Selection of Chairs/Directors.

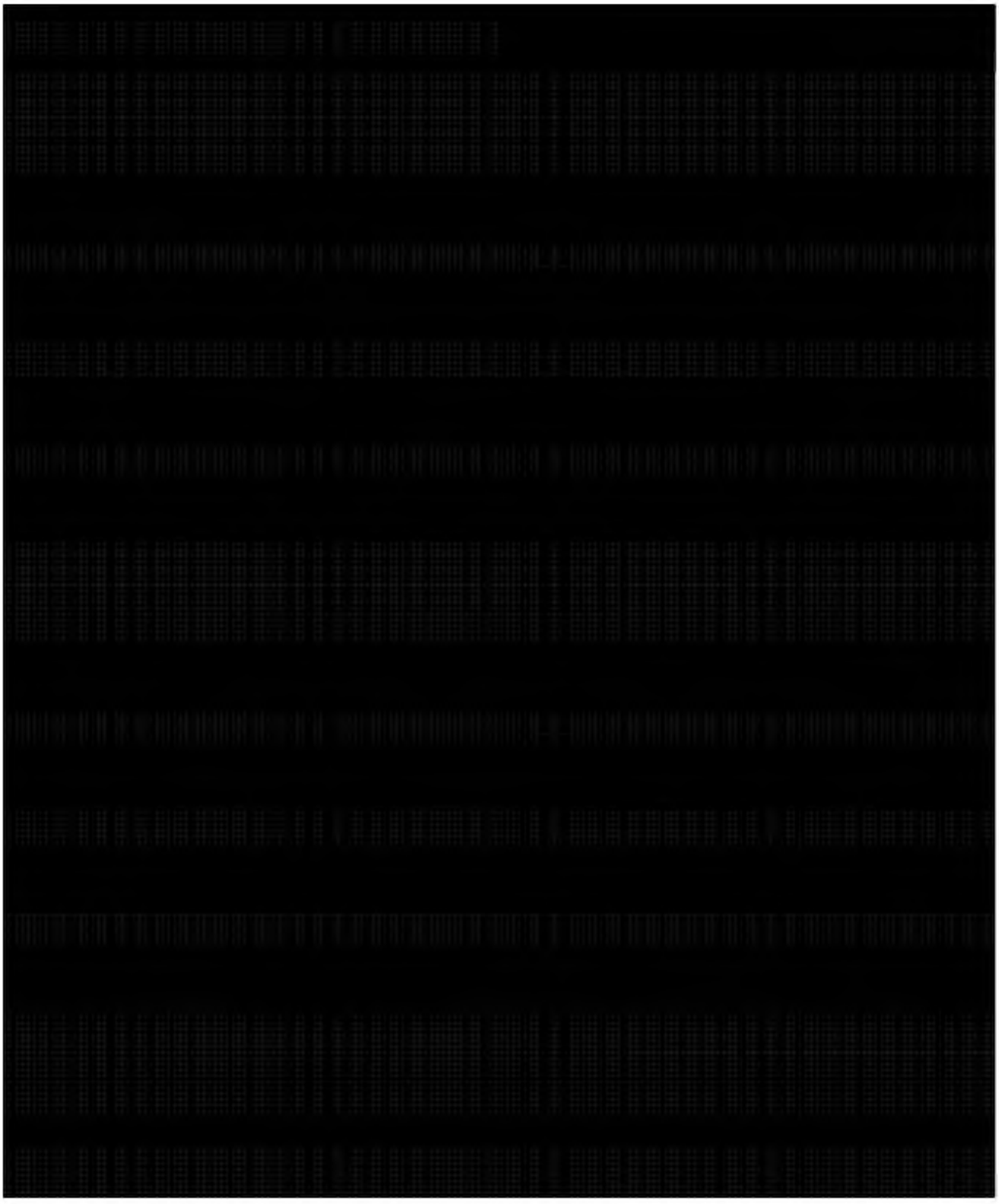
**The parties agree to the following accepted editorial changes:**

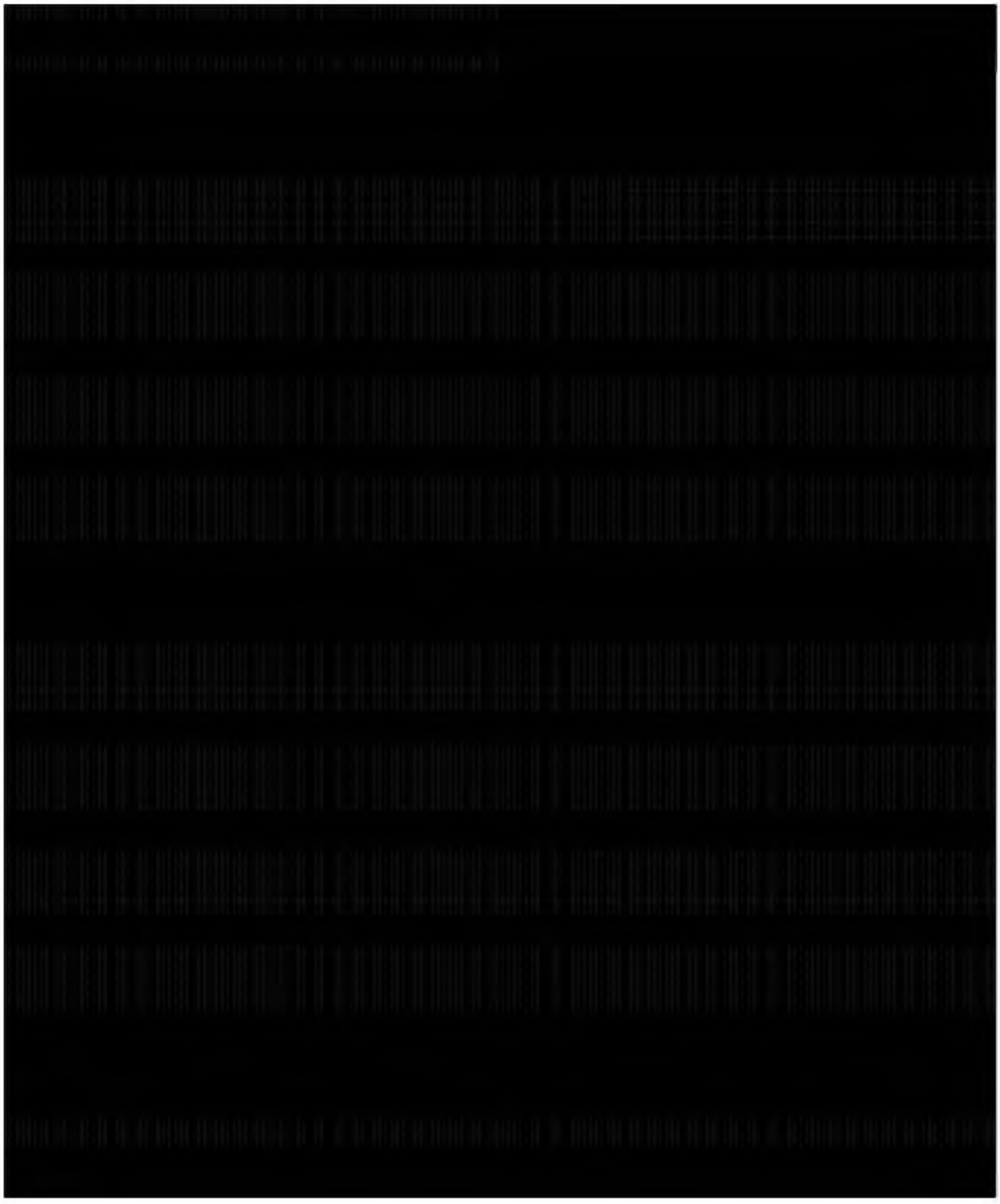


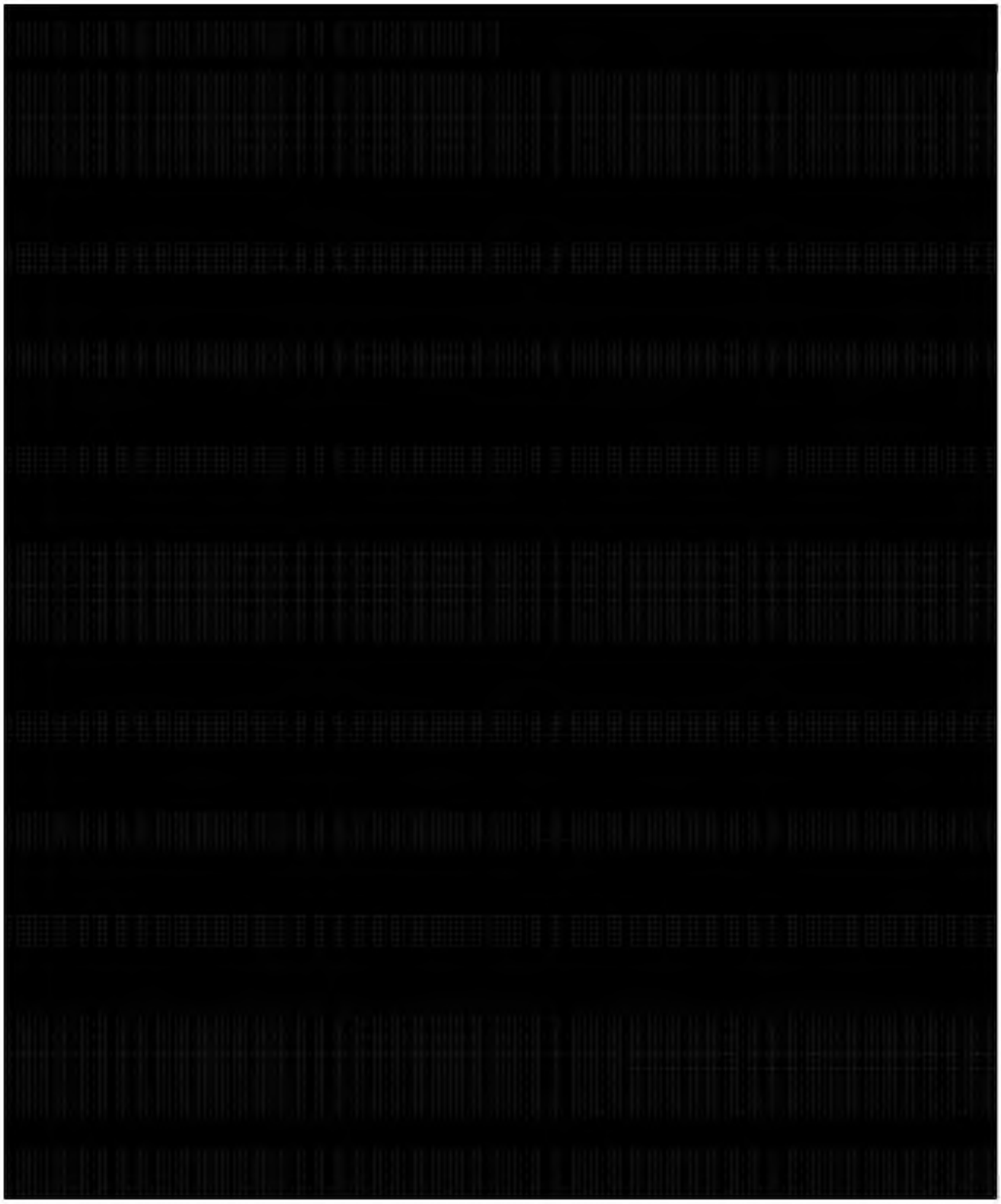


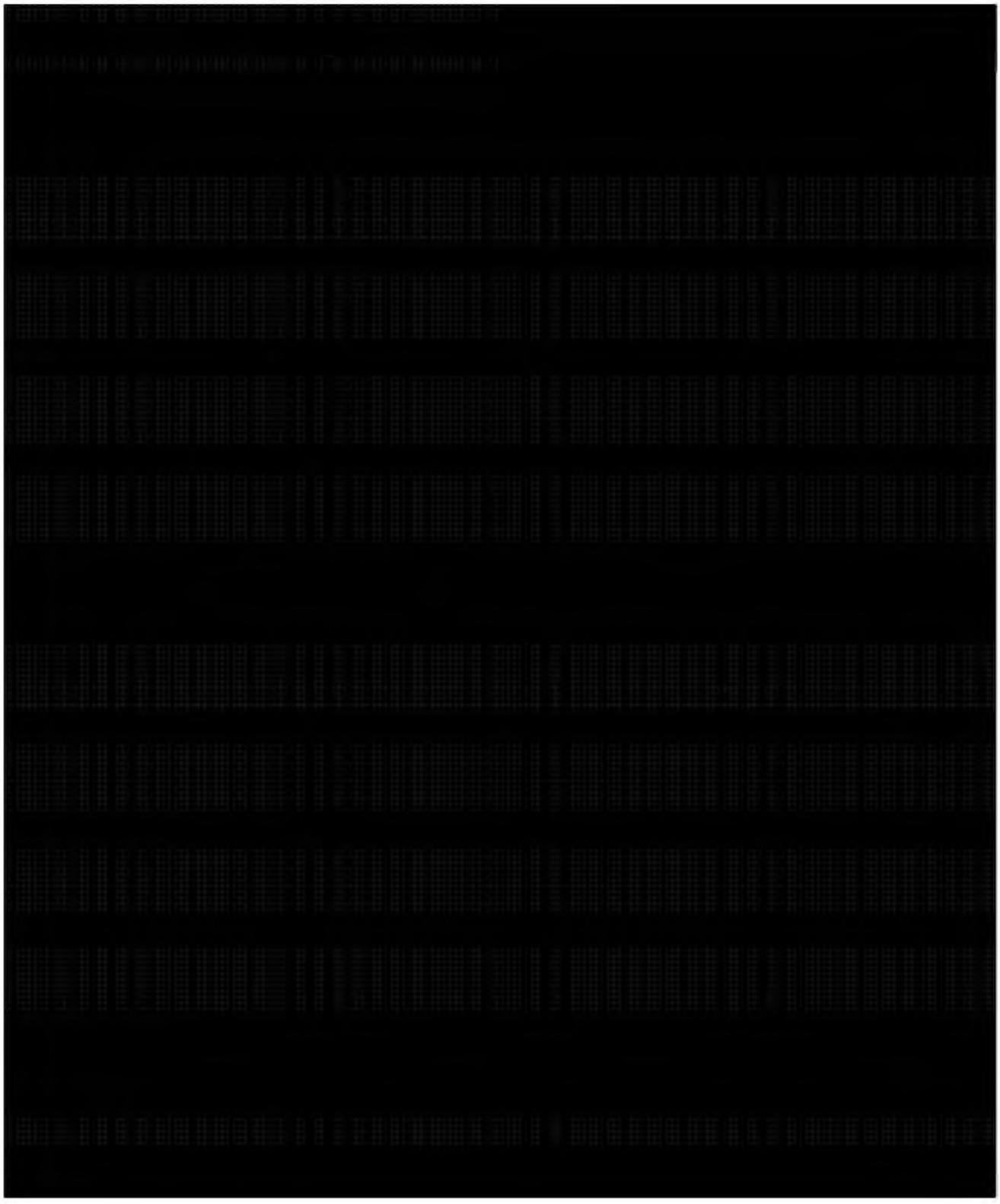


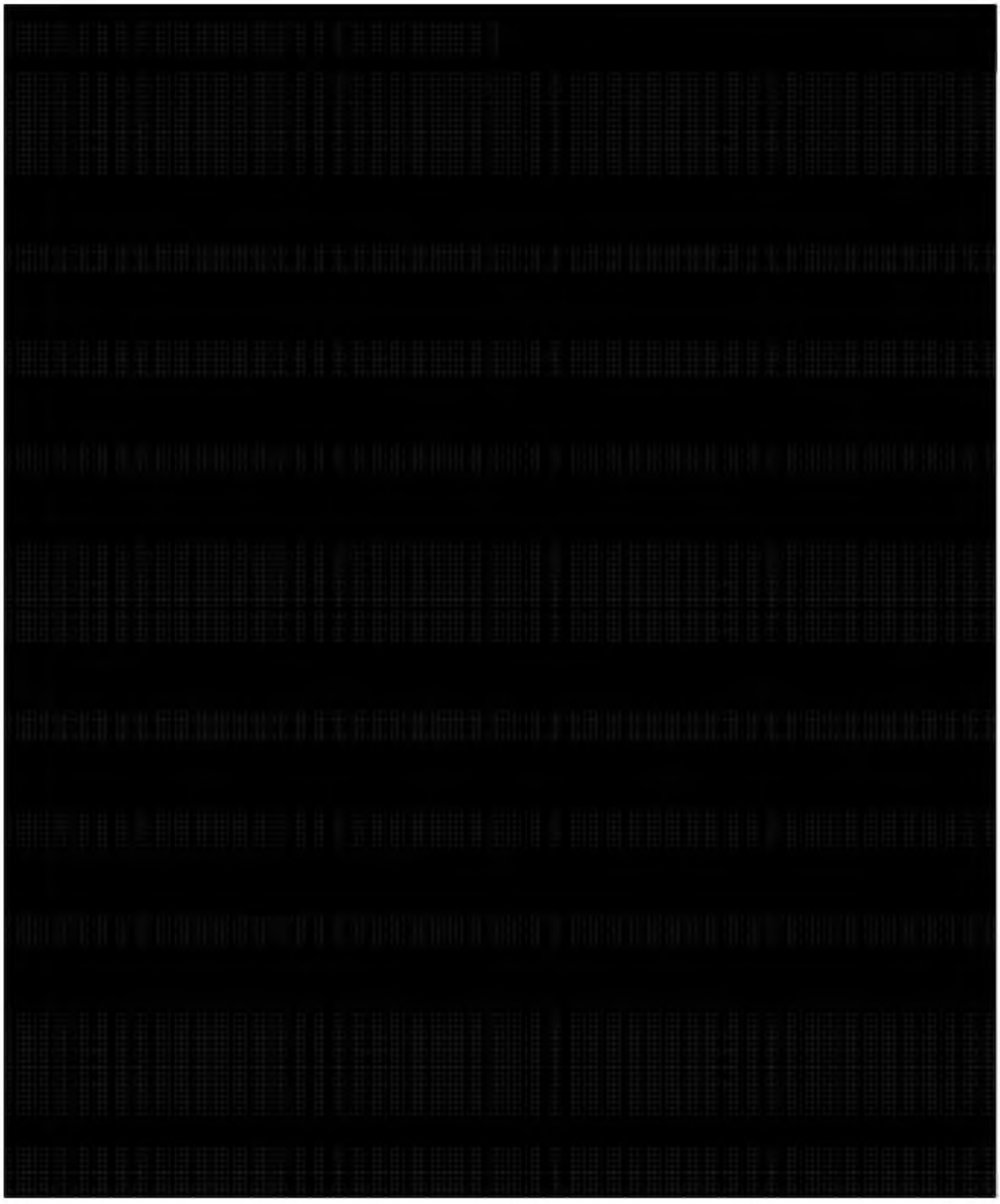


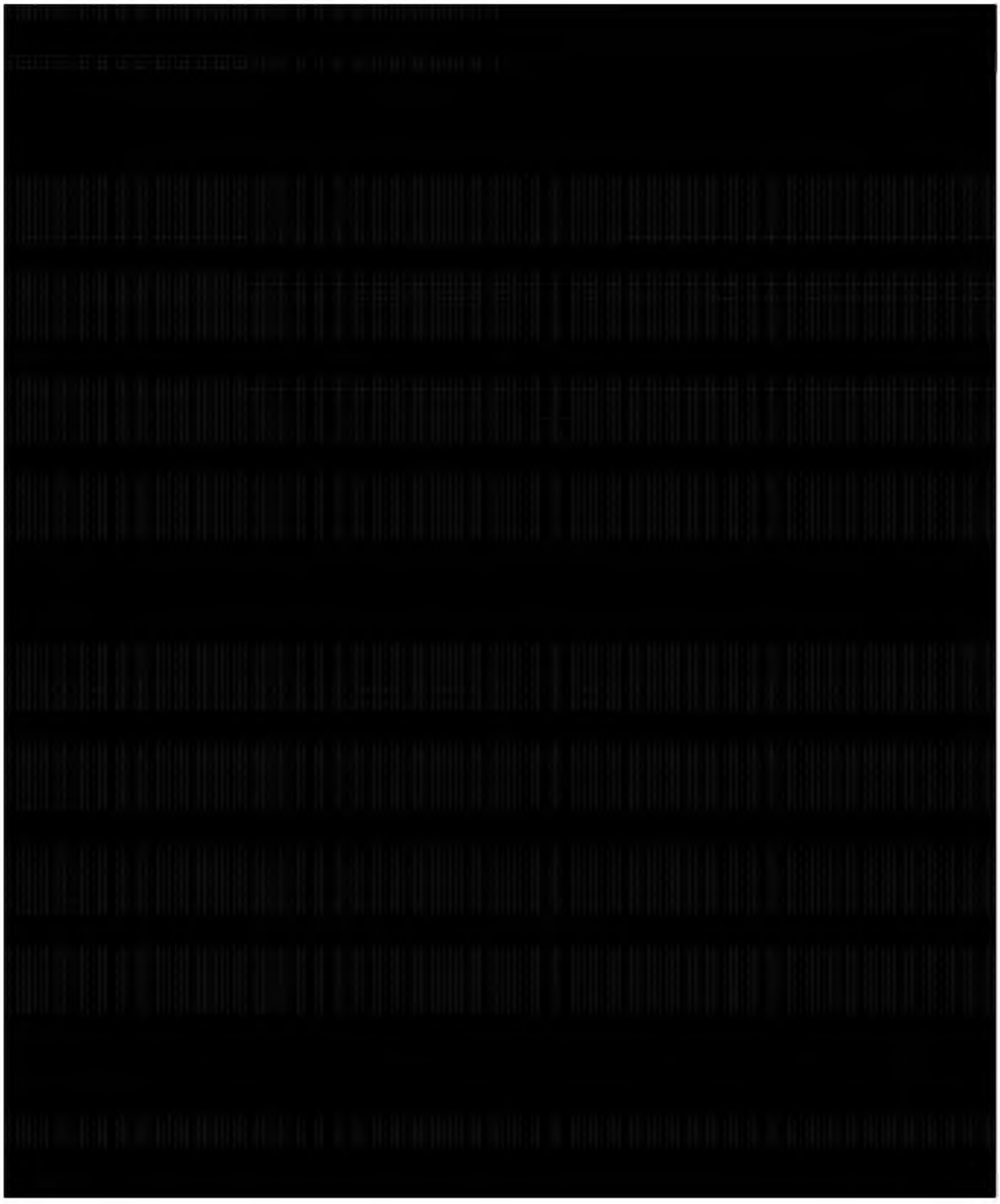


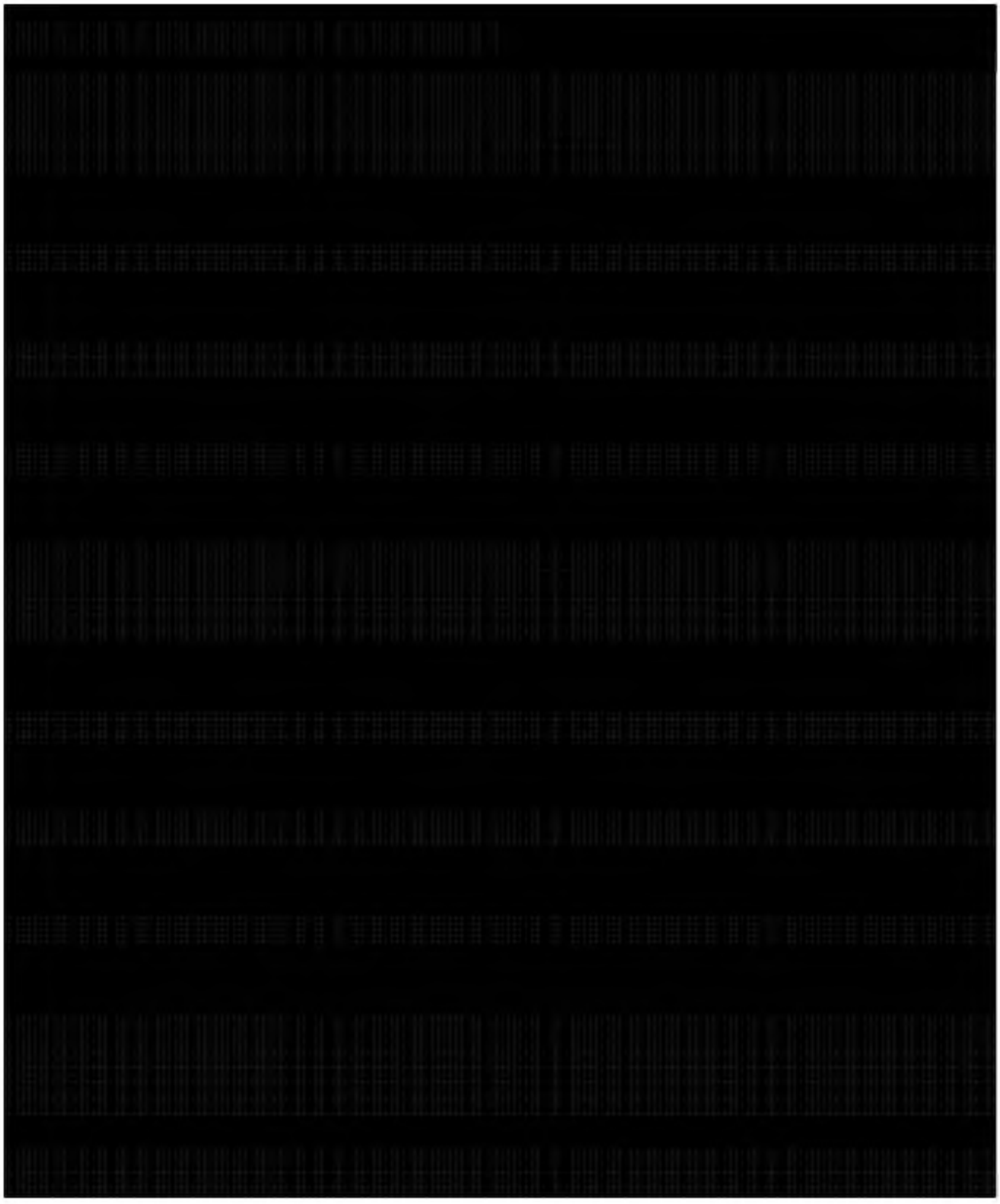












***Grievance of Appointment Decision of Sessional Members***

4.15.19 All applicants from the roster shall be notified of the appointment decision. **Notification will occur on or before July 31 for the Fall Term, October 31 for the Winter Term and February 15 for the Spring/Summer Term. For courses that are filled beyond the timelines stated in 4.15.16, the applicants~~members~~on the roster shall be notified within 30 days of appointment.** In the event that an unsuccessful applicant for a sessional teaching position believes that someone else was appointed to the position in violation of the provisions of this Collective Agreement, she/he may request within one (1) month of the notification, a review of the appointment with the view of establishing whether the Employer acted in accordance with the provisions of this Collective Agreement when not appointing the unsuccessful applicant.[6]

**ADMIN: The University counters the Union's editorial proposal in article 4.15.19 as modified above.**

**LUFA: The Employer's counter is not purely editorial and deviates from the order from Mr. Kaplan. However, LUFA agrees to the employer's proposal.**

ORDER FROM MR. KAPLAN

The Union has grieved the University's failure in some circumstances to notify members on the roster of the appointment decision for sessional contracts as required in Article 4.15.19. The University concedes that not all appointment decisions have been provided to members on the roster. Article 4.15.5 reads:

4.15.19 All applicants from the roster shall be notified of the appointment decision.

2. I direct the University to have the appropriate Dean instruct the applicable Departments/Schools **to notify members on the roster** of the appointment decision for sessional contracts as required in Article 4.15.19. For the purpose of this article, notification will occur on or before July 31 for the Fall Term, October 31 for the Winter Term and February 15 for the Spring/Summer Term. For courses that are filled beyond the timelines stated in 4.15.16, the roster shall be notified within 30 days of appointment.

3. This award is prospective and without prejudice to either parties' position on any **outstanding grievance or breach up until today's date.**

[6]Order from Mr. Kaplan 17 December Grievance 2019-16 – added "members on"

**ARTICLE 8.20 – PROCEDURES FOR THE AWARD/DENIAL OF A PROGRESS-THROUGH-THE-RANKS INCREMENT**

8.20.4 The Dean/University Librarian shall examine the annual reports as per Article 5.45 – Annual Report for Members, and make such other inquiries, as she/he deems appropriate. Where the Dean/University Librarian has concerns about the Member's performance with respect to the awarding of the PTR increment, the Dean/University Librarian shall first issue a written warning, stating the basis of the concerns, and what needs to be done to remedy them. This warning will be ~~clearly spelled out~~**issued** in a separate letter.[7] The Member shall be awarded the PTR increment for that year and shall indicate in the following year's annual report what measures the Member has taken to address those concerns. If in the following year, the Dean/University Librarian is not satisfied that the concerns have been addressed by the Member and that the Member does not show active participation and/or satisfactory performance in all three (3) areas, A), B), and C) (within the provisions of Article 5.15 – Rights, Responsibilities and Duties of Academics) or in the subset of those areas for which the Member's terms of employment are relevant, the Dean/University Librarian shall communicate to the Member the possibility that the PTR will be denied. The Dean/University Librarian shall specify the reasons and provide the evidence giving rise to this possibility. The Dean/University Librarian shall invite the Member to a meeting in order to address the concerns. The Dean/University Librarian shall inform the Union of the upcoming meeting and shall inform the Member of her/his right to be accompanied by a Union representative. The review shall include a consideration of at least the three (3) previous annual reports, if available, and a meeting with the Member. The Dean/University Librarian shall invite the Member to submit relevant materials.

**ADMIN: The University counters the Union's editorial proposal in article 8.20.4 as modified below:**

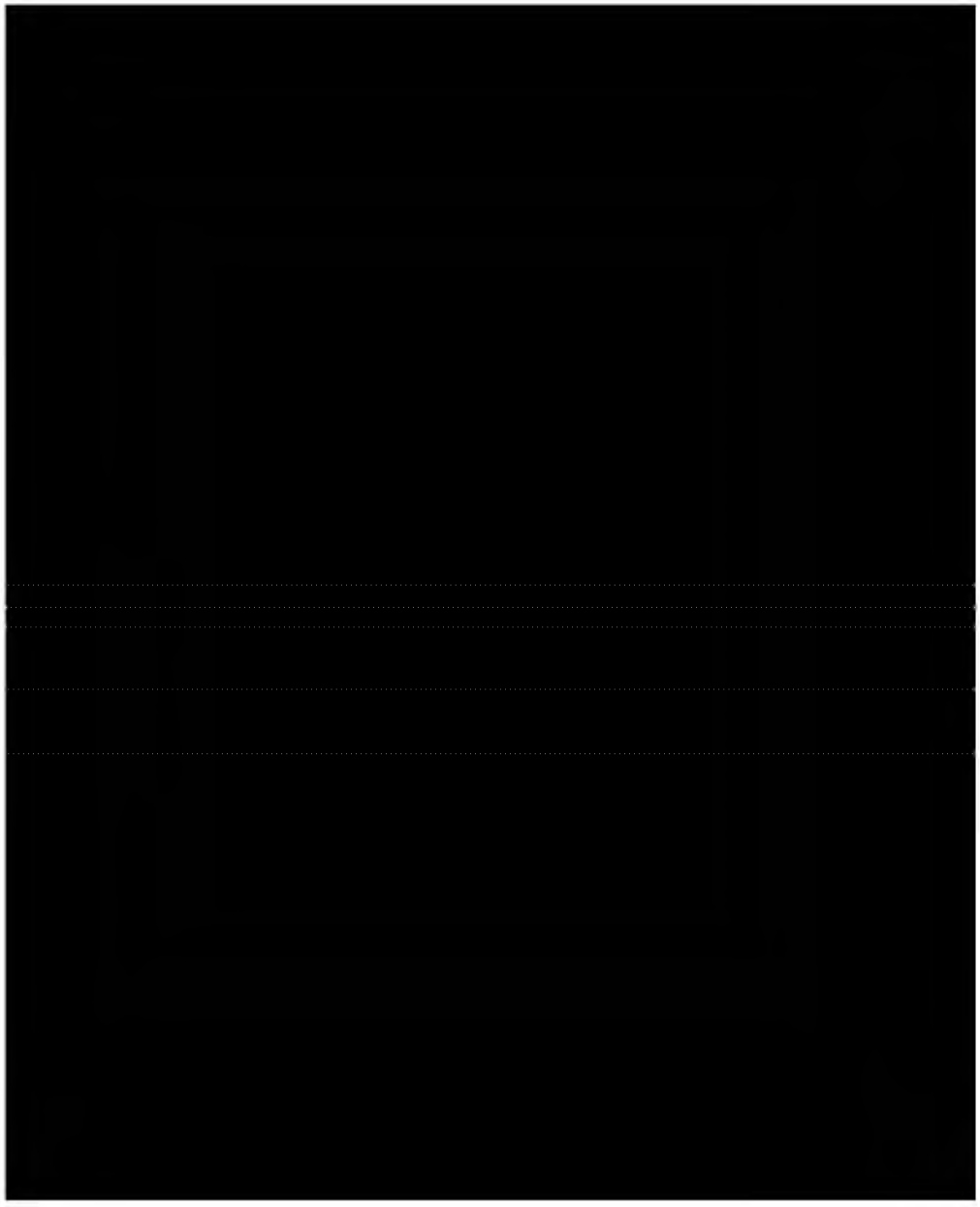
**LUFA: The changes are purely editorial. Language in settlement clearly states it will be spelled out. However, LUFA agrees to the employer's proposal.**

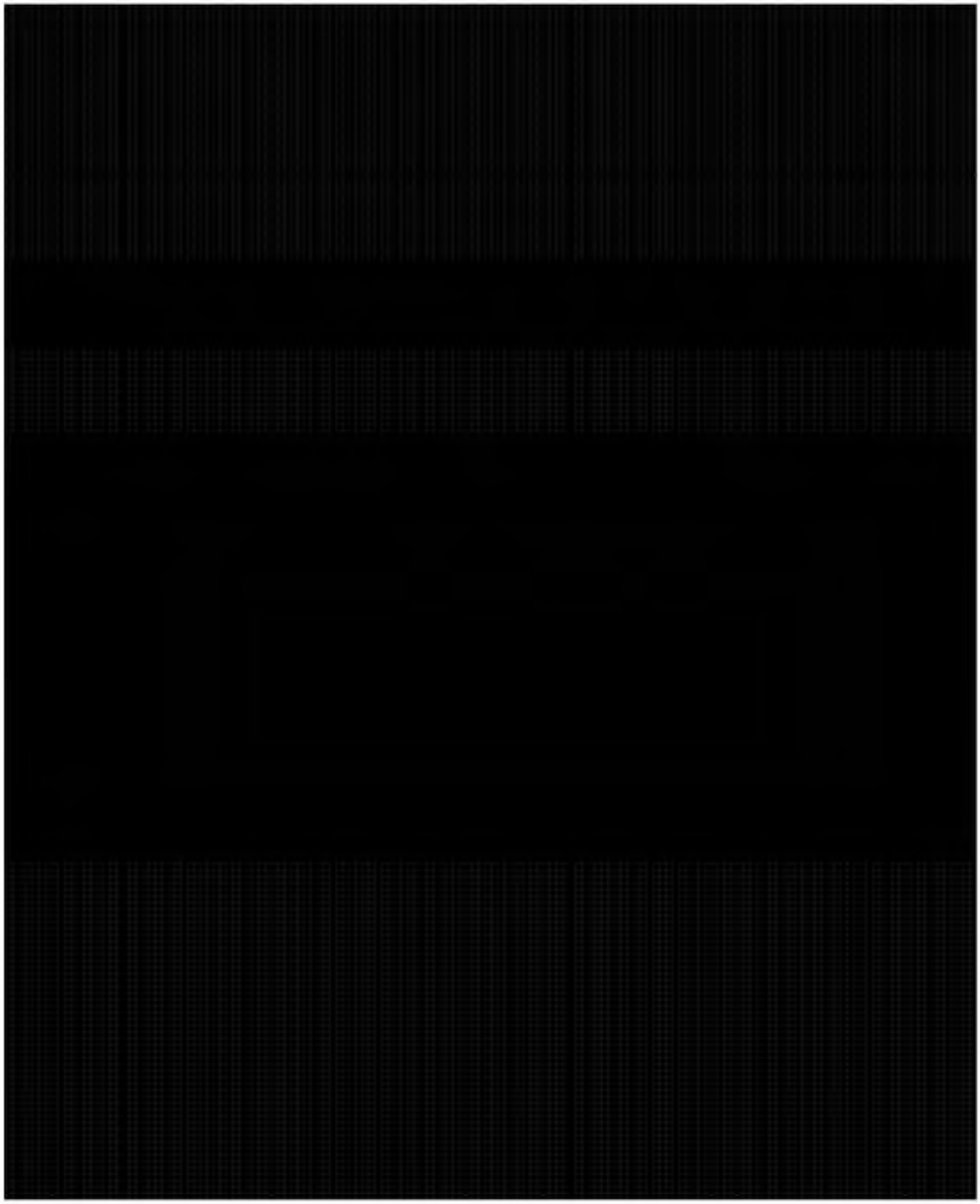
Settlement Paragraph 3- 2015-05

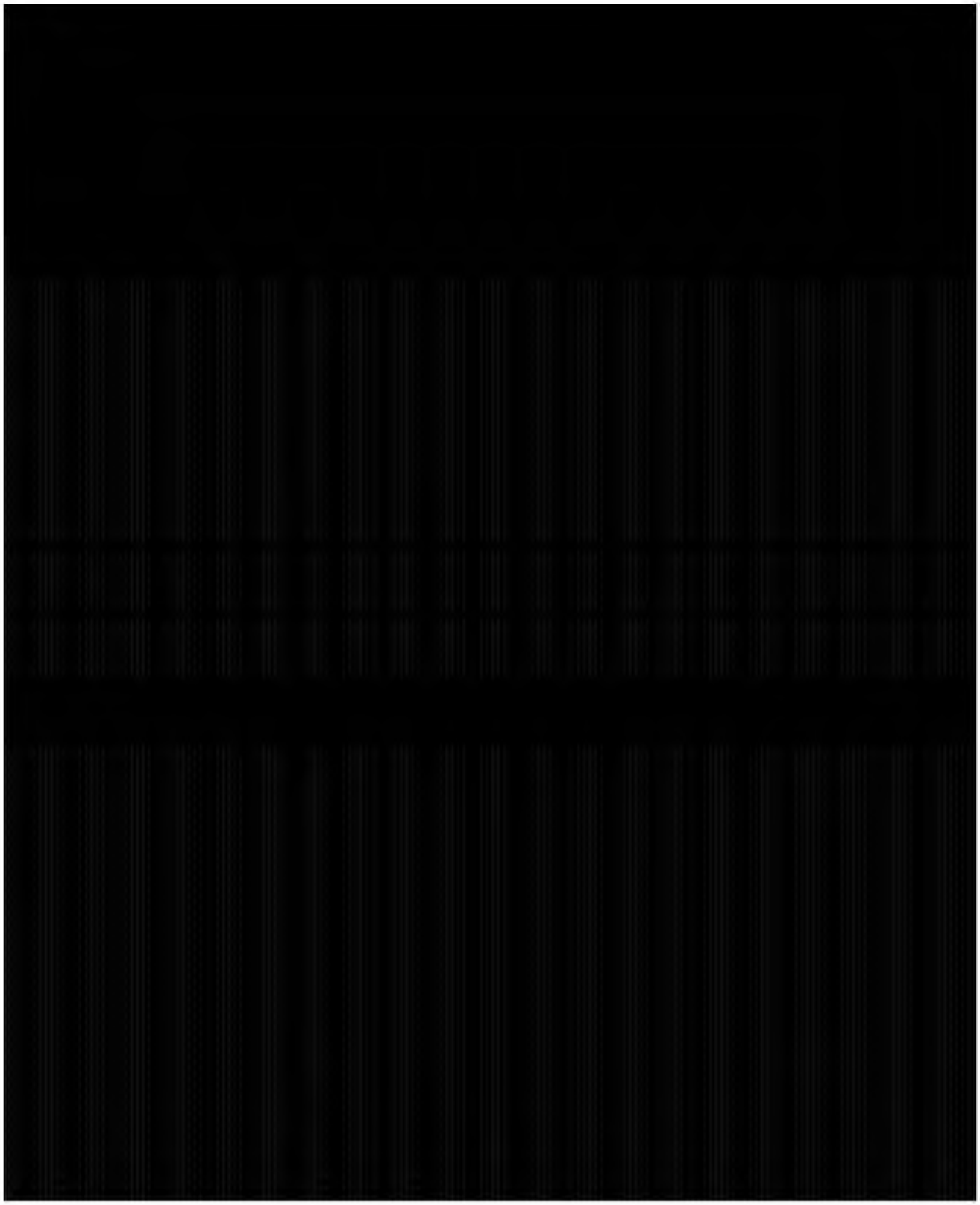
The administration acknowledges that it was improper to deny PTR's without following the process outlined in Article 8.20.4 and that a written statement of concerns issued in an annual assessment does not constitute a warning as per Article 8.20.4 and that **such warning will be clearly spelled out in a separate letter**;

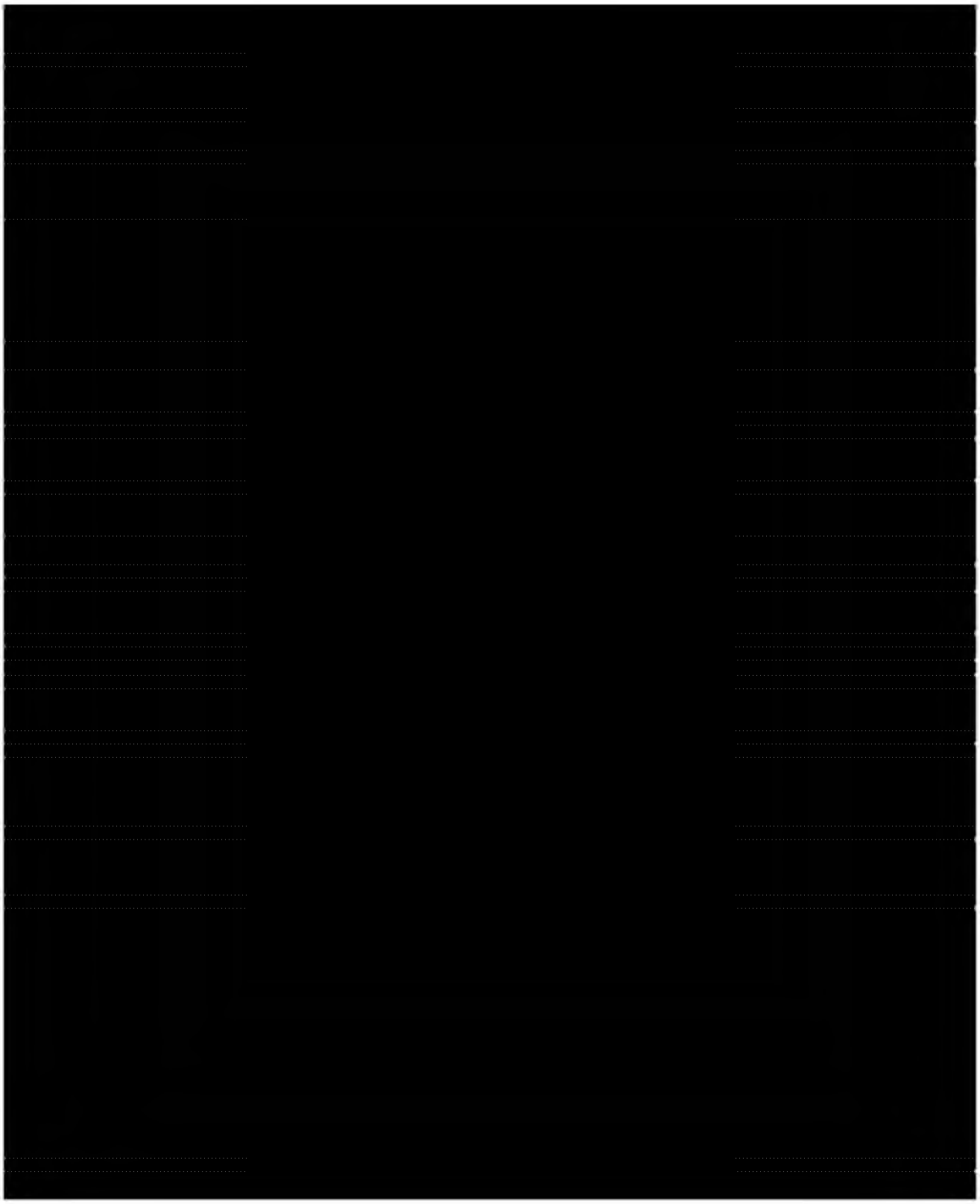
[7] Grievance Settlement 2015-05, 2016-20, 2016-21 signed 16 December, 2016.

**Indigenous Knowledge**









Changes marked below that indicate "AGREE" have been agreed to by the parties.

**ARTICLE 11.10 – GRIEVANCE PROCEDURE**

11.10.1 There shall be no discrimination, harassment or coercion, of any kind, practised against any persons involved in these procedures.

11.10.2 The Union and the Employer agree to make every reasonable effort to settle all grievances in a prompt, just and equitable manner.

**11.10.3 Definitions**

(a) Grievance: A "grievance" shall mean any difference arising from the interpretation, application, administration or alleged violation of the Collective Agreement, including any question as to whether a matter is arbitrable in accordance with the *Labour Relations Act, 1995*.

(b) Grievor: The grievor is either the Union which initiates a grievance against the Employer on behalf of a Member or group of Members or itself, or the Employer which initiates a grievance against the Union, an individual Member or a group of Members except as otherwise prohibited in this Collective Agreement.

(c) ~~Individual Grievance: An individual grievance is a grievance initiated by the Union on behalf of an individual Member.~~ ~~Group Grievance: A group grievance is a grievance initiated by the Union on behalf of a group of Members.~~ ~~Policy Grievance: A policy grievance is a grievance by a Union which may involve a matter of general policy or of general application of the Collective Agreement.~~ (f) ~~Union Grievance: A Union grievance is a grievance which directly affects the Union.~~ Employer Grievance: An Employer grievance is a grievance initiated by the Employer.

(c) "Working days": Working days shall mean Monday through Friday, excluding Recognised and other Holidays identified in Article 7.10 – Recognized and Other Holidays including the customary December – January recess, as well as the months of July and August.

11.10.4 The time limits specified in this Article may be extended by mutual agreement by the Parties. Moreover, an arbitrator shall have the power to waive time limits. The amended time limits must be specified in writing.

11.10.5 ~~Notwithstanding Article 11.10.2 above, a grievor shall have recourse to the grievance procedures set out below if such grievor is convinced that no settlement can be reached by informal means, unless otherwise specified in this Collective Agreement.~~ AGREE

11.10.6 All communications required under these procedures shall be in writing and shall be delivered **by email ~~electronically~~.** ~~by registered mail or with written proof of receipt.~~ AGREE

11.10.7 No technical violation or irregularity occasioned by clerical, typographical or technical error in the written specification of the grievance shall prevent the substance of a grievance from being heard and judged on its merits.

11.10.8 All Parties to a grievance shall be bound by and shall promptly implement all decisions arrived at under the procedures described in this Article.

## 11.10.9 Applicability of Grievance Procedures

(a) The following decisions will not be subject to grievance:

(i) Non-renewal of term appointments as per Article 5.20 – Appointment and Renewal;

(ii) The award of a merit increment as per Article 8.25 – Merit Increments.

(b) The following decisions will be subject to grievance only in the case of allegations of either violations of academic freedom, significant procedural irregularities or discrimination:

(i) The non-renewal of a probationary appointment when the Vice-President, Academic and Provost confirms a negative recommendation of a Faculty Personnel Committee;

(ii) The denial of a first application for promotion to a particular rank when the Vice- President, Academic and Provost confirms a negative recommendation of a Faculty Personnel Committee (and the denial of a second application for promotion where the two (2) applications are made in consecutive years);

(iii) The denial of an early application for tenure when the Vice-President, Academic and Provost confirms a negative recommendation of a Faculty Personnel Committee;

(iv) The decision of the Vice-President, Academic and Provost, regarding academic workload as per Article5.40.6 (d) of Article 5.40 – Academic Workload.

(c) Grievances concerning Renewal as per Article 5.20 – Appointment and Renewal, concerning tenure as per Article 5.60 – Tenure Evaluation Procedures, and concerning promotion as per Article 5.65 – Promotion Procedures, shall proceed directly to arbitration as set forth in Article 11.15 – Arbitration Procedure.

(d) Grievances concerning dismissal shall proceed directly to Step 2 – Formal Grievance Procedure as set forth in this Article.

### 11.10.10 Step 1 – Informal Grievance Procedure

The Union and the Employer agree to make reasonable efforts to settle grievances promptly by informal and amicable means. Thus, the grievor shall first attempt to get the matter under question resolved by informal means within thirty (30) working days of the date upon which the grievor had notice of the event or decision giving rise to the grievance. This would normally involve contacting the Dean/University Librarian concerned before bringing the matter to the Vice-President, Academic and Provost. However, this does not preclude making the Vice-President, Academic and Provost aware of such a grievance, nor does it preclude a grievance from being addressed to the Vice-President, Academic and Provost initially or early on in the process.

### 11.10.11 Step 2 – Formal Grievance Procedure

(a) **Failing a resolution at step 1,** ~~T~~the grievor shall present a notice of grievance in writing to the Vice-President, Academic and Provost **~~in the case of the Union a Member~~**, or to the President of the Union **~~in the case of the Employer,~~** within thirty (30) working days of the date upon which the grievor had notice of the event or decision giving rise to the grievance. The notice of grievance shall specify the matter(s) in dispute, the Article(s) alleged to have been violated, and the remedy sought.

(b) ~~In the event of a grievance concerning renewal, tenure or promotion as per Article11.10.9 (c) above, the notice of grievance shall also include the name of the grievor's appointee to the Arbitration Panel.~~ AGREE

(c) No later than **twenty (20)** working days following the receipt of the **formal** grievance, the Employer representative shall meet with the Union representative. The Parties shall make every reasonable attempt to resolve the grievance. AGREE

(d) If the grievance is resolved at this stage, such settlement shall be reduced to writing and countersigned by the Union representative and the Employer representative within fifteen (15) working days of the meeting at which the settlement was reached.

(e) In the event that the Union representative and the Employer representative cannot resolve the grievance within fifteen (15) working days of the meeting(s) specified in Article 11.10.11 (c), the ~~Employer~~ representative **of the party responding to the grievance** shall forward in writing to the ~~Union~~**other party`s** representative the reasons for denying the grievance. AGREE

**Article 11.15 – Arbitration Procedure**

11.15.1

(a) Failing settlement and/or timely response under the foregoing grievance procedure, any grievance may then be submitted to arbitration as hereinafter provided under its own distinct arbitral procedure. If no written request for arbitration is received within thirty (30) working days after the decision of the Vice President, Academic and Provost or the Union President under Step 2 – Formal Grievance Procedure of the grievance procedure is given, the grievance shall be deemed to have been abandoned.

(b) When either Party requests that any matter be submitted to Arbitration as provided in this Article, it shall make such request in writing addressed to the other Party of this Collective Agreement, and at the same time ~~appoint a nominee~~ **propose an Arbitrator**. Within fifteen (15) working days thereafter, the other Party shall ~~appoint its nominee~~ **either accept the proposed Arbitrator or propose an alternate Arbitrator,** ~~provided however, that if such Party fails to appoint its nominee as herein required, the Minister of Labour for Ontario shall have the power to make such appointment upon application thereto by the Party invoking the arbitration procedure. The two (2) nominees shall attempt to agree upon a chairperson of the Arbitration Board.~~ If the~~y are~~ **parties are** unsuccessful in agreeing upon ~~such a chairperson~~**an Arbitrator** within a period of twenty (20) working days ~~of the appointment of the second nominee,~~ they shall request the Minister of Labour for Ontario to appoint ~~a chairperson~~ **an Arbitrator**.

The time limits specified in this Article may be extended by mutual agreement by the Parties. ~~However, the thirty (30) working day time limit set out in Article11.15.1 (a) above referring a grievance to arbitration shall not be waived and/or extended pursuant to the *Labour Relations Act, 1995*. Moreover, an arbitrator shall be bound by this provision~~

(d) Saturdays, Sundays, Recognised and other Holidays identified in Article 7.10 – Recognized and ~~Other Holidays including the customary December – January recess as well as the months of July and August are not to be counted in the time limits set out in this Article.~~ AGREE

11.15.2 ~~No person may be appointed to the Arbitration Board who has been involved in an attempt to negotiate or settle the grievance.~~ AGREE

The ~~Arbitration Board~~ **Arbitrator** shall not be authorized to make any decisions inconsistent with the provisions of this Collective Agreement, nor to alter, modify, add to, or amend any part of this Collective Agreement. AGREE

11.15.4 No matter may be submitted to arbitration which has not been properly carried through all requisite steps of the Grievance Procedure hereinbefore set out unless otherwise agreed to in writing between the Parties.

11.15.5 The ~~proceedings of the~~ Arbitration **proceedings** ~~Board~~will be expedited by the Parties ~~hereto~~, and the decision of the **Arbitrator** ~~majority and, where there is no majority, the decision of the chairperson~~ will be final and binding upon the Parties ~~hereto~~, and the Employee or Employees concerned. AGREE

11.15.6 ~~Each of t~~**T**he Parties ~~hereto will bear the expenses of the nominee appointed by it, and the Parties~~ will share equally the fees and expenses, if any, of the **Arbitrator** ~~chairperson of the Arbitration Board~~. AGREE

~~Wherever the term "Arbitration Board" is referred to in this Collective Agreement, the Parties hereto may mutually agree, in writing, to substitute a mutually agreeable arbitrator for the Arbitration Board at the time of reference to arbitration and the other provisions referring to Arbitration Board shall appropriately apply.~~ AGREE

**Schedule "EE"**

**Pension Term Sheet**

See attached agreement.

LAURENTIAN UNIVERSITY FACULTY ASSOCIATION ("**LUFA**") and LAURENTIAN UNIVERSITY STAFF UNION ("**LUSU**")
PENSION TERM SHEET

This document describes the terms for proposed support agreements from each of LUFA and LUSU in respect of the Retirement Plan of Laurentian University of Sudbury and its Federated and Affiliated Universities, Registration No. 0267013 (the "**Registered Pension Plan**").

The contents of the LUFA and LUSU Pension Term Sheet are intended to be summary only and remain subject to definitive documentation to be agreed among LUFA, LUSU and Laurentian University as contemplated herein. Agreement on the Registered Pension Plan is a necessary component of a larger set of agreements between Laurentian University and LUFA and LUSU, respectively, and is dependent on agreement on all other matters currently under negotiation between the parties.

The confidentiality provisions applicable to the parties pursuant to the confidential mediation taking place in connection with Laurentian's proceeding under the *Companies' Creditors Arrangement Act* apply to the LUFA and LUSU Pension Term Sheet.

**A. Registered Pension Plan Design Changes**

Each of the changes outlined below is proposed to be made effective July 1, 2021, unless otherwise noted.

1. Limit Portability as of May 1, 2021

   Remove the right to a commuted value payment in lieu of a monthly pension payable from the Registered Pension Plan for any active member who leaves employment after having reached their early retirement date (the first day of July coincident with or next following the member's 55$^{th}$ birthday).

   Provide notice and one final window of opportunity for former members to elect a commuted value payment in lieu of a monthly pension payable from the Registered Pension Plan.

   For those faculty members who have chosen to retire pursuant to the Retirement Incentives communicated by the University on March 28, 2021, the deadline to elect to receive a commuted value payment will be extended to May 15, 2021.

2. Modify Early Retirement Provisions

   For members who have not attained age 62 as of July 1, 2021:

   - Remove subsidized early retirement reductions for all members on all service (actuarially adjusted from normal retirement date for LUFA members and Senior Leadership members and from age 62 for LUSU members and other members except LUFA members and Senior Leadership members);

   - Eliminate unreduced early retirement (prior to normal retirement date) for LUFA members and Senior Leadership members.

   For purposes of the foregoing, Senior Leadership are leaders who are excluded from a bargaining unit and serve above the Director level, in positions such as: Assistant Vice-President, Associate Dean, Associate Vice-President (AVP), Chief Advancement Officer,

Chief of Staff, Dean, Executive Director, President and Vice-Chancellor, Registrar and Secretary of Senate, University Secretary and General Counsel or Vice-President.

3. Limit Receipt of Pension While Employed

   Remove ability of members to draw a pension while remaining in continuous employment after age 65, except for members already in receipt of a pension as of July 1, 2021 or who must commence receipt of their pension under income tax law.

4. Freeze Best Average Pensionable Earnings

   Best Average Pensionable Earnings would be frozen at the rate in effect on June 30, 2021. This figure will be communicated to members at that time.

   Improvements to pre-July 1, 2021 Best Average Pensionable Earnings through pre-retirement indexation to be granted in accordance with the Benefits and Funding Policy.

5. Future Service Reduced Career Average Earnings Lifetime Benefit Formula Integrated with Enhanced CPP

   For service on and after July 1, 2021, members will make contributions toward and earn pension benefits at the 1.3% rate on the portion of their earnings below the Year's Additional Maximum Pensionable Earnings ("**YAMPE**") and at the 2% rate on the portion of earnings above the YAMPE. For this purpose, YAMPE=114% of YMPE. The benefit formula for service on and after July 1, 2021 will be based on pensionable earnings in each year (career average earnings formula), not on a final average earnings formula.

   Improvements to career average earnings formula through pre-retirement indexation to be granted in accordance with the Benefits and Funding Policy.

6. Indexation

   For service on and after July 1, 2021 indexation, which is not guaranteed, to be granted in accordance with the Benefits and Funding Policy.

**B. Registered Pension Plan Contribution Changes**

Laurentian will contribute a minimum of 8% of pensionable earnings, inclusive of employer current service contributions, special payments and administrative expenses.

Members will also contribute 8% of pensionable earnings in aggregate based on a rate to be set that reflects a lower rate on earnings up to the YAMPE and a higher rate on earnings in excess of the YAMPE, with the objective of achieving an equitable relationship between contributions and benefits above and below the YAMPE. The preliminary member contribution rates as of July 1, 2021 are:

Earnings up to YAMPE: 6.7%

Earnings above YAMPE: 10.4%

The rate of member contributions up to and above the YAMPE will be determined following the filing of a July 1, 2021 valuation, to be confirmed by an independent actuary selected by LUFA and LUSU and to become effective on a date to be agreed by Laurentian, LUFA and LUSU.

**C. Pension Committee Terms of Reference**

The Pension Committee Terms of Reference are amended as set out in Appendix "**A**".

**D. Registered Pension Plan Benefits and Funding Policy**

A Benefits and Funding Policy to govern the financial management of the Registered Pension Plan shall be established based on the key terms set out in Appendix "**B**".

The Benefits and Funding Policy shall, subject to review and amendment in accordance with its terms, bind the stakeholders and govern their future discussions, proposals, and negotiations in relation to the Registered Pension Plan.

**E. Collective Agreement Proposals Relating to Pensions and Retiree Benefits**

The LUFA-Laurentian and LUSU-Laurentian collective agreements will be revised to give effect to the above in accordance with the proposed amendments set out in Appendix "**C**".

**F. Joint Committee on the Benefits and Funding Policy and Long-Term Pension Sustainability:**

1. A joint committee will be established prior to April 30, 2021 whose mandate will be to monitor and advise on the administration and implementation of the Benefits and Funding Policy. The joint committee will also review and report on the pros and cons of all possible long term sustainability options for the Registered Pension Plan, including the available JSPP options (at least CAAT DBPlus and the University Pension Plan), with the objective of making a recommendation to the Stakeholders (LUFA, LUSU and Laurentian) for adoption not later than December 31, 2021, or an alternative date set by the joint committee.

2. The joint committee will be comprised of four (4) Laurentian representatives, two (2) LUFA representatives and two (2) LUSU representatives.

3. Terms of Reference and Rules of Procedure for the joint committee are to be determined by April 30, 2021 by LUFA, LUSU and Laurentian, to be subject to binding mediation/arbitration by Eli Gedalof or William Kaplan absent a decision by April 20, 2021.

4. The joint committee will be supported by an independent actuary jointly selected by the committee.

LAURENTIAN UNIVERSITY FACULTY ASSOCIATION

Per: _____ c/s April 7, 2021
Name: David Wright Date
Firm: Ryder, Wright, Blair & Holmes LLP
Title: Chief Negotiator and Counsel
*I have the authority to bind the Association*

LAURENTIAN UNIVERSITY OF SUDBURY

Per: _____ c/s April 7, 2021
Name: Robert Haché Date
Title: President
*I have the authority to bind the Corporation*

LAURENTIAN UNIVERSITY STAFF UNION

Per: _____ c/s _____
Name: Tom Fenske Date
Title: President
*I have the authority to bind the Union*

**C. Pension Committee Terms of Reference**

The Pension Committee Terms of Reference are amended as set out in Appendix "A".

**D. Registered Pension Plan Benefits and Funding Policy**

A Benefits and Funding Policy to govern the financial management of the Registered Pension Plan shall be established based on the key terms set out in Appendix "B".

The Benefits and Funding Policy shall, subject to review and amendment in accordance with its terms, bind the stakeholders and govern their future discussions, proposals, and negotiations in relation to the Registered Pension Plan.

**E. Collective Agreement Proposals Relating to Pensions and Retiree Benefits**

The LUFA-Laurentian and LUSU-Laurentian collective agreements will be revised to give effect to the above in accordance with the proposed amendments set out in Appendix "C".

**F. Joint Committee on the Benefits and Funding Policy and Long-Term Pension Sustainability:**

1. A joint committee will be established prior to April 30, 2021 whose mandate will be to monitor and advise on the administration and implementation of the Benefits and Funding Policy. The joint committee will also review and report on the pros and cons of all possible long term sustainability options for the Registered Pension Plan, including the available JSPP options (at least CAAT DBPlus and the University Pension Plan), with the objective of making a recommendation to the Stakeholders (LUFA, LUSU and Laurentian) for adoption not later than December 31, 2021, or an alternative date set by the joint committee.
2. The joint committee will be comprised of four (4) Laurentian representatives, two (2) LUFA representatives and two (2) LUSU representatives.
3. Terms of Reference and Rules of Procedure for the joint committee are to be determined by April 30, 2021 by LUFA, LUSU and Laurentian, to be subject to binding mediation/arbitration by Eli Gedalof or William Kaplan absent a decision by April 20, 2021.
4. The joint committee will be supported by an independent actuary jointly selected by the committee.

LAURENTIAN UNIVERSITY FACULTY ASSOCIATION

Per: _____ c/s _____
Name: David Wright Date
Firm: Ryder, Wright, Blair & Holmes LLP
Title: Chief Negotiator and Counsel
*I have the authority to bind the Association*

LAURENTIAN UNIVERSITY OF SUDBURY

Per: _____ c/s _____
Name: Robert Haché Date
Title: President
*I have the authority to bind the Corporation*

LAURENTIAN UNIVERSITY STAFF UNION

Per: Tom Fenske c/s April 5th, 2021
Name: Tom Fenske Date
Title: President
*I have the authority to bind the Union*

**Appendix "A"**

# LAURENTIAN UNIVERSITY PENSION COMMITTEE

## Terms of Reference

1. To monitor, and advise the Finance Committee of the Board of Governors on the following matters:

   a) the selection of one or more investment managers;

   b) the investment policy of the plan; and

   c) operational changes to the administration of the plan.

2. To meet with the investment manager(s) to review fund performance.

3. To meet with representatives of the investment consultant to review comparative pension fund investment measurement reports.

4. To advise the University on periodic reports to be provided to plan members.

5. To review the actuarial valuation reports prepared by the actuary of the plan.

6. To implement and administer the Benefits and Funding Policy.

7. To consult with the Joint Committee on the Benefits and Funding Policy and Long-Term Pension Sustainability as contemplated by the Benefits and Funding Policy.

8. To propose plan text amendments (i) required to satisfy regulatory compliance requirements and (ii) required to be made in accordance with the Benefits and Funding Policy.

## Composition

Voting Members

Five representatives appointed by the Board of Governors

Three representatives appointed by the Faculty Association (LUFA)

Two representatives appointed by the Staff Union (LUSU)

Non-Voting Members

Associate Vice-President Human Resources and Organizational Development (ex officio)

Associate Vice-President, Financial Services (ex officio)

One representative of faculty retirees

One representative appointed by non-union administrative staff (LUAPSA)

**Rules of Procedure**

The Pension Committee's Rules of Procedure are to be developed consistent with these Terms of Reference.

Revised: April 30, 2021

**Appendix "B"**

**Key Terms**
**Registered Pension Plan Benefits and Funding Policy ("Funding Policy")**

Laurentian University, LUFA, and LUSU have agreed to reduce pension benefits in the context of Laurentian University's proceeding under the *Companies' Creditors Arrangement Act*. As a consequence, the aggregate 16% contribution rate for the Plan has been developed to exceed the current service cost of the plan design on and after July 1, 2021.

This Funding Policy's purpose is to ensure that excess contributions will be used to (i) build reserves and (ii) grant benefit improvements.

The following criteria must be met in order for benefit improvements to be granted:

- The Plan must be 95% funded on a solvency basis;
- The Plan must be 105% funded on a going concern basis, including Provision for Adverse Deviations;
- The cost of any benefit improvement maintains a low risk of special payments in the five years following the benefit improvement. For this purpose, a benefit improvement must result in the solvency ratio of the Plan remaining at no less than 90% and the going concern funded status of the Plan, including Provision for Adverse Deviation, remaining at no less than 103% following the granting of the improvement; and
- The contributions to the Plan have a low risk of exceeding 16% of pensionable earnings.

The priority of benefit improvements and building of reserves is to be set out in the Benefits and Funding Policy to be established by Laurentian University, LUFA and LUSU and shall reflect the key terms set out herein. Agreement on the Benefits and Funding Policy shall be reached by April 30, 2021, to be subject to binding mediation/arbitration by Eli Gedalof or William Kaplan, absent a decision by April 20, 2021.

The criteria for granting benefit improvements will be assessed against robust actuarial analysis prepared annually. The actuarial assumptions and methodologies used will be the same as those used in the latest filed actuarial valuation for the Plan. Actuarial assumptions and methodologies are to be based on best estimates.

The Joint Committee on the Benefits and Funding Policy and Long-Term Pension Sustainability (the "**Joint Committee**") comprised of representatives of Laurentian, LUFA and LUSU, pursuant to the LUFA/LUSU Pension Term Sheet will be notified by the Pension Committee and given the opportunity to comment prior to changes to the actuarial assumptions for filed valuations.

The Joint Committee will be notified by the Pension Committee of any proposed changes to the Statement of Investment Policy and given the opportunity to comment prior to the implementation of any changes.

The Joint Committee will monitor the administration of the Benefits and Funding Policy to ensure that Plan amendments to give effect to improvements to benefits and establishment of reserves are implemented pursuant to the criteria and priority described therein.

No benefit improvements will be considered prior to July 1, 2025, unless prior to that time the surplus in the Plan exceeds the *Income Tax Act* ("ITA") maximums, in order to build reserves.

Employer contribution holidays and reductions in employer contribution rates are prohibited.

Contributions to the Plan are subject to the *Pension Benefits Act* and ITA.

This policy is subject to review by Laurentian University, LUFA and LUSU no later than July 1, 2025.

**Appendix "C"**

**LUFA and LUSU Collective Agreement Proposals Relating to Pension**

| LUFA Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| 2.40.12 | Adjust to reflect revised Pension Committee Composition in Terms of Reference | The President of the Union or someone designated by the President, and two (2) additional Members designated by the President of the Union, shall continue to be voting Members of the University Pension Committee. Given the importance of pensions, on substantive matters, the Union's Board has the right to ratify the recommendations of its representatives. | ~~The President of the Union or someone designated by the President, and two (2) additional~~ Three (3) Members designated by the President of the Union~~,~~ shall ~~continue to~~ be voting Members of the University Pension Committee. Given the importance of pensions, on substantive matters, the Union's Board has the right to ratify the recommendations of its representatives.<br><br>No amendments to the Pension Plan that reduce pension benefits for Members, or that materially affect Members' rights, may be made without LUFA's consent. |
| 5.90.5 | Reflect proposed pension portability changes | Members hired after September 24, 2017, and who are age 55 or older upon retirement or resignation, will not have the option to commute the value of their pension benefit upon retirement or resignation. The Pension Plan will be amended to reflect this agreement. | Delete [to be included in plan design support agreement]. |
| 8.45.3 | Delete reference to the SuRP. | Effective July 1, 2011, Members shall only participate in the | Effective July 1, 2011, Members shall only participate in the |

| LUFA Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | Defined Benefit component of the Retirement Plan and Member contributions shall only be used toward funding the Defined Benefit component of the Retirement Plan. All pension service contributions and benefits accrued prior to July 1, 2011, shall remain in the hybrid component of the Retirement Plan. Eligible Members shall participate in the Laurentian University Supplementary Pension Plan. | Defined Benefit component of the Retirement Plan and Member contributions shall only be used toward funding the Defined Benefit component of the Retirement Plan. All pension service contributions and benefits accrued prior to July 1, 2011, shall remain in the hybrid component of the Retirement Plan. ~~Eligible Members shall participate in the Laurentian University Supplementary Pension Plan.~~ |
| 8.45.4 | Reflect agreement on contributions | Employer<br><br>The Employer's contributions to the Retirement Plan shall be at least the amount required to fund current service costs and any unfunded liabilities and Solvency liabilities, or 7.5%, whichever is greater, in accordance with the *Pension Benefits Act* and regulations thereunder based upon the actuarial valuations for the Retirement Plan that the Employer files with the Financial Services Commission of Ontario. Interest on the Employee contributions to the | Employer<br><br>The Employer's contributions to the Retirement Plan shall be at least the amount required to fund current service costs and any unfunded liabilities and reduced solvency liabilities, or ~~7.5%~~8.0%, whichever is greater, in accordance with the *Pension Benefits Act* and regulations thereunder based upon the actuarial valuations for the Retirement Plan that the Employer files with the Financial Services ~~Commission~~Regulatory Authority of Ontario. Interest on the Employee contributions |

| LUFA Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | Plan will be credited at the Plan rate of return.<br><br>The Employer may take a contribution holiday in accordance with the *Pension Benefits Act* and after discussion with the Pension Committee only when required under the *Income Tax Act* due to excess surpluses as defined under the *Income Tax Act* 147.2(2) (d). Any contribution holiday shall be shared equally between the Employer and Employees.<br><br><u>Employee</u><br><br>(a) Effective June 30, 2017, eight point two percent (8.2%) of the part of the Member's Pensionable Earnings that is below the year's basic exemption as defined by the Canada Pension Plan;<br><br>(b) Effective June 30, 2017, six point four percent (6.4%) of the part of the Member's Pensionable Earnings that is between the year's basic exemption and the year's maximum pensionable earnings;<br><br>(c) Effective June | to the Plan will be credited at the Plan rate of return.<br><br>~~The Employer may take a contribution holiday in accordance with the *Pension Benefits Act* and after discussion with the Pension Committee only when required under the *Income Tax Act* due to excess surpluses as defined under the *Income Tax Act* 147.2(2) (d). Any contribution holiday shall be shared equally between the Employer and Employees.~~<br><br><u>Employee:</u><br><br>Each Member shall contribute by regular payroll deduction as follows.<br><br>Effective July 1, 2021, the sum of:<br><br>a) 6.7% of Pensionable Earnings up to the YAMPE; and<br><br>b) 10.4% of Pensionable Earnings above the YAMPE.<br><br>[Placeholder for further adjustments to reflect Pension Term Sheet]<br><br>~~(a) Effective JuneJuly 301, 201721, eight point~~ |

| LUFA Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | 30, 2017, eight point two percent (8.2%) of the part of the ember's Pensionable Earnings that is in excess of the year's maximum pensionable earnings. | ~~two percent (8.2%) of the part of the Member's Pensionable Earnings that is below the year's basic exemption as defined by the Canada Pension Plan;~~<br><br>~~(b) Effective June 30, 2017, six point four percent (6.4%) of the part of the Member's Pensionable Earnings that is between the year's basic exemption and the year's maximum pensionable earnings;~~<br><br>~~(c) Effective June 30, 2017, eight point two percent (8.2%) of the part of the ember's Pensionable Earnings that is in excess of the year's maximum pensionable earnings.~~ |
| Appendix L: Letter of Understanding - Pension Plan Contributions | Remove | RE: Pension Plan Contributions.<br>During the 2017 collective bargaining negotiations, the University sought an increase to employee pension contributions from LUFA members while providing a fully offsetting salary increase, with the goal of achieving a fair and equitable cost-sharing of current service costs. It was agreed that the parties would benefit from an opportunity to | Delete. |

| LUFA Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | consider the July 1, 2017 Pension Plan Valuation, due to be finalized in or about December 2017. The parties therefore agreed that the matter of pension contributions would not form part of the renewal collective agreement but committed to a process to make progress on the matter during the life of the agreement. In that spirit, recognizing that no outcome is binding on either party except as may be mutually agreed in writing, the University and the Union commit to engaging in collegial, open and transparent discussions. The parties agree to begin these discussions in a timely manner to allow for pension and salary increases, if any, to take effect July 1, 2018. | |

**LUFA and LUSU Collective Agreement Proposals Relating to Pension**

| LUSU Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| 20.01 | Delete reference to the SuRP. | Effective July 1, 2012, Members shall only participate in the Defined Benefit component of the Retirement Plan and Member contributions shall only be used toward funding the Defined Benefit component of the Retirement Plan. All pension service contributions and benefits accrued prior toJuly 01, 2012, shall remain in the hybrid component of the Retirement Plan. Eligible Members shall participate in the Laurentian University Supplementary Pension Plan. | Effective July 1, 2012, Members shall only participate in the Defined Benefit component of the Retirement Plan and Member contributions shall only be used toward funding the Defined Benefit component of the Retirement Plan. All pension service contributions and benefits accrued prior toJuly 01, 2012, shall remain in the hybrid component of the Retirement Plan. ~~Eligible Members shall participate in the Laurentian University Supplementary Pension Plan.~~ |
| 20.03 | Reflect agreement on contributions | Employer Contribution<br><br>The Employer's contributions to the Retirement Plan shall beat least the amount required to fund current service costs and any unfunded liabilities and solvency liabilities, or 7.5%, whichever is greater, in accordance with the *Pension Benefits Act* and regulations there under based upon the | Employer Contribution<br><br>The Employer's contributions to the Retirement Plan shall beat least the amount required to fund current service costs and any unfunded liabilities and <u>reduced</u> solvency liabilities, or ~~7.5%~~<u>8.0%</u>,whichever is greater, in accordance with the *Pension Benefits Act* and regulations there under based upon the |

| LUSU Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | actuarialvaluations for the Retirement Plan that the Employer files with the Financial Services Commission of Ontario.Interest on the Employee contributionsto the Plan will be credited at the Plan rate of return.<br><br>The Employer may takea contribution holiday inaccordance with the *Pension Benefits Act* and after discussion with the Pension Committee only when required under the *Income Tax Act* due to excess surpluses as defined under the Income Tax Act 147.2(2) (d). Any contribution holiday shall be shared equallybetween the Employerand Employees.<br><br>Member's Required Contribution<br><br>Each Member shall contribute by regular payroll deduction as follows:<br><br>Effective July 1, 2018,the sum of: | actuarial valuations for the Retirement Plan thatthe Employer files with the Financial Services ~~Commission~~ RegulatoryAuthority of Ontario. Interest on the Employee contributionsto the Plan will be credited at the Plan rateof return.<br><br>~~The Employer may takea contribution holiday inaccordance with the *Pension Benefits Act* and after discussion with the Pension Committee only when required under the *Income Tax Act* due to excess surpluses as defined under the Income Tax Act 147.2(2) (d). Any contribution holiday shall be shared equallybetween the Employerand Employees.~~<br><br>Member's Required Contribution:<br><br>Each Member shall contribute by regularpayroll deduction as follows:<br><br>Effective July 1, |

| LUSU Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | a) 9.9 % of the partof the Member's Pensionable Earnings that is below the year'sbasic exemption as defined by the CanadaPension Plan;<br><br>b) 6.4 % of the partof the Member's Pensionable Earnings that is between the year's basic exemption and the Y.M.P.E.; and<br><br>c) 9.9 % of the partof the Member's Pensionable Earnings that is in excess of the Y.M.P.E. | ~~2018~~2021, the sum of:<br><br>a) 6.7% of Pensionable Earnings up to the YAMPE; and<br><br>b) 10.4% of PensionableEarnings above the YAMPE.<br><br>[Placeholder for further adjustments to reflect Pension Term Sheet]<br><br>~~a) 9.9 % of the partof the Member's Pensionable Earnings that is below the year's basic exemption as defined by the Canada Pension Plan;~~<br><br>~~b) 6.4 % of the partof the Member's Pensionable Earnings that is between the year's basic exemption and the Y.M.P.E.; and~~<br><br>~~c) 9.9 % of the partof the Member's Pensionable Earnings that is in excess of the Y.M.P.E.~~ |
| 20.05 c) | Reflect proposed pensionportability changes | c) Laurentian University Staff Unionmembers who are hiredon or after September 24, | Delete [to be included in plan design support agreement] |

| LUSU Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | 2017, and who are age 55 or older upon retirement or resignation, will not have the option to commute the value of their pension benefit upon retirement or resignation. The Pension Plan will be amended to reflect this agreement. | |
| New 20.06 | Reflect LUSU participation in Pension Committee | N/A | Two (2) Laurentian University Staff Union members designated by the President of the Union shall be voting Members of the University Pension Committee. |
| New 20.07 | Address Amendments to the Pension Plan | N/A | No amendments to the Pension Plan that reduce pension benefits for Members, or that materially affect Members' rights, may be made without LUSU's consent. |

**Schedule "FF"**

**Rights of Federated University Employees**

The parties agree to the attached Letter of Understanding:

B E T W E E N :

**LAURENTIAN UNIVERSITY**

("Laurentian University")

- and –

**LAURENTIAN UNIVERSITY FACULTY ASSOCIATION**

("LUFA")

**Letter of Understanding**

**WHEREAS** the parties entered into a Term Sheet on April 4, 2021**;**

The parties agree as follows:

For a period of 5 years commencing May 1, 2021, where any new academic positions are created, or any academic vacancies arise at the University, which are not filled by a Member with recall rights, applicants who are employed at Thorneloe University, Huntington University or the University of Sudbury as of the date of the signing of this Letter of Understanding, will be given priority in the hiring process, and if qualified, offered the position.

Dated at Sudbury this 7th day of April, 2021.

Laurentian University

LUFA

This is Exhibit “I” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

**LAURENTIAN UNIVERSITY STAFF UNION**
**MEDIATION TERM SHEET**

**DATED APRIL 5, 2021**

The below sets out the key financial terms and conditions agreed to following negotiations between Laurentian University of Sudbury ("**Laurentian**") and the Laurentian University Staff Union ("**LUSU**") in the confidential mediation overseen by Mr. Justice Sean Dunphy, the Court-appointed mediator in the CCAA proceedings of Laurentian (in such capacity, the "**Mediator**").

For greater certainty, this term sheet and its schedules reflect certain key terms and conditions required by Laurentian to become a financially sustainable post-secondary organization, in terms of monetary value and stability of overall operations.

| | |
|---|---|
| **LUSU Member Terminations** | The parties agree that the total number of LUSU Members who will be terminated is 41. The agreed-upon confidential list of LUSU Members who will be terminated is attached hereto as Schedule "A" (the "**Terminated LUSU Members**").<br><br>The Terminated LUSU Members shall have preferential recall rights for the period of two (2) years from the date of layoff.<br><br>Recall provisions shall be as per article 10 of the LUSU Collective Agreement, subject to the preferential recall rights for Terminated LUSU members.<br><br>Employee transfers, agreed upon during the CCAA negotiations, shall be done in accordance with the provisions of Schedule "B" |
| **Effective Termination Date** | The effective termination date of the Terminated LUSU Members shall be April 30, 2021. |
| **Retirement Election** | LUSU Members may elect, by irrevocable written notice provided on or before April 9, 2021, that any LUSU Members intend to retire (the "**Retiring LUSU Members**").<br><br>Any position vacancies resulting from the retirement of a LUSU Member shall be filled once the position is vacated. This may occur through recall rights and will apply only to those positions which were not deemed redundant in the CCAA restructuring. |
| **Notice to LUSU Members** | The parties agree to develop mutually acceptable communications to the Terminated LUSU Members. |

| | |
|---|---|
| **Terms of Termination of LUSU Members** | Terminated LUSU Members shall be entitled to file a claim in the CCAA claims process in respect of all entitlements relating to their employment or former employment with Laurentian, in accordance with the terms and conditions of the collective agreement and the CCAA. The Monitor will assist LUSU in calculating the amounts applicable for LUSU Members, which are all subject to the claims process in the CCAA proceeding. |
| **Treatment of Retiring LUSU Members** | Retiring LUSU Members, who vacate their position by July 1, 2021, shall be entitled to receive the following.<br><br>(i) Until June 30, 2023, with 100% of the premium cost to be at the cost of the retiree, the option to maintain Laurentian Health Benefits (Health & Dental), subject to Manulife approval. |
| **Other Amendments to Collective Agreement** | See attached Schedules "C" to "I" to this Term Sheet for other amendments to the Collective Agreement. |
| **Entire Agreement** | This Term Sheet and its Schedules constitute the entire agreement between the parties pertaining to the subject matter of this Term Sheet. For greater certainty, in the event that this Term Sheet and the Schedules conflict, this Term Sheet shall be paramount. |
| **Governing Law** | The settlement agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario. The CCAA Court shall have the exclusive jurisdiction to determine any action arising under the settlement agreement and the parties hereby attorn to the exclusive jurisdiction thereof. |
| **Amendments** | This term sheet shall only be modified in writing and upon signature by all of the parties. |
| **Notices** | All notices, requests, consents and other communications delivered pursuant to the terms of this Term Sheet shall be contained in a written instrument and may be delivered in person or sent by internationally recognized overnight courier or by email. |

**LAURENTIAN UNIVERSITY OF SUDBURY**

Per: _____ c/s
Name:
Title:

I have the authority to bind the Corporation.

**LAURENTIAN UNIVERSITY STAFF UNION**

Per: _____ c/s
Name:
Title:

I have the authority to bind the Association.

**Schedule "A"**

**List of Terminated LUSU Members**

Attached.

**Schedule "B"**

**Redacted pages contain sensitive personal information**

**Schedule "C"**

## 1. SALARY AND TERM

**The parties agree to the following salary and term:**

1. The LUSU CA will expire on June 30, 2024.

2. Salary Adjustments over the life of the CA will be as follows:

| | **Year 1 2020-21** | **Year 2 July 1 2021** | **Year 3 July 1 2022** | **Year 4 July 1 2023** |
|---|---|---|---|---|
| **Salary** | No Changes | 0% ATB | 1% ATB | 1% ATB |
| **Step Increases** | No Changes | Freeze on all step increases | Step increases to resume | Step increases continue |

## 2. GOVERNANCE AND CONSULTATION

The parties agree to the following:

1. The University will undertake a thorough external and collaborative review of the overall governance structure including the Board and Senate, as part of the restructuring. The review will include consultation from all major stakeholders including the employee groups and lenders, francophone and Indigenous partners, in order to help position Laurentian as a leader in the sector. The University will review and engage in a discussion about the structure and composition of existing Committees, to find opportunities for greater participation by faculty and staff.

2. The University will, jointly with LUSU and LUFA, approach the Province of Ontario to request that the *Laurentian University of Sudbury Act* be amended to remove the restriction that prohibits University employees from eligibility for appointment as a member of the Board, to add that a minimum of one seat on the Board of Govenors to be elected by LUSU from LUSU membership.

3. The University, through the office of the President with the involvement of external advisors including those with sector expertise, will undertake a full review of all operations in order to make all necessary changes to processes, procedures and policies to ensure that best practices are established and maintained in all operational functions at all times. The process will include consultation and transparency, with the Report shared with the Board and the Laurentian community. The university will create a Continuous Improvement Committee to ensure that, once service-delivery and other operational processes, procedures and policies have been reviewed and improved as part of the Report presented to the Board and the Laurentian community, constant review and improvement occurs so that Laurentian can utilize best practices within the sector at all times. The Continuous Improvement Committee will include representation from employee groups and other stakeholders.

3. Section 15 of the *Laurentian University of Sudbury Act* prevents Deans, faculty, and staff of Laurentian from being elected to the Board. A review of the Laurentian Act with respect to Board composition will be undertaken. The University is committed to finding ways to increase the input of stakeholders for recommendations to the composition of the Board (including as part of the external and collaborative governance review referred to above) and will also look to provide external support for the Board. The University will undertake to conduct a thorough, transparent and robust process to develop criteria to ensure that the Board is always comprised of individuals who have the necessary skills and experience, while ensuring that the diverse, bilingual and tricultural mandate of the university is reflected. An Advisory Committee will be formed which will include representatives of employee groups, major lenders (for so long as amounts are being paid over time for pre-filing indebtedness) and other key stakeholders including francophone and Indigenous partners with a view to providing recommendations and advice to the Board Nominating Committee.

4. After April 30, 2021, with input from major stakeholders including employee groups and the lenders, the University commits to conducting a review of all real estate to determine whether opportunities exist for it to be monetized, for the benefit of creditors. Prior to the next President assuming the role, the President's house will be sold.

5. LUSU will be given a seat on the Laurentian University Benefits Committee. The Committee will begin meeting regulary commencing May 1, 2021.

**Schedule "D"**

3. REMOVE FREE GYM MEMBERSHIP

**The parties agree that any benefit or subsidy provided to the LUAPS group with regard to gym memberships, will also apply to the LUSU group.**

**The parties agree to eliminate Schedule E of the LUSU CA and will be replaced with any benefit or subsidy provided to the LUAPS group with regard to gym membership:**

~~PHYSICAL EDUCATION MEMBERSHIP~~

~~The University agrees to renew its policy regarding Physical Education membership in the Voyageur Athletics and Campus Recreation Centre for staff members and their immediate dependents in accordance with the established guidelines, and the rights and privileges of the Union members shall be the same as other employees of the University. This benefit does not apply to the dependents of Part-time Security Guards.~~

**Schedule "E"**

4. REMOVE TUITION EXEMPTION BENEFIT

**The parties agree to following changes to Schedule F of the LUSU CA:**

TUITION FEES

The University agrees that:

a) Full-time ~~and retired members of~~ staff ~~(an employee who is eligible to receive retirement benefits in accordance with the University Retirement Plan), dependents of deceased, retired employees and dependents of employees deceased~~ while in the full-time employ of the University, employees receiving benefits under the Long-Term Disability Plan, their dependents and spouses shall be eligible for free tuition (not including incidental fees or foreign-fee supplement) as of the effective date of the appointment. Dependents are defined as sons or daughters of a staff member ( as defined above) who are entitled to be claimed as dependent children within the meaning of the Income Tax Act in the years in which tuition exemption is requested.

b) A student qualifying for tuition exemption must remain in good standing. In the event of loss of good standing, the same course(s), or an equivalent one(s), however, may be taken at the student's expense in order to reinstate eligibility or good standing.

c) Laurentian University reserves the right to modify or rescind this policy depending on the development of future government policy that has a bearing on this matter.

**Schedule "F"**

**The parties agree that the Retiree Health Benefit Plan (RHBP) will cease to exist and all Collective Agreement references will be eliminated.**

**The parties agree to the following changes to Schedule J of the LUSU CA:**

RETIREES BENEFITS

a) On an annual basis, retirees from Laurentian University, upon request, will be supplied with a photo-identification library card, at no cost to them, except if they require a replacement for a lost card. There will be a charge for replacement of lost cards.

b) The same library privileges as full-time employees.

c) Free parking in facilities in the parking lot designated by the Parking/Security office.

d) The University agrees that any retiree health benefit or subsidy provided to the LUAPS or LUFA group during the life of this agreement will also apply to the LUSU group.

~~d) Exemption from tuition fees for themselves, their spouses and their dependents as per Letter of Understanding "F", RE: Tuition Fees.~~

~~e) The same eligibility for Physical Education Centre Membership for employees, their spouses and their dependents as full-time Employees, as per Letter of Understanding "E", RE: Physical Education Employee Membership.~~

~~f) The the Retirees Health Benefit Plan (RHBP) will be reinast ,ted on July 1, 2024, at which time the benefits will be increased to $1,317.60 per year for a family, and $658.82 per year for a single individual. The premium for this plan will be paid by the employee, in the retirement plan, and will comprise $12.47 per month for family premium, and $6.24 for single premium, or as adjusted by the Laurentian University Benefits Committee.~~
~~It is understood that the rates and subsidy payments change every July 1 and employees shall make contributions in accordance with the provisions of the RHBP.~~

~~g) The following benefits will be prorated based on the reduced workweek adopted under the plan: long-term disability, vacation and sick-leave. The pension contribution calculations will be based on the nominal annual salary. Life insurance will be based on the nominal annual salary.~~

**Schedule "G"**

5. CHANGE SECURITY STAFFING SERVICES

**The parties agree to the following changes to article 1.01 of the LUSU CA:**

The University recognizes the Union as the sole and exclusive bargaining agent for all Security Guards in the employ of Laurentian University of Sudbury, save and except supervisors, persons above the rank of supervisor, night watchmen, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period as set out in the certificate issued by the Ontario Labour Relations Board and dated at Toronto, January 22, 2010.

~~The University recognizes the Union as the sole and exclusive bargaining agent for all Security Guards in the employ of Laurentian University of Sudbury regularly employed for not more than 24 hours per week, save and except Director, Security and Parking Services and persons above the rank of Director, night watchmen, persons regularly employed for more than 24 hours per week, and students employed during the school vacation period, as set out in the certificate issued by the Ontario Labour Relations Board and dated at Toronto, January 22, 2010.~~

Note: It is understood that all language regarding Part-Time Security Guards will be removed from the LUSU CA.

**Schedule "H"**

1. UPDATE PREGNANCY/PARENTAL LEAVE PROVISIONS

**The parties agree to the following letter of understanding:**

Within one year of the signing of this agreement, the parties will conduct an editorial review of the Pregnancy/Parental provisions of the Collective Agreement in order to update to appropriate and modern terminology. The parties agree that there will be no substantive changes to the language during the editorial process.

## Schedule "I"

## OVERTIME

**The parties agree to the following letter of understanding:**

Overtime will be credited as time in lieu unless the University, in its sole discretion, decides to pay out overtime. It is understood that time in lieu must be taken within six (6) months of being earned at a mutually agreeable time. However, retiring employees will be entitled to payment for any outstanding lieu time at retirement.

**Redacted pages contain sensitive personal information**

LAURENTIAN UNIVERSITY FACULTY ASSOCIATION ("**LUFA**") and LAURENTIAN UNIVERSITY STAFF UNION ("**LUSU**")
PENSION TERM SHEET

This document describes the terms for proposed support agreements from each of LUFA and LUSU in respect of the Retirement Plan of Laurentian University of Sudbury and its Federated and Affiliated Universities, Registration No. 0267013 (the "**Registered Pension Plan**").

The contents of the LUFA and LUSU Pension Term Sheet are intended to be summary only and remain subject to definitive documentation to be agreed among LUFA, LUSU and Laurentian University as contemplated herein. Agreement on the Registered Pension Plan is a necessary component of a larger set of agreements between Laurentian University and LUFA and LUSU, respectively, and is dependent on agreement on all other matters currently under negotiation between the parties.

The confidentiality provisions applicable to the parties pursuant to the confidential mediation taking place in connection with Laurentian's proceeding under the *Companies' Creditors Arrangement Act* apply to the LUFA and LUSU Pension Term Sheet.

**A. Registered Pension Plan Design Changes**

Each of the changes outlined below is proposed to be made effective July 1, 2021, unless otherwise noted.

1. Limit Portability as of May 1, 2021

   Remove the right to a commuted value payment in lieu of a monthly pension payable from the Registered Pension Plan for any active member who leaves employment after having reached their early retirement date (the first day of July coincident with or next following the member's 55$^{th}$ birthday).

   Provide notice and one final window of opportunity for former members to elect a commuted value payment in lieu of a monthly pension payable from the Registered Pension Plan.

   For those faculty members who have chosen to retire pursuant to the Retirement Incentives communicated by the University on March 28, 2021, the deadline to elect to receive a commuted value payment will be extended to May 15, 2021.

2. Modify Early Retirement Provisions

   For members who have not attained age 62 as of July 1, 2021:

   - Remove subsidized early retirement reductions for all members on all service (actuarially adjusted from normal retirement date for LUFA members and Senior Leadership members and from age 62 for LUSU members and other members except LUFA members and Senior Leadership members);

   - Eliminate unreduced early retirement (prior to normal retirement date) for LUFA members and Senior Leadership members.

   For purposes of the foregoing, Senior Leadership are leaders who are excluded from a bargaining unit and serve above the Director level, in positions such as: Assistant Vice-President, Associate Dean, Associate Vice-President (AVP), Chief Advancement Officer,

Chief of Staff, Dean, Executive Director, President and Vice-Chancellor, Registrar and Secretary of Senate, University Secretary and General Counsel or Vice-President.

3. Limit Receipt of Pension While Employed

   Remove ability of members to draw a pension while remaining in continuous employment after age 65, except for members already in receipt of a pension as of July 1, 2021 or who must commence receipt of their pension under income tax law.

4. Freeze Best Average Pensionable Earnings

   Best Average Pensionable Earnings would be frozen at the rate in effect on June 30, 2021. This figure will be communicated to members at that time.

   Improvements to pre-July 1, 2021 Best Average Pensionable Earnings through pre-retirement indexation to be granted in accordance with the Benefits and Funding Policy.

5. Future Service Reduced Career Average Earnings Lifetime Benefit Formula Integrated with Enhanced CPP

   For service on and after July 1, 2021, members will make contributions toward and earn pension benefits at the 1.3% rate on the portion of their earnings below the Year's Additional Maximum Pensionable Earnings ("**YAMPE**") and at the 2% rate on the portion of earnings above the YAMPE. For this purpose, YAMPE=114% of YMPE. The benefit formula for service on and after July 1, 2021 will be based on pensionable earnings in each year (career average earnings formula), not on a final average earnings formula.

   Improvements to career average earnings formula through pre-retirement indexation to be granted in accordance with the Benefits and Funding Policy.

6. Indexation

   For service on and after July 1, 2021 indexation, which is not guaranteed, to be granted in accordance with the Benefits and Funding Policy.

**B. Registered Pension Plan Contribution Changes**

Laurentian will contribute a minimum of 8% of pensionable earnings, inclusive of employer current service contributions, special payments and administrative expenses.

Members will also contribute 8% of pensionable earnings in aggregate based on a rate to be set that reflects a lower rate on earnings up to the YAMPE and a higher rate on earnings in excess of the YAMPE, with the objective of achieving an equitable relationship between contributions and benefits above and below the YAMPE. The preliminary member contribution rates as of July 1, 2021 are:

Earnings up to YAMPE: 6.7%

Earnings above YAMPE: 10.4%

The rate of member contributions up to and above the YAMPE will be determined following the filing of a July 1, 2021 valuation, to be confirmed by an independent actuary selected by LUFA and LUSU and to become effective on a date to be agreed by Laurentian, LUFA and LUSU.

**C. Pension Committee Terms of Reference**

The Pension Committee Terms of Reference are amended as set out in Appendix "**A**".

**D. Registered Pension Plan Benefits and Funding Policy**

A Benefits and Funding Policy to govern the financial management of the Registered Pension Plan shall be established based on the key terms set out in Appendix "**B**".

The Benefits and Funding Policy shall, subject to review and amendment in accordance with its terms, bind the stakeholders and govern their future discussions, proposals, and negotiations in relation to the Registered Pension Plan.

**E. Collective Agreement Proposals Relating to Pensions and Retiree Benefits**

The LUFA-Laurentian and LUSU-Laurentian collective agreements will be revised to give effect to the above in accordance with the proposed amendments set out in Appendix "**C**".

**F. Joint Committee on the Benefits and Funding Policy and Long-Term Pension Sustainability:**

1. A joint committee will be established prior to April 30, 2021 whose mandate will be to monitor and advise on the administration and implementation of the Benefits and Funding Policy. The joint committee will also review and report on the pros and cons of all possible long term sustainability options for the Registered Pension Plan, including the available JSPP options (at least CAAT DBPlus and the University Pension Plan), with the objective of making a recommendation to the Stakeholders (LUFA, LUSU and Laurentian) for adoption not later than December 31, 2021, or an alternative date set by the joint committee.

2. The joint committee will be comprised of four (4) Laurentian representatives, two (2) LUFA representatives and two (2) LUSU representatives.

3. Terms of Reference and Rules of Procedure for the joint committee are to be determined by April 30, 2021 by LUFA, LUSU and Laurentian, to be subject to binding mediation/arbitration by Eli Gedalof or William Kaplan absent a decision by April 20, 2021.

4. The joint committee will be supported by an independent actuary jointly selected by the committee.

LAURENTIAN UNIVERSITY FACULTY ASSOCIATION

Per: _____ c/s April 7, 2021
Name: David Wright Date
Firm: Ryder, Wright, Blair & Holmes LLP
Title: Chief Negotiator and Counsel
*I have the authority to bind the Association*

LAURENTIAN UNIVERSITY OF SUDBURY

Per: _____ c/s April 7, 2021
Name: Robert Haché Date
Title: President
*I have the authority to bind the Corporation*

LAURENTIAN UNIVERSITY STAFF UNION

Per: _____ c/s _____
Name: Tom Fenske Date
Title: President
*I have the authority to bind the Union*

**C. Pension Committee Terms of Reference**

The Pension Committee Terms of Reference are amended as set out in Appendix "A".

**D. Registered Pension Plan Benefits and Funding Policy**

A Benefits and Funding Policy to govern the financial management of the Registered Pension Plan shall be established based on the key terms set out in Appendix "B".

The Benefits and Funding Policy shall, subject to review and amendment in accordance with its terms, bind the stakeholders and govern their future discussions, proposals, and negotiations in relation to the Registered Pension Plan.

**E. Collective Agreement Proposals Relating to Pensions and Retiree Benefits**

The LUFA-Laurentian and LUSU-Laurentian collective agreements will be revised to give effect to the above in accordance with the proposed amendments set out in Appendix "C".

**F. Joint Committee on the Benefits and Funding Policy and Long-Term Pension Sustainability:**

1. A joint committee will be established prior to April 30, 2021 whose mandate will be to monitor and advise on the administration and implementation of the Benefits and Funding Policy. The joint committee will also review and report on the pros and cons of all possible long term sustainability options for the Registered Pension Plan, including the available JSPP options (at least CAAT DBPlus and the University Pension Plan), with the objective of making a recommendation to the Stakeholders (LUFA, LUSU and Laurentian) for adoption not later than December 31, 2021, or an alternative date set by the joint committee.
2. The joint committee will be comprised of four (4) Laurentian representatives, two (2) LUFA representatives and two (2) LUSU representatives.
3. Terms of Reference and Rules of Procedure for the joint committee are to be determined by April 30, 2021 by LUFA, LUSU and Laurentian, to be subject to binding mediation/arbitration by Eli Gedalof or William Kaplan absent a decision by April 20, 2021.
4. The joint committee will be supported by an independent actuary jointly selected by the committee.

LAURENTIAN UNIVERSITY FACULTY ASSOCIATION

Per: _____ c/s _____
Name: David Wright Date
Firm: Ryder, Wright, Blair & Holmes LLP
Title: Chief Negotiator and Counsel
*I have the authority to bind the Association*

LAURENTIAN UNIVERSITY OF SUDBURY

Per: _____ c/s _____
Name: Robert Haché Date
Title: President
*I have the authority to bind the Corporation*

LAURENTIAN UNIVERSITY STAFF UNION

Per: Tom Fenske c/s April 5th, 2021
Name: Tom Fenske Date
Title: President
*I have the authority to bind the Union*

**Appendix "A"**

# LAURENTIAN UNIVERSITY PENSION COMMITTEE

## Terms of Reference

1. To monitor, and advise the Finance Committee of the Board of Governors on the following matters:

   a) the selection of one or more investment managers;

   b) the investment policy of the plan; and

   c) operational changes to the administration of the plan.

2. To meet with the investment manager(s) to review fund performance.

3. To meet with representatives of the investment consultant to review comparative pension fund investment measurement reports.

4. To advise the University on periodic reports to be provided to plan members.

5. To review the actuarial valuation reports prepared by the actuary of the plan.

6. To implement and administer the Benefits and Funding Policy.

7. To consult with the Joint Committee on the Benefits and Funding Policy and Long-Term Pension Sustainability as contemplated by the Benefits and Funding Policy.

8. To propose plan text amendments (i) required to satisfy regulatory compliance requirements and (ii) required to be made in accordance with the Benefits and Funding Policy.

## Composition

Voting Members

Five representatives appointed by the Board of Governors

Three representatives appointed by the Faculty Association (LUFA)

Two representatives appointed by the Staff Union (LUSU)

Non-Voting Members

Associate Vice-President Human Resources and Organizational Development (ex officio)

Associate Vice-President, Financial Services (ex officio)

One representative of faculty retirees

One representative appointed by non-union administrative staff (LUAPSA)

**Rules of Procedure**

The Pension Committee's Rules of Procedure are to be developed consistent with these Terms of Reference.

Revised: April 30, 2021

**Appendix "B"**

**Key Terms**
**Registered Pension Plan Benefits and Funding Policy ("Funding Policy")**

Laurentian University, LUFA, and LUSU have agreed to reduce pension benefits in the context of Laurentian University's proceeding under the *Companies' Creditors Arrangement Act*. As a consequence, the aggregate 16% contribution rate for the Plan has been developed to exceed the current service cost of the plan design on and after July 1, 2021.

This Funding Policy's purpose is to ensure that excess contributions will be used to (i) build reserves and (ii) grant benefit improvements.

The following criteria must be met in order for benefit improvements to be granted:

- The Plan must be 95% funded on a solvency basis;
- The Plan must be 105% funded on a going concern basis, including Provision for Adverse Deviations;
- The cost of any benefit improvement maintains a low risk of special payments in the five years following the benefit improvement. For this purpose, a benefit improvement must result in the solvency ratio of the Plan remaining at no less than 90% and the going concern funded status of the Plan, including Provision for Adverse Deviation, remaining at no less than 103% following the granting of the improvement; and
- The contributions to the Plan have a low risk of exceeding 16% of pensionable earnings.

The priority of benefit improvements and building of reserves is to be set out in the Benefits and Funding Policy to be established by Laurentian University, LUFA and LUSU and shall reflect the key terms set out herein. Agreement on the Benefits and Funding Policy shall be reached by April 30, 2021, to be subject to binding mediation/arbitration by Eli Gedalof or William Kaplan, absent a decision by April 20, 2021.

The criteria for granting benefit improvements will be assessed against robust actuarial analysis prepared annually. The actuarial assumptions and methodologies used will be the same as those used in the latest filed actuarial valuation for the Plan. Actuarial assumptions and methodologies are to be based on best estimates.

The Joint Committee on the Benefits and Funding Policy and Long-Term Pension Sustainability (the "**Joint Committee**") comprised of representatives of Laurentian, LUFA and LUSU, pursuant to the LUFA/LUSU Pension Term Sheet will be notified by the Pension Committee and given the opportunity to comment prior to changes to the actuarial assumptions for filed valuations.

The Joint Committee will be notified by the Pension Committee of any proposed changes to the Statement of Investment Policy and given the opportunity to comment prior to the implementation of any changes.

The Joint Committee will monitor the administration of the Benefits and Funding Policy to ensure that Plan amendments to give effect to improvements to benefits and establishment of reserves are implemented pursuant to the criteria and priority described therein.

No benefit improvements will be considered prior to July 1, 2025, unless prior to that time the surplus in the Plan exceeds the *Income Tax Act* ("ITA") maximums, in order to build reserves.

Employer contribution holidays and reductions in employer contribution rates are prohibited.

Contributions to the Plan are subject to the *Pension Benefits Act* and ITA.

This policy is subject to review by Laurentian University, LUFA and LUSU no later than July 1, 2025.

**Appendix "C"**

**LUFA and LUSU Collective Agreement Proposals Relating to Pension**

| LUFA Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| 2.40.12 | Adjust to reflect revised Pension Committee Composition in Terms of Reference | The President of the Union or someone designated by the President, and two (2) additional Members designated by the President of the Union, shall continue to be voting Members of the University Pension Committee. Given the importance of pensions, on substantive matters, the Union's Board has the right to ratify the recommendations of its representatives. | ~~The President of the Union or someone designated by the President, and two (2) additional~~ Three (3) Members designated by the President of the Union~~,~~ shall ~~continue to~~ be voting Members of the University Pension Committee. Given the importance of pensions, on substantive matters, the Union's Board has the right to ratify the recommendations of its representatives.<br><br>No amendments to the Pension Plan that reduce pension benefits for Members, or that materially affect Members' rights, may be made without LUFA's consent. |
| 5.90.5 | Reflect proposed pension portability changes | Members hired after September 24, 2017, and who are age 55 or older upon retirement or resignation, will not have the option to commute the value of their pension benefit upon retirement or resignation. The Pension Plan will be amended to reflect this agreement. | Delete [to be included in plan design support agreement]. |
| 8.45.3 | Delete reference to the SuRP. | Effective July 1, 2011, Members shall only participate in the | Effective July 1, 2011, Members shall only participate in the |

| LUFA Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | Defined Benefit component of the Retirement Plan and Member contributions shall only be used toward funding the Defined Benefit component of the Retirement Plan. All pension service contributions and benefits accrued prior to July 1, 2011, shall remain in the hybrid component of the Retirement Plan. Eligible Members shall participate in the Laurentian University Supplementary Pension Plan. | Defined Benefit component of the Retirement Plan and Member contributions shall only be used toward funding the Defined Benefit component of the Retirement Plan. All pension service contributions and benefits accrued prior to July 1, 2011, shall remain in the hybrid component of the Retirement Plan. ~~Eligible Members shall participate in the Laurentian University Supplementary Pension Plan.~~ |
| 8.45.4 | Reflect agreement on contributions | Employer<br><br>The Employer's contributions to the Retirement Plan shall be at least the amount required to fund current service costs and any unfunded liabilities and Solvency liabilities, or 7.5%, whichever is greater, in accordance with the *Pension Benefits Act* and regulations thereunder based upon the actuarial valuations for the Retirement Plan that the Employer files with the Financial Services Commission of Ontario. Interest on the Employee contributions to the | Employer<br><br>The Employer's contributions to the Retirement Plan shall be at least the amount required to fund current service costs and any unfunded liabilities and reduced solvency liabilities, or ~~7.5%~~8.0%, whichever is greater, in accordance with the *Pension Benefits Act* and regulations thereunder based upon the actuarial valuations for the Retirement Plan that the Employer files with the Financial Services ~~Commission~~Regulatory Authority of Ontario. Interest on the Employee contributions |

| LUFA Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | Plan will be credited at the Plan rate of return.<br><br>The Employer may take a contribution holiday in accordance with the *Pension Benefits Act* and after discussion with the Pension Committee only when required under the *Income Tax Act* due to excess surpluses as defined under the *Income Tax Act* 147.2(2) (d). Any contribution holiday shall be shared equally between the Employer and Employees.<br><br><u>Employee</u><br><br>(a) Effective June 30, 2017, eight point two percent (8.2%) of the part of the Member's Pensionable Earnings that is below the year's basic exemption as defined by the Canada Pension Plan;<br><br>(b) Effective June 30, 2017, six point four percent (6.4%) of the part of the Member's Pensionable Earnings that is between the year's basic exemption and the year's maximum pensionable earnings;<br><br>(c) Effective June | to the Plan will be credited at the Plan rate of return.<br><br>~~The Employer may take a contribution holiday in accordance with the *Pension Benefits Act* and after discussion with the Pension Committee only when required under the *Income Tax Act* due to excess surpluses as defined under the *Income Tax Act* 147.2(2) (d). Any contribution holiday shall be shared equally between the Employer and Employees.~~<br><br><u>Employee:</u><br><br>Each Member shall contribute by regular payroll deduction as follows.<br><br>Effective July 1, 2021, the sum of:<br><br>a) 6.7% of Pensionable Earnings up to the YAMPE; and<br><br>b) 10.4% of Pensionable Earnings above the YAMPE.<br><br>[Placeholder for further adjustments to reflect Pension Term Sheet]<br><br>~~(a) Effective JuneJuly 301, 201721, eight point~~ |

| LUFA Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | 30, 2017, eight point two percent (8.2%) of the part of the ember's Pensionable Earnings that is in excess of the year's maximum pensionable earnings. | ~~two percent (8.2%) of the part of the Member's Pensionable Earnings that is below the year's basic exemption as defined by the Canada Pension Plan;~~<br><br>~~(b) Effective June 30, 2017, six point four percent (6.4%) of the part of the Member's Pensionable Earnings that is between the year's basic exemption and the year's maximum pensionable earnings;~~<br><br>~~(c) Effective June 30, 2017, eight point two percent (8.2%) of the part of the ember's Pensionable Earnings that is in excess of the year's maximum pensionable earnings.~~ |
| Appendix L: Letter of Understanding - Pension Plan Contributions | Remove | RE: Pension Plan Contributions.<br>During the 2017 collective bargaining negotiations, the University sought an increase to employee pension contributions from LUFA members while providing a fully offsetting salary increase, with the goal of achieving a fair and equitable cost-sharing of current service costs. It was agreed that the parties would benefit from an opportunity to | Delete. |

| LUFA Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | consider the July 1, 2017 Pension Plan Valuation, due to be finalized in or about December 2017. The parties therefore agreed that the matter of pension contributions would not form part of the renewal collective agreement but committed to a process to make progress on the matter during the life of the agreement. In that spirit, recognizing that no outcome is binding on either party except as may be mutually agreed in writing, the University and the Union commit to engaging in collegial, open and transparent discussions. The parties agree to begin these discussions in a timely manner to allow for pension and salary increases, if any, to take effect July 1, 2018. | |

**LUFA and LUSU Collective Agreement Proposals Relating to Pension**

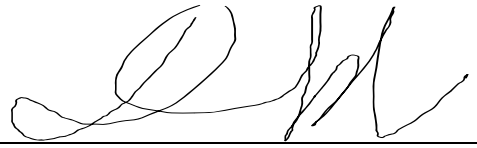
| LUSU Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| 20.01 | Delete reference to the SuRP. | Effective July 1, 2012, Members shall only participate in the Defined Benefit component of the Retirement Plan and Member contributions shall only be used toward funding the Defined Benefit component of the Retirement Plan. All pension service contributions and benefits accrued prior toJuly 01, 2012, shall remain in the hybrid component of the Retirement Plan. Eligible Members shall participate in the Laurentian University Supplementary Pension Plan. | Effective July 1, 2012, Members shall only participate in the Defined Benefit component of the Retirement Plan and Member contributions shall only be used toward funding the Defined Benefit component of the Retirement Plan. All pension service contributions and benefits accrued prior toJuly 01, 2012, shall remain in the hybrid component of the Retirement Plan. ~~Eligible Members shall participate in the Laurentian University Supplementary Pension Plan.~~ |
| 20.03 | Reflect agreement on contributions | Employer Contribution<br><br>The Employer's contributions to the Retirement Plan shall beat least the amount required to fund current service costs and any unfunded liabilities and solvency liabilities, or 7.5%, whichever is greater, in accordance with the *Pension Benefits Act* and regulations there under based upon the | Employer Contribution<br><br>The Employer's contributions to the Retirement Plan shall beat least the amount required to fund current service costs and any unfunded liabilities and <u>reduced</u> solvency liabilities, or ~~7.5%~~<u>8.0%</u>,whichever is greater, in accordance with the *Pension Benefits Act* and regulations there under based upon the |

| LUSU Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | actuarialvaluations for the Retirement Plan that the Employer files with the Financial Services Commission of Ontario.Interest on the Employee contributionsto the Plan will be credited at the Plan rate of return.<br><br>The Employer may takea contribution holiday inaccordance with the *Pension Benefits Act* and after discussion with the Pension Committee only when required under the *Income Tax Act* due to excess surpluses as defined under the Income Tax Act 147.2(2) (d). Any contribution holiday shall be shared equallybetween the Employerand Employees.<br><br>Member's Required Contribution<br><br>Each Member shall contribute by regular payroll deduction as follows:<br><br>Effective July 1, 2018,the sum of: | actuarial valuations for the Retirement Plan thatthe Employer files with the Financial Services ~~Commission~~ RegulatoryAuthority of Ontario. Interest on the Employee contributionsto the Plan will be credited at the Plan rateof return.<br><br>~~The Employer may takea contribution holiday inaccordance with the *Pension Benefits Act* and after discussion with the Pension Committee only when required under the *Income Tax Act* due to excess surpluses as defined under the Income Tax Act 147.2(2) (d). Any contribution holiday shall be shared equallybetween the Employerand Employees.~~<br><br>Member's Required Contribution:<br><br>Each Member shall contribute by regularpayroll deduction as follows:<br><br>Effective July 1, |

| LUSU Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | a) 9.9 % of the partof the Member's Pensionable Earnings that is below the year'sbasic exemption as defined by the CanadaPension Plan;<br><br>b) 6.4 % of the partof the Member's Pensionable Earnings that is between the year's basic exemption and the Y.M.P.E.; and<br><br>c) 9.9 % of the partof the Member's Pensionable Earnings that is in excess of the Y.M.P.E. | ~~2018~~2021, the sum of:<br><br>a) 6.7% of Pensionable Earnings up to the YAMPE; and<br><br>b) 10.4% of PensionableEarnings above the YAMPE.<br><br>[Placeholder for further adjustments to reflect Pension Term Sheet]<br><br>~~a) 9.9 % of the partof the Member's Pensionable Earnings that is below the year's basic exemption as defined by the Canada Pension Plan;~~<br><br>~~b) 6.4 % of the partof the Member's Pensionable Earnings that is between the year's basic exemption and the Y.M.P.E.; and~~<br><br>~~c) 9.9 % of the partof the Member's Pensionable Earnings that is in excess of the Y.M.P.E.~~ |
| 20.05 c) | Reflect proposed pensionportability changes | c) Laurentian University Staff Unionmembers who are hiredon or after September 24, | Delete [to be included in plan design support agreement] |

| LUSU Collective Agreement | | | |
|---|---|---|---|
| **Provision** | **Intended Amendment** | **Current** | **Proposed Revised** |
| | | 2017, and who are age 55 or older upon retirement or resignation, will not have the option to commute the value of their pension benefit upon retirement or resignation. The Pension Plan will be amended to reflect this agreement. | |
| New 20.06 | Reflect LUSU participation in Pension Committee | N/A | Two (2) Laurentian University Staff Union members designated by the President of the Union shall be voting Members of the University Pension Committee. |
| New 20.07 | Address Amendments to the Pension Plan | N/A | No amendments to the Pension Plan that reduce pension benefits for Members, or that materially affect Members' rights, may be made without LUSU's consent. |

This is Exhibit “J” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

**Federated Universities Enrolment: Headcount+**

| Institution | 2018F | 2019F | 2020F |
|---|---|---|---|
| Huntington University | 192 | 181 | 163 |
| Thorneloe University | 94 | 85 | 91 |
| University of Sudbury | 94 | 100 | 108 |
| Études religieuses | 5 | 10 | 16 |
| Philosophy (joint) | 12 | 11 | 12 |
| Religious Studies (joint) | 16 | 19 | 28 |
| Grand Total | 412 | 403 | 417 |

**Federated Universities Enrolment: Fall FTEs+**

| Institution | 2018F | 2019F | 2020F |
|---|---|---|---|
| Huntington University | 128.6 | 116.1 | 103.2 |
| Thorneloe University | 71.6 | 66.7 | 62.8 |
| University of Sudbury | 56.3 | 64.3 | 69.6 |
| Études religieuses | 2 | 5.6 | 9.4 |
| Philosophy (joint) | 8.8 | 8.9 | 10 |
| Religious Studies (joint) | 9.7 | 11.2 | 16.8 |
| Grand Total | 276.4 | 270.7 | 271 |

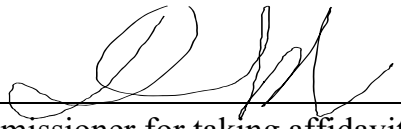
+Students can belong to multiple federated universities. A student enrolled in both Huntington and Thorneloe, for example, will be shown in both. The grand total is unique students.

Philosophy(ie) is offered jointly with Laurentian.

Religious Studies is offered jointly among the federated universities.

Both tables are based on enrolments submitted to the Ministry of Colleges and Universities for official enrolment reporting Fall Nov 1st each year.

This is Exhibit “K” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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**Laurentian University**
**Distribution to Federated Universities**
**April 30 2020**

| | UofS | Huntington | Thorneloe | Total |
|---|---|---|---|---|
| Total Grants | 1,849,034 | 1,125,781 | 551,205 | 3,526,020 |
| Net Tuition | 2,417,652 | 1,283,652 | 1,570,964 | 5,272,268 |
| Material fees paid | 133,848 | 109,181 | 64,922 | 307,951 |
| Administrative fee | -630,350 | -398,791 | (369,060) | (1,398,200) |
| **Net Distribution paid to Fed. U** | **3,770,184** | **2,119,823** | **1,818,031** | **7,708,039** |

**Laurentian University**
**Distribution to Federated Universities**
**April 30 2020**

| Summary of Grants | UofS | Huntington | Thorneloe | Total |
|---|---|---|---|---|
| Core | 283,043 | 765,521 | 322,523 | 1,371,087 |
| Performance Funding | 41,075 | 111,093 | 46,805 | 198,973 |
| Northern | 212,816 | 172,832 | 80,462 | 466,110 |
| Bilingualism | 615,185 | | | 615,185 |
| Northern Sustainability | 100,584 | 51,507 | 76,615 | 228,706 |
| COVID 19 | 18,361 | 9,402 | 13,986 | 41,749 |
| Facilities Renewal | 26,845 | 15,426 | 10,814 | 53,085 |
| Special Purpose - French Language | 551,125 | | | 551,125 |
| Total | 1,849,034 | 1,125,781 | 551,205 | 3,526,020 |

**Laurentian University**
**Contribution (Tuition) to Federated Universities**

| ***Total Federated Universities*** | **Actuals 2019-20** |
|---|---|
| Tuition (Gross before TSA) | 6,213,634 |
| TSA | -941,366 |
| Net Tuition | 5,272,268 |
| **Estimated $ transfered to Fed. U for LU-only student delivery** | **4,034,808** |

| **University of Sudbury** | |
|---|---|
| Tuition (Gross before TSA) | 2,849,325 |
| TSA | -431,673 |
| Net Tuition | 2,417,652 |
| % of course delivery to LU-only degree seeker | 0.8 |
| **Estimated $ transfered to Fed. U for LU-only student delivery** | **1,934,122** |

| **Huntington University** | |
|---|---|
| Tuition (Gross before TSA) | 1,512,849 |
| TSA | -229,197 |
| Net Tuition | 1,283,652 |
| % of course delivery to LU-only degree seeker | 0.666 |
| **Estimated $ transfered to Fed. U for LU-only student delivery** | **854,912** |

| **Thorneloe University** | |
|---|---|
| Tuition (Gross before TSA) | 1,851,460 |
| TSA | -280,496 |
| Net Tuition | 1,570,964 |
| % of course delivery to LU-only degree seeker | 0.793 |
| **Estimated $ transfered to Fed. U for LU-only student delivery** | **1,245,774** |

**Laurentian University**
**Contribution (Other) to Federated Universities**

| | |
|---|---|
| **Administrative Fee** | |
| University of Sudbury | -630,350 |
| Huntington University | -398,791 |
| Thorneloe University | -369,060 |
| Total Admin Fee | -1,398,200 |
| | |
| **Material Fees** | |
| University of Sudbury | 133,848 |
| Huntington University | 109,181 |
| Thorneloe University | 64,922 |
| Total Material Fee | 307,951 |

This is Exhibit “L” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

# NOTICE BY LAURENTIAN UNIVERSITY OF SUDBURY TO DISCLAIM OR RESILIATE AN AGREEMENT

**To:** **University of Sudbury**

**And To:** **Ernst & Young Inc., in its capacity as the Court-Appointed Monitor of the Applicant (the "Monitor")**

**TAKE NOTICE THAT:**

1. Proceedings under the *Companies' Creditors Arrangement Act* (the "**Act**") in respect of Laurentian University of Sudbury ("**Laurentian**") were commenced on the 1st day of February, 2021.

2. In accordance with subsection 32(1) of the Act, Laurentian gives you notice of its intention to disclaim or resiliate the following agreements:

   Federation Agreement between Laurentian and the University of Sudbury dated September 10, 1960, as same may have been amended from time to time.

   Financial Distribution Notice between Laurentian and the University of Sudbury dated May 1, 2019 amending the Proposed Grant Distribution and Services Fees agreement between Laurentian, the University of Sudbury, Thorneloe University, and Huntington University dated November 10, 1993.

3. In accordance with subsection 32(2) of the Act, any party to the agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the agreement is not to be disclaimed or resiliated.

4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the agreements are disclaimed or resiliated on the 30th day of April, 2021, being 30 days after the day on which this notice has been given.

5. For more information on the CCAA proceeding affecting Laurentian, you may visit the Monitor's website at: https://documentcentre.ey.com/#/detail-engmt?eid=459.

Dated at Sudbury, Ontario, on April 1, 2021.

Laurentian University of Sudbury
Robert Hache – President and Vice-Chancellor

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on April 1, 2021.

Sharon Hamilton,
Senior Vice President
Ernst & Young Inc., in its capacity
as Court-Appointed Monitor

This is Exhibit “M” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

# NOTICE BY LAURENTIAN UNIVERSITY OF SUDBURY TO DISCLAIM OR RESILIATE AN AGREEMENT

**To:** **Thorneloe University**

**And To:** **Ernst & Young Inc., in its capacity as the Court-Appointed Monitor of the Applicant (the "Monitor")**

**TAKE NOTICE THAT:**

1. Proceedings under the *Companies' Creditors Arrangement Act* (the "**Act**") in respect of Laurentian University of Sudbury ("**Laurentian**") were commenced on the 1st day of February, 2021.

2. In accordance with subsection 32(1) of the Act, Laurentian gives you notice of its intention to disclaim or resiliate the following agreements:

   Federation Agreement between Laurentian and Thorneloe University dated 1962, as same may have been amended from time to time.

   Financial Distribution Notice between Laurentian and Thorneloe University dated May 1, 2019 amending the Proposed Grant Distribution and Services Fees agreement between Laurentian, the University of Sudbury, Thorneloe University, and Huntington University dated November 10, 1993.

3. In accordance with subsection 32(2) of the Act, any party to the agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the agreement is not to be disclaimed or resiliated.

4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the agreements are disclaimed or resiliated on the 30th day of April, 2021, being 30 days after the day on which this notice has been given.

5. For more information on the CCAA proceeding affecting Laurentian, you may visit the Monitor's website at: https://documentcentre.ey.com/#/detail-engmt?eid=459.

Dated at Sudbury, Ontario, on April 1, 2021.

Laurentian University of Sudbury
Robert Hache – President and Vice-Chancellor

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on April 1, 2021.

Sharon Hamilton,
Senior Vice President
Ernst & Young Inc., in its capacity
as Court-Appointed Monitor

This is Exhibit “N” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

# NOTICE BY LAURENTIAN UNIVERSITY OF SUDBURY TO DISCLAIM OR RESILIATE AN AGREEMENT

**To:** **Huntington University**

**And To:** **Ernst & Young Inc., in its capacity as the Court-Appointed Monitor of the Applicant (the "Monitor")**

**TAKE NOTICE THAT:**

1. Proceedings under the *Companies' Creditors Arrangement Act* (the "**Act**") in respect of Laurentian University of Sudbury ("**Laurentian**") were commenced on the 1st day of February, 2021.

2. In accordance with subsection 32(1) of the Act, Laurentian gives you notice of its intention to disclaim or resiliate the following agreements:

   Federation Agreement between Laurentian and Huntington University dated September 10, 1960, as same may have been amended from time to time.

   Financial Distribution Notice between Laurentian and Huntington University dated May 1, 2019 amending the Proposed Grant Distribution and Services Fees agreement between Laurentian, the University of Sudbury, Thorneloe University, and Huntington University dated November 10, 1993.

3. In accordance with subsection 32(2) of the Act, any party to the agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the agreement is not to be disclaimed or resiliated.

4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the agreements are disclaimed or resiliated on the 30th day of April, 2021, being 30 days after the day on which this notice has been given.

5. For more information on the CCAA proceeding affecting Laurentian, you may visit the Monitor's website at: https://documentcentre.ey.com/#/detail-engmt?eid=459.

Dated at Sudbury, Ontario, on April 1, 2021.

Laurentian University of Sudbury
Robert Hache – President and Vice-Chancellor

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on April 1, 2021.

Sharon Hamilton,
Senior Vice President
Ernst & Young Inc., in its capacity
as Court-Appointed Monitor

This is Exhibit “O” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

SHEPPARD CLAUDE
Avocats • Lawyers

Sunday, 11 April 2021

Delivery by E-Mail

**THORNTON GROUT FINNIGAN LLP**
100 Wellington St. West, Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

**Attention:** D.J. Miller
Mitchell W. Grossell
Andrew Hanrahan
Derek Harland

**ERNST & YOUNG INC.**
100 Adelaide Street West
EY Tower
Toronto, ON M5H 0B3

**Attention:** Sharon Hamilton
Michael Nathaniel

**STIKEMAN ELLIOTT LLP**
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

**Attention:** Ashley Taylor,
Elizabeth Pillon
Ben Muller

Dear Madams, Dear Sirs:

**RE: IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURY (under CCAA)**
**Court File No. CV-21-656040-00CL**
**Notice by Laurentian to Disclaim or Resiliate an Agreement, dated April 1, 2021**

202-1173 Road Cyrville Road, Ottawa (ON) K1J 7S6
T 613 748 3333 F 613 748 1599 aclaude@sheppardclaude.ca

This request is made on behalf of my client, University of Sudbury, under subsection 32(8) of the Companies' Creditors Arrangements Act, for Laurentian University of Sudbury's reasons, in writing, for the above-described proposed disclaimer or resiliation.

Please reply by email to me as soon as possible, and, in any event, within the 5 days required by the CCAA.

Respectfully,

**Sheppard & Claude**

Andre Claude

c.c. Client

This is Exhibit “P” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

D.J. Miller
T: 416-304-0559
E: djmiller@tgf.ca
File No. 1898-002

April 19, 2021

**VIA EMAIL (aclaude@sheppardclaude.ca)**

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

**Attention: André Claude**

Dear Mr. Claude:

**Re: In the Matter of the *Companies' Creditors Arrangement Act* and In the Matter of a Plan of Compromise or Arrangement of Laurentian University of Sudbury, Court File No.: CV-21-00656040-00CL**

I write in response to your letter of April 11, 2021 in which you requested, pursuant to Section 32(8) of the *Companies' Creditors Arrangement Act* ("**CCAA**") that Laurentian University of Sudbury ("**Laurentian**") provide written reasons for the Notice to Disclaim that was delivered to the University of Sudbury ("**US**") on April 1, 2021 (the "**Disclaimer**").

By email exchange you advised that we did not need to respond to the request within the time referenced under the CCAA, if our client's motion record for the motion returnable on April 29, 2021 seeking the stay extension, increased DIP financing and other relief was served on April 19, 2021, as the evidence contained therein would include our client's position on the Disclaimer. As we advised, that motion record was to include an Affidavit addressing relief sought by Laurentian, as well as in response to the various motions brought by other parties including the Disclaimer.

Last night you delivered an Affidavit in French, which we are having translated in order to review and respond to it. As we are therefore not serving our motion record today, we take this opportunity to provide you with the reasons for the Disclaimer of the Federation Agreement between Laurentian and the University of Sudbury dated September 10, 1960 (the "**Federation Agreement**") and the Financial Distribution Notice between Laurentian and the University of Sudbury dated May 1, 2019 (the "**Financial Distribution Notice**") amending the Proposed Grant Distribution and Services Fees agreement between Laurentian, US, Thorneloe University, and Huntington University dated November 10, 1993.

These brief reasons will be supplemented by the motion record in respect of the April 29 motion, once served.

On February 1, 2021, Laurentian commenced proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**") and, the same day, the Ontario Superior Court of Justice issued an Order that, among other things, declared that Laurentian was insolvent.

The facts giving rise to Laurentian's insolvency are outlined in the Affidavit of Dr. Robert Haché filed in support of the CCAA application. Laurentian's insolvency has resulted in profound operational, academic and other changes having to be made in order to re-establish financial sustainability. That includes:

- A comprehensive academic restructuring
- The results of the academic restructuring, together with the need to immediately reduce expenses, has led to the reduction of more than 100 full time faculty positions at Laurentian, which reductions have been implemented
- The academic restructuring was approved by Senate and has been implemented
- The academic restructuring has included a review of the capacity and enrolment numbers in all courses and programs offered by Laurentian
- Laurentian has the capacity, facilities, faculty and courses available for all of its students. Its costs in that regard are fixed
- Having all courses taught at Laurentian does not result in any additional expenses being incurred. Accordingly, funding received from all sources for the teaching of students can remain at Laurentian, rather than being paid to the federated universities
- Laurentian has taken certain significant one-time steps in this restructuring in order to create cost-savings that will allow it to operate in future and generate positive cash flow. Cash will also be needed to satisfy the claims of creditors in its CCAA proceeding, and that is expected to include payments over a number of years.
- Not only does the Disclaimer of the federated agreements enhance the prospects of a viable Plan of Arrangement, but in the absence of such Disclaimer, Laurentian's prospects of continuing to operate beyond April 30, 2021 are diminished, if not entirely eliminated.

The overhaul of Laurentian's operations described above is designed to establish financial stability for Laurentian by finding all available ways to increase revenues and decrease expenses, while still providing a high-quality education to LU's students. Laurentian has already cut as many expenses as it can related to academic programming and labour. Those cuts alone will not be sufficient. Another critical component of the restructuring is the termination of the federated university model so that Laurentian can bring all teaching, and the accompanying revenue that is generated from teaching, in-house. That will result in the amount of approximately $7.7 million per year not being paid by Laurentian to the federated universities. Otherwise, it is unlikely that there would be any Plan of Arrangement that would be acceptable to creditors and could therefore be approved.

The Disclaimer is further necessitated by the fact that it is a condition of Laurentian's DIP Loan, for the advance of further funds to cover the period May 1 to August 31, 2021, that no further funds be paid from Laurentian to the Federated Universities and that the Disclaimers become

effective as of May 1, 2021. The availability of additional DIP financing is essential to Laurentian's continued operations beyond April 30, 2021.

Yours truly,

**Thornton Grout Finnigan LLP**

D.J. Miller

cc: *Laurentian University of Sudbury*
*Ernst & Young Inc.* – Court-appointed Monitor
*Stikeman Elliott LLP* – Counsel to the Court-appointed Monitor

This is Exhibit “Q” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

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**TRANSITION AGREEMENT**

**April 16, 2021**

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**TRANSITION AGREEMENT**

THIS AGREEMENT made and effective as of the 16th day of April, 2021,

BETWEEN:

**LAURENTIAN UNIVERSITY OF SUDBURY**, a corporation incorporated by *The Laurentian University of Sudbury Act*, 1960

("**Laurentian**")

- and -

**HUNTINGTON UNIVERSITY**, a corporation incorporated by Chapter 143 of the Statutes of Ontario, 1960

("**Huntington**")

**RECITALS:**

A. Huntington was incorporated following the petition of the United Church of Canada, and Huntington continues to respect the United Church of Canada's traditions and its relationship with Huntington. Pursuant to *The Huntington University Act, 1971*, Huntington is authorized and empowered to enter into federation or affiliation with other colleges or universities.

B. Pursuant to *The Laurentian University of Sudbury Act*, 1960, c.151, Laurentian is authorized and empowered to admit into federation or affiliation with Laurentian, other colleges or universities.

C. On September 10, 1960, Laurentian and Huntington (collectively, the "**Parties**") entered into federation with each other upon the terms and conditions of the agreement dated September 10, 1960 (the "**Federation Agreement**").

D. On November 10, 1993, the Parties, in addition to the other Federated Universities (as defined below) entered into a Proposed Grant Distribution and Services Fees Agreement that provided for the terms for the distribution of tuition collected by Laurentian, operating grants and the allocation of certain fees for administrative services provided by Laurentian to the Federated Universities.

E. On May 10, 2019, Laurentian delivered to Huntington a notice (the "**Financial Distribution Notice**") that amended and superseded certain financial terms related to the allocation of grant funding, tuition fees and administrative services by and among the Parties and the Parties have been operating pursuant to the Financial Distribution Notice since that time.

F. On February 1, 2021, Laurentian commenced proceedings (the "**CCAA Proceeding**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**").

G. On April 1, 2021, Laurentian delivered a notice of disclaimer (the "**Disclaimer**") in respect of the Federation Agreement and the Financial Distribution Notice.

H. Huntington has not and does not consent to or approve the Disclaimer. Upon execution of this Transition Agreement, Huntington agrees that it will not take any steps to cause the Approval Order sought by Laurentian to be opposed or not granted, and provided the Approval Order is granted, Huntington agrees not to oppose the Disclaimer.

I. With the approval of its Board of Governors (in the case of Laurentian) and its Board of Regents (in the case of Huntington), the Parties wish to enter into this Agreement to address certain matters arising from the Disclaimer and the termination of the Federation Agreement and the Financial Distribution Notice.

In consideration of the above recitals, the mutual representations and covenants below and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows.

## ARTICLE 1
## INTERPRETATION

**Section 1.1 Defined Terms.**

As used in this Agreement, capitalized terms used and not otherwise defined herein shall have the following meanings:

"**Agreement**" means this Transition Agreement, including Schedule "A" hereto.

"**Applicable Laws**" means, with respect to any Person, property, transaction, event or other matter, (a) any foreign or domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, order or other requirement having the force of law, (b) any policy, practice, protocol, standard or guideline of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law (collectively in the foregoing clauses (a) and (b), "**Law**"), in each case relating or applicable to such Person, property, transaction, event or other matter and also includes, where appropriate, any interpretation of Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation.

"**Approval Order**" means an order of the Court approving this Agreement and authorizing Laurentian and Huntington to carry out the terms herein, which order shall be in form and substance acceptable to Laurentian and Huntington, each acting reasonably.

"**Business Day**" means any day of the year, other than a Saturday, Sunday or any day on which Canadian chartered banks are closed for business in Sudbury, Ontario.

"**CCAA**" has the meaning given to such term in the Recitals to this Agreement.

"**CCAA Claims Process**" has the meaning given to such term in Section 10.1(1)(a) of this Agreement.

"**CCAA Proceeding**" has the meaning given to such term in the Recitals to this Agreement.

**"Court"** means the Ontario Superior Court of Justice (Commercial List).

"**Disclaimer**" has the meaning given to such term in the Recitals to this Agreement.

"**Effective Date**" means May 1, 2021 or such other date agreed to between Huntington and Laurentian.

"**Federated Universities**" means collectively, Huntington University, Thorneloe University and the University of Sudbury.

"**Federation Agreement**" has the meaning given to such term in the Recitals to this Agreement.

"**Financial Distribution Notice**" has the meaning given to such term in the Recitals to this Agreement.

"**Gerontology Program Transfer**" has the meaning given to such term in Section 4.1(1) of this Agreement.

"**Governmental Authority**" means:

(a) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);

(b) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government;

(c) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and

(d) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association.

"**Huntington**" has the meaning given to such term in the preamble to this Agreement.

"**Huntington Courses and Programs**" means Huntington's current courses and programs, including courses and programs in Gerontology, Communications Studies and Religious Studies.

"**Huntington Lease**" means the indenture between Huntington and Laurentian dated July 3, 1964.

"**Laurentian**" has the meaning given to such term in the preamble to this Agreement.

"**Marketing Materials**" has the meaning given to such term in Section 5.3(1) of this Agreement.

"**Monitor**" means Ernst & Young Inc., in its capacity as monitor of Laurentian in the CCAA Proceeding.

**"Notice"** has the meaning given to such term in Section 12.1 of this Agreement.

"**Party**" has the meaning given to such term in the Recitals to this Agreement.

"**Pension Effective Date**" has the meaning given to such term in Section 7.1(1) of this Agreement, being June 30, 2021 or such other date agreed to by Huntington and Laurentian.

"**Pension Plan**" means Retirement Plan of Laurentian University of Sudbury and its Federated and Affiliated Universities, Registration Number 0267013.

"**Person**" means an individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or governmental entity, and pronouns have a similarly extended meaning.

"**Representatives**" means the individuals who are employees, whether unionized or non-unionized, including supplemental employees and independent contractors under contract, agents and representatives of each of the Parties who are employed by each of the Parties to perform, or who otherwise perform, or are otherwise involved with the decision making or operations of each of the Parties.

"**RHBP**" means the retiree health benefits plan administered by Laurentian as in effect prior to February 1, 2021.

**Section 1.2 References and Usage.**

(1) Any reference in this Agreement to gender includes all genders. Words importing the singular number only include the plural and vice versa.

(2) The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect its interpretation.

(3) All references in this Agreement to dollars or to "$" are expressed in Canadian currency, unless otherwise specifically indicated.

(4) In this Agreement (i) the words "including", "includes" and "include" mean "including (or includes or include) without limitation" and (ii) the words "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". Unless otherwise specified, the words "Article", "Section" and other subdivision followed by a number mean and refer to the specified Article, Section or other subdivision of this Agreement. In the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

(5) The schedules and exhibits attached to this Agreement form an integral part of it.

(6) Any reference in this Agreement to a Person includes its legal representatives, successors and permitted assigns.

(7) Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it as it or they may have been, or may from time to time be, amended, re-enacted or replaced.

(8) Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment must be made or such action must be taken on or not later than the next succeeding Business Day.

## ARTICLE 2
## RECITALS

**Section 2.1 Recitals**

(1) The Recitals to this Agreement are true and correct and shall form part of this Agreement.

## ARTICLE 3
## EFFECTIVENESS

**Section 3.1 Effectiveness**

(1) Subject to the Court granting the Approval Order, this Agreement and the Disclaimer are deemed to be effective on the Effective Date.

(2) Laurentian shall seek the Approval Order on or prior to April 29, 2021. If Laurentian fails to obtain the Approval Order on or before April 29, 2021 (subject to reserve), this Agreement shall not be effective and shall be void.

(3) Notwithstanding anything else in this Agreement or the Disclaimer, in the event that the University of Sudbury, Thorneloe University, or any successor in interest to such universities, receives funding from Laurentian, directly or indirectly, to teach courses or programs, Huntington shall be entitled, at its election, to resume teaching all or some of the Huntington Courses and Programs and to receive similar equivalent compensation on a per student basis from Laurentian to teach such Huntington Courses and Programs.

## ARTICLE 4
## ACADEMIC PROGRAMS

**Section 4.1 Termination of Academic Programs**

(1) Effective on the Effective Date, Huntington shall cease to have the ability or responsibility to deliver academic courses or programs as credit towards Laurentian courses and degrees and shall cease to have the ability or responsibility to admit new students into Laurentian. As of the Effective Date, Laurentian students will no longer be permitted to take elective courses through Huntington as credit for a Laurentian degree.

(2) Huntington shall request that its faculty complete all work and satisfy all obligations in respect of all Huntington Courses and Programs during the ongoing Winter 2021 academic term, including marking of all final exams, essays or other student work to enable grades, marks and credits to be received by existing students in the ordinary course.

**Section 4.2 Payment of Existing Obligations**

(1) Prior to the Effective Date, Laurentian shall pay to Huntington, in full, all tuition and grant funds allocable to Huntington for the period between February 1, 2021 to the Effective Date in the amount calculated in accordance with the existing funding formula under the Financial Distribution Notice and agreed to by Huntington and Laurentian.

(2) Following the Effective Date, neither Laurentian nor Huntington shall be required to transfer any portion of any tuition fees, grants or other funding received by either of them from any source to the other, provided that this section shall not impact: (i) the obligations of Huntington to make payment for services provided by Laurentian in accordance with Article 6 below; or (ii) the obligations of Huntington to make the payments in accordance with Article 7 below.

**Section 4.3 Transition of Students to Laurentian Programs**

(1) Laurentian and Huntington shall each advise students enrolled in Huntington Courses and Programs that, as of the Effective Date, the Huntington Courses and Programs, other than Gerontology, have been discontinued by Laurentian and that the Gerontology program has been acquired by Laurentian with the consent of Huntington.

(2) Laurentian may offer such students enrollment in other courses or programs, as applicable, offered by Laurentian. Laurentian will provide pathways to degree completion for students enrolled in the Huntington Courses and Programs to provide an opportunity for such students to complete their degrees on their anticipated schedule without undue disruption, wherever possible.

(3) Huntington shall not be responsible for any transition of such students to other Laurentian courses or programs, but it shall provide such reasonable assistance to Laurentian as may be requested or required in order to effect same. Huntington shall provide such information in its possession to Laurentian as may be reasonably required in order to permit Laurentian to facilitate the transfer of students to other programs at Laurentian and the recognition of their credits, grades and related information.

(4) The Parties agree that Huntington shall have no responsibility or liability of any kind to Laurentian, students or other persons arising from the discontinuance or cancellation of the Huntington Courses and Programs (including any refund of tuition fees or grant funds received by Laurentian). Laurentian agrees that, to the extent that Laurentian receives a release in any CCAA plan of compromise or arrangement or order of the Court in the CCAA Proceeding in connection with claims arising from the discontinuation of any courses and programs, Laurentian shall seek to obtain a similar third-party release in favour of Huntington.

(5) Other than as expressly provided for in Section 4.4 of this Agreement, Huntington will continue to retain ownership and control of the remaining Huntington Courses and Programs, including all rights to teach, lease, license or otherwise exploit the Huntington Courses and Programs and any related intellectual property in the future, regardless of mode of delivery.

**Section 4.4 Transfer of Gerontology Program**

(1) Effective on the Effective Date, Huntington hereby transfers and assigns to Laurentian all of its rights relating to the Gerontology program (including any rights to any related course material, curriculum and library material), in order to permit Laurentian to continue to offer

the Gerontology program following the Effective Date (the "**Gerontology Program Transfer**"), all on an as, is where is basis, and without any representations, warranties, or obligations on the part of Huntington except as expressly provided herein. For greater certainty, the Gerontology Program Transfer is with respect to the program only and does not include any rights or obligations in respect of any Huntington faculty.

(2) In consideration for the Gerontology Program Transfer, Laurentian hereby agrees to assume Huntington's retiree wind-up liabilities under the Pension Plan which, as at the actuarial valuation as at January 1, 2020, are in the amount of $599,000, and hereby releases Huntington from all such liabilities.

(3) The Parties shall work cooperatively to transfer from Huntington to Laurentian all physical materials relating to the Gerontology program (such as library material) in the possession and control of Huntington.

## ARTICLE 5
## HUNTINGTON LEASE AND CONTINUED USE OF FACILITIES

**Section 5.1 Huntington Lease.**

(1) Following the Effective Date, the Huntington Lease shall remain in full force and effect and shall continue on the existing terms set out therein. For greater certainty, neither the Disclaimer and the termination of the Federation Agreement and the Financial Distribution Notice, nor the execution and implementation of this Agreement shall trigger Laurentian's rights under section 6 of the Huntington Lease. Huntington shall remain responsible for all obligations under the Huntington Lease.

**Section 5.2 Continued Use of Facilities.**

(1) Following the Effective Date, Huntington will continue to maintain its building and related facilities (including its residence and parking lot) for its own benefit and use, and Huntington will continue to offer residence and parking which will be operated independently of Laurentian.

(2) Huntington shall be solely responsible for all buildings it owns and operates on Laurentian's land including all related facilities and activities conducted thereon. Laurentian shall not be liable or responsible in any manner whatsoever relating to Huntington's operation or use of its buildings, facilities or residence, and Huntington is solely responsible for all aspects of same. Huntington will maintain such insurance as a prudent owner of buildings would hold, including as it relates to any activities conducted in the buildings.

**Section 5.3 Advertisement of Residence in Marketing Materials**

(1) For five academic years following the Effective Date (commencing with the academic year 2021-2022) subject to any renewal by agreement of the Parties, Laurentian will offer Huntington's residence on its website/student enrollment and marketing materials (the "**Marketing Materials**") for first-year students. The Marketing Materials will specify that Huntington's residence is independently managed and operated by Huntington, and not Laurentian.

(2) During the term provided for in subsection (1) above, Huntington will require first-year students electing to reside in Huntington's residence through the Laurentian enrollment process to opt into the Laurentian meal plan.

## ARTICLE 6
## SEPARATION OF OPERATIONS

### Section 6.1 Shared Services

(1) Schedule "A" hereto is a list of all services provided or managed by Laurentian for Huntington as of the date of this Agreement, with the corresponding portion of the cost attributable to Huntington (or, where such portion is not a defined amount, the method of calculating the portion). Schedule "A" shall be reviewed annually by the Parties on or before the anniversary of the Effective Date, to ensure that it reflects the correct methodology and amounts for such services.

### Section 6.2 Services to be Discontinued or Transferred

(1) Prior to the Effective Date, Huntington and Laurentian will identify and agree to those services that Huntington will no longer require from Laurentian following the Effective Date and such services shall be discontinued as of the Effective Date. Huntington and Laurentian will work cooperatively to transfer to Huntington complete responsibility and billing of Huntington's portion within three (3) months of the Effective Date where it is possible to do so at minimal cost to either Huntington or Laurentian.

(2) For services which cannot be transferred on that basis or which Huntington and Laurentian mutually agree not to transfer, Laurentian will continue to provide the service and shall bill Huntington for Huntington's portion of such service at Laurentian's cost, with no additional fees.

(3) Notwithstanding the foregoing, prior to the Effective Date, Huntington and Laurentian may mutually agree, each in their sole discretion, to an arrangement pursuant to which shared services continue to be provided by Laurentian to Huntington on the current basis for an all-in service fee payable by Huntington to Laurentian.

## ARTICLE 7
## PENSION AND BENEFITS

### Section 7.1 Pension and Benefits

(1) Effective on June 30, 2021 or such other date agreed to by Huntington and Laurentian (the "**Pension Effective Date**"):

(a) Huntington will cease to be a "participating employer" in the Pension Plan and the RHBP.

(b) All current Huntington employees will cease to accrue benefits under the Pension Plan effective on the Pension Effective Date or the date of their termination of employment, if earlier. Current and former Huntington employees shall be entitled to benefits from the Pension Plan calculated in accordance with the terms of Pension Plan, subject to any amendments to the Pension Plan that are implemented by Laurentian in the CCAA

Proceeding or otherwise. Huntington employees will be entitled to the same treatment as Laurentian employees under any amendment made to the Pension Plan. Huntington shall make normal cost contributions to the Pension Plan for benefits accruing by Huntington employees up to the Pension Effective Date. Huntington shall make special payments in respect of the going concern deficiency of the Pension Plan based upon the January 1, 2020 actuarial valuation for the period ending on the Pension Effective Date.

(c) Huntington employees and retirees will receive the same treatment as Laurentian employees and retirees in respect of the RHBP, and claims in respect of the RBHP may be filed in any claims process under the CCAA. The RBHP has, or will be terminated within the CCAA Proceeding and no claims have or will be processed after February 1, 2021. No further Huntington contributions will be required to the RHBP after April 5, 2021. Laurentian will terminate the RHBP, including Huntington's participation in the RHBP, no later than the Pension Effective Date.

(d) No Huntington employees will continue to accrue future benefits under the Pension Plan or the RHBP for any period commencing on the Pension Effective Date.

(e) To the extent that Laurentian receives a release in any CCAA plan of compromise or arrangement or order of the Court in the CCAA Proceeding in connection with claims arising from the discontinuation of the RHBP, Laurentian shall seek to obtain a similar third-party release in favour of Huntington.

(f) On the Pension Effective Date, Huntington shall pay $1,200,000 into the Pension Plan in respect of the Pension Plan's wind-up deficiency relating to active and deferred vested Huntington members only, which shall be held by the Pension Plan and notionally segregated for the benefit of the active and deferred vested Huntington members until such time as Huntington former members who elect to receive commuted value transfer payments receive their final installment of such commuted value payments.

(g) Subject to, and in consideration of Huntington's payment in accordance with subsection (f) above and the Gerontology Program Transfer, Huntington shall be released from all obligations related to the Pension Plan, including any required contributions, special payments or wind-up liabilities, and Huntington shall have no further obligations or responsibilities under the Pension Plan.

(h) Laurentian shall continue to administer the Pension Plan, including communications and administration of the Pension Plan in respect of Huntington employees and former employees.

(i) The Parties acknowledge and agree that Huntington's participation in the Pension Committee for the Pension Plan ceased on April 5, 2021.

(2) Effective on the Pension Effective Date, Laurentian shall amend, or cause an amendment of, the Pension Plan, in form and substance acceptable to Huntington acting reasonably, to document Huntington's removal as a "participating employer" under the Pension Plan and such other consequential amendments as the Parties may mutually agree to give effect to the foregoing.

## ARTICLE 8
## REPRESENTATIONS AND WARRANTIES

### Section 8.1 Representations and Warranties of Huntington

(1) Organization and Corporate Power. Huntington is duly organized and validly exists under the laws of the jurisdiction in which it is organized. Huntington has the requisite corporate power and authority to enter into, deliver and perform its obligations pursuant to this Agreement;

(2) Authorization; Binding Effect; No Breach.

(a) The execution, delivery and performance of this Agreement has been duly authorized by Huntington, including approval by its Board of Regents, at the time of its execution and delivery. Upon its due authorization, execution and delivery by Huntington, this Agreement constitutes a valid and binding obligation of Huntington enforceable against Huntington in accordance with its respective terms.

(b) The execution, delivery and performance by Huntington of this Agreement does not and will not conflict with or result in a breach of the terms, conditions or provisions of, constitute a default under, result in a violation of, or require any consent pursuant to (i) the articles, notice of articles, charter, by-laws or operating agreement of Huntington, (ii) any material contract or other document to which Huntington is a party or to which any of its assets is subject to, or (iii) any Applicable Laws.

### Section 8.2 Representations and Warranties of Laurentian

(1) Organization and Corporate Power. Laurentian is duly organized and validly exists under the laws of the jurisdiction in which it is organized. Subject to obtaining the Approval Order, Laurentian has the requisite corporate power and authority to enter into, deliver and perform its obligations pursuant to this Agreement;

(2) Authorization; Binding Effect; No Breach.

(a) The execution, delivery and performance of this Agreement has been duly authorized by Laurentian, including approval by its Board of Governors, at the time of its execution and delivery and is subject only to Court approval. Upon its due authorization, execution and delivery by Laurentian and subject only to Court approval, this Agreement constitutes a valid and binding obligation of Laurentian enforceable against Laurentian in accordance with its respective terms.

(b) The execution, delivery and performance by Laurentian of this Agreement does not and will not conflict with or result in a breach of the terms, conditions or provisions of, constitute a default under, result in a violation of, or require any consent pursuant to: (i) the articles, notice of articles, charter, by-laws or operating agreement of Laurentian, (ii) any material contract or other document to which Laurentian is a party or to which any of its assets is subject to, or (iii) any Applicable Laws.

**Section 8.3 Mutual Representations and Warranties**

(1) Except pursuant to Section 8.1 and Section 8.2, neither Laurentian, Huntington or any of their respective Representatives have made or shall be deemed to have made any other representation or warranty, express or implied, at law or in equity in respect of the transactions contemplated by this Agreement.

## ARTICLE 9
## COVENANTS

**Section 9.1 Cooperation.**

(1) Upon the terms and subject to the conditions of this Agreement, and subject to any other term of this Agreement providing for an alternate standard of cooperation, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under Applicable Laws to consummate the transactions contemplated hereby as soon as practicable, including Huntington's support for the Approval Order.

## ARTICLE 10
## RELEASES AND CCAA MATTERS

**Section 10.1 Releases by Laurentian**

(1) In accordance with the terms of this Agreement, Laurentian hereby:

(a) in its personal capacity and its capacity as administrator under the Pension Plan, fully and finally releases and discharges Huntington from any and all obligations and responsibilities under the Pension Plan effective as of the Pension Effective Date subject to, and in consideration of, Huntington's payment in accordance with Section 7.1(1)(f) and the Gerontology Program Transfer;

(b) agrees that, to the extent that Laurentian receives a release in any CCAA plan of compromise or arrangement or order of the Court in the CCAA Proceeding in connection with claims arising from the discontinuation of the RHBP, Laurentian shall seek to obtain a similar third-party release in favour of Huntington.

(c) agrees that, to the extent that Laurentian receives a release in any CCAA plan of compromise or arrangement or order of the Court in the CCAA Proceeding in connection with claims arising from the discontinuation of any courses and programs, Laurentian shall seek to obtain a similar third-party release in favour of Huntington.

**Section 10.2 CCAA Claims**

(1) Nothing in this Agreement shall:

(a) constitute Huntington's consent or agreement to the Disclaimer or an acknowledgement that such agreements/documents are capable of being disclaimed or preclude Huntington from filing a proof of claim for damages or losses arising from the Disclaimer, subject in all respects to any claims process approved by the Court in

the CCAA Proceeding (the "**CCAA Claims Process**") and any determination of such claim in accordance with the CCAA Claims Process;

(b) waive or limit the rights of Huntington or Huntington's current or former employees and retirees from asserting any claims as creditors against Laurentian in any CCAA Claims Process in connection with the Pension Plan or RHBP, subject in all respects to any CCAA Claims Process and any determination of such claim in accordance with the CCAA Claims Process.

**Section 10.3 Post-Filing Agreement**

(1) This Agreement shall constitute a post-filing obligation of Laurentian and not be subject to compromise under any CCAA plan of compromise or arrangement.

## ARTICLE 11
## CONFIDENTIALITY

**Section 11.1 Confidential Information**

Except as provided in Section 11.3 below, the terms of this Agreement are confidential and shall not be disclosed to any person (other than the Monitor) without the consent of both Parties.

**Section 11.2 Public Communications.**

The substance of any communications to the public regarding this Agreement and its subject matter is important to the Parties, and shall be made in a mutually-agreeable and coordinated fashion, each acting reasonably.

**Section 11.3 Court Materials.**

(1) Laurentian shall be entitled to disclose this Agreement in connection with Laurentian seeking the Approval Order or as otherwise may be required in connection with the CCAA Proceeding, provided that such disclosure shall be on terms acceptable to both Parties, including sealing of certain terms of this Agreement in a form and manner acceptable to both Parties. For greater certainty, any provisions of this Agreement relating to the amount and terms of consideration paid shall not be publicly disclosed and shall be sealed.

(2) Any Court or other materials disclosing or addressing this Agreement and its terms or the Disclaimer, including the portion of any court materials and the draft order to be sought in connection with the Approval Order, shall be provided to Huntington in draft form no later than three (3) Business Days in advance of filing or release and shall be in form and substance acceptable to Huntington, acting reasonably.

## ARTICLE 12
## MISCELLANEOUS

**Section 12.1 Notices.**

Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a **"Notice"**) must be in writing, sent by personal delivery, courier, facsimile or email and addressed:

(a) to Laurentian at:

Laurentian University
935 Ramsey Lake Rd.
Sudbury, Ontario
P3E 2C6

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

(b) to Huntington at:
Huntington University
935 Ramsey Lake Rd.
Sudbury, Ontario
P3E 2C6

Attention: Dr. Kevin McCormick
Email: kmccormick@huntingtonu.ca

A Notice is deemed to be given and received (i) if sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day or (ii) if sent by email, when the sender receives an email from the recipient acknowledging receipt, provided that an automatic "read receipt" does not constitute acknowledgment of an email for purposes of this Section 12.1. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a Party.

**Section 12.2 Time of the Essence.**

Time is of the essence in this Agreement.

**Section 12.3 Third Party Beneficiaries.**

Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties hereto and their successors and permitted assigns, and no Person, other than the Parties hereto and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum,

save and except in the event of any action, suit, proceeding, hearing or other forum as it pertains to matters of confidentiality and any particular Representative in connection therewith.

**Section 12.4 No Authority to Bind.**

Nothing contained in this Agreement shall be deemed or construed to create a joint venture, agency relationship or partnership between the Parties. Neither Party shall have any power to control the activities and/or operations of any other Party and no Party shall have any power or authority to bind or commit any other Party.

**Section 12.5 Amendments.**

This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by each Party.

**Section 12.6 Waiver.**

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.

**Section 12.7 Entire Agreement.**

This Agreement, including Schedule "A", collectively sets forth the entire understanding of the Parties relating to the subject matter thereof. All prior or contemporaneous understandings, agreements, representations and warranties, whether written or oral, are superseded by this Agreement and its Schedule "A", and all such prior or contemporaneous understandings, agreements, representations and warranties are hereby terminated.

**Section 12.8 Further Assurances.**

Each Party shall, at the reasonable request of another Party or Parties, take all such action and shall execute and deliver all such documents as is or are reasonably required to carry out the terms, intent and purpose of this Agreement.

**Section 12.9 Successors and Assigns.**

(1) This Agreement becomes effective when executed by all of the Parties. After that time, it will be binding upon and enure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns.

(2) Neither this Agreement nor any of the rights or obligations under this Agreement, including any right to payment or access to services, may be assigned or transferred, in whole or in part, by any Party without the prior written consent of the other Party which consent may be withheld, in the sole discretion of such other Party. Any purported assignment or transfer without such written consent will be null and void and of no effect.

**Section 12.10 Severability.**

If any provision of this Agreement is determined to be illegal, invalid or unenforceable, by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

**Section 12.11 Governing Law.**

(1) This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

(2) Each Party irrevocably attorns and submits to the exclusive jurisdiction of the Ontario courts situated in the City of Toronto, and waives objection to the venue of any proceeding in such court or that such court provides an inconvenient forum.

**Section 12.12 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

**Section 12.13 No Strict Construction**

The parties have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favouring or disfavouring either Party by virtue of authorship of any provision of this Agreement.

***[Remainder of page intentionally left blank. Signature pages follow.]***

The Parties have executed this Agreement on the date first written above.

**LAURENTIAN UNIVERSITY OF SUDBURY**

By: _____
Authorized Signing Officer

**HUNTINGTON UNIVERSITY**

By: _____

By: _____

The Parties have executed this Agreement on the date first written above.

**LAURENTIAN UNIVERSITY OF SUDBURY**

By: _____
Authorized Signing Officer

**HUNTINGTON UNIVERSITY**

By: _____

By: _____

**Schedule "A"**
**Shared Services**

**1 SERVICES**

The Service Provider will provide the following services to The Client (**3 year term**):

| Department | Service Area | Service Description | Cost |
|---|---|---|---|
| **Information Technology (IT)** | **IT Infrastructure** | Internet connectivity and network support services (administration) | [redacted] |
| | | Internet connectivity and network support services (residence) | [redacted] |
| | | Data center operations, data backups, email, collaboration and communication infrastructure (Google Workspace) | [redacted] |
| | | *** Optional service: Research network access (Canarie & Orion) | [redacted] |
| | | *** Optional service: VOIP telephone and Long distance services | [redacted] |
| | | *** Optional service: Zoom | [redacted] |
| | | *** Optional service: Microsoft Office | [redacted] |
| | | Access point and network equipment refresh (administration) - Capital Expense Required | * [redacted] |
| | | Access point and network equipment refresh (residence) - Capital Expense Required | * [redacted] |
| | **IT Security** | Information security services bundle including<br>- Multi-Factor authentication<br>- Incident response & monitoring | [redacted] |

| | | | |
|---|---|---|---|
| | | - Firewall, intrusion prevention and detection<br>- CISO services | |
| | **End-user support** | Service Desk and end-user support services for account, software, cybersecurity and hardware support questions and issues. The fee is for 100 support hours per year | [redacted] |
| | **Other considerations** | • Recurring monthly fees are based on 10 FTE. [redacted] Capital expenditures are for the building and not contingent on a FTE count.<br>• Capital expenses related to IT, to meet the minimum requirements for computing (end-user devices) and network services are to be born by the client<br>• The client is responsible for the damages, repairs, upgrades and maintenance of the cabling infrastructure beyond the demarcation point. (Room A005 of the Arts building)<br>• [redacted]<br>• The monthly cost for Internet connectivity is based on the current consumption and daily averages for the 2019-2021 period and is subject to increases should the bandwidth consumption increase by more than 10% in a given calendar year.<br>• The Client is responsible for acquiring their own *cyber insurance* commensurate with their risk exposure and cyber risk profile.<br>• [redacted]<br>• Additional services related to business systems (e.g student registration system (SIS), learning management system (LMS), enterprise resource planning and management system (ERP), intranet | |

| | | |
|---|---|---|
| | | services, web hosting etc may be available upon request but require additional discovery and discussions to properly define the costing structure. |

| Department | Service Area | Service Description | Cost |
|---|---|---|---|
| **Facility Services** | **Infrastructure** | Water/Wastewater - Billed directly to the Client from GSU. | [redacted] |
| | | Electricity - Facility Services reads the meter and provides an invoice to finance. An invoice is sent to the Client via the finance department | [redacted] |
| | | Natural gas - Enbridge reads meters, and an invoice is sent to the Client via the finance department | [redacted] |
| | | Road clearing (including snow/sand removal) - Manitou Road from Lot 7 to the client property<br><br>Sidewalk clearing - Sidewalks along Manitou Road from Lot 7 to the client property | [redacted] |
| | **Building / Maintenance Services** | Fire alarm monitoring<br><br>Locksmithing | [redacted] |
| | | Shipping and receiving : Outgoing Purolator parcels are processed at Huntington and picked up by Purolator<br><br>Outgoing mail is picked up by Shipping and Receiving, processed and billed back to the Client. | [redacted] |

| | | | |
|---|---|---|---|
| | | All incoming mail and parcels are received by Shipping and Receiving, and delivered as per Service Provider Standard | |
| | **Other considerations** | Demarcation of services are as follows:<br>Natural Gas - Property Line<br>Water - Property line<br>Wastewater - Property Line<br>Electricity - Dining Assembly Building from client meter<br>Fire alarm cabling - R.D. Parker building 3rd floor fire alarm panel..<br>• Capital expenses related to any systems within demarcation of services, including client buildings, are to be born by the client<br>• [redacted]<br>• [redacted] | |

| Department | Service Area | Service Description | Cost |
|---|---|---|---|
| **Campus Safety** | **Security Services - Required** | Attend emergency calls - police, fire, ambulance.<br>Crisis response for residence | [redacted] |
| | | Accessibility escorts (24/7 response)<br>Wellness checks (residence) | [redacted] |
| | **Security Services - Optional** | Building patrols - 2 patrols in each 24 hour day (24/7 response) | [redacted] |
| | | Perform building fire drill - Once/year | [redacted] |

| | | |
|---|---|---|
| | **Other considerations** | • [redacted]<br>• [redacted] |

| Department | Service Area | Service Description | Cost |
|---|---|---|---|
| **Library** | **Library Services** | Library Management System | [redacted] |
| | **Other Considerations** | • [redacted] | |

2 Requirements of the Service Provider

In order for the Service Provider to be able to be able to deliver on the services in section 1, the following requirements must be met.

| | **Request** | **Rationale** |
|---|---|---|
| Campus Safety | Access to Client owned internal cameras | Allows for campus safety to properly provide enhanced |
| IT | Network upgrades<br>Camera Upgrades<br>Computer (end-user devices) upgrades | All network equipment (fiber optics, routers, switches and wireless access points) to comply with the University's minimum standard for performance, cybersecurity and vendor support requirements.<br><br>All end-user devices to comply with the minimum security, operating system and version requirements. E.g Computers unable to operate a supported version of Windows 10 may need to be upgraded at the client's expense before joining the network. |
| Residence | First year residence applications all done through my.laurentian.ca | Will allow for seamless transition for students on the meal plan |
| Residence | Residence list inputted into Fusion | Allows for campus services to be delivered more efficiently (ie. security services, student support services, mail delivery) |

This is Exhibit “R” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

SHEPPARD CLAUDE
Avocats • Lawyers

lundi, 12 avril 2021

Transmission par courriel

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Mitchell W. Grossell
Andrew Hanrahan
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**STIKEMAN ELLIOTT LLP**
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**Compétence :** Ashley Taylor,
Elizabeth Pillon
Ben Muller

**Objet : DANS L'AFFAIRE CONCERNANT UNE TRANSACTION OU UN ARRANGEMENT VISANT L'UNIVERSITÉ LAURENTIENNE (sous la LACC)**
**Dossier de la cour n° CV-21-656040-00CL**
**Demande de l'Université de Sudbury liée à la programmation des cours en français de l'Université Laurentienne**

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Mesdames et Messieurs :

Nous vous avisons que l'Université de Sudbury a l'intention de s'objecter à toutes démarches judiciaires présentes et futures entamées par l'Université Laurentienne (la Laurentienne) qui portent ou pourraient porter atteinte aux droits et acquis de l'Université de Sudbury. Notamment elle s'objecte à l'avis de résiliation que vous nous avez signifié le 1er avril courant.

Comme vous le savez, l'Université de Sudbury a annoncé le vendredi, 12 mars dernier, qu'elle devient une université homogène de langue française. Elle a déjà entamé sa transition en vue de réaliser rapidement cette mission renouvelée.

À cette fin, l'Université de Sudbury réclame l'ensemble des programmes, des cours et des services offerts en français à l'Université Laurentienne, ainsi que des installations et des ressources afférentes. Nous croyons cette avenue non seulement dans le meilleur intérêt des deux universités, mais surtout nécessaire pour éviter les torts irréparables qui sont infligés sur la communauté franco-ontarienne à cause de l'incertitude entourant l'avenir de la Laurentienne, particulièrement en ce qui regarde la continuité de cette programmation si essentielle à la communauté francophone.

Nous avons tous pu observer depuis plus d'une décennie, et surtout dans les dernières semaines, une réduction dans l'intérêt de la Laurentienne, voire un manque de passion, pour les grands efforts dans sa prestation de services en français. Force est de reconnaître que la continuité de tous les services en français est actuellement en péril, et que dire de l'épanouissement de l'offre de programmes pour la communauté? Entre les mains de la Laurentienne le dossier est et demeurera en régression plutôt qu'en progression. Il ne faut surtout pas s'étonner que la communauté franco-ontarienne accorde maintenant à l'Université de Sudbury tout son appui et réclame que lui soit confiée la charge totale de cette filière.

Tout cela dit, la communauté francophone demande à la Laurentienne sa coopération pour assurer un transfert coordonné des programmes et services durant le cours de cette importante transition. Étant donné les présentes circonstances, ceci est le moindre que la Laurentienne puisse faire pour le bien-être de la communauté.

Une possibilité assez directe pour atteindre cet objectif, si la Laurentienne y est intéressée, est d'effectuer cette transition à l'intérieur de l'entente de fédération existante. Le cas échéant, on procéderait à négocier un remaniement complet des contrats.

Nous croyons possible de le faire dans un esprit de collaboration, afin de colmater les torts déjà infligés sur la communauté franco-ontarienne. Ainsi, l'Université de Sudbury invite le Conseil des gouverneurs et le Sénat de l'Université Laurentienne à rencontrer l'Université de Sudbury afin d'établir les modalités d'un tel transfert et d'une collaboration pour bâtir ensemble ce nouvel avenir. Un tel dialogue entre les parties offre une occasion unique permettant à la Laurentienne de s'allier avec l'Université de Sudbury dans le but de donner effet au projet d'une université par et pour les francophones, avec tous les bénéfices que cela engendrera sur le plan financier, et il y aura

assurément des bénéfices financiers importants si la collaboration est au rendez-vous. L'Université de Sudbury considère que cette avenue est dans l'intérêt de toutes les parties concernées : elle favorise à la fois la viabilité financière de la Laurentienne et assure du même coup le respect des droits de la minorité linguistique.

Le projet de l'Université de Sudbury répond à la volonté exprimée de la communauté franco-ontarienne et permettra de mieux desservir ses besoins. Il existe un consensus communautaire selon lequel le développement et l'épanouissement de la communauté de langue minoritaire passent nécessairement par la mise en place d'institutions gérées par et pour les Franco-Ontariennes et Franco-Ontariens; nous en avons déjà la preuve au scolaire (élémentaire et secondaire) et au collégial. Tout en reconnaissant les nombreuses années que la Laurentienne a évolué avec elle, la communauté franco-ontarienne préconise aujourd'hui un modèle d'université unilingue de langue française, qui pourra s'effectuer soit dans le cadre de l'entente de fédération existante ou de façon indépendante.

Il y a ici une opportunité unique qui se présente aux deux institutions de repositionner l'enseignement post-secondaire dans le Moyen-Nord de sorte que ces deux institutions pionnières de Sudbury puissent s'entraider afin de fleurir et accroître l'offre d'enseignement dans un nouveau modèle de fonctionnement qui répondra aux besoins pressants de la communauté franco-ontarienne.

Aussi n'oublions pas la possibilité d'unir les forces de l'Université de Sudbury à celles de la Laurentienne pour continuer à améliorer l'offre de services envers les communautés autochtones dont les liens d'appartenance sont profonds avec les deux institutions universitaires.

Étant donné l'urgence occasionnée par l'insolvabilité de l'Université Laurentienne et la vitesse à laquelle se déroule le processus entamé en vertu de la LACC, nous vous prions de nous confirmer dès midi lundi (demain) votre ouverture à entretenir avec nous des pourparlers à l'amiable sur la possibilité de la mise en œuvre, en partie ou en totalité, de notre proposition.

Dans l'attente d'une réponse favorable, veuillez agréer, Mesdames et Messieurs, nos salutations les meilleures.

**Sheppard & Claude**

André Claude

c.c. Pierre Riopel, Président du Conseil des régents, Université de Sudbury
John Meehan, Recteur, Université de Sudbury
Ronald F. Caza, Caza Saikaley

SHEPPARD CLAUDE
Avocats • Lawyers

Monday, 12 April 2021

Delivery by E-Mail

[UNOFFICIALLY TRANSLATED FROM THE ORIGINAL FRENCH VERSION]

**THORNTON GROUT FINNIGAN LLP**
100 Wellington St. West, Suite 3200
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Toronto, ON M5K 1K7

**Attention:** D.J. Miller
Mitchell W. Grossell
Andrew Hanrahan
Derek Harland

**ERNST & YOUNG INC.**
100 Adelaide Street West
EY Tower
Toronto, ON M5H 0B3

**Attention:** Sharon Hamilton
Michael Nathaniel

**STIKEMAN ELLIOTT LLP**
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

**Attention:** Ashley Taylor,
Elizabeth Pillon
Ben Muller

**RE: IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURY (under CCAA)**
**Court File No. CV-21-656040-00CL**
**Request for Laurentian's French-language Programmes by University of Sudbury**

---

Dear Madams, Dear Sirs:

202-1173 Road Cyrville Road, Ottawa (ON) K1J 7S6
T 613 748 3333 F 613 748 1599 aclaude@sheppardclaude.ca

This will serve to advise that the University of Sudbury intends to contest any legal proceedings initiated by Laurentian University (Laurentian) that do or may infringe upon the rights and property of the Sudbury University, and more particularly regarding the Notice of Disclaimer that you served upon us on April 1st.

As you know, the University of Sudbury announced on Friday, March 12, that it was becoming a francophone university. It has already begun its transition to achieve this new mission quickly.

To this end, the University of Sudbury is calling for all programs, courses and services offered in French at Laurentian University, as well as facilities and related resources. We believe this avenue not only in the best interest of both universities, but above all necessary to avoid the irreparable harm that is being inflicted on the Franco-Ontarian community because of the current uncertainty surrounding the future of Laurentian, especially with regard to the continuity of the French language services so essential to the Francophone community.

We have witnessed for more than a decade, and over the past few weeks in particular, a lack in interest by Laurentian or even a lack of passion to make greater efforts in its delivery of French-language services. It must be recognized that the continuity of all services in French at Laurentian is currently threatened, to say nothing about the need to expand the programs offered to the community. If left in the hands of Laurentian, the situation will further decline rather than improve. It should come as no surprise that the Franco-Ontarian community is now giving its full support to the University of Sudbury and that it wishes to entrust it with full responsibility over these services.

With this said, the French-speaking community asks Laurentian for its cooperation to ensure a coordinated transfer of programs and services during this important transition. In the present circumstances, this seems like the least that Laurentian can do for the good of the community.

In order to achieve this objective in the most direct way, should Laurentian be willing, is to effect the transition within the existing federation. Thus, we negotiate a complete overhaul of the federated agreements.

We believe it is possible to do so in a spirit of collaboration, in an effort to stop the damage being inflicted on the Franco-Ontarian community. Thus, the University of Sudbury is inviting the Board of Governors and the Senate of Laurentian to meet with the University of Sudbury to establish the terms of such a transfer and to work together to build this new future. A dialogue between the parties offers a unique opportunity for Laurentian to join with the University of Sudbury to give effect to this university project by and for francophones, with all the financial benefits that this can bring to both sides, of which there should be plenty if the parties are willing to collaborate. The University of Sudbury considers this avenue to be in the interest of all parties concerned because

it promotes both the financial viability of Laurentian and at the same time ensures respect for the rights of the linguistic minority.

The plans of the University of Sudbury meet to the expressed wishes of the Franco-Ontarian community and will better serve its needs. There is a community consensus that the development of the minority-language rights necessarily requires the establishment of institutions run by and for Franco-Ontarians; this has already been proven at the elementary and secondary levels of education, and at the college level. While acknowledging the many years that Laurentian has evolved with this community, the Franco-Ontarian community now advocates a unilingual French-language university model; this may be achieved either within the framework of the existing federated agreement or by (other) independent means.

There is a unique opportunity here for both institutions to change post-secondary education in the Near North area so that these two founding Sudbury institutions can help each other grow and develop their post-secondary offerings under a new business model that will also meet the needs of the Franco-Ontarian community.

Let us also seize this opportunity to join forces of the University of Sudbury to Laurentian's in an effort to continue to improve our services to the Indigenous communities whose ties are deep with the two academic institutions.

Given the urgency caused by Laurentian's insolvency and the speed with which the CCAA process is unfolding, please confirm as early as noon on Monday (tomorrow) your willingness to hold amicable discussions with us on the possibility of implementing our proposal in whole or in part.

Pending a favourable response, please accept, ladies and gentlemen, our best greetings.

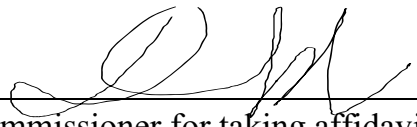
**Sheppard & Claude**

*A. Claude*

Andre Claude

c.c. Pierre Riopel, Chair of the Council of Regents, University of Sudbury
John Meehan, President, University of Sudbury
Ronald Caza, Caza Saikaley

This is Exhibit “S” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

TGF
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File No. 1898-002

April 12, 2021

**VIA EMAIL (aclaude@sheppardclaude.ca)**

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

**Attention: André Claude**

Dear Sir:

**Re: In the Matter of the *Companies' Creditors Arrangement Act* and In the Matter of a Plan of Compromise or Arrangement of Laurentian University of Sudbury, Court File No.: CV-21-00656040-00CL**

We acknowledge receipt of your letter of today's date.

We agree that the restructuring of Laurentian University of Sudbury ("**Laurentian**") ought to proceed with a spirit of collaboration, and Laurentian has every intention of working with the University of Sudbury ("**US**") to that end. In particular, Laurentian remains prepared to engage in meaningful discussions with US as to how to best transition to two separate institutions following: (i) the announcement by US on March 12, 2021 that it intends to become a unilingual Francophone university, and (ii) the issuance of the Notice of Disclaimer of the Federation Agreements by Laurentian on April 1, 2021. Laurentian has made clear that it respects the historic legacy of US, notwithstanding termination of the federation relationship.

Laurentian and US are on different paths in terms of how they intend to deliver French language post-secondary education in Ontario. US has taken a view that it ought to be a French-only institution. Laurentian intends to maintain its commitment to the Franco-Ontario community and to remain a tri-cultural institution that provides strong, comprehensive academic programs in both English and French.

Laurentian's French language programs (serving approximately 2,000 Laurentian students) are at the core of its mandate. As such, Laurentian does not intend to transfer any French language programs or services to US. Laurentian does not agree that transferring its French language programmes and services to US, "… promotes both the financial viability of Laurentian and at the same time ensures respect for the rights of the linguistic minority." To the contrary, Laurentian believes that maintaining French-language programs is critical to its successful restructuring and

TGF
Thornton Grout Finnigan LLP



its ability to serve both the English and French speaking communities, in addition to its strong commitment to the Indigenous communities of Ontario.

Laurentian is a "government agency" for the purposes of the *French Language Services Act* and O. Reg. 398/93 *Designation of Public Service Agencies* and it intends to continue to comply with its obligations therein.

Notwithstanding the different approaches that Laurentian and US intend to pursue for the delivery of French language post-secondary education in the future, Laurentian confirms its continued willingness to engage in a cooperative dialogue with US as to the best path forward through the necessary transition. In that regard, we have not received a response from US in respect of the transition proposal delivered by Laurentian on March 26, 2021, and we would be pleased to discuss same.

Yours truly,

**Thornton Grout Finnigan LLP**

D.J. Miller

cc: *Laurentian University of Sudbury*
*Ernst & Young Inc.* – Court-appointed Monitor
*Stikeman Elliott LLP* – Counsel to the Court-appointed Monitor

This is Exhibit “T” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

# TRANSITION AGREEMENT BETWEEN UNIVERSITY OF SUDBURY ("USUDBURY") AND LAURENTIAN UNIVERSITY OF SUDBURY ("LAURENTIAN") WITH RESPECT TO TRANSITION POST-DISCLAIMER OF THE FEDERATION AGREEMENT

## I. PURPOSE

This document constitutes a transition agreement (the "**Transition Agreement**") between USudbury and Laurentian following Laurentian's disclaimer of the Federation Agreement between USudbury and Laurentian dated September 10, 1960 (the "**Federation Agreement**") and the Financial Distribution Notice between USudbury and Laurentian dated May 1, 2019 (the "**Financial Distribution Notice**") pursuant to section 32 of the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The terms set out herein represent an offer by Laurentian to USudbury which are open for acceptance until the commencement of the motion brought by Laurentian which is returnable on April 29, 2021 before the Ontario Superior Court of Jusitce (Commercial List). Acceptance of the offer reflected in this Term Sheet is subject to approval of USudbury's Board of Regents and Laurentian's Board of Governors.

## II. EFFECTIVENESS

1. This Transition Agreement shall become binding on the parties upon signing (subject only to Court approval and approval of Laurentian's Board of Governors and USudbury's Board of Regents), with an effective date for implementation of May 1, 2021 or such other date agreed to between USudbury and Laurentian (the "**Effective Date**").

## III. ACADEMIC PROGRAMS AND COURSES

2. Effective on the Effective Date, USudbury shall cease to have the ability or responsibility to deliver academic courses or programs as credit towards Laurentian courses and degrees. As of the Effective Date, Laurentian students will no longer be permitted to register for or take elective courses through USudbury (save and except for the completion of courses in the current term, including marking of any final student work or exams). No credits towards any degree granted by Laurentian will be given for any courses offered by USudbury that may be taken by a Laurentian student, save and except as may be otherwise available to all students through the ordinary process for seeking recognition of courses taken at any other university.

3. On the Effective Date, Laurentian shall transfer in full to USudbury all outstanding tuition and grant funds received by Laurentian for the benefit of USudbury for the period between February 1, 2021 to the Effective Date calculated in accordance with the existing funding formula. Following the Effective Date, neither Laurentian nor USudbury shall be required to transfer any portion of any tuition fees, grants, or other funding received by either of them from any source to the other, except as may be expressly provided in the Transition Agreement.

4. Laurentian shall advise students currently enrolled in USudbury's current courses and programs (collectively, the "**USudbury Courses and Programs**") that the USudbury Courses and Programs have been discontinued towards Laurentian degrees by Laurentian and Laurentian will offer all such students enrollment in other courses or programs, as applicable, offered by Laurentian. USudbury shall have no responsibility or liability of any kind to Laurentian, students, or other persons arising from the discontinuance or cancellation of the USudbury Courses and Programs towards Laurentian degrees (including any refund of tuition fees or grant funds received by Laurentian) and USudbury shall not be responsible for any transition of such students to other

Laurentian courses or programs. Notwithstanding anything else herein, USudbury shall provide to Laurentian such information as may be required in order to permit Laurentian to facilitate the transfer of students to programs at Laurentian and the recognition of their credits, grades, and related information.

5. USudbury and Laurentian will work cooperatively through the transition period to ensure that, above all, students are protected with an opportunity to continue their studies towards completion of a degree through courses taught at Laurentian.

6. With that in mind and notwithstanding any other provision herein, USudbury and its faculty shall complete all work and satisfy all obligations in respect of all courses and programs currently being offered by USudbury during the current Winter 2021 academic term, including marking of all final papers, exams, essays, and other course work to enable grades, marks, and credits to be received by existing students in the ordinary course.

7. Subject to any terms as may be agreed to by USudbury and Laurentian for a one-time purchase and transfer of the curriculum and all related materials for the Indigenous Studies program, as described below, USudbury will continue to retain ownership and control of the USudbury Courses and Programs, including all rights to teach, lease, or license the USudbury Courses and Programs and any related intellectual property in the future, regardless of the mode of delivery.

8. Based on a request received by Laurentian from the Laurentian University Native Education Counsel ("**LUNEC**"), and with ongoing engagement with LUNEC, Laurentian is prepared to immediately engage in discussions with USudbury with respect to the Indigenous Studies program, and is prepared to offer online courses in the Spring term at the specific request of LUNEC. Laurentian will not assume the employment of any USudbury faculty as part of any future arrangements for the Indigenous Studies program, however, the faculty who have taught Indigenous Studies courses at USudbury will have the opportunity to continue teaching at Laurentian as sessionals, subject to the terms of the collective agreement between Laurentian and the Laurentian University Faculty Association.

## IV. USUDBURY LEASE AND CONTINUED USE OF FACILITIES

9. Following the Effective Date, the Indenture between USudbury and Laurentian dated April 9, 1965 (the "**USudbury Lease**") shall remain in full force and effect and shall, subject only to any conforming changes arising from the terms of the Transition Agreement, continue on the existing terms set out therein. For greater certainty, neither the disclaimer/termination of the Federation Agreement nor the Transition Agreement shall trigger Laurentian's rights under section 6 of the USudbury Lease. USudbury shall remain responsible for all obligations under the USudbury Lease. Nothing contained herein constitutes a waiver or forbearance by Laurentian in any respect for the obligations thereunder, nor shall the non-delivery of a Disclaimer Notice under the USudbury Lease be deemed to constitute any such waiver.

10. USudbury will continue to maintain its building and related facilities (including its residence and parking lot) for its own benefit and use. Following the Effective Date, USudbury will continue to offer residence and parking which will be operated independently of Laurentian.

11. If requested by USudbury, Laurentian will offer USudbury's residence on its website/student enrollment and marketing materials for Laurentian students. Laurentian's website/student enrollment and marketing materials will include language specifying that USudbury's residence is

independently managed and operated by USudbury and not Laurentian. In consideration for including the USudbury residence in Laurentian's website / marketing materials, USudbury will require students residing in USudbury's residence to opt into the Laurentian meal plan. USudbury will ensure that its residence complies with Laurentian's minimum standards to house Laurentian students and USudbury agrees that it will subscribe to Laurentian's security services to ensure the safety of Laurentian students housed in USudbury's residence in accordance with Section V below. This aspect of the Transition Agreement will be for a term of three years, subject to further review and consideration as to any renewal(s) by mutual agreement of the parties.

12. USudbury shall be solely responsible for all buildings it owns and operates on Laurentian's land including all related facilities and activities conducted thereon. USudbury agrees that Laurentian shall not be liable or responsible in any manner whatsoever relating to USudbury's operation or use of its buildings, facilities, or residence, and that USudbury is solely responsible for all aspects of same. USudbury will ensure that its use of premises and activities conducted thereon are consistent with the terms of the USudbury Lease, including ensuring the buildings are kept in a good state of repair and remain compliant with applicable health and safety codes.

## V. SEPARATING OPERATIONS

With respect to operating services that are currently provided or managed by Laurentian for USudbury:

13. The parties will prepare a schedule of all such services with the corresponding portion of the cost attributable to USudbury (or, where such portion is not a defined amount, the method of calculating the portion), which schedule shall be developed cooperatively between Laurentian and USudbury.

14. Prior to the Effective Date, USudbury and Laurentian will identify and agree to those services that USudbury will no longer require from Laurentian following the Effective Date and such services shall be discontinued as of the Effective Date.

15. USudbury and Laurentian will work cooperatively to transfer to USudbury complete responsibility and billing of USudbury's portion within three (3) months of the Effective Date where it is possible to do so at minimal cost to either USudbury or Laurentian.

16. For services which cannot be transferred on that basis or which USudbury and Laurentian mutually agree not to transfer, Laurentian will continue to provide the service and shall bill USudbury for USudbury's portion of such service at cost, with no additional fees.

17. In the alternative to the above, Laurentian is willing to consider an arrangement whereby shared services continue to be provided by Laurentian on the current basis and USudbury will pay Laurentian an all-in service fee to administer those services, the amount of which to be mutually agreed upon by USudbury and Laurentian. This option is subject to the parties agreeing on the terms for such an arrangement, including the services to be provided, the fees to be paid by USudbury, and the term length of such an agreement.

## VI. BOARD AND SENATE NOMINEES

18. Effective on the Effective Date, USudbury shall cease to have any right to nominate members to the Board of Governors or the Senate of Laurentian.

## VII. PENSION AND BENEFITS

19. The terms of any continuation, discontinuation or amendment of USudbury's participation in the Laurentian registered pension plan and retiree health and benefits plan shall be as set out in the Pension Term Sheet, attached hereto as Schedule "**A**".

## VIII. COURT APPROVAL

20. Laurentian will include a copy of this Term Sheet in its motion materials in support of the Order to be sought from the Court on April 29, 2021. If the terms of this offer are accepted by Thorneloe prior to commencement of the motion, Laurentian will seek Court approval of same at that time.

DATED at Sudbury this _____ day of April, 2021

_____
Laurentian University of Sudbury

_____
University of Sudbury

## SCHEDULE "A"

## SUMMARY OF KEY PENSION AND BENEFIT TERMS BETWEEN THE UNIVERSITY OF SUDBURY ("USUDBURY") AND LAURENTIAN UNIVERSITY OF SUDBURY ("LAURENTIAN") WITH RESPECT TO TRANSITION POST-DISCLAIMER OF THE FEDERATION AGREEMENT

### I. PURPOSE

1. This document ("**Pension and Benefits Schedule**") provides a summary overview of the key terms of the Transition Agreement between USudbury and Laurentian with respect to USudbury's participation in, and obligations with respect to, pension entitlements earned by USudbury's employees and former employees under the Retirement Plan of Laurentian University of Sudbury and its Federated and Affiliated Universities, Registration No. 0267013 (the "**Registered Pension Plan**") and the Retiree Health Benefit Plan.

2. Capitalized terms not defined herein have the meaning given to them in the Transition Agreement

3. The contents of this Pension and Benefits Schedule provide a summary overview only. Finalization of this Pension and Benefits Schedule shall be subject to approval of USudbury's Board of Regents and Laurentian's Board of Governors.

### II. EFFECTIVENESS

4. This Pension and Benefits Schedule forms part of the Transition Agreement and will become effective coincident with, and on the same preconditions as the Transition Agreement except that Laurentian and its DIP Lender also must be satisfied of USudbury's financial ability to satisfy its obligations to the Registered Pension Plan as set out below.

### III. FUTURE SERVICE ACCRUAL UNDER REGISTERED PENSION PLAN

5. USudbury employees who participate in the Registered Pension Plan shall cease to accrue benefits under and cease to make contributions to the Registered Pension Plan effective on a date to be agreed, which shall be no later than June 30, 2021 (the "**Final Accrual Date**") or on the date of their termination of employment, if earlier.

6. No service or earnings of USudbury employees in respect of the period after the Final Accrual Date shall be taken into account in determining the benefits of USudbury employees under the terms of the Registered Pension Plan.

7. Upon termination of employment with USudbury, members shall be entitled to termination or retirement options in accordance with the *Pension Benefits Act* and terms of the Registered Pension Plan, as amended from time to time including amendments that impact portability rights in respect of past service entitlements.

8. USudbury shall continue to make current service contributions for benefits accruing for USudbury employees and shall continue to make all required special payments in accordance with the *Pension Benefits Act* until the Final Accrual Date.

## IV. NOTIONAL SEGREGATION OF USUDBURY ASSETS AND LIABILITIES

9. In its capacity as administrator of the Registered Pension Plan, Laurentian will cause the Actuary for the Registered Pension Plan to calculate (1) the liabilities of USudbury's employees and former employees ("**USudbury Members**") under the Registered Pension Plan ("**USudbury Liabilities**") separate from all other liabilities under the Registered Pension Plan ("**Other Liabilities**") and (2) a proportional share of the assets of the Registered Pension Plan relating to the USudbury Liabilities (the "**USudbury Account**") separate from the proportional share of the assets of the Registered Pension Plan associated with the Other Liabilities.

10. The initial USudbury Liabilities and USudbury Account will be calculated as at January 1, 2020 on a wind-up basis using the assumptions and methodologies set out in the actuarial valuation report for the Registered Pension Plan prepared as at January 1, 2020. To reflect activity for the period January 1, 2020 to the date of calculation, the USudbury Account will be adjusted to reflect current service contributions and special payments made by USudbury and USudbury Members from January 1, 2020 to the date of calculation, which will be credited to the USudbury Account, and to reflect benefit payments made to USudbury Members from January 1, 2020 to the date of calculation which will be debited from the USudbury Account.

11. The USudbury Account shall be a notional recordkeeping account within the pension fund under the Registered Pension Plan. Laurentian is not required to segregate the USudbury Account from other assets held in relation to the Registered Pension Plan.

12. Laurentian will cause investment returns, net of all expenses, earned on the pension fund assets to be credited to the USudbury Account from January 1, 2020 to the date on which all USudbury Liabilities are satisfied in full.

## V. FUNDING OF WIND-UP DEFICIT

13. USudbury's portion of the Registered Pension Plan's wind-up determined by the Actuary as of January 1, 2020 is estimated to be $6,644,000 (the "**Initial Wind-Up Deficit**").

14. In respect of the Initial Wind-up Deficit, the Actuary shall calculate the amount of the monthly payments required to satisfy the deficit by the 15-year anniversary of the Final Accrual Date (the "**Amortization End Date**") based on the solvency (non-indexed) interest rate in effect on January 1, 2020 and USudbury shall make such monthly payments to the pension fund of the Registered Pension Plan.

15. The Actuary shall recalculate the USudbury Liabilities on a wind-up basis each time an actuarial valuation of the Registered Pension Plan is filed with the Financial Services Regulatory Authority of Ontario and the recalculation of the USudbury Liabilities shall reflect actuarial gains and losses to the new valuation date (each a "**Restated Wind-Up Deficit**"). For greater certainty, the USudbury Liabilities in respect of the pensions accrued for the period January 1, 2020 to the Final Accrual Date will be reflected in the first Restated Wind-Up Deficit.

16. In respect of each Restated Wind-Up Deficit, the Actuary shall recalculate the amount of the monthly payments (including retroactive adjustments) required to satisfy the deficit effective from the new valuation date to the Amortization End Date based upon the solvency (non-indexed) interest rate in effect on the valuation date of the new valuation report and USudbury shall make such monthly payments to the pension fund of the Registered Pension Plan.

17. Monthly payments are due to the pension fund of the Registered Pension Plan on the first business day of each month on or after the Final Accrual Date.

18. USudbury may, at its option, make lump-sum pre-payments in respect of the Initial Wind-Up Deficit, or a Restated Wind-Up Deficit, as applicable, and any such pre-payments shall be applied to reduce the amortization period.

19. If any USudbury Member is entitled to, and elects a commuted value option, USudbury shall make payments to the pension fund of the Registered Pension Plan to fund the transfer deficiency within five (5) years of the initial commuted value installment payment.

## VI. PURCHASE OF ANNUITIES

20. Laurentian will, subject to having received the payments described above and subject to the requirements of the *Pension Benefits Act*, purchase buy-out annuities and seek a discharge in respect of the USudbury Members as soon as practical following the date on which the assets in the USudbury Account are equal to or in excess of the USudbury Liabilities.

21. USudbury will pay into the pension fund for the Registered Pension Plan the difference between the cost of purchasing annuities for USudbury Members to satisfy all remaining USudbury Liabilities (inclusive of the transactional costs associated with the annuity purchase), and the assets in the USudbury Account.

22. To the extent that there are assets remaining in the USudbury Account following the satisfaction of all USudbury Liabilities after the purchase of buy-out annuities (following any adjustment period) Laurentian will pay an equivalent amount to USudbury and the USudbury Account shall be closed.

## VII. RESPONSIBILITY FOR PENSION DEFICIT & REMEDIES

23. USudbury acknowledges and agrees that it is and shall remain solely responsible for the funding of the USudbury Liabilities in accordance with the *Pension Benefits Act* until buy-out annuities are purchased for USudbury Members and a discharge under the *Pension Benefits Act* has been obtained by Laurentian. USudbury shall remain responsible for special payment obligations arising in respect of the USudbury Liabilities on and after the Final Accrual Date to the extent the monthly payments in Section V are insufficient to satisfy the special payment obligations.

24. In the event of a default in making monthly payments, or breach of the Transition Agreement by USudbury which has not been cured, Laurentian may, without prejudice to any other remedies that may be available to it, require USudbury to immediately accelerate all payments hereunder to fully satisfy all USudbury Liabilities.

25. In the event of a default in making monthly payments, a breach of the Transition Agreement by USudbury, USudbury's bankruptcy or insolvency, or the failure of USudbury to satisfy the financial pre-conditions set out in Section II, Laurentian may, without prejudice to any other remedies that may be available to it, take steps to establish a separate pension plan such that the USudbury Liabilities and the USudbury Account are segregated from the remainder of the Registered Pension Plan. Such transaction shall be at USudbury's cost. USudbury shall cooperate with Laurentian to achieve this result.

26. Until the USudbury Liabilities have been satisfied in full, USudbury agrees that it shall not undertake a transfer of or encumber its property or make distributions or gifts of its property without the written consent of Laurentian.

## VIII. CALCULATIONS

27. All calculations required to give effect to this Pension and Benefits Schedule will be performed by the Actuary as directed by Laurentian, using interest rates and actuarial assumptions in effect in respect of the Registered Pension Plan from time to time and the cost of preparing such calculations will be borne by the Registered Pension Plan.

## IX. ONGOING PLAN ADMINISTRATION, ASSESSMENTS & WIND UP OF THE REGISTERED PENSION PLAN

28. Laurentian shall continue to administer the Registered Pension Plan, including communications, the administration of the Registered Pension Plan in respect of USudbury Members and the investment of the USudbury Account.

29. Laurentian is solely responsible for setting the actuarial assumptions and methodology to be used in actuarial valuations of the Registered Pension Plan.

30. USudbury's participation in the Pension Committee for the Registered Pension Plan will cease on the April 30, 2021.

31. Laurentian shall make available to USudbury such relevant information about the Registered Pension Plan as the parties may agree.

32. USudbury will be responsible for the cost of any additional actuarial assessments or calculations it seeks in connection with the fulfillment of its obligations hereunder.

33. USudbury will remain responsible for its portion of all Pension Benefits Guarantee Fund or other assessments required to be paid in respect of the Registered Pension Plan.

34. Nothing in this Pension and Benefits Schedule limits Laurentian's right to amend, terminate or convert the Registered Pension Plan into another registered pension plan, in its sole discretion.

35. If the Registered Pension Plan is wound-up prior to the discharge of USudbury in respect of the USudbury Liabilities, USudbury's funding obligations will be determined in accordance with the *Pension Benefits Act*. If the Registered Pension Plan is converted into another registered pension plan prior to the discharge of USudbury in respect of the USudbury Liabilities, USudbury's funding obligations will be determined in accordance with the *Pension Benefits Act* and the conversion agreements.

## X. RETIREE HEALTH BENEFITS PLAN

36. USudbury's employees and retirees will receive the same treatment as Laurentian employees and retirees in respect of the Retiree Health Benefit Plan ("**RHBP**"), and claims in respect of the RHBP may be filed in any claims process under the CCAA.

37. The RHBP has, or will be, terminated within the CCAA proceeding. No RHBP claims have or will be processed after February 1, 2021.

38. No USudbury employees will continue to accrue future benefits under the RHBP for any period on or after the Final Accrual Date or the date the RHBP is terminated, if earlier.

This is Exhibit “U” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

# TRANSITION AGREEMENT BETWEEN THORNELOE UNIVERSITY ("THORNELOE") AND LAURENTIAN UNIVERSITY OF SUDBURY ("LAURENTIAN") WITH RESPECT TO TRANSITION POST-DISCLAIMER OF THE FEDERATION AGREEMENT

## I. PURPOSE

This document constitutes a transition agreement (the "**Transition Agreement**") between Thorneloe and Laurentian following Laurentian's disclaimer of the Federation Agreement between Thorneloe and Laurentian entered into in 1962 (the "**Federation Agreement**") and the Financial Distribution Notice between Thorneloe and Laurentian dated May 1, 2019 (the "**Financial Distribution Notice**") pursuant to section 32 of the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The terms set out herein represent an offer by Laurentian to Thorneloe which are open for acceptance until the commencement of the motion brought by Laurentian which is returnable on April 29, 2021 before the Ontario Superior Court of Justice (Commercial List). Acceptance of the offer reflected in this Term Sheet is subject to approval of Thorneloe's Board of Governors and Laurentian's Board of Governors.

## II. EFFECTIVENESS

1. This Transition Agreement shall become binding on the parties upon signing (subject only to Court approval and approval of the Board of Governors of each of Laurentian and Thorneloe), with an effective date for implementation of May 1, 2021 or such other date agreed to between Thorneloe and Laurentian (the "**Effective Date**").

## III. ACADEMIC PROGRAMS AND COURSES

2. Effective on the Effective Date, Thorneloe shall cease to have the ability or responsibility to deliver academic courses or programs as credit towards Laurentian courses and degrees. As of the Effective Date, Laurentian students will no longer be permitted to register for or take elective courses through Thorneloe (save and except for the completion of courses in the current term, including marking of any final student work or exams). No credits towards any degree granted by Laurentian will be given for any courses offered by Thorneloe that may be taken by a Laurentian student, save and except as may be otherwise available to all students through the ordinary process for seeking recognition of courses taken at any other university.

3. On the Effective Date, Laurentian shall transfer in full to Thorneloe all outstanding tuition and grant funds received by Laurentian for the benefit of Thorneloe for the period between February 1, 2021 to the Effective Date calculated in accordance with the existing funding formula. Following the Effective Date, neither Laurentian nor Thorneloe shall be required to transfer any portion of any tuition fees, grants, or other funding received by either of them from any source to the other, except as may be expressly provided in the Transition Agreement.

4. Laurentian shall advise students currently enrolled in Thorneloe's current courses and programs (collectively, the "**Thorneloe Courses and Programs**") that the Thorneloe Courses and Programs have been discontinued towards Laurentian degrees by Laurentian and Laurentian will offer all such students enrollment in other courses or programs, as applicable, offered by Laurentian. Thorneloe shall have no responsibility or liability of any kind to Laurentian, students, or other persons arising from the discontinuance or cancellation of the Thorneloe Courses and Programs towards Laurentian degrees (including any refund of tuition fees or grant funds received by Laurentian) and Thorneloe shall not be responsible for any transition of such students to other Laurentian courses or programs. Notwithstanding anything else herein, Thorneloe shall provide to

Laurentian such information as may be required in order to permit Laurentian to facilitate the transfer of students to programs at Laurentian and the recognition of their credits, grades, and related information.

5. Thorneloe and Laurentian will work cooperatively through the transition period to ensure that, above all, students are protected with an opportunity to continue their studies towards completion of a degree through courses taught at Laurentian.

6. With that in mind and notwithstanding any other provision herein, Thorneloe and its faculty shall complete all work and satisfy all obligations in respect of all courses and programs currently being offered by Thorneloe during the current Winter 2021 academic term, including marking of all final papers, exams, essays, and other course work to enable grades, marks, and credits to be received by existing students in the ordinary course.

7. Thorneloe will continue to retain ownership and control of the Thorneloe Courses and Programs, including all rights to teach, lease, or license the Thorneloe Courses and Programs and any related intellectual property in the future, regardless of the mode of delivery.

## IV. THORNELOE LEASE AND CONTINUED USE OF FACILITIES

8. Following the Effective Date, the Indenture between Thorneloe and Laurentian dated October 26, 1964 (the "**Thorneloe Lease**") shall remain in full force and effect and shall, subject only to any conforming changes arising from the terms of the Transition Agreement, continue on the existing terms set out therein. For greater certainty, neither the disclaimer/termination of the Federation Agreement nor the Transition Agreement shall trigger Laurentian's rights under section 6 of the Thorneloe Lease. Thorneloe shall remain responsible for all obligations under the Thorneloe Lease. Nothing contained herein constitutes a waiver or forbearance by Laurentian in any respect for the obligations thereunder, nor shall the non-delivery of a Disclaimer Notice under the Thorneloe Lease be deemed to constitute any such waiver.

9. Thorneloe will continue to maintain its building and related facilities (including its residence and parking lot) for its own benefit and use. Following the Effective Date, Thorneloe will continue to offer residence and parking which will be operated independently of Laurentian.

10. If requested by Thorneloe, Laurentian will offer Thorneloe's residence on its website/student enrollment and marketing materials for Laurentian students. Laurentian's website/student enrollment and marketing materials will include language specifying that Thorneloe's residence is independently managed and operated by Thorneloe and not Laurentian. In consideration for including the Thorneloe residence in Laurentian's website/marketing materials, Thorneloe will require students residing in Thorneloe's residence to opt into the Laurentian meal plan. Thorneloe will ensure that its residence complies with Laurentian's minimum standards to house Laurentian students and Thorneloe agrees that it will subscribe to Laurentian's security services to ensure the safety of Laurentian students housed in Thorneloe's residence in accordance with Section V below. This aspect of the Transition Agreement will be for a term of three years, subject to further review and consideration as to any renewal(s) by mutual agreement of the parties.

11. Thorneloe shall be solely responsible for all buildings it owns and operates on Laurentian's land including all related facilities and activities conducted thereon. Thorneloe agrees that Laurentian shall not be liable or responsible in any manner whatsoever relating to Thorneloe's operation or use of its buildings, facilities, or residence, and that Thorneloe is solely responsible for all aspects

of same. Thorneloe will ensure that its use of premises and activities conducted thereon are consistent with the terms of the Thorneloe Lease, including ensuring the buildings are kept in a good state of repair and remain compliant with applicable health and safety codes.

## V. SEPARATING OPERATIONS

With respect to operating services that are currently provided or managed by Laurentian for Thorneloe:

12. The parties will prepare a schedule of all such services with the corresponding portion of the cost attributable to Thorneloe (or, where such portion is not a defined amount, the method of calculating the portion), which schedule shall be developed cooperatively between Laurentian and Thorneloe.

13. Prior to the Effective Date, Thorneloe and Laurentian will identify and agree to those services that Thorneloe will no longer require from Laurentian following the Effective Date and such services shall be discontinued as of the Effective Date.

14. Thorneloe and Laurentian will work cooperatively to transfer to Thorneloe complete responsibility and billing of Thorneloe's portion within three (3) months of the Effective Date where it is possible to do so at minimal cost to either Thorneloe or Laurentian.

15. For services which cannot be transferred on that basis or which Thorneloe and Laurentian mutually agree not to transfer, Laurentian will continue to provide the service and shall bill Thorneloe for Thorneloe's portion of such service at cost, with no additional fees.

16. In the alternative to the above, Laurentian is willing to consider an arrangement whereby shared services continue to be provided by Laurentian on the current basis and Thorneloe will pay Laurentian an all-in service fee to administer those services, the amount of which to be mutually agreed upon by Thorneloe and Laurentian. This option is subject to the parties agreeing on the terms for such an arrangement, including the services to be provided, the fees to be paid by Thorneloe, and the term length of such an agreement.

## VI. BOARD AND SENATE NOMINEES

17. Effective on the Effective Date, Thorneloe shall cease to have any right to nominate members to the Board of Governors or the Senate of Laurentian.

## VII. PENSION AND BENEFITS

18. The terms of any continuation, discontinuation or amendment of Thorneloe's participation in the Laurentian registered pension plan and retiree health and benefits plan shall be as set out in the Pension Term Sheet, attached hereto as Schedule "**A**".

## VIII. COURT APPROVAL

19. Laurentian will include a copy of this Term Sheet in its motion materials in support of the Order to be sought from the Court on April 29, 2021. If the terms of this offer are accepted by Thorneloe prior to the commencement of the motion, Laurentian will seek Court approval of same at that time.

DATED at Sudbury this _____ day of April, 2021.

_____
Laurentian University of Sudbury

_____
Thorneloe University

## SCHEDULE "A"

## SUMMARY OF KEY PENSION AND BENEFIT TERMS BETWEEN THORNELOE UNIVERSITY ("THORNELOE") AND LAURENTIAN UNIVERSITY OF SUDBURY ("LAURENTIAN") WITH RESPECT TO TRANSITION POST-DISCLAIMER OF THE FEDERATION AGREEMENT

### I. PURPOSE

1. This document ("**Pension and Benefits Schedule**") provides a summary overview of the key terms of the Transition Agreement between Thorneloe and Laurentian with respect to Thorneloe's participation in, and obligations with respect to, pension entitlements earned by Thorneloe's employees and former employees under the Retirement Plan of Laurentian University of Thorneloe and its Federated and Affiliated Universities, Registration No. 0267013 (the "**Registered Pension Plan**") and the Retiree Health Benefit Plan.

2. Capitalized terms not defined herein have the meaning given to them in the Transition Agreement.

3. The contents of this Pension and Benefits Schedule provide a summary overview only. Finalization of this Pension and Benefits Schedule shall be subject to approval of Thorneloe's Board of Governors and Laurentian's Board of Governors.

### II. EFFECTIVENESS

4. This Pension and Benefits Schedule forms part of the Transition Agreement and will become effective coincident with, and on the same preconditions as the Transition Agreement except that Laurentian and its DIP Lender also must be satisfied of Thorneloe's financial ability to satisfy its obligations to the Registered Pension Plan as set out below.

### III. FUTURE SERVICE ACCRUAL UNDER REGISTERED PENSION PLAN

5. Thorneloe employees who participate in the Registered Pension Plan shall cease to accrue benefits under and cease to make contributions to the Registered Pension Plan effective on a date to be agreed, which shall be no later than June 30, 2021 (the "**Final Accrual Date**") or on the date of their termination of employment, if earlier.

6. No service or earnings of Thorneloe employees in respect of the period after the Final Accrual Date shall be taken into account in determining the benefits of Thorneloe employees under the terms of the Registered Pension Plan.

7. Upon termination of employment with Thorneloe, members shall be entitled to termination or retirement options in accordance with the *Pension Benefits Act* and terms of the Registered Pension Plan, as amended from time to time including amendments that impact portability rights in respect of past service entitlements.

8. Thorneloe shall continue to make current service contributions for benefits accruing for Thorneloe employees and shall continue to make all required special payments in accordance with the *Pension Benefits Act* until the Final Accrual Date.

## IV. NOTIONAL SEGREGATION OF THORNELOE ASSETS AND LIABILITIES

9. In its capacity as administrator of the Registered Pension Plan, Laurentian will cause the Actuary for the Registered Pension Plan to calculate (1) the liabilities of Thorneloe's employees and former employees ("**Thorneloe Members**") under the Registered Pension Plan ("**Thorneloe Liabilities**") separate from all other liabilities under the Registered Pension Plan ("**Other Liabilities**") and (2) a proportional share of the assets of the Registered Pension Plan relating to the Thorneloe Liabilities (the "**Thorneloe Account**") separate from the proportional share of the assets of the Registered Pension Plan associated with the Other Liabilities.

10. The initial Thorneloe Liabilities and Thorneloe Account will be calculated as at January 1, 2020 on a wind-up basis using the assumptions and methodologies set out in the actuarial valuation report for the Registered Pension Plan prepared as at January 1, 2020. To reflect activity for the period January 1, 2020 to the date of calculation, the Thorneloe Account will be adjusted to reflect current service contributions and special payments made by Thorneloe and Thorneloe Members from January 1, 2020 to the date of calculation, which will be credited to the Thorneloe Account, and to reflect benefit payments made to Thorneloe Members from January 1, 2020 to the date of calculation which will be debited from the Thorneloe Account.

11. The Thorneloe Account shall be a notional recordkeeping account within the pension fund under the Registered Pension Plan. Laurentian is not required to segregate the Thorneloe Account from other assets held in relation to the Registered Pension Plan.

12. Laurentian will cause investment returns, net of all expenses, earned on the pension fund assets to be credited to the Thorneloe Account from January 1, 2020 to the date on which all Thorneloe Liabilities are satisfied in full.

## V. FUNDING OF WIND-UP DEFICIT

13. Thorneloe's portion of the Registered Pension Plan's wind-up determined by the Actuary as of January 1, 2020 is estimated to be $3,797,000 (the "**Initial Wind-Up Deficit**").

14. In respect of the Initial Wind-up Deficit, the Actuary shall calculate the amount of the monthly payments required to satisfy the deficit by the 15-year anniversary of the Final Accrual Date (the "**Amortization End Date**") based on the solvency (non-indexed) interest rate in effect on January 1, 2020 and Thorneloe shall make such monthly payments to the pension fund of the Registered Pension Plan.

15. The Actuary shall recalculate the Thorneloe Liabilities on a wind-up basis each time an actuarial valuation of the Registered Pension Plan is filed with the Financial Services Regulatory Authority of Ontario and the recalculation of the Thorneloe Liabilities shall reflect actuarial gains and losses to the new valuation date (each a "**Restated Wind-Up Deficit**"). For greater certainty, the Thorneloe Liabilities in respect of the pensions accrued for the period January 1, 2020 to the Final Accrual Date will be reflected in the first Restated Wind-Up Deficit.

16. In respect of each Restated Wind-Up Deficit, the Actuary shall recalculate the amount of the monthly payments (including retroactive adjustments) required to satisfy the deficit effective from the new valuation date to the Amortization End Date based upon the solvency (non-indexed) interest rate in effect on the valuation date of the new valuation report and Thorneloe shall make such monthly payments to the pension fund of the Registered Pension Plan.

17. Monthly payments are due to the pension fund of the Registered Pension Plan on the first business day of each month on or after the Final Accrual Date.

18. Thorneloe may, at its option, make lump-sum pre-payments in respect of the Initial Wind-Up Deficit, or a Restated Wind-Up Deficit, as applicable, and any such pre-payments shall be applied to reduce the amortization period.

19. If any Thorneloe Member is entitled to, and elects a commuted value option, Thorneloe shall make payments to the pension fund of the Registered Pension Plan to fund the transfer deficiency within five (5) years of the initial commuted value installment payment.

## VI. PURCHASE OF ANNUITIES

20. Laurentian will, subject to having received the payments described above and subject to the requirements of the *Pension Benefits Act*, purchase buy-out annuities and seek a discharge in respect of the Thorneloe Members as soon as practical following the date on which the assets in the Thorneloe Account are equal to or in excess of the Thorneloe Liabilities.

21. Thorneloe will pay into the pension fund for the Registered Pension Plan the difference between the cost of purchasing annuities for Thorneloe Members to satisfy all remaining Thorneloe Liabilities (inclusive of the transactional costs associated with the annuity purchase), and the assets in the Thorneloe Account.

22. To the extent that there are assets remaining in the Thorneloe Account following the satisfaction of all Thorneloe Liabilities after the purchase of buy-out annuities (following any adjustment period) Laurentian will pay an equivalent amount to Thorneloe and the Thorneloe Account shall be closed.

## VII. RESPONSIBILITY FOR PENSION DEFICIT & REMEDIES

23. Thorneloe acknowledges and agrees that it is and shall remain solely responsible for the funding of the Thorneloe Liabilities in accordance with the *Pension Benefits Act* until buy-out annuities are purchased for Thorneloe Members and a discharge under the *Pension Benefits Act* has been obtained by Laurentian. Thorneloe shall remain responsible for special payment obligations arising in respect of the Thorneloe Liabilities on and after the Final Accrual Date to the extent the monthly payments in Section V are insufficient to satisfy the special payment obligations.

24. In the event of a default in making monthly payments, or breach of the Transition Agreement by Thorneloe which has not been cured, Laurentian may, without prejudice to any other remedies that may be available to it, require Thorneloe to immediately accelerate all payments hereunder to fully satisfy all Thorneloe Liabilities.

25. In the event of a default in making monthly payments, a breach of the Transition Agreement by Thorneloe, Thorneloe's bankruptcy or insolvency, or the failure of Thorneloe to satisfy the financial pre-conditions set out in Section II, Laurentian may, without prejudice to any other remedies that may be available to it, take steps to establish a separate pension plan such that the Thorneloe Liabilities and the Thorneloe Account are segregated from the remainder of the Registered Pension Plan. Such transaction shall be at Thorneloe's cost. Thorneloe shall cooperate with Laurentian to achieve this result.

26. Until the Thorneloe Liabilities have been satisfied in full, Thorneloe agrees that it shall not undertake a transfer of or encumber its property or make distributions or gifts of its property without the written consent of Laurentian.

## VIII. CALCULATIONS

27. All calculations required to give effect to this Pension and Benefits Schedule will be performed by the Actuary as directed by Laurentian, using interest rates and actuarial assumptions in effect in respect of the Registered Pension Plan from time to time and the cost of preparing such calculations will be borne by the Registered Pension Plan.

## IX. ONGOING PLAN ADMINISTRATION, ASSESSMENTS & WIND UP OF THE REGISTERED PENSION PLAN

28. Laurentian shall continue to administer the Registered Pension Plan, including communications, the administration of the Registered Pension Plan in respect of Thorneloe Members and the investment of the Thorneloe Account.

29. Laurentian is solely responsible for setting the actuarial assumptions and methodology to be used in actuarial valuations of the Registered Pension Plan.

30. Thorneloe's participation in the Pension Committee for the Registered Pension Plan will cease on the April 30, 2021.

31. Laurentian shall make available to Thorneloe such relevant information about the Registered Pension Plan as the parties may agree.

32. Thorneloe will be responsible for the cost of any additional actuarial assessments or calculations it seeks in connection with the fulfillment of its obligations hereunder.

33. Thorneloe will remain responsible for its portion of all Pension Benefits Guarantee Fund or other assessments required to be paid in respect of the Registered Pension Plan.

34. Nothing in this Pension and Benefits Schedule limits Laurentian's right to amend, terminate or convert the Registered Pension Plan into another registered pension plan, in its sole discretion.

35. If the Registered Pension Plan is wound-up prior to the discharge of Thorneloe in respect of the Thorneloe Liabilities, Thorneloe's funding obligations will be determined in accordance with the *Pension Benefits Act*. If the Registered Pension Plan is converted into another registered pension plan prior to the discharge of Thorneloe in respect of the Thorneloe Liabilities, Thorneloe's funding obligations will be determined in accordance with the *Pension Benefits Act* and the conversion agreements.

## X. RETIREE HEALTH BENEFITS PLAN

36. Thorneloe's employees and retirees will receive the same treatment as Laurentian employees and retirees in respect of the Retiree Health Benefit Plan ("**RHBP**"), and claims in respect of the RHBP may be filed in any claims process under the CCAA.

37. The RHBP has, or will be terminated within the CCAA proceeding. No RHBP claims have or will be processed after February 1, 2021.

38. No Thorneloe employees will continue to accrue future benefits under the RHBP for any period on or after the Final Accrual Date or the date the RHBP is terminated, if earlier.

This is Exhibit “V” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

LaurentianUniversity
UniversitéLaurentienne

# Laurentian University Retirement Plan

March 18, 2021

Delivered by E-Mail

Dear Member:

**Re: Important Information Concerning Your Pension Plan Entitlements**

We are writing on behalf of Laurentian University. As you know, Laurentian University is currently operating under the *Companies' Creditors Arrangement Act* ("CCAA") with a view to restructuring its operations.

Further to the Court hearing on Monday March 15, 2021 of which you were provided notice, I am writing to provide a copy of the Order of the Court and Chief Justice Morawetz's Endorsement issued March 17, 2021 which affects the ability of members of the Retirement Plan of Laurentian University of Sudbury and its Federated and Affiliated Universities (the "Pension Plan") to transfer 100% of the commuted value of their entitlements out of the Pension Plan.

We are writing to you because you are one of the Interim CV Applicants referenced in the Order. The balance of this letter provides you with information about your right to make an election or re-election with regard to your pension entitlements under the Pension Plan in light of the Order.

The Order does not change the amount of your monthly pension entitlement under the Pension Plan nor the amount of the commuted value indicated on your original retirement statement or termination statement. However, as a result of the Order, if you elect to transfer your commuted value out of the Pension Plan, the transfer will be made in two installments instead of one. The first installment will be paid at the Pension Plan's transfer ratio, which is 65.8%, with the balance to be paid within 5 years in accordance with applicable pension legislation. The amount of the second installment is 34.2% of the commuted value indicated on your original retirement statement or termination statement, plus interest.

Payment at the Pension Plan's transfer ratio applies to tax-sheltered locked-in amounts and amounts payable in cash. If your commuted value includes both a tax-sheltered locked-in portion and a taxable cash portion, you will receive 65.8% of both portions in your initial installment.

You are being asked to confirm below your intention about your entitlements under the Pension Plan and return this letter within 30 days of its date. **Failure to respond to this request means that you will be deemed to have withdrawn any request for a commuted value transfer, and you will retain your entitlement to a deferred pension payable from the Pension Plan.**

If you retain a right to a deferred pension under the Pension Plan, your entitlements will be determined based on the terms of the Pension Plan, as amended from time to time. If you elect a commuted value payment in the future, the amount will be recalculated using interest rates and actuarial assumptions then in effect, which may result in a higher or lower commuted value.

**If you no longer have copies of your retirement or termination statement and need that information to be re-issued, please contact us immediately and this information will be sent to you.**

**Election or Re-Election**

Our records indicate that you have already returned your Application for Termination Benefits or Application for Pension Benefits Form and all related documentation. You may reconsider your pension options and make a fresh election in light of the attached court Order. **You have 30 days from the date of this letter to return a signed copy of this letter to the address below. If you do not return this letter with one of the boxes below checked, you will be deemed to have withdrawn your request for a commuted value transfer and will retain your entitlement to a deferred pension payable from the Pension Plan.**

**Please check one of the boxes below:**

☐ I confirm my original election to receive a transfer of my commuted value entitlement and understand that the first installment will be 65.8% of the lump sum amount included on my retirement or termination statement, plus interest to first day of the month in which payment is made. I understand the second installment will be payable within five years, in accordance with applicable pension legislation. The transfer of the second installment will be made to the same account(s) on the same conditions as the first installment unless I advise otherwise.

☐ I confirm my original election to retain my pension entitlements in the Pension Plan and understand that I have the right to receive a deferred pension.

☐ I confirm my original election to commence an immediate pension.

☐ I wish to change my original election. I hereby elect the following option:

- ☐ Receive a transfer of my commuted value entitlement in two installments. I understand that the first installment will be 65.8% of the lump sum amount included on my retirement or termination statement, plus interest to first day of the month in which payment is made. I understand the second installment will be payable within five years, in accordance with applicable pension legislation. The transfer of the second installment will be made to the same account(s) on the same conditions as the first installment unless I advise otherwise.

- ☐ Retain my pension entitlements in the Pension Plan with the right to a deferred pension.

- ☐ Commence an immediate pension payable from the Pension Plan with a _____ [[please insert pension commencement date] pension commencement date. Note: this option is only available if you received an Application for Pension Benefits and have reached your early retirement date.

I understand that I will be contacted with regard to any additional documentation that is required to be provided given the change to my original election.

_____ _____

**Full Member Name** **Signature**

**How to Return Your Election**

A copy of this letter should be returned by either one of the following methods:

Mail: Eckler Ltd.
Attn: Laurentian University Pension Administration
5140 Yonge Street, Suite 1700
Toronto, ON M2N 6L7

Email: laurentianpensions@eckler.ca

If returning your election by email, please ensure that your documents are clearly legible otherwise originals will be required to be submitted by mail. Please ensure that all emailed documents are password protected. Send the password to us in a separate email. If you are not sure how to do that, please contact us and we can assist you in that regard.

If you have any questions, please do not hesitate to contact Mr. Norman Lavallee, Associate Vice-President Financial Services at pension@laurentian.ca.

Please note that all payments under the Laurentian University Supplemental Retirement Plan (SuRP) have been discontinued at this time in accordance with a court Order issued in the CCAA process. This letter relates solely to your entitlements under the Pension Plan.

Laurentian University Pension Administration

Encl.

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

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

| | | |
|---|---|---|
| THE HONOURABLE CHIEF | ) | WEDNESDAY, THE 17th |
| | ) | |
| JUSTICE MORAWETZ | ) | DAY OF MARCH, 2021 |

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**
**(Re: Pension)**

**THIS MOTION**, brought by Laurentian University of Sudbury ("**LU**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order: (a) applying the Transfer Ratio (as defined below) to commuted value transfer requests from all Interim CV Applicants (as defined below); and (b) confirming that the PBGF Assessment Payment and the Incremental PBGF Assessment Payment (both as defined below) are stayed pursuant to the terms of the Amended and Restated Initial Order, was heard this day by videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

**ON READING** the Notice of Motion of LU dated March 8, 2021, the affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits thereto (the "**Initial Haché Affidavit**") that was previously filed in this proceeding, the Affidavit of Bobbie-Jo Brinkman sworn March 8, 2021 and the Exhibits thereto and the Second Report of the Monitor dated March 11, 2021 and on hearing the submissions of counsel in attendance and the following Interim CV Applicants, Caleb Leduc, Brady Zapalski, Ann Pegoraro, William Oxley and Sheila McGillis, with no one appearing for any other person on the service list or the remaining Interim CV Applicants (as defined below),

although duly served as appears from the Affidavit of Service of Derek Harland sworn March 10, 2021,

**Service and Definitions**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion is hereby validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Initial Haché Affidavit.

**Application of the Transfer Ratio for Commuted Value Transfers**

3. **THIS COURT ORDERS AND DECLARES** that LU, in its capacity as an Applicant herein and as sponsor and administrator of the Pension Plan (as such term is defined in the Initial Haché Affidavit), shall be permitted to transfer commuted values from the Pension Plan based on a transfer ratio equal to 65.8% (the "**Transfer Ratio**"), being the transfer ratio contained in the most recently filed actuarial valuation report for the Pension Plan (effective as of January 1, 2020 and filed with the Financial Services Regulatory Authority of Ontario in December 2020), in accordance with the Ontario *Pension Benefits Act* and the regulations thereto (the "**PBA**") for any individual who has received a retirement or termination statement and election form from LU indicating that he or she may elect to receive a 100% commuted value transfer from the Pension Plan and for whom such transfers have not yet been made (the "**Interim CV Applicants**").

4. **THIS COURT DECLARES AND ORDERS** that any Interim CV Applicant who has elected a commuted value transfer shall be given a re-election form, which form must be submitted in writing to LU within 30 days of notice of this Order, to elect to either receive an immediate or deferred pension, as applicable, or a commuted value transfer based on the Transfer Ratio. Each such Interim CV Applicant shall receive a copy of this Order from LU, and be advised of the 30-day period within which such election shall be made in writing to LU. Any such Interim CV Applicant who does not make an election in writing to LU within 30 days of the date upon which notice of this Order is provided to them, shall be deemed to have withdrawn their application for

a transfer of their commuted value and shall retain their entitlement to a deferred pension from the Pension Plan.

5. **THIS COURT ORDERS AND DECLARES** that, notwithstanding anything in this Order, any future adjustments to the applicable Transfer Ratio for the purpose of commuted value transfers shall be established in accordance with the PBA, or by further Order of this Court.

**Stay of Pension Benefits Guarantee Fund Assessment Payment**

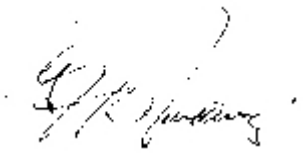
6. **THIS COURT ORDERS AND CONFIRMS** that, for greater certainty, the payment due on March 30, 2021 in the amount of $842,018.34 in respect of LU's *pro rata* portion of assessment fees payable to the Pension Benefits Guarantee Fund relating to the Pension Plan for the pre-filing period of July 1, 2019 to June 30, 2020, plus any interest and penalties thereon (the "**PBGF Assessment Payment**") and any incremental amount owing by LU in respect of its *pro rata* portion of assessment fees payable to the Pension Benefits Guarantee Fund relating to the Pension Plan for the pre-filing period of July 1, 2018 to June 30, 2019 due to the filing in December 2020 of a new actuarial valuation report for the Pension Plan, plus any interest and penalties thereon (the "**Incremental PBGF Assessment Payment**"), is stayed and suspended in accordance with paragraph 12 of the Amended and Restated Initial Order of this Court dated February 11, 2021.

7. **THIS COURT ORDERS** that none of LU or any of its directors, officers, employees, agents, advisors or consultants shall incur any obligation or liability as a result of the stay and suspension of the PBGF Assessment Payment and the Incremental PBGF Assessment Payment in accordance with the terms of this Order. For greater certainty, nothing in this Order shall preclude the Financial Services Regulatory Authority from asserting a claim against LU in respect of the PBGF Assessment Payment or the Incremental PBGF Assessment Payment.

**General**

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, having jurisdiction in Canada or in the United States of America to give effect to this Order and to assist LU 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 LU and to the Monitor, as an officer of the 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 LU and the Monitor and their respective agents in carrying out the terms of this Order.



CHIEF JUSTICE G.B. MORAWETZ

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

**ORDER**
**(Pension Order)**

**THORNTON GROUT FINNIGAN LLP**
3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

**D.J. Miller (LSO# 344393P)**
Email: djmiller@tgf.ca

**Mitchell W. Grossell (LSO# 69993I)**
Email: mgrossell@tgf.ca

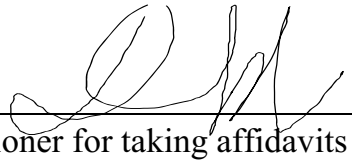
**Andrew Hanrahan (LSO# 78003K)**
Email: ahanrahan@tgf.ca

**Derek Harland (LSO# 79504N)**
Email: dharland@tgf.ca

Tel: 416-304-1616
Fax: 416-304-1313

Lawyers for the Applicant

This is Exhibit “W” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

To: All Faculty via email

From: Marie-Josee Berger, Provost & VP Academic

Date: March 28, 2021

Topic: ***IMPORTANT RETIREMENT INCENTIVE INFORMATION***

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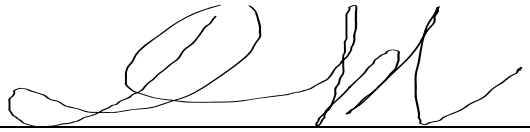
**RETIREMENT INCENTIVE**

| | |
|---|---|
| **Retirement Election** | All Faculty Members shall be advised by March 28, 2021 that they may elect, by irrevocable written notice provided on or before April 1, 2021, that they intend to retire (the "**Retiring Faculty Members**").<br><br>The effective termination date of the Retiring Faculty Members for those teaching courses in this academic term shall be May 15, 2021, to allow for marking of final exams, papers and communicating grades. For all Retiring Faculty Members who are not teaching courses in this academic term, the effective termination date shall be April 30, 2021. |
| **Treatment of Retiring Faculty Members** | In addition to the rights afforded to retired members under the Collective Agreement and to Emeritus faculty under the University`s Emeritus Policy, Retiring Faculty Members shall be entitled to receive the following:<br><br>(i) A claim in the CCAA claims process in accordance with their entitlement under the collective agreement and the terms of the CCAA;<br><br>(ii) Access to office space for up to June 30, 2023. The office provided shall be at the discretion of the Dean, and may be shared office space;<br><br>(iii) Emeritus Status (as defined in the Collective Agreement), if eligible and alternatively adjunct status if eligible, such determinations to be made on a reasonably expedited basis;<br><br>(iv) To be added to the sessional roster in the applicable Department/School and be given priority for one three credit course for which no member has establishment, for which they have taught at least once in the past 3 years, to be paid at the overload |

| | |
|---|---|
| | rate;<br><br>(v) Continued library privileges;<br><br>(vi) Until June 30, 2023, the ability to maintain their current status with respect to supervision of students and will be paid when the graduate student completes a thesis in accordance with article 5.40.8;<br><br>(vii) Their name appearing on the University website for their Department or School as long as they are either engaged as a sessional instructor and/or with respect to supervision of students;<br><br>(viii) Until June 30, 2023, with 100% of the premium cost to be at the cost of the retiree, the option to maintain Laurentian Health Benefits (Health & Dental) subject to Manulife approval;<br><br>(ix) Their name included in the next service ceremony for Laurentian.<br><br>(x) Retiring Members shall be advised that the option to commute the value of their pension at the wind up transfer ratio remains available to them at this time but may not be available in the future. |

This is Exhibit “X” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

TGF
Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

D.J. Miller
T: 416-304-0559
E: djmiller@tgf.ca
File No. 1898-002

March 23, 2021

**VIA EMAIL**

**Quebec Secretariat for Canadian Relations**
875, Grande Allée Est
3rd Floor, office 3.565
Québec, QC G1R 4Y8
gilbert.charland@mce.gouv.gc.ca

**Attention: Gilbert Charland**

**Re: In the Matter of the *Companies' Creditors Arrangement Act* and In the Matter of a Plan of Compromise or Arrangement of Laurentian University of Sudbury, Court File No.: CV-21-00656040-00CL**

Dear Mr. Charland:

We are counsel to Laurentian University of Sudbury ("**Laurentian**"). We refer to your letter to Mr. Normand Lavallee dated March 17, 2021 in which you indicated the Minister for Canadian Relations and the Canadian Francophonie (the "**Minister**") may terminate the Memorandum of Understanding entered into between Laurentian and the Quebec Secretariat for Canadian Relations (the "**Secretariat**"), on behalf of the Minister, in February 2020 (the "**Protocol**"). You also demand that Laurentian repay research grant funding that the Secretariat provided in respect of research to be undertaken by [redacted].

As you are aware, on February 1, 2021, Laurentian commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (as amended and restated, the "**Initial Order**"), a copy of which is enclosed. Ernst & Young Inc. (the "**Monitor**") is the Court-appointed Monitor of Laurentian's CCAA Proceedings.

Pursuant to paragraph 21 of the Initial Order, all rights and remedies against or in respect of Laurentian are stayed and suspended except with written consent of Laurentian and the Monitor, or leave of the Court. Accordingly, the Minister is not permitted to terminate the Protocol or otherwise make any demands or take any enforcement steps thereunder.

In response to your concerns about the treatment of research grant funding, please be advised that as part of its CCAA Proceedings, Laurentian, with the assistance of the Monitor, is undertaking a review in respect of all research grants received by Laurentian. However, at this time, Laurentian

TGF
Thornton Grout Finnigan LLP



is not able to address any particular funds that may have been received prior to the commencement of its CCAA Proceedings.

The Secretariat's support for Laurentian's research programming is acknowledged and appreciated. As the CCAA Proceedings progress, we anticipate being in a position to provide more information regarding research funds received by Laurentian. At that time, we will engage in discussions with all of Laurentian's grant providers, including the Secretariat.

Please do not hesitate to contact the undersigned should you have any questions.

Yours truly,

**Thornton Grout Finnigan LLP**

D.J. Miller

Encl.

cc: *Laurentian University of Sudbury*
*Ernst & Young Inc., the court-appointed Monitor*
*Stikemans LLP, counsel for the court-appointed Monitor*

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

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

| | | |
|---|---|---|
| THE HONOURABLE CHIEF | ) | THURSDAY, THE 11TH |
| | ) | |
| JUSTICE MORAWETZ | ) | DAY OF FEBRUARY, 2021 |

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

**AMENDED AND RESTATED INITIAL 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 amending and restating the Initial Order (the "**Initial Order**") issued on February 1, 2021 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein 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 30, 2021 and the Exhibits thereto (the "**Haché Initial Affidavit**"), the Pre-filing Report of Ernst & Young Inc. (the "**Monitor**") dated January 30, 2021, the First Report of the Monitor dated February 7, 2021 (the "**First Report**") 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 Angela Maharaj sworn February 9, 2021, the Affidavit of Service of Derek Harland sworn February 4, 2021, and on reading the consent of Ernst & Young Inc. to act as the Monitor,

**SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Haché Initial Affidavit.

**NON-APPLICANT STAY PARTY**

**THIS COURT ORDERS** that the Laurentian University Students General Association (the "**SGA**") shall be referred to herein as a "**Non-Applicant Stay Party**". Although not an applicant under the CCAA, the Non-Applicant Stay Party shall enjoy certain of the benefits and protections provided herein and be subject to the restrictions as expressly hereunder set out.

**APPLICATION**

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is insolvent and is a company to which the CCAA applies.

**PLAN OF ARRANGEMENT**

4. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

**POSSESSION OF PROPERTY AND OPERATIONS**

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business and deal with its assets, including the businesses and assets of the other entities, partnerships and joint ventures in which the Applicant has a direct or indirect interest, and is authorized to continue to provide services to such parties in respect of which it is currently providing services, in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel

and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to use the cash management system currently in place, as described in the Haché Initial Affidavit, which for greater certainty includes any segregated bank accounts now existing (together with any segregated bank accounts established pursuant to paragraph 7, the "**Cash Management System**"), and that any present or future bank or institution providing the Cash Management System to the Applicant shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, except to the extent that such terms are expressly modified by this Order or with the consent of the Applicant, the Monitor and any applicable bank or financial institution providing a Cash Management System, and shall be, solely in its capacity as provider of the Cash Management System only, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System on or after the Initial Filing Date.

7. **THIS COURT ORDERS** that (a) any segregated bank accounts established by the Applicant from and after December 1, 2020, to hold funds received by it on the condition that such funds be used for a specific purpose in respect of a particular aspect of the Applicant's Business, including without limitation, funds provided to the Applicant for the purpose of research projects (including grants, awards or other similar funds), funds received in respect of restricted donations or endowments, and employee and employer contributions to benefit plans (collectively, the "**Segregated Funds**") shall be used for such specific purpose, and (b) from and after the date of this Order, the Applicant may establish additional segregated bank accounts, including trust accounts if necessary, to hold any additional Segregated Funds that are received by the Applicant under such agreed upon arrangements, and the Segregated Funds shall not form part of the Applicant's Property.

8. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order, in all cases subject to the availability of financing under the DIP Term Sheet (as defined below):

(a) all outstanding and future wages, salaries, employee and retiree benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Applicant, ordinary course pension benefits or contributions, vacation pay, expenses and any director fees and expenses, payable on or after the date of this Order, in each case for costs incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements for current and future employees (but not including any payments to former employees or retirees in respect of the SuRP and the RHBP, as such terms are defined in the Haché Initial Affidavit, or termination or severance payments, which are hereby stayed), and all other payroll processing and servicing expenses;

(b) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other similar amounts that are owing or may be owed to students or student associations of the Applicant, whether such amounts are as a result of the reimbursement of tuition fees, ancillary fees or otherwise, provided that such rebates, refunds or other similar amounts are subject to the existing policies and procedures of the Applicant;

(c) all outstanding amounts owing in respect of the current 2020-21 academic year and future amounts payable to students in respect of student scholarship, bursary or grants; and

(d) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

9. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business (including the value thereof) including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order or payments to obtain the release of goods or delivery of services contracted for prior to the date of this Order,

provided that, to the extent such expenses were incurred prior to the date Initial Filing Date, the Applicant shall only be entitled to pay such amounts if they are determined by the Applicant, in consultation with the Monitor, to be necessary to the continued operation of the Business or preservation of the Property and such payments are approved in advance by the Monitor.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) until further order of this Court, all outstanding and future normal course contributions to or payments in respect of the Pension Plan, as defined in the Haché Initial Affidavit, in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

(c) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the date of this Order (including for greater certainty in respect of the interest rate swap transactions); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

**PENSION PLAN**

13. **THIS COURT ORDERS** that the Applicant's obligation to make special payments (whether pursuant to the Ontario *Pension Benefits Act*, RSO 1990, c. P-8 and regulations made thereunder or to the terms of the Pension Plan, as such term is defined in the Haché Initial Affidavit, and whether in respect of the Applicant's own employees and former employees or in respect of the employees and former employees of the other employers participating in the

Pension Plan as set out in the Haché Initial Affidavit) in respect of the defined benefit component of the Pension Plan (such payments being the "**Special Payments**"), shall be suspended effective on and after February 1, 2021 for the duration of this CCAA proceeding, subject to further Order of this Court. For greater certainty, the suspension of Special Payments hereunder does not constitute a disclaimer or termination by the Applicant of any component of the Pension Plan, nor does it constitute an acknowledgment of any obligation by the Applicant to make Special Payments relating to employers other than the Applicant.

14. **THIS COURT ORDERS** that for the duration of this proceeding, no Person (as hereinafter defined), including employees and former employees of the Applicant (or the surviving spouse of any such person) entitled to a benefit under the defined benefit component of the Pension Plan (whether or not such member was represented by a union when the member was employed by the Applicant) or the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario, shall commence any action or other proceeding in connection with the suspension of the Special Payments or because the Applicant has not made the Special Payments.

15. **THIS COURT ORDERS** that the Applicant and each of its respective directors, officers, officials, and agents shall not incur any obligation or liability, whether by way of debt, damages for breach of any duty whether statutory, fiduciary, common law or otherwise, or for breach of trust, as a result of the suspension of the Special Payments in accordance with the terms of this Order.

16. **THIS COURT ORDERS** that if any claim, lien, charge or trust, including deemed trust, arises as a result of the suspension of the Special Payments, no such claim, lien charge or trust, including deemed trust, shall have priority over the Charges (as hereinafter defined) in this proceeding, or in any subsequent receivership, interim receivership or bankruptcy of the Applicant.

**RESTRUCTURING**

17. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its Business or operations, and to dispose of redundant or non-material assets not exceeding $50,000 in any one transaction or $250,000 in the aggregate. Notwithstanding the foregoing, the Applicant shall not cease, downsize or shut down any parts of its Business if such action would cause any current students of the Applicant to be unable to continue and complete courses that they are already enrolled in, subject to further Order of the Court;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as they deem appropriate;

(c) vacate, abandon or quit any leased premises and disclaim or resiliate any real property lease and any ancillary agreements relating to any leased premises, subject to paragraphs 11 and 18 of this Order;

(d) disclaim arrangements or agreements of any nature whatsoever with whomever, whether oral or written, as the Applicant deems appropriate, with the Monitor's consent or pursuant to further Order of the Court, in accordance with Section 32 of the CCAA;

(e) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(f) pursue all avenues and to engage in discussions with key stakeholders of the Applicant in an effort to give effect to an operational restructuring of the Applicant;

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of its business (the "**Restructuring**").

18. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days' prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the

landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

19. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

20. **THIS COURT ORDERS** that until and including April 30, 2021, or such later date as this Court may subsequently order (the "**Stay Period**"), no proceeding or enforcement process in or out of any court or tribunal or other forum, whether arising by contract or otherwise (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

21. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the

Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended, including any existing, pending or future information requests made to the Applicant under the *Freedom of Information and Protection of Privacy Act*, except with the written consent of the Applicant and the Monitor, or leave of this Court, including, without limitation, by way of terminating, making any demand, accelerating, amended or declaring in default, sweeping any cash in the Applicant's bank accounts (if available), exercising any option, right or remedy or taking any enforcement steps under or in respect of any agreement or agreements with respect to which the Applicant is a party, borrower, principal obligor or guarantor, by reason of:

(a) the Applicant being insolvent or having made an application to this Court under the CCAA;

(b) the Applicant being a party to this proceeding or taking any steps related thereto; or

(c) any default or cross-default arising from the matters set out in the foregoing subparagraphs,

provided that nothing in this Order shall:

(a) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on;

(b) exempt the Applicant from compliance with any statutory or regulatory provisions relating to health, safety or the environment;

(c) affect such investigations, actions, suits or proceedings by a regulatory body as are specifically permitted by Section 11.1 of the CCAA;

(d) prevent the filing of any registration to preserve or perfect a security interest;

(e) prevent the registration of a claim for lien; or

(f) prevent any actions that are permitted by Section 34(8) of the CCAA.

**LIMITED STAY IN RESPECT OF THE NON-APPLICANT STAY PARTY**

22. **THIS COURT ORDERS** that during the Stay Period, no Person shall (a) commence or continue any Proceeding or enforcement process, (b) terminate, repudiate, make any demand, accelerate, alter, amend, declare in default, exercise any options, rights or remedies, or (c) discontinue, fail to honour, alter, interfere with or cease to perform any obligation, pursuant to or in respect of any agreement, lease, sublease, license or permit with respect to which the Non-Applicant Stay Party is a party, borrower, principal obligor or guarantor, by reason of:

(a) the Applicant being insolvent or having made an application to this Court under the CCAA;

(b) the Applicant being a party to this proceeding or taking any steps related thereto; or

(c) the stay granted pursuant to this paragraph 22; and

(d) any default or cross-default arising from the matters set out in the foregoing subparagraphs,

except with the written consent of the Applicant and the Monitor, or with leave of this Court.

**NO INTERFERENCE WITH RIGHTS**

23. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant or the Non-Applicant Stay Party or take any steps to interrupt or interfere with the operation of the Business or the continued use of the Property of the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

24. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from

discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

26. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicant, including the members of the Board of Governors of the Applicant (the "**Board**") with respect to any claim against the directors, officers or the Board that arose before the date of this Order and that relates to any obligations of the Applicant whereby the directors, officers or the Board are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

27. **THIS COURT ORDERS** that the Applicant shall indemnify its directors, officers and the Board against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer, director or member of the Board, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. **THIS COURT ORDERS** that the directors, officers and Board of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $5,000,000, as security for the indemnity provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

29. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors, officers and the Board shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

**APPOINTMENT OF MONITOR**

30. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) liaise with and assist the Applicant and the Assistants with respect to all matters relating to the Applicant's Business, the Applicant's Property and the Restructuring, and such other matters as may be relevant to the proceedings herein;

(c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;

(d) advise the Applicant in the preparation of the Applicant's cash flow statements and any other reporting to the Court or otherwise;

(e) be at liberty to participate in discussions with representatives of the Ministry of Colleges and Universities ("**MCU**") and such other representatives of Provincial or Federal government agencies, at any time on all aspects of this proceeding and the Applicant's restructuring, subject to such terms of confidentiality as may be appropriate in the Monitor's assessment and in consultation with the Applicant;

(f) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender (as defined below) and its counsel on a weekly basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

(g) advise the Applicant in its development of the Plan and any amendments to the Plan;

(h) assist the Applicant, to the extent required by the Applicant, with the holding and administering of a creditors' meeting for voting on the Plan;

(i) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, wherever situate, in order to assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

32. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property of the Applicant, or any property of the Non-Applicant Stay Party, and shall take no part whatsoever in the management or supervision of the management of the Business and shall not,

by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental legislation, unless it is actually in possession.

34. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

35. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or the Initial Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order or the Initial Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicant's counsel and advisors in connection with the CCAA proceedings (collectively, the "Restructuring Advisors") together with independent counsel to the Board ("**Board Counsel**") shall each be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Restructuring Advisors and Board Counsel. Notwithstanding the foregoing, the fees and disbursement of Board Counsel paid by the Applicant from and after the date of this Order shall not exceed the aggregate amount of $250,000, plus HST, pending further Order of the Court.

37. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. **THIS COURT ORDERS** that the Restructuring Advisors shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $1,250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Restructuring Advisors, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

**DIP FINANCING**

39. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Firm Capital Mortgage Fund Inc., or its assignee (the "**DIP Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed $25,000,000, unless permitted by further Order of this Court.

40. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicant and the DIP Lender dated as of January 29, 2021 (the "**DIP Term Sheet**") attached as Exhibit "HHH" to the Haché Initial Affidavit, subject to such minor amendments as may be acceptable to the Applicant and the DIP Lender and approved by the Monitor.

41. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents and other definitive documents (collectively, the "**DIP Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms of the DIP Term Sheet, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the DIP Documents, as and when the same become due, and are to be performed, notwithstanding any other provision of this Order.

42. **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 "A" (the "**Real Property**"), and the DIP Lender's Charge shall not secure any obligation that exists between the Applicant and the DIP Lender before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the DIP Documents;

(b) upon the occurrence of an event of default under the DIP Documents or the DIP Lender's Charge or upon the Maturity Date (as defined in the DIP Term Sheet), the DIP Lender, upon 14 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 Term Sheet, the DIP Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant, to make, demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the 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.

44. **THIS COURT ORDERS AND DECLARES** that, unless otherwise agreed by the DIP Lender, the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any other or similar proceeding that may be commenced by the Applicant with respect to any advances made under the DIP Documents.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

45. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge and the DIP Lender's Charge (collectively, the "**Charges**" and each individually, a "**Charge**") as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $1,250,000);

Second – Directors' Charge (to the maximum amount of $2,000,000);

Third – DIP Lender's Charge (to the maximum amount of $25,000,000); and

Fourth – Directors' Charge (to the maximum amount of $3,000,000).

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

47. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, construction liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

48. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also

obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

49. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the DIP Documents shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges or the execution, delivery or performance of the DIP Documents; and

(c) the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the DIP Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

51. **THIS COURT ORDERS** that, notwithstanding anything else contained herein and pending further Order of the Court, the Property subject to the Charges herein shall not include the Segregated Funds.

**SERVICE AND NOTICE**

52. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail and the Sudbury Star a notice containing the information prescribed under the CCAA, and (ii) within five days of the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1,000 (excluding any individual employees, former employees with pension and/or retirement savings or benefits plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plan), and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

53. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure*, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/Laurentian.

54. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

55. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

56. **THIS COURT ORDERS** that the Applicant and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

**SEALING PROVISION**

57. **THIS COURT ORDERS** that Confidential Exhibits "**EEE**" and "**FFF**" of the Haché Initial Affidavit, are hereby sealed pending further order of the Court, and shall not form part of the public record.

**GENERAL**

58. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

59. **THIS COURT ORDERS** that upon the registration in the Land Titles Division of the Real Property of the DIP Lender's Charge in the form prescribed in the *Land Titles Act* or the

*Registration Reform Act*, or both, as applicable, the Land Registrar is hereby directed to register the DIP Lender's Charge on title of the Real Property.

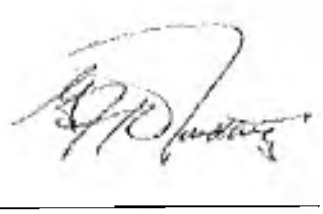
60. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

61. **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.

62. **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.

63. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. **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.



CHIEF JUSTICE G.B. MORAWETZ

**Schedule "A"**
**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 |

1043

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)**
Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

**THORNTON GROUT FINNIGAN LLP**
3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

**D.J. Miller (LSO# 344393P)**
Email: djmiller@tgf.ca

**Mitchell W. Grossell (LSO# 69993I)**
Email: mgrossell@tgf.ca

**Andrew Hanrahan (LSO# 78003K)**
Email: ahanrahan@tgf.ca

**Derek Harland (LSO# 79504N)**
Email: dharland@tgf.ca

Tel: 416-304-1616
Fax: 416-304-1313

Lawyers for the Applicant

This is Exhibit “Y” referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

Blakes

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

**Pamela Huff**
Partner
Dir: 416-863-2958
pamela.huff@blakes.com

April 21, 2021

Reference: 22043/889

**VIA E-MAIL**

D.J. Miller
Thornton Grout Finnigan LLP
100 Wellington Street West, Suite 3200
P.O. Box 329
Toronto, ON M5K 1K7

**Re: In the matter of the *Companies' Creditors Arrangement Act* ("CCAA") Proceedings *of* Laurentian University of Sudbury ("Laurentian University") (Court File No CV-21-00656040-00CL)**

Ms. Miller,

As you are aware, we are counsel to Royal Bank of Canada ("**RBC**"), a significant creditor in the above referenced matter.

Reference is made to the motion that has been scheduled by Laurentian University on April 29, 2021 for, among other things, an extension of the CCAA stay period (the "**April 29 Hearing**"). RBC understands that at the April 29 Hearing, Laurentian University intends to also seek court approval of additional first ranking debtor-in-possession financing ("**Additional DIP Financing**").

Presently, a number of information requests by RBC remain outstanding in respect of the proposed extension of the CCAA stay period, Additional DIP Financing and mediation being conducted within the CCAA proceedings (the "**Mediation**"). In order for RBC to make an informed decision regarding its position on the matters before the Court at the April 29 Hearing, the following minimum information is necessary:

(i) A timetable for a proposed claims process to be conducted in connection with the CCAA proceedings (the "**Claims Process**");

(ii) A timetable for a proposed process for the evaluation of opportunities to monetize redundant and/or non-critical assets of Laurentian University (the "**Sale Process**");

(iii) A timetable of any other activities by Laurentian University or anticipated material steps during the extended stay period, if granted; and

(iv) An overview and timetable of the proposed next steps in the Mediation, the development of a proposed Plan, the anticipated ongoing role of the Court-appointed mediator and lender engagement in respect thereof, and exit from CCAA in the event of creditor support of a Plan.

RBC expects to be consulted and to have an opportunity to provide meaningful input in respect of any potential Claims Process and any proposed Sale Process, both of which will have a material impact on recoveries for

Laurentian University's creditors. In particular and without limitation, (i) the draft Claims Process Order, if and when sought by Laurentian University, should provide that material claims are only to be approved with the consent of RBC and the Monitor and shall otherwise be subject to Mediation and Court approval, and (ii) RBC should be provided with an advance opportunity to review and consent to the proposed Sale Process, including the proposed sale advisor that Laurentian University seeks to engage and the terms of such engagement. To the extent Laurentian University or the Monitor have any issues with the any of the foregoing, we would request to be advised of same at the earliest opportunity and well in advance of the April 29 Hearing.

Yours truly,

Pamela Huff

Cc: Aryo Shalviri, *Blake, Cassels & Graydon LLP, counsel to RBC*

Stuart Brotman & Dylan Chochla, *Fasken Martineau DuMoulin LLP, counsel to TD*

George Benchetrit, *Chaitons LLP*, *counsel to BMO*

Mitch Grossell, *Thornton Grout Finnigan LLP, counsel to Laurentian University*

Sharon Hamilton, *Ernst & Young Inc., the Monitor*

Ashley Taylor & Elizabeth Pillon, *Stikeman Elliott LLP, counsel to the Monitor*

This is Exhibit "Z" referred to in the
Affidavit of Dr. Robert Haché sworn by video conference 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 April 21st, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

Firm Capital Corporation
Mortgage Banking • Real Estate Capital
163 Cartwright Avenue
Toronto, Ontario M6A 1V5
Tel: 416-635-0221
Fax: 416-635-1713

**FIRM CAPITAL CORPORATION, AS TRUSTEE**
**LOAN AMENDMENT AGREEMENT (the "Amendment")**

April 19, 2021

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

**Attention: Dr. Robert Haché, President and Vice-Chancellor**

**Re: Increase to Debtor in Possession Financing for Laurentian University of Sudbury ("Laurentian")**

We wish to confirm that, based upon and subject to the accuracy of the information furnished to us, and subject to our ongoing review of all matters in respect of the motion to be brought by Laurentian before the Court on April 29, 2021 and the determination of such motion, the following amendments and/or additions as set out below shall be in addition to the original terms of the Debtor in Possession Financing Commitment dated January 26, 2021 issued by Firm Capital Corporation ("**FCC**") and the DIP Loan Agreement dated February 10, 2021 (the "**DIP Loan Agreement**") between Laurentian and Firm Capital Mortgage Fund Inc. (the "**DIP Lender**") (together, the "**Commitment**"). All other terms of the Commitment, unless otherwise stated below, shall remain in effect. The following amendments are subject to all legal matters and documentation being to the complete satisfaction of the DIP Lender, and their solicitors.

**DEFINITIONS**: The defined term "Initial Order" as defined in the DIP Loan Agreement and any references thereto shall be amended to reflect the "Amended and Restated Initial Order" dated February 11, 2021.

**LOAN AMOUNT:** The DIP Facility and DIP Financing as provided in the DIP Loan Agreement shall be amended and increased as follows:

| | |
|---|---|
| Existing Loan Amount ("**Facility A**"): | $25,000,000.00 |
| Add: Subject Loan Increase ("**Facility B**") | $10,000,000.00 |
| Revised Loan Amount (the "**Loan**") | $35,000,000.00 |

**ADVANCE OF FUNDS:** The parties acknowledge that all DIP Advances under Facility A have been advanced to the Borrower. DIP Advances as provided in the DIP Loan Agreement shall be amended to provide for Advances in respect of Facility B as follows:

Upon the Conditions to Funding specified herein being satisfied, Facility B shall be advanced upon five (5) days' written request by the Borrower in amounts as specified by the Borrower, to be in draws of not less than $3,000,000.

**TERM**: Repayment and Maturity Date as provided in the DIP Loan Agreement to be extended to August 31, 2021 (the "**Maturity Date**" or the "**Term**").

**ADDITONAL LOAN SECURITY:** In addition to the security provided to the Borrower pursuant to the Commitment, this Amendment shall be subject to the Borrower providing the additional security and other documents listed below, in a form and substance satisfactory to the DIP Lender, including, but not limited to:

1. An Order granted by the Court in the CCAA proceeding which provides for an increase in the DIP Lender's Charge to $35,000,000 as a valid and perfected super-priority Court-Ordered charge on all of the Property (as defined in the Amended and Restated Initial Order) of the Borrower, ranking subordinate to only the Administration Charge and to a portion of the Directors' Charge in the amount of $2,000,000 as set out in the Amended and Restated Initial Order, and to any valid purchase money security interest.
2. An amended Promissory Note and/or Amendment to the DIP Loan Agreement.
3. A first priority assignment of rents registered on all property owned by the Borrower.
4. Such further security and other documentation that the DIP Lender and its solicitor may request and reasonably require.

**CONDITIONS TO FUNDING:**

In addition to the Conditions Precedent to Advances provided for in section 13 of the DIP Loan Agreement, this Amendment and any advance of funds hereunder is subject to the following conditions being satisfied to the satisfaction of the DIP Lender by the specific dates set out below or, if not otherwise specified, by May 1, 2021:

1. Written acceptance of this Amendment by the Borrower by April 19, 2021 subject only to the Borrower's Board of Governors approval, if applicable, and Court approval.

2. The Term Sheets between the Borrower and each of the Laurentian University Faculty Association ("**LUFA**") and the Laurentian University Staff Union, including but not limited to the Pension Term Sheets which are a Schedule thereto (together, and collectively, the "**Union Term Sheets**") are each ratified by the members by no later than 9 am on Wednesday, April 14, 2021 and all necessary steps are taken to implement same.

3. An Order is granted in form and substance satisfactory in all respects to the DIP Lender:

   (i) authorizing the Borrower to execute this Amendment and approving the increase to the Loan created herein;

   (ii) increasing the DIP Lender's Charge under the Amended and Restated Initial Order to include the additional amount of Facility B and the aggregate Loan contemplated hereunder;

   (iii) extending all aspects of the stay of proceedings pursuant to the Amended and Restated Initial Order to August 31, 2021;

   (iv) approving the Union Term Sheets;

   (v) approving the Transition Services Agreement with Huntington University; and

   (vi) confirming and extending all rights in favour of the DIP Lender as exist under the Amended and Restated Initial Order;

   and in each case authorizing and directing the Borrower to implement same.

4. The Disclaimers of the Borrower's Federation Agreements and Financial Distribution Notices with

each of Huntington University, Thorneloe University and the University of Sudbury (collectively, the **Federated Universities**") issued on April 1, 2021 shall become effective, binding and final on May 1, 2021.

5. Other than the academic restructuring passed by Senate on April 6, 2021, no further academic restructuring of the Borrower's programs occurs without the DIP Lender's consent (which may be withheld in its sole discretion).

6. The Borrower shall have provided a revised cash flow forecast and multi-year financial forecast to the DIP Lender, demonstrating to the DIP Lender, in its sole discretion, that the Borrower will be financially sustainable and achieve operational stability upon emergence from the CCAA Proceeding.

7. No material changes to the Borrower's governance or senior leadership shall occur that, in the DIP Lender's sole discretion, creates a situation of increased instability during the Term of the Loan.

8. No Report is filed by the Monitor in the CCAA proceeding which advises of a material adverse event.

9. Other than as may be requested by the Borrower with the consent of the DIP Lender and with the Monitor's support, no Court Order is issued which affects the Borrower, or any of its Business.

10. The DIP Lender shall not be obligated to advance funds under this Amendment if: (i) the Amended and Restated Initial Order has been vacated, stayed or otherwise caused to become ineffective or is amended in a manner not acceptable to the DIP Lender; or (ii) an Order is granted by the Court at any time which the DIP Lender does not support.

11. The Borrower shall have sought and obtained from the Court, by May 31, 2021 or such later date as the DIP Lender may agree, a Claims Process Order on terms acceptable to the DIP Lender for the commencement of a claims process with respect to all creditor claims.

**AFFIRMATIVE COVENANTS:**

The Loan is subject to the following conditions that the Borrower must comply with as a condition of any further advance hereunder:

1. The Borrower shall have entered into a negotiated settlement, resolution or determination by binding Arbitration of all of the Grievances referenced in the Order Appointing Mediator dated February 5, 2021, by May 30, 2021. The outcome of those determinations must be acceptable to the DIP Lender to the extent such determinations have any impact on the Borrower's financial sustainability or operational stability.
2. The issues specifically identified in the Term Sheet between the Borrower and LUFA that are to be determined through binding arbitration shall be resolved by June 18, 2021. The outcome of those determinations must be acceptable to the DIP Lender to the extent such determinations have any impact on the Borrower's financial sustainability or operational stability.

**LOAN AMENDMENT FEE:** $200,000.00 payable to FCC.

The $200,000.00 Loan Amendment Fee shall be deemed to have been fully earned by FCC and payable upon the Court issuing an Order approving this Amendment. In the event the Loan Amendment Fee becomes fully earned and payable and is not paid prior to the advance of funds under this Amendment, the Borrower hereby irrevocably directs the DIP Lender's solicitor to pay the Loan Amendment Fee from the advance under this Amendment.

**SCHEDULES ATTACHED:**

The following attached schedule(s) form a part of this Amendment:

SCHEDULE "A": Borrower Disclosure Form

**AMENDMENT ACCEPTANCE:**

The Borrower agrees that FCC's services are rendered at the time this Amendment is accepted by the Borrower, approved by the Borrower's Board of Governors and approved by the Court. If the terms and conditions set out herein are satisfactory and the Borrower is prepared to seek Court approval of same, kindly acknowledge acceptance by initialling each page and signing below. This offer of financing will be open for acceptance by the Borrower until 5 p.m. on April 23, 2021. **The Borrower acknowledges having received and/or executed a Borrower Disclosure Form at least 48 hours prior to signing this Amendment and a copy has been retained by the Borrower.** In case of any inconsistency or conflict between any provisions of this Amendment and any provisions of the security documents for the Loan, the DIP Lender may, in their sole discretion, determine which shall prevail.

[Signature page to follow]

Yours truly,
**FIRM CAPITAL CORPORATION, AS TRUSTEE**
PER:

Jonathan Mair
Senior Vice-President

E. & O. E.

**BORROWER ACCEPTANCE:**
I hereby acknowledge that I have been advised by Firm Capital Corporation to seek legal advice with respect to the DIP Financing or Loan and have done so prior to signing this Amendment.

Laurentian University of Sudbury hereby accepts the terms and conditions of this Amendment, expressly subject to Court approval of same, and covenants and agrees with FCC and the DIP Lender to duly carry out same terms and conditions, dated this 20th day of April, 2021.

**BORROWER:**

**LAURENTIAN UNIVERSITY OF SUDBURY**
**PER:**

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

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**

**THORNTON GROUT FINNIGAN LLP**
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TD West Tower, Toronto-Dominion Centre
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**Derek Harland** (LSO# 79504N)
Email: dharland@tgf.ca

Tel: 416-304-1616
Fax: 416-304-1313

Lawyers for the Applicant

# Tab 14

Court File No. CV-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

# AFFIDAVIT OF PIERRE RIOPEL
**(sworn April 14, 2021)**

I, Pierre Riopel, of the Municipalité of Rivière-des-Français, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am the Chair of the Board of Regents at the University of Sudbury ("**USudbury**"), and as such have personal knowledge of the matters hereinafter deposed to. Where I do not have personal knowledge of the facts set out in this affidavit, I state the source of that information and verily believe the information to be true.

2. In preparing this affidavit, I have reviewed the affidavit of Robert Haché sworn January 30th, 2021 (the "**Haché Affidavit**") in support of the Application of Laurentian University of Sudbury ("**Laurentian**") under the *Companies' Creditors Arrangements Act* "**CCAA**").

## History of the Federated Relationship Between USudbury and Laurentian

3. USudbury was founded as Collège du Sacré-Coeur in 1913. On April 20, 1914, the Ontario legislature adopted the *Charte du Collège du Sacré-Coeur.* In 1957, the Collège du Sacré-Coeur changed its name to University of Sudbury.

4. Under its enabling statute, Sudbury was bestowed with a number of powers, including the power to confer degrees.

5. USudbury is a bilingual and tri-cultural university based in the tradition of its founding francophone Jesuit Fathers. It is committed to promoting the traditions and culture of the Indigenous people. USudbury offers French- and English-language programs and courses in “Culture et Communications” (including journalism and folklore components) (French-language only), Indigenous Studies (founded in 1975), Philosophy and Religious Studies. A number of the French-language courses offered through Laurentian have been provided by USudbury.

6. Besides providing French and English language electives to students enrolled in a program at Laurentian or at another Federated University, USudbury offers students the possibility of adding a minor or minors to a specialized program as well as the possibility of earning a language certificate as a complement to any degree. The transdisciplinary skills (critical, analytical and creative thinking, problem-solving, adaptation, communications and multicultural awareness) and knowledge acquired through the courses taught at USudbury are invaluable to students in their quest for future employment, career development and everyday life.

7. Laurentian owes its existence to the USudbury. In 1960, USudbury, the Anglican Diocese of Algoma, and the United Church Presbytery petitioned the Ontario government to establish Laurentian as a non-denominational, bilingual university to serve the Sudbury community. Laurentian’s enabling legislation specifically contemplates that Laurentian would enter into federation agreements with church-related universities or colleges and that credits from such institutions would be treated as if they were given in Laurentian’s “University College.”[1]

[1] *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151 C. 154 4(c).

8. One of the driving factors for the creation of Laurentian was to ensure that it would become a beacon for the francophone community in offering programs and courses in French to meet its needs, and that this mission would always remain a priority for the newly created university. Laurentian was incorporated in 1960. It is a non-share capital corporation created by *An Act to Incorporate Laurentian University of Sudbury* S.O. 1960, c. 151 C. 154, operating as a publicly funded, bilingual university in Sudbury, Ontario. It is a registered charity under the *Income Tax Act*.

9. From inception, Laurentian's incorporating statute contemplates that it would enter into federation agreements with other universities.

10. In 1960, the year it was incorporated, Laurentian entered into a Federation Agreement with Sudbury (the "**Federation Agreement**"). The Federation Agreement includes the declarations of Laurentian and Sudbury that they each:

> [E]xpress the firm hope and conviction that the relationship between the Universities established by this agreement will be a permanent one and that they and the other universities and colleges which become federated or affiliated with Laurentian University will work together to fulfil the objects of the Act of Incorporation of Laurentian University…The Parties fully realize that the success of the task which they have set themselves will depend more on the mutual understanding, goodwill and cooperation between the institutions now or hereafter associate together in Laurentian University, than upon any formal agreements.

A copy of the Federation Agreement is attached as **Exhibit "A".**

11. As part of the federation arrangement between Laurentian and USudbury, the parties entered into a perpetual lease dated April 9, 1965 for an initial term of 99 years (the "**Lease**"), a copy of which is attached as **Exhibit "B**".

12. Consistent with the parties' stated intention for a permanent and perpetual federated relationship (the "**Federation Relationship**"), the Lease contained an option for USudbury to renew for another 99 years, with the options to renew and continue on each renewal.

13. The Federation Agreement was intended to be permanent and perpetual. There is no provision for its termination, and the parties never intended for there to be the possibility of a unilateral termination of the Federation Relationship.

14. Despite the contemplated permanency of the Federation Relationship, Laurentian seeks to terminate it by its Notice to Disclaim or Resiliate an Agreement dated April 1, 2021 (the "**Proposed Disclaimer**") in which the Federation Agreement and a Financial Distribution Notice between Laurentian and USudbury dated May 1, 2019, amending the Proposed Grant Distribution and Services Fees agreement between Laurentian, USudbury, Thorneloe University, and Huntington University dated November 10, 1993 (the "**Financial Distribution Notice**") are sought to be disclaimed.

A copy of the Financial Distribution Notice is attached as **Exhibit "C".**

15. The Federation Relationship is reflected in the Federation Agreement, the Financial Distribution Notice and the Lease, the terms of all of which are interdependent and interlocked. USudbury expected that the Federation Relationship would be permanent and relied on it being so when it entered into the Federation Agreement and the Lease.

16. The Federation Relationship required USudbury to:

a) suspend its right to confer diplomas on students in favour of Laurentian, except for diplomas in Theology;

b) give up its right to receive money directly from the Ministry of Colleges and Universities for students ("**Grants**");

c) give up its right to receive tuition funds directly from students ("**Tuitions**");

d) pay out of its own funds for the construction and operating costs of buildings and student housing (the "**Buildings**") on lands under the Lease (the "**Leased Lands**"); and

e) maintain and pay the full costs of its professors and teaching staff for all courses it offers.

17. The Financial Distribution Notice states, as its underlying principle that:

> …none of Laurentian University or any of the Federated Universities will subsidize the operations or services of another, and each will be responsible forcovering its own costs. The funding mechanism in place at any given time will be consistent with the funding mechanism between the Province and Laurentian University.
>
> …
>
> Each Federated University employs its own staff and is, and will continue to be, responsible for its own financial affairs. Laurentian University is the principal employer for administering pension plan and benefits and provides access to these employee benefits to each of the Federated Universities, with each Federated University bearing the sole financial responsibility for all contributions and funding for such employee benefits for its own staff.

18. USudbury has two buildings on the Leased Lands, a main building for administration and classrooms, and a residence, which were constructed by USudbury at its cost of more than **$5M** (the "**Buildings**").

19. Section 6 of the Lease provides that:

> … this lease and any renewal thereof shall at the option of [Laurentian] cease and be void if at any time during the term hereby granted [USudbury] shall withdraw from federation with [Laurentian] or if the lands and premises cease for a period of three years to be used by [USudbury] for educational instruction at a university level, or if [USudbury] shall cease for a period of three years to operate as a University. In the event of such termination [USudbury] shall have the right to purchase the demised lands forthwith…[2]

20. In the event of any of the foregoing, USudbury has the right to purchase the demised lands on which USudbury's building has been constructed at a value to be determined in accordance with the terms set out in the lease. If USudbury does not exercise its right to purchase the demised lands, then Laurentian shall have the option to purchase the USudbury's building at cost minus depreciation (based on a formula set out in the USudbury Lease).

21. Laurentian also entered into federation agreements with University of Thorneloe ("**Thorneloe**") and Huntington University ("**Huntington**") (USudbury, Thorneloe and Huntington, collectively, the "**Federated Universities**").

**Lack of Good Faith**

22. The Proposed Disclaimer is unfortunately not the first time Laurentian has attempted to unilaterally terminate or materially alter the Federation Agreement.

[2] USudbury Lease at s 6, Laurentian Mediation Brief at Appendix D.

**The 2019 Financial Distribution Notice**

23. During the course of their 60-year federation, Laurentian and the Federated Universities entered into a series of agreements to address the allocation of funding and costs of services. The final agreement between the Federated Universities and Laurentian is a Grant Distribution and Service Fees Agreement dated November 10, 1993 (the "**1993 Funding Agreement**").

24. The 1993 Funding Agreement governed for over 25 years and included a funding formula that detailed, among other things, how (i) Grants and Tuition received by Laurentian would be distributed to the Federated Universities; and (ii) the service fees that would be paid to Laurentian, which were calculated as being a portion of the Grants and Tuitions received by each Federated University.

25. Effective May 1, 2019, Laurentian, without the consent of USudbury or the other Federated Universities, purported to unilaterally revise or replace the 1993 Funding Agreement and the allocation of funding between Laurentian and each of the Federated Universities through the issuance of separate "Notices of Terms of Financial Distribution" to each of the Federated Universities. The most recent of these is the Financial Distribution Notice which is one of the two agreements that Laurentian seeks to disclaim.

26. USudbury was not asked to and did not consent to Laurentian unilaterally revising or replacing the 1993 Funding Agreement through the Financial Distribution Notice or otherwise. By purporting to revise the allocation of revenues on its own, without consultation or discussion with USudbury, Laurentian was not acting within the guiding principles of the Federation Agreement or in good faith.

27. Based on its own proposed formula, Laurentian retains 15% of the Tuition funding per student, releasing only 85% of the funding from Grants and Tuitions to the Federated Universities who actually deliver the courses and programs. Laurentian

receives funding based on the number of students enrolled at the Federated Universities for purposes of the provincial funding formula but does not pay the Federated Universities the full amount for each student, even before an allocation between the Federated Universities and Laurentian applies. The 15% that goes to Laurentian comes “off the top”.

28. The existing funding formula was not forced upon Laurentian by USudbury or the Federated Universities. To the contrary, Laurentian sought to impose it on the Federated Universities. The 2019 revised funding formula reflected Laurentian’s own unilateral assessment of the economic allocation of Grants and Tuition and funding between Laurentian and the Federated Universities.

29. There is no reason that the allocation of revenues from Tuition and Grants cannot be divided in a way that is acceptable to both Laurentian and USudbury and that does not hamper Laurentian financially or create undue hardship to USudbury. If necessary, the Financial Distribution Notice should be revised, by agreement of the parties, not unilaterally disclaimed by Laurentian. The Federation Agreement itself in no way causes any financial obligations on Laurentian that either hinders or hampers it from making a viable plan to its creditors. By seeking to terminate the Agreements rather than attempting to negotiate new terms for financial allocation of revenues and expenses, Laurentian is acting contrary to the principles agreed to and enunciated in the Federation Agreement and in bad faith.

**Lease**

30. The Lease gives Laurentian the right to elect whether or not to trigger any termination and its right to purchase the Buildings. The Lease was intended to work in parallel with the Federation Agreement so that neither party could withdraw from the Federation Arrangement without the consent of the other. A disclaimer of the Federation Agreement would saddle USudbury with all of the cost of maintaining the Buildings while depriving it of any revenues from Tuitions or Grants, all of which

would be kept by Laurentian, along with Laurentian's unilateral ability to control who owns the land beneath the Buildings.

31. I am advised by André Claude, USudbury's lawyer, and verily believe that the Lease cannot be disclaimed under the CCAA which is likely why Laurentian has not attempted to do so. However, by attempting to disclaim the Agreements and putting itself in a position to keep all revenues and force USudbury to pay the operating costs of the Buildings and put itself in a position to unilaterally determine who will own the Buildings, Laurentian is not acting in good faith in connection with the Lease, the Agreements or the Proposed Disclaimers. The approximate annual cost of maintaining the Buildings is $400,000, not including any additional repairs or replacements that are required from time to time.

**Employees**

32. In the 2019/2020 academic year, USudbury had a faculty of 13 full-time professors and 37 sessional professors. USudbury had an average faculty to student ratio of 1:45, an average class size of 14, a Full Student Course Equivalent (full-year) enrolment of 2,228 and individual registrations in all courses of 4,080 students.

33. USudbury has estimated the cost of terminating its employees if the Proposed Disclaimer was permitted to be as high as $4 million. The teaching faculty is under a collective bargaining agreement and is represented by LUFA. Other employees, also unionized, are under a collective agreement negotiated with UNIFOR.

**Laurentian's Insolvency**

34. The Haché Affidavit describes low class enrolment as being a factor in its insolvency (para. 12 and following) and suggests that an overhaul and restructuring of the Federation Arrangement must occur to make Laurentian's courses financially sustainable. Under the Federation Agreement, USudbury pays the full costs of teaching any courses it offers and under the Lease it pays for the construction and

operation of the Buildings. Mr. Haché provides no explanation whatsoever as to how the Federation Agreement is causing or materially contributing to Laurentian's courses not being financially unstainable. The Federation Agreement in no way contributes to Laurentian's current financial woes. On top of its attempt to dissolve the Federation, Laurentian has now announced deep cuts to its programs and course offering, which may resolve some of its problems and create a whole new set of problems. In doing so, Laurentian is striking at the very heart of its obligations towards the Francophone community, and it is striking directly at USudbury's ability to carry-out its obligations towards this same community. In support of this statement, I rely on the Notice of Motion and its supporting materials served and filed by the Assemblée de la francophonie de l'Ontario, which is dated on March 31, 2021.

35. What is obvious from the Haché Affidavit, as the real cause of Laurentian's insolvency, is the debt burden it carries related to capital expenditures and construction, bank lending and disputed grievances, as described in paragraphs 212 to 260. The Federation Arrangement has nothing to do with these expenditures. Mr. Haché does not explain how terminating the Federation Arrangement will result in Laurentian being operationally solvent so long as those other obligations exist.

**Lease Rights**

36. USudbury intends to continue the Lease in accordance with its terms and will continue to utilize the properties and Buildings for its purposes.

37. Laurentian can only terminate the Lease if USudbury (i) withdraws from the federation with Laurentian; (ii) ceases to use the land for university-level education for three years; or (iii) ceases to operate as a university for three years. USudbury has not had or expressed any intention of withdrawing from the federation with Laurentian, prior to February 1, 2021. To the contrary it is Laurentian that wishes

to terminate the federation against the wishes of USudbury and without the good faith discussions required by the Federation Agreement.

38. Mr. Haché says in paragraph 295 of the Haché Affidavit that Laurentian seeks to establish a "Laurentian 2.0" by, among other things "...terminating the agreements and relationship with the Federated Universities". By making this statement without discussion or consultation with the Federated Universities, and USudbury in particular, in connection with the Proposed Disclaimer, Laurentian is not acting in good faith in connection with the Agreements or in connection with its actions under the CCAA.

**Likely Significant Financial Hardship to USudbury**

39. The immediate effect of a termination of the Federation Relationship, effective April 30th, 2021 would be to leave USudbury unable to take the myriad steps needed to convert itself into an independent university. At the same time, USudbury would be required to pay for all of the expenses associated with the Federation Relationship and its termination, including:

a) The lay-off costs for its employees which could amount to $4 million; and

b) The annual upkeep of its buildings on the Leased Lands of approximately $400,000.

40. In addition, the disclaimer of the Agreements would cause a significant financial loss to USudbury from the future loss of income from Grants and Tuition fees.

**Likelihood of Viable Plan not Enhanced by Proposed Disclaimers**

41. USudbury desires and intends to continue to operate as a university and provide university-level education whether or not the Court permits the Proposed

Disclaimers. If it is compelled to continue operating in the absence of a Federation Relationship with Laurentian, it will do so without the benefit of the Agreements and the Relationship which commit Laurentian and USudbury to find solutions together to serve the Sudbury and area population.

42. I am advised by our legal counsel, André Claude, and I verily believe, that he wrote to Laurentian's counsel, Ms. D.J. Miller, on April 12, 2021 for the purposes of opening a discussion with Laurentian about the possibility of having French-language programming, services and infrastructure transferred to USudbury, while remaining federated with Laurentian, in an effort to avoid irreparable harm to the Franco-Ontarian community. Laurentian's counsel responded to Mr. Claude's letter on the same day, making clear that Laurentian would not entertain any discussion with USudbury about any such transfer in the course of its restructuring. A copy of these letters are attached hereto as **Exhibit "D"** and **Exhibit "E"** respectively.

43. USudbury needs to go on, regardless, and as a result, Laurentian will risk losing revenue for each student that enrolls for a USudbury course. Given that under the Federation Relationship USudbury only receives a portion of Grant and Tuition funds but has to pay the costs of the Buildings and the full costs of its teaching staff for the courses it provides, Laurentians' financial position will not be bettered but will be worsened by the Proposed Disclaimers.

44. If, despite its desire to continue as an operating university, USudbury is unable to pivot quickly enough in becoming an independent university due to the immensely short time span in which it must take all mechanical and administrative steps to separate itself from the Federated Relationship because of the Proposed Disclaimers, this would cause more than significant financial hardship. USudbury wishes, if at all possible, to arrive at an arrangement with Laurentian with the Federation Agreement and Relationship, to offer all of the French programs and courses. The significance to the Francophone community of ensuring not only the survival but the actual promotion of these programs and courses cannot be overstated. Such an arrangement can be arrived at, or imposed if necessary, within

the scope of the Federation. In either scenario, the Proposed Disclaimers and the unilateral termination of the Federation Agreement and Federation Relationship should not be permitted by this Court and may be contrary to the *French Language Services Act*, RSO 1990, c. F. 32, amongst other.

**Disclaimer Means Substantially Higher Claims and Creditor Opposition to any Plan**

45. Under their respective Federation Agreements, USudbury and the other Federated Universities have a unique commonality of interest sufficient for them to be put into their own separate class for voting purposes. Their combined claims for damages will be substantially higher by millions of dollars if their respective agreements are disclaimed. The result of this is that a viable plan that will be accepted by all classes of creditors is less, not more likely, to occur if the Proposed Disclaimer is permitted.

46. USudbury will be seeking to have the Federated Universities put into one class for voting purposes and will vote against any plan that includes the disclaimer of the Agreements without its consent. The likelihood that Laurentian will be able to file a viable plan acceptable to all classes of creditors is smaller, not greater, if that plan includes the termination of the Federation Arrangement.

47. Laurentian and USudbury currently have integrated IT and email systems, including email currently managed by Laurentian. As Mr. Haché says in paragraph 63 of the Haché Affidavit, “For all intents and purposes, the Federated Universities are integrated into Laurentian…” It is not possible to disentangle USudbury from Laurentian so that USudbury is able to restructure to be able to offer courses and diplomas to students for the next academic semester beginning May 1, 2021. It is likely that the earliest semester USudbury could offer courses for would be September 1, 2021 or January 1, 2022.

48. This affidavit is made in the English language for the sake of expediency.

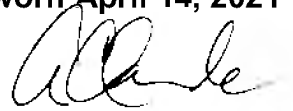
49. I make this Affidavit in support of the relief set out in the Notice of Motion herein and for no other or improper purpose.

Sworn remotely by Pierre Riopel in the Municipalité of Rivière-des-Français, in the province of Ontario, before me in the city of Ottawa, in the province of Ontario, on April 14, 2021, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely.

A Commissioner, etc.

PIERRE RIOPEL

**This is Exhibit "A" to the Affidavit of Pierre Riopel sworn April 14, 2021**



**A Commissioner for taking Affidavits.**

DATED 10th SEPTEMBER 1960

LAURENTIAN UNIVERSITY OF SUDBURY

- and -

THE UNIVERSITY OF SUDBURY

---

A G R E E M E N T

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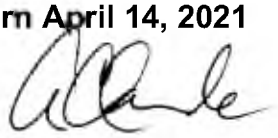
CASSELS, BROCK & KELLEY
255 Bay Street
Toronto 1 Ontario

**This is Exhibit "B" to the Affidavit of Pierre Riopel sworn April 14, 2021**



**A Commissioner for taking Affidavits.**

THIS INDENTURE made in triplicate this 9th day of April, 1965, in pursuance of The Short Forms of Leases Act;

B E T W E E N:

LAURENTIAN UNIVERSITY OF SUDBURY,
hereinafter called "the Lessor"

OF THE FIRST PART

- and -

THE UNIVERSITY OF SUDBURY
hereinafter called "the Lessee"

OF THE SECOND PART

WHEREAS the Lessee has entered into an agreement of federation with the Lessor;

AND WHEREAS the Lessor has agreed to allocate and reserve land within its campus which the Lessee may acquire and upon which it may construct buildings for teaching at the University level, administration, and faculty and students residences, with or without chapels, subject to the prior written approval of the Lessor as to architectural design and upon such arrangements and conditions as to title and tenure as may be agreed upon;

WITNESSETH that in consideration of the premises and in further consideration of the rents, covenants and agreements hereinafter contained on the part of the Lessee to be observed and performed, the Lessor hath demised and leased and by these presents doth demise and lease unto the Lessee

That part of Lot 3 in the First Concession and that part of Lot 3 in the Second Concession of the Township of MacKim in the District of Sudbury and being designated as PART 4 on a plan of survey of record in the office of Land Titles at Sudbury as SR-Plan 525.

**This is Exhibit "C" to the Affidavit of Pierre Riopel sworn April 14, 2021**

**A Commissioner for taking Affidavits.**

# LAURENTIAN UNIVERSITY FINANCIAL DISTRIBUTION TO FEDERATED UNIVERSITIES

**THESE TERMS OF FINANCIAL DISTRIBUTION**, effective as of the 1st day of May, 2019 (the "**Effective Date**")

**B E T W E E N :**

**LAURENTIAN UNIVERSITY OF SUDBURY**

**("Laurentian University")**

**- and -**

**UNIVERSITY OF SUDBURY**

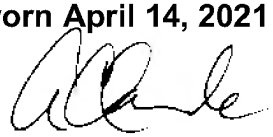
**(the "Recipient")**

This Notice is delivered further to the Proposed Grant Distribution and Services Fees document dated November 10, 1993 (the "**1993 Funding Model**") and sets out the terms for the distribution of operating grants to the Recipient and service fees charged to the Recipient from and after the Effective Date. This document amends, restates and replaces in its entirety any prior documentation, oral or written representations and past practices relating to the distribution of grant funding, tuition fees and service fees between Laurentian University and the Recipient, including but not limited to those described under the 1993 Funding Model. No future amendments to the terms set out in this Notice are effective unless confirmed and agreed to in writing, in advance, by Laurentian University.

The Recipient is a separate legal entity established by separate Acts and governed by an independent Board. The Recipient owns its own buildings on land that is owned by Laurentian University and leased to the Recipient by Laurentian University.

The Recipient is recognized under the *Laurentian University Act* by allowing Laurentian University to admit "church-related universities or colleges into federation as colleges of the Faculty of Arts and Science, which church-related universities or colleges have the right to give instruction in philosophy and religious knowledge and in such other subjects as may from time to time be approved by the Faculty of Arts and Science of the University and be consented to by the Senate and Board, and the University shall accept such courses in partial fulfillment of the requirements for a degree under the same academic terms and conditions as would obtain if the instruction were given in University College".

**This is Exhibit "D" to the Affidavit of Pierre Riopel sworn April 14, 2021**



**A Commissioner for taking Affidavits.**

SHEPPARD CLAUDE
Avocats • Lawyers

lundi, 12 avril 2021

Transmission par courriel

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**Compétence :** Ashley Taylor,
Elizabeth Pillon
Ben Muller

**Objet : DANS L'AFFAIRE CONCERNANT UNE TRANSACTION OU UN ARRANGEMENT VISANT L'UNIVERSITÉ LAURENTIENNE (sous la LACC)**
**Dossier de la cour nº CV-21-656040-00CL**
**Demande de l'Université de Sudbury liée à la programmation des cours en français de l'Université Laurentienne**

---

Mesdames et Messieurs :

202-1173, chemin Cyrville Road, Ottawa (ON) K1J 7S6
T 613 748 3333 F 613 748 1599 aclaude@sheppardclaude.ca

Nous vous avisons que l'Université de Sudbury a l'intention de s'objecter à toutes démarches judiciaires présentes et futures entamées par l'Université Laurentienne (la Laurentienne) qui portent ou pourraient porter atteinte aux droits et acquis de l'Université de Sudbury. Notamment elle s'objecte à l'avis de résiliation que vous nous avez signifié le 1er avril courant.

Comme vous le savez, l'Université de Sudbury a annoncé le vendredi, 12 mars dernier, qu'elle devient une université homogène de langue française. Elle a déjà entamé sa transition en vue de réaliser rapidement cette mission renouvelée.

À cette fin, l'Université de Sudbury réclame l'ensemble des programmes, des cours et des services offerts en français à l'Université Laurentienne, ainsi que des installations et des ressources afférentes. Nous croyons cette avenue non seulement dans le meilleur intérêt des deux universités, mais surtout nécessaire pour éviter les torts irréparables qui sont infligés sur la communauté franco-ontarienne à cause de l'incertitude entourant l'avenir de la Laurentienne, particulièrement en ce qui regarde la continuité de cette programmation si essentielle à la communauté francophone.

Nous avons tous pu observer depuis plus d'une décennie, et surtout dans les dernières semaines, une réduction dans l'intérêt de la Laurentienne, voire un manque de passion, pour les grands efforts dans sa prestation de services en français. Force est de reconnaître que la continuité de tous les services en français est actuellement en péril, et que dire de l'épanouissement de l'offre de programmes pour la communauté? Entre les mains de la Laurentienne le dossier est et demeurera en régression plutôt qu'en progression. Il ne faut surtout pas s'étonner que la communauté franco-ontarienne accorde maintenant à l'Université de Sudbury tout son appui et réclame que lui soit confiée la charge totale de cette filière.

Tout cela dit, la communauté francophone demande à la Laurentienne sa coopération pour assurer un transfert coordonné des programmes et services durant le cours de cette importante transition. Étant donné les présentes circonstances, ceci est le moindre que la Laurentienne puisse faire pour le bien-être de la communauté.

Une possibilité assez directe pour atteindre cet objectif, si la Laurentienne y est intéressée, est d'effectuer cette transition à l'intérieur de l'entente de fédération existante. Le cas échéant, on procéderait à négocier un remaniement complet des contrats.

Nous croyons possible de le faire dans un esprit de collaboration, afin de colmater les torts déjà infligés sur la communauté franco-ontarienne. Ainsi, l'Université de Sudbury invite le Conseil des gouverneurs et le Sénat de l'Université Laurentienne à rencontrer l'Université de Sudbury afin d'établir les modalités d'un tel transfert et d'une collaboration pour bâtir ensemble ce nouvel avenir. Un tel dialogue entre les parties offre une occasion unique permettant à la Laurentienne de s'allier avec l'Université de Sudbury dans le but de donner effet au projet d'une université par et pour les francophones, avec tous les bénéfices que cela engendrera sur le plan financier, et il y aura

assurément des bénéfices financiers importants si la collaboration est au rendez-vous. L'Université de Sudbury considère que cette avenue est dans l'intérêt de toutes les parties concernées : elle favorise à la fois la viabilité financière de la Laurentienne et assure du même coup le respect des droits de la minorité linguistique.

Le projet de l'Université de Sudbury répond à la volonté exprimée de la communauté franco-ontarienne et permettra de mieux desservir ses besoins. Il existe un consensus communautaire selon lequel le développement et l'épanouissement de la communauté de langue minoritaire passent nécessairement par la mise en place d'institutions gérées par et pour les Franco-Ontariennes et Franco-Ontariens; nous en avons déjà la preuve au scolaire (élémentaire et secondaire) et au collégial. Tout en reconnaissant les nombreuses années que la Laurentienne a évolué avec elle, la communauté franco-ontarienne préconise aujourd'hui un modèle d'université unilingue de langue française, qui pourra s'effectuer soit dans le cadre de l'entente de fédération existante ou de façon indépendante.

Il y a ici une opportunité unique qui se présente aux deux institutions de repositionner l'enseignement post-secondaire dans le Moyen-Nord de sorte que ces deux institutions pionnières de Sudbury puissent s'entraider afin de fleurir et accroître l'offre d'enseignement dans un nouveau modèle de fonctionnement qui répondra aux besoins pressants de la communauté franco-ontarienne.

Aussi n'oublions pas la possibilité d'unir les forces de l'Université de Sudbury à celles de la Laurentienne pour continuer à améliorer l'offre de services envers les communautés autochtones dont les liens d'appartenance sont profonds avec les deux institutions universitaires.

Étant donné l'urgence occasionnée par l'insolvabilité de l'Université Laurentienne et la vitesse à laquelle se déroule le processus entamé en vertu de la LACC, nous vous prions de nous confirmer dès midi lundi (demain) votre ouverture à entretenir avec nous des pourparlers à l'amiable sur la possibilité de la mise en œuvre, en partie ou en totalité, de notre proposition.

Dans l'attente d'une réponse favorable, veuillez agréer, Mesdames et Messieurs, nos salutations les meilleures.

**Sheppard & Claude**

André Claude

c.c. Pierre Riopel, Président du Conseil des régents, Université de Sudbury
John Meehan, Recteur, Université de Sudbury
Ronald F. Caza, Caza Saikaley

**This is Exhibit "E" to the Affidavit of Pierre Riopel sworn April 14, 2021**

**A Commissioner for taking Affidavits.**

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File No. 1898-002

April 12, 2021

**VIA EMAIL (aclaude@sheppardclaude.ca)**

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

**Attention: André Claude**

Dear Sir:

**Re: In the Matter of the *Companies' Creditors Arrangement Act* and In the Matter of a Plan of Compromise or Arrangement of Laurentian University of Sudbury, Court File No.: CV-21-00656040-00CL**

We acknowledge receipt of your letter of today's date.

We agree that the restructuring of Laurentian University of Sudbury ("**Laurentian**") ought to proceed with a spirit of collaboration, and Laurentian has every intention of working with the University of Sudbury ("**US**") to that end. In particular, Laurentian remains prepared to engage in meaningful discussions with US as to how to best transition to two separate institutions following: (i) the announcement by US on March 12, 2021 that it intends to become a unilingual Francophone university, and (ii) the issuance of the Notice of Disclaimer of the Federation Agreements by Laurentian on April 1, 2021. Laurentian has made clear that it respects the historic legacy of US, notwithstanding termination of the federation relationship.

Laurentian and US are on different paths in terms of how they intend to deliver French language post-secondary education in Ontario. US has taken a view that it ought to be a French-only institution. Laurentian intends to maintain its commitment to the Franco-Ontario community and to remain a tri-cultural institution that provides strong, comprehensive academic programs in both English and French.

Laurentian's French language programs (serving approximately 2,000 Laurentian students) are at the core of its mandate. As such, Laurentian does not intend to transfer any French language programs or services to US. Laurentian does not agree that transferring its French language programmes and services to US, "… promotes both the financial viability of Laurentian and at the same time ensures respect for the rights of the linguistic minority." To the contrary, Laurentian believes that maintaining French-language programs is critical to its successful restructuring and

TGF
Thornton Grout Finnigan LLP



its ability to serve both the English and French speaking communities, in addition to its strong commitment to the Indigenous communities of Ontario.

Laurentian is a "government agency" for the purposes of the *French Language Services Act* and O. Reg. 398/93 *Designation of Public Service Agencies* and it intends to continue to comply with its obligations therein.

Notwithstanding the different approaches that Laurentian and US intend to pursue for the delivery of French language post-secondary education in the future, Laurentian confirms its continued willingness to engage in a cooperative dialogue with US as to the best path forward through the necessary transition. In that regard, we have not received a response from US in respect of the transition proposal delivered by Laurentian on March 26, 2021, and we would be pleased to discuss same.

Yours truly,

**Thornton Grout Finnigan LLP**

D.J. Miller

cc: *Laurentian University of Sudbury*
*Ernst & Young Inc.* – Court-appointed Monitor
*Stikeman Elliott LLP* – Counsel to the Court-appointed Monitor

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

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**

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

Proceedings commenced at Toronto

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# AFFIDAVIT OF PIERRE RIOPEL
**Sworn April 14, 2020**

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Lawyers for the Moving Party
University of Sudbury

# Tab 15

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**

# FIRST REPORT OF THE MONITOR
**February 7, 2021**

## INTRODUCTION

1. On February 1, 2021, Laurentian University of Sudbury ("**LU**" or the "**Applicant**") brought an application (the "**CCAA Application**") before this Court seeking an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to, among other things, obtain a stay of proceedings to allow the Applicant an opportunity to financially and operationally restructure itself.

2. On February 1, 2021, the Court granted an initial order (the "**Initial Order**") that, among other things, appointed Ernst & Young Inc. as monitor of the Applicant in these CCAA proceedings (in such capacity, the "**Monitor**"), and approved a stay of proceedings for the initial 10-day period (the "**Stay Period**") and certain Court ordered super-priority charges.

3. The Court scheduled a comeback motion for 9:00am on February 10, 2021 (the "**Comeback Motion**").

## PURPOSE

4. The purpose of this First Report of the Monitor (the "**First Report**") is to provide information to the Court on:

    a. the Applicant's operations since the granting of the Initial Order;

    b. the Monitor's activities since its appointment;

c. the Applicant's request for the appointment of a Court-appointed mediator;

d. the Applicant's request for approval of an Amended and Restated Initial Order that, among other things, approves:

   i. debtor-in-possession ("**DIP**") financing pursuant to the DIP Term Sheet (as defined below) between the Applicant and the DIP Lender (as defined below) and the grant of the DIP Lender's Charge (as defined below);

   ii. an extension of the Stay Period to April 30, 2021;

   iii. an increase in the Administration Charge from $400,000 to $1,250,000;

   iv. an increase in the Directors' Charge from $2,000,000 to $5,000,000, in accordance with the priority set out in the Amended and Restated Initial Order; and

   v. the granting of the Administration Charge, the Directors' Charge and the DIP Lender's Charge in priority to all other "secured creditors" as defined in the CCAA,

   in each case, substantially in the form included in the Applicant's Motion Record; and

e. the Monitor's recommendations with respect to the above.

**TERMS OF REFERENCE AND DISCLAIMER**

5. In preparing this First Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Applicant and discussions with senior management of the Applicant ("**Management**") (collectively, the "**Information**"). Except as described in this First Report in respect of the Applicant's Cash Flow Forecast:

   a. the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not 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 Assurance Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and

b. some of the information referred to in this First Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.

6. Future oriented financial information referred to in this First Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

7. Unless otherwise indicated, the Monitor's understanding of factual matters expressed in this First Report concerning the Applicant and its business is based on the Information, and not independent factual determinations made by the Monitor.

8. This First Report does not take into account all future impacts of COVID-19 (SARSCoV-2) ("**COVID-19**" or the "**Pandemic**") on the forecasts or projections or other actions taken by the Applicant as a result of the Pandemic. Any references made to the impact of the Pandemic on the Applicant in this First Report are based on preliminary enquiries and are not to be interpreted as a complete commentary or as an accurate assessment of the full impact of the Pandemic. The full impact of the Pandemic is not capable of being qualitatively or quantitatively assessed at this time.

9. The Monitor also brings this Court's attention to paragraph 5 of the Affidavit of Dr. Robert Haché (the "**Haché Affidavit**") sworn January 30, 2020 (the "**Initial Order Affidavit**") in which Dr. Haché Notes that he has relied upon information provided by LU's Finance department which has experienced certain challenges as a result of its limited team and resources. As a result, the Monitor notes that the Information relied upon for purposes of this First Report may be limited by these challenges.

10. Capitalized terms not defined in this First Report are as defined in the Report of the Proposed Monitor dated January 30, 2021 (the "**Pre-Filing Report**") or in the Initial Order.

11. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian dollars.

## BACKGROUND

12. On March 28, 1960, LU was incorporated under An Act to Incorporate Laurentian University of Sudbury, S.O. 1960, c. 151 C. 154 (the "**Laurentian Act**"). A copy of the Laurentian Act is attached as Exhibit "A" to the Haché Affidavit.

13. LU is a publicly funded, bilingual and tricultural post-secondary institution. Its operations are located in the City of Greater Sudbury, Ontario. LU has consistently been one of the largest employers in Sudbury.

14. The objectives and purposes of LU are described in the Laurentian Act as:

    a. the advancement of learning and the dissemination of knowledge; and

    b. the intellectual, social, moral and physical development of its members and the betterment of society.

15. LU is a non-share capital corporation and a registered charity pursuant to the *Income Tax Act*, R.S.C. 1985, c.1 (the "**Income Tax Act**"). Pursuant to Section 149 of the Income Tax Act, LU is exempt from the payment of income tax because of its status as a registered charity. As a registered charity, LU also receives donations and issues tax receipts to donors.

16. Further background information with respect to the Applicant is described in the Pre-Filing Report.

## UPDATE ON THE APPLICANT'S OPERATIONS

17. Since the date of the Initial Order, the Applicant has focused on maintaining normal course day-to-day operations. Student classes are continuing (virtually due to the Pandemic) with no disruption.

18. In addition, the Applicant has commenced communications with its various stakeholders, including its students, faculty and other employees, suppliers, research-granting agencies and donors. Letters were emailed to certain of these stakeholder groups informing them of the commencement of the CCAA proceedings. The Applicant also launched a website at www.laurentianu.info and www.ulaurentienne.info to provide further information to stakeholders, including a detailed list of frequently asked questions and answers, contact information for support services for students, faculty and staff and a method to contact LU by email for other information.

19. Finally, the Applicant has drafted and implemented new fiscal restraint policies to monitor and authorize only necessary expenses during the pendency of this CCAA proceeding.

## MONITOR'S ACTIVITIES TO DATE

20. Since the granting of the Initial Order, among other things, the Monitor has:

a. assisted the Applicant in its communications with stakeholders;

b. responded to calls and e-mails received from creditors and other parties with respect to these CCAA proceedings;

c. monitored LU's receipts and disbursements;

d. participated in discussions with Management with respect to the cash flow forecasts prepared by the Applicant;

e. participated in a call with the Applicant and the Ministry of Colleges and Universities ("**MCU**"); and

f. participated in a case conference with LU and LUFA (as defined below) related to the appointment of a Court-appointed mediator.

21. The Applicant's weekly cash flow forecast for the period from January 30, 2021 to April 30, 2021 (the "**Cash Flow Forecast**"), appended to the Pre-Filing Report, is attached as Appendix "**A**" to this First Report. Given the limited number of business days that have elapsed since the date of the Pre-Filing Report, the Applicant does not anticipate any material change in the weekly cash flow forecast. The Monitor will continue to work with the Applicant to review actual receipts and disbursements and any variances, if any, from the Cash Flow Forecast and provide an update to the Court in its next report.

22. The Monitor has established a case website at www.ey.com/ca/Laurentian (the "**Monitor's Website**"). All court documents and certain other relevant documents will be posted on the Monitor's Website. Further, the Monitor has arranged for a toll-free hotline phone number (1-855-338-1766) for calls related to this matter and an e-mail address (LaurentianUniversity.Monitor@ca.ey.com) for e-mail correspondence with the Applicant's creditors and other stakeholders.

23. Pursuant to the Initial Order, the following notices and documents have been posted on the Monitor's Website, and/or sent to the Applicant's stakeholders since the date of the Initial Order:

a. On February 1, 2021, the Monitor posted a copy of the Application Record of the Applicant (the "**Application Record**"), the Factum of the Applicant, the Pre-Filing Report, the Initial Order and the Endorsement of Chief Justice Morawetz dated February 1, 2021, on the Monitor's Website;

b. On February 4, 2021, the Monitor sent a notice (the "**Notice to Creditors**"), which included information about the CCAA proceedings, the toll-free telephone number and the Monitor's email address to all known creditors who have a claim against the Applicant of more than $1,000, based on the contact information of such known

creditors provided by the Applicant (the "**Known Creditors**"), by prepaid ordinary mail. A copy of the Notice to Creditors was also posted on the Monitor's Website and is attached hereto as Appendix "**B**";

c. On February 4, 2021, the Monitor posted a list showing the names of the Known Creditors and amounts owing per the Applicant's books and records on the Monitor's Website and the service list for the CCAA proceedings (this service list will be updated regularly by the Monitor as additional Notices of Appearance are filed);

d. On February 4, 2021, the Monitor published the Notice to Creditors in the Globe and Mail (National Edition) and the Sudbury Star;

e. On February 5, 2021, the Monitor posted a copy of the Applicant's Motion Record in respect of the Comeback Motion; and

f. On February 5, 2021, the Monitor posted the Order re: Appointment of Mediator and related Endorsement of Chief Justice Morawetz to the Monitor's Website

**MEDIATION**

24. In its' Application Record, the Applicant sought an Order for the appointment of a mediator by the Court (the "**Court-Appointed Mediator**") to oversee negotiations with respect to the various restructuring initiatives necessary for the Applicant to achieve financial sustainability, including but not limited to a restructuring of academic programs, reduction of employee headcount and a restructuring of its Federated Universities model.

25. In the Pre-Filing Report, the Monitor set out its view that the appointment of a Court-Appointed Mediator is critical to ensure that LU, the Laurentian University Faculty Association ("**LUFA**") and LU's other stakeholders have the best possible opportunity to succeed in effecting an operational restructuring that will permit LU to be sustainable in the long term. The Monitor also set out its view with respect to the ideal characteristics of a Court-Appointed Mediator being someone:

a. that is independent and objective;

b. with experience in both insolvency matters as well as collective agreements and labour negotiations;

c. who understands the urgency with which the mediation must be conducted;

d. has the time available to dedicate to the mediation; and

e. preferably, who is bilingual.

26. Ultimately, the Monitor noted that it is imperative that the Court-Appointed Mediator be appointed by this Court on an urgent basis.

27. In this Court's endorsement issued in connection with the Initial Order, this Court invited LU, LUFA and the Monitor to schedule a case conference prior to the Comeback Motion, if necessary, to discuss the potential appointment of a Court-Appointed Mediator.

28. The Monitor, counsel to the Monitor, counsel to LU and counsel to LUFA attended before this Court at a case conference on February 5, 2021. During the case conference, this Court indicated that after considering the urgency with which negotiations need to take place, the importance of such negotiations being successful within this compressed time period and the proposed characteristics of a potential Mediator, the Court proposed to appoint the Honourable Justice Sean Dunphy of the Ontario Superior Court of Justice as the Court-Appointed Mediator. During his career, Justice Dunphy was a leading insolvency lawyer with extensive experience in CCAA restructurings, including complex labour negotiations, and is bilingual. All parties at the case conference confirmed that there were no objections to Justice Dunphy's appointment as mediator. Accordingly, the Court issued the order and endorsement attached to this Report as Appendices "**C**" and "**D**" respectively, confirming Justice Dunphy's appointment.

## DIP AGREEMENT

29. As described in the Pre-Filing Report, the Applicant is in urgent need of funding in order to permit it to continue operations. As a result, and based on the Applicant's assets, LU, through its legal counsel, approached four external lenders that specialize in real estate and infrastructure based lending, including DIP financing.

30. Due to the extreme confidentiality in respect of this matter, each of the third parties was asked to sign a non-disclosure agreement ("**NDA**") prior to LU's identity being disclosed. Once executed, LU's identity was disclosed and a further form of NDA was obtained from each party, at which time the overall financial circumstances were shared with the prospective lenders and they were given access to a virtual data room of relevant information. The parties were invited to commence diligence on the information in the data room and ask additional questions which were responded to by LU, with the assistance of its advisors.

31. Discussions were held with certain of the Applicant's existing lenders regarding potential DIP financing including an invitation to review information in the data room.

32. These discussions resulted in the Applicant receiving non-binding draft term sheets from three potential lenders. The Applicant, along with its counsel and the proposed Monitor, reviewed the terms submitted by the prospective lenders factoring in, among other things, the maximum principal amount of the proposed DIP financing, fees and costs, and terms and conditions prescribed under the various term sheets and determined that of the three initial proposals, two were sufficiently preferable to merit narrowing ongoing negotiations to these two parties.

33. After further negotiations with these two parties, the Applicant executed a term sheet (the "**DIP Term Sheet**") with Firm Capital Corporation. Subsequent to the execution of the DIP Term Sheet, Firm Capital Corporation assigned its interest to Firm Capital Mortgage Fund Inc. (the "**DIP Lender**"). The DIP Lender has requested a definitive agreement (the "**DIP Agreement**") to formally document the terms and conditions set out in the DIP Term Sheet. The Applicant and the DIP Lender are in the process of negotiating and finalizing the DIP Agreement.

34. The following is a summary of the material terms of the DIP facility, which will be reflected in the DIP Agreement:

    a. the DIP facility is a secured non-revolving credit facility with monies to be advanced in accordance with the Cash Flow Forecast;

    b. the maximum principal amount is $25 million with a maturity date of May 1, 2021. The maturity date may be extended for an additional 90 days if LU achieves the following milestones, to the satisfaction of the DIP Lender in its sole and unfettered discretion:

        i. LU reaches a consensus among all necessary stakeholders on an academic restructuring and reduction of LU's program offerings;

        ii. LU enters into a negotiated settlement with LUFA with respect to terminations to be effected, resolution of outstanding grievances, and the terms of a new collective agreement between LUFA and LU; and

        iii. LU provides the DIP Lender with a revised cash flow forecast and a multi-year budget demonstrating to the DIP Lender, in its sole and unfettered discretion, that LU is financially sustainable.

    c. the DIP facility contemplates two advances to be made as follows:

        i. the initial advance is subject to the Court issuing the Amended and Restated Initial Order and granting the DIP Lender's Charge and is expected to be made shortly thereafter; and

ii. the second advance shall be made upon five calendar days' prior written request to the DIP Lender and approved by the Monitor.

d. advances shall be used to fund LU's working capital requirements for operations during the CCAA proceedings in accordance with the Cash Flow Forecast, or any revised versions of same, as approved by the DIP Lender;

e. interest shall be compounded and payable monthly in arrears in cash on the first day of each month, in arrears, at a rate that is the greater of 8.50% per annum or the TD Canada Trust Posted Bank Prime Rate of Interest from time to time plus 6.05% per annum; and

f. a commitment fee of $500,000 shall be deemed to have been fully earned and payable to the DIP Lender on the date that the Court approves the Amended and Restated Initial Order approving the DIP financing.

35. As reflected by the Cash Flow Forecast, the Applicant has a critical and immediate need for DIP financing. Without access to DIP financing, the Applicant will be unable to maintain operations and address its operational and financial restructuring needs. In addition to addressing LU's short-term liquidity issues, approval of the DIP Term Sheet will provide assurance to LU's suppliers, employees, students and other stakeholders that LU has the necessary funds to continue operating until at least the end of the current semester (April 30, 2021), which will allow LU the opportunity to work with its stakeholders to effect the necessary academic and operational restructuring. Accordingly, the Monitor is of the view that the Applicant's request for approval of the DIP financing and the DIP Term Sheet is required and reasonable.

36. The Monitor notes that on February 4, 2021, counsel to the Applicant and counsel to the Monitor were contacted by a law firm indicating the firm had a client that was potentially interested in submitting a competing proposal for DIP financing. On February 5, 2021, the Monitor was contacted by another party expressing similar interest. After consideration, the Applicant determined that given the number of weeks it took other potential lenders to conduct their due diligence, as a result of the inherent complexity in the real estate assets, it was highly unlikely that a new party could negotiate and execute a non-disclosure agreement, conduct its due diligence and be in a position to submit a binding offer and complete all definitive documentation prior to the Comeback Motion. In addition, the Applicant had already executed the DIP Term Sheet, which is in the Applicant's Application Record, has been disclosed to the service list and put forward for this Court's approval. Accordingly, the Applicant declined the request from the law firm to proceed with any due diligence process and the Monitor communicated the same message to the other party.

## STAY EXTENSION / AMENDED AND RESTATED INITIAL ORDER

37. The proposed Amended and Restated Initial Order proposes certain amendments to the Initial Order. All of the proposed amendments can be seen in Blackline of Amended and Restated Initial Order to Initial Order included at Tab 3 of the Applicant's Motion Record filed in connection with the Comeback Motion. Certain of the amendments are highlighted below.

### Stay Extension

38. The Stay Period is currently set to expire on February 11, 2021. The Applicant requests an extension of the Stay Period up to and including April 30, 2021.

39. The Monitor is of the view that the requested extension of the Stay Period is appropriate for the following reasons:

    a. the extension of the Stay Period will provide comfort to LU's students that the Applicant will continue in the ordinary course for the duration of the winter semester;

    b. the Applicant requires the extension in order to conduct a mediated negotiation with its stakeholders and effect an academic, operational and financial restructuring plan that will allow it to achieve long term financial sustainability; and

    c. the Applicant continues to operate in good faith and with due diligence since the date of the Initial Order.

40. Based on the Cash Flow Forecast, and with the approval of the DIP Term Sheet and DIP Lender's Charge, as described below, the Monitor is of the view that the Applicant should have sufficient liquidity to fund its operations until April 30, 2021. If there are any material events to report upon in the interim period, the Applicant and the Monitor will return to the Court.

41. For the foregoing reasons, the Monitor supports the Applicant's request for an order extending the Stay Period to April 30, 2021.

### Pension and Benefit Plans

42. As set out in the Pre-Filing Report, the Applicant administers three employee pension and benefit plans: (a) a registered defined benefit pension plan (the "**DB Pension Plan**"); (b) a supplementary unfunded retirement plan (the "**SuRP**") and (c) a retirement health benefits plan (the "**RHBP**").

43. As the SuRP and RHBP plans are unfunded contractual obligations to former or retired employees, the Initial Order provides for a stay of any amounts payable under these plans.

44. In respect of the DB Pension Plan, the most recent actuarial valuation was made as of January 1, 2020 (updated in December 2020). Pursuant to this actuarial valuation, the DB Pension Plan had a solvency ratio of 85.4%, representing a going concern deficiency of approximately $4.5 million. This deficiency is required to be addressed over a period not exceeding ten years, beginning one year after the date of valuation (i.e. January 1, 2021).

45. The actuarial valuation provided that the DB Pension Plan current service contributions for the next three years would be set at $16,188,000, annually, payable in monthly instalment of approximately $1,349,000. In addition, to address the going concern deficiency, the actuary concluded that an annual special payment contribution of $505,000 must be made, payable in monthly instalments of approximately $42,083.

46. In light of LU's current financial situation, the proposed Amended and Restated Order requests relief from this Court to stay the payment of any pre-filing or post-filing special payments to the DB Pension Plan to assist LU with its current liquidity crisis and maximize the chance that LU can successfully restructure.

47. While the Applicant will have access to funding through the DIP Agreement, subject to this Court's approval, that funding is limited and is only projected to be sufficient to fund operations through to the end of the current academic term. Given the Applicant's overall liquidity constraints, the Monitor is of the view that permitting a stay of special payments to the DB Pension Plan during the Stay Period is appropriate and reasonable.

**Freedom of Information and Protection of Privacy Act**

48. The proposed Amended and Restated Order provides for relief from this Court to stay any existing, pending or future information requests to the Applicant pursuant to the *Freedom of Information and Protection of Privacy Act* ("**FIPPA**"). As a publicly funded university, LU is subject to these requests in the normal course.

49. As a result of the CCAA proceedings and the anticipated mediation, the Applicant expects to receive a significantly increased volume of FIPPA information requests. The Applicant simply does not have the resources to deal with the increased volume. In order to successfully restructure by May 1, 2021, the Applicant must focus all its efforts on either serving the needs of students on a day to day basis or supporting the operational restructuring process.

50. The Monitor notes that it is also expected that there will continue to be substantial disclosure of information to all stakeholders through materials filed in the CCAA proceedings and made available on the Monitor's website as well as additional

communications from LU directly to stakeholders and posted on the website established by LU.

51. Given the distraction that would result in attempting to deal with these requests and the negative impact it could have on achieving a successful restructuring and the significant volume of information that has and will be made available in the CCAA proceedings, the Monitor is of the view that extending the stay to FIPPA requests is reasonable in the circumstances.

**Super-Priority Charges**

52. The proposed Amended and Restated Initial Order provides for the following super-priority charges (collectively, the "**Charges**") on the current and future assets, undertakings and properties of the Applicant, wherever located, including all proceeds thereof that rank in the following order:

    a. first, the Administration Charge (up to a maximum amount of $1.25 million);

    b. second, the Directors' Charge (up to a maximum amount of $2 million);

    c. third, the DIP Lender's Charge (up to a maximum of $25 million); and

    d. fourth, the Directors' Charge (up to an additional $3 million for a total maximum Directors' Charge amount of $5 million).

53. The quantum of these Charges has been determined based upon amounts necessary during the CCAA proceedings, as described in the Pre-Filing Report.

54. The Applicant's secured creditors are primarily comprised of subcontractors who have registered construction liens against certain real property owned by the Applicant and limited equipment lessors. The Monitor understands that these parties have been served with notice of the Comeback Motion and the relief sought at the Comeback Motion will provide for the Charges to rank ahead of these potential claims.

**Administration Charge**

55. The proposed Amended and Restated Initial Order provides for a charge of up to $1.25 million (the "**Administration Charge**") in favour of counsel and advisors to the Applicant, the Monitor, the Monitor's independent counsel and independent counsel to the Board as security for the professional fees and disbursements incurred prior to and after the commencement of the CCAA proceedings. Professional fee obligations secured by the Administration Charge will be paid in the ordinary course from funding provided by, among other things, the DIP financing.

56. The Monitor is of the view that the proposed Administration Charge is reasonable and appropriate in the circumstances, having regard to, among other things, the complexity of the proceedings, potential work expected to be required, and the size of charges approved in comparable proceedings. Accordingly, the Monitor is of the view that the Administration Charge is required and reasonable in the circumstances.

**DIP Lender's Charge**

57. As set out in the Pre-Filing Report, in order to provide the required liquidity needed to fund the operations of LU during the CCAA proceedings, the Applicant is seeking approval of the DIP Term Sheet, pursuant to which the DIP Lender agreed to provide the DIP financing required in the Cash Flow Forecast, subject to the terms and conditions of the DIP Term Sheet and any other definitive documentation. In addition to the approval of the DIP Term Sheet, the proposed Amended and Restated Initial Order provides for the creation of a super-priority charge in the amount of $25 million (the "**DIP Lender's Charge**") to match the maximum allowable borrowing amount proposed in the DIP Term Sheet.

58. The DIP Lender's Charge will be secured by all Property (as defined in the Amended and Restated Initial Order) of the Applicant.

59. The DIP Lender's Charge is a condition of the DIP financing as set out above. Also, as set out above, the Applicant is in urgent need of the financing to fund operations for the balance of the academic term so as to complete an operational restructuring. Accordingly, the Monitor is of the view that the DIP Lender's Charge is appropriate and reasonable.

**Directors' Charge**

60. The proposed Amended and Restated Initial Order provides for a charge in an amount not to exceed $5 million (the "**Directors' Charge**") to secure the indemnity in favour of the current and future directors and officers of the Applicant (the "**Directors and Officers**") against obligations and liabilities that they may incur as directors and officers of the Applicant for actions taken after the commencement of these CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of such director's or officer's gross negligence or willful misconduct.

61. The Directors and Officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any director's and officer's insurance policy, to the extent such coverage is insufficient to pay an indemnified amount as described above, or to the extent that such coverage is denied by the insurance provider.

62. The DIP Term Sheet provides that any Directors' Charge may only rank ahead of the DIP Lender's Charge to the maximum amount of $2 million. Accordingly, it is proposed that $2 million of the Directors' Charge rank behind the Administration Charge and ahead of

the DIP Lender's Charge, with the balance of $3 million ranking behind the DIP Lender's Charge.

63. The Monitor reviewed the calculation of the Directors' Charge that was prepared by the Applicant taking into consideration the amount of LU's payroll, current service pension contributions and vacation pay and notes that the Director's Charge is less than the quantum of such amounts that will accrue during these CCAA proceedings. For illustration, the majority of the Applicant's employees are paid once per month and aggregate monthly payroll is approximately $11 million, monthly DB Pension Plan contributions are approximately $1.2 million and vacation pay accrued on a monthly basis is approximately $800,000.

64. The Monitor is of the view that the Directors' Charge is required and is reasonable under the circumstances.

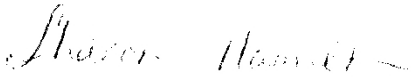
## CONCLUSIONS AND RECOMMENDATIONS

65. For the reasons stated herein, the Monitor supports the relief sought by the Applicant in the proposed Amended and Restated Initial Order, including but not limited to the extension of the Stay Period, the extension of the stay to FIPPA information requests, the stay of special payments to the DB Pension Plan and the approval of the DIP Term Sheet and DIP Lender's Charge, and the elevation of the Court-ordered Charges, and recommends that the Court grant the proposed Amended and Restated Initial Order.

66. The Monitor notes that the appointment of the Court-Appointed Mediator is a critical and important step to moving forward in effecting an operational restructuring. The Monitor will work closely with the Court-Appointed Mediator to support this process so that it may be carried out in an efficient and effective manner.

All of which is respectfully submitted this 7th day of February, 2021.

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



**Sharon S. Hamilton, CPA, CA, CIRP, LIT**
**Senior Vice President**

# Tab 16

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**

# SECOND REPORT OF THE MONITOR
**March 11, 2021**

## INTRODUCTION

1. On February 1, 2021, Laurentian University of Sudbury ("**LU**" or the "**Applicant**") brought an application (the "**CCAA Application**") before this Court seeking an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to, among other things, obtain a stay of proceedings to allow the Applicant an opportunity to financially and operationally restructure itself.

2. On February 1, 2021, the Court granted an initial order (the "**Initial Order**") that, among other things, appointed Ernst & Young Inc. as monitor of the Applicant in these CCAA proceedings (in such capacity, the "**Monitor**"), and approved a stay of proceedings for the initial 10-day period (the "**Stay Period**") and certain Court ordered super-priority charges.

3. On February 10, 2021, the Court held a comeback hearing which resulted in the issuance of an amended and restated initial order (the "**Amended and Restated Initial Order**") which among other things, approved a debtor-in-possession interim financing arrangement in the amount of $25 million (the "**DIP Facility**") and extended the stay of proceedings to April 30, 2021.

## PURPOSE

4. The purpose of this Second Report of the Monitor (the "**Second Report**") is to provide information to the Court on:

a. the Applicant's operations since the date of the Monitor's First Report;

b. the status of the Applicant's restructuring efforts;

c. an update on the Applicant's actual receipts and disbursements for the period January 30, 2021 to March 5, 2021 (the "**Reporting Period**") compared to the cash flow forecast appended to the First Report;

d. an update with respect to the Applicant's cash flow forecast (the "**Revised Cash Flow Forecast**") for the period March 6, 2021 to April 30, 2021 (the "**Forecast Period**");

e. the Applicant's request for approval of an order (the "**Pension Order**") in respect of certain pension matters that, among other things:

   i. approves the processing of certain pending commuted value transfer requests from the Applicant's registered pension plan at the transfer value ratio as set out in the last filed actuarial valuation; and

   ii. confirms that certain premiums due to the Pension Benefits Guarantee Fund (the "**PBGF**") are a pre-filing unsecured obligation of the Applicant and are stayed pursuant to the stay of proceedings in the Amended and Restated Initial Order,

   in each case, substantially in the form included in the Applicant's Motion Record; and

f. the Monitor's recommendations with respect to the above.

## TERMS OF REFERENCE AND DISCLAIMER

5. In preparing this Second Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Applicant and discussions with senior management of the Applicant ("**Management**") (collectively, the "**Information**"). Except as described in this Second Report in respect of the Applicant's Revised Cash Flow Forecast:

   a. the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not 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 Assurance Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion

or other form of assurance contemplated under GAAS in respect of the Information; and

b. some of the information referred to in this Second Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.

6. Future oriented financial information referred to in this Second Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

7. Unless otherwise indicated, the Monitor's understanding of factual matters expressed in this Second Report concerning the Applicant and its business is based on the Information, and not independent factual determinations made by the Monitor.

8. This Second Report does not take into account all future impacts of COVID-19 (SARSCoV-2) ("**COVID-19**" or the "**Pandemic**") on the forecasts or projections or other actions taken by the Applicant as a result of the Pandemic. Any references made to the impact of the Pandemic on the Applicant in this Second Report are based on preliminary enquiries and are not to be interpreted as a complete commentary or as an accurate assessment of the full impact of the Pandemic. The full impact of the Pandemic is not capable of being qualitatively or quantitatively assessed at this time.

9. Capitalized terms not defined in this Second Report are as defined in the Pre-Filing Report of the Proposed Monitor, the First Report of the Monitor or in the Amended and Restated Initial Order, as applicable.

10. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian dollars.

## BACKGROUND

11. On March 28, 1960, LU was incorporated under An Act to Incorporate Laurentian University of Sudbury, S.O. 1960, c. 151 C. 154 (the "**Laurentian Act**"). A copy of the Laurentian Act is attached as Exhibit "A" to the Haché Affidavit.

12. LU is a non-share capital corporation and a registered charity pursuant to the *Income Tax Act*, R.S.C. 1985, c.1 (the "**Income Tax Act**"). Pursuant to Section 149 of the Income Tax Act, LU is exempt from the payment of income tax because of its status as a registered

charity. As a registered charity, LU also receives donations and issues tax receipts to donors.

13. LU is a publicly funded, bilingual and tricultural post-secondary institution. Its operations are located in the City of Greater Sudbury, Ontario. LU has consistently been one of the largest employers in Sudbury.

14. As described in the Haché Affidavit, the governance structure of LU is bi-cameral. It has a Board of Governors (the "**Board**") and a Senate (the "**Senate**"), both of which derive their powers from the Laurentian Act. The Board, and the President and Vice-Chancellor generally have powers over the operational and financial management of LU, whereas the Senate is responsible for decisions in respect of educational policy at LU.

15. LU has relationships with certain independent federated universities including the University of Sudbury ("**SU**"), the University of Thorneloe ("**Thorneloe**") and Huntington University ("**Huntington**") (collectively, the "**Federated Universities**").

16. Further background information with respect to the Applicant is described in the Pre-Filing Report.

## UPDATE ON THE APPLICANT'S OPERATIONS

17. As set out in the First Report, since the date of the Initial Order, the Applicant has focused on maintaining normal course day-to-day operations. Student classes are continuing (virtually due to the Pandemic) with no disruption.

18. Recently, the Applicant opened registration for spring term courses, which would commence in May 2021. In light of the uncertainty with respect to LU's ability to continue operations subsequent to April 30, 2021, the Applicant is currently allowing students to register for spring courses without requiring any deposits. Assuming LU is successful in negotiating changes to its cost structure that allow it to be financially sustainable, fees for spring term courses will be billed in April and payment will be due by May 7, 2021.

19. Also as set out in the First Report, the Applicant commenced communications with its various stakeholders, including its students, faculty and other employees, suppliers, research-granting agencies and donors immediately after the issuance of the Initial Order. Letters were emailed to certain of these stakeholder groups informing them of the commencement of the CCAA proceedings. The Applicant also launched a website at www.laurentianu.info and www.ulaurentienne.info to provide further information to stakeholders, including a detailed list of frequently asked questions and answers, contact information for support services for students, faculty and staff and a method to contact LU by email for other information. The information on the website has been continually

updated as a result of questions received from various parties. The Applicant has also issued several follow-up communications to keep stakeholders informed to the extent possible.

20. The Monitor notes that both the Applicant and the Monitor have received a significant volume of calls and emails from stakeholders. Many of these inquiries have sought information as to what will happen post April 30, 2021 as well as detail on how specific restricted funds (research grants and restricted donations) were handled and how the obligations associated with these will be treated in the CCAA process. Both the Applicant and the Monitor have spent considerable time responding to these inquiries, recognizing that neither the Applicant nor the Monitor is in a position today to provide specific details or comment on what might happen post April 30, 2021, or how obligations will be treated in a Plan of Arrangement or otherwise.

21. Finally, as set out in the First Report, the Applicant has implemented new fiscal restraint policies to monitor and authorize only critical and necessary expenses during the pendency of this CCAA proceeding. While these policies represent a change to LU's historical practice as they require senior leadership approval for most expenditures before being incurred (vs. permitting decentralized authority for spending within annual budget limits), these policies are necessary in the Monitor's view to ensure that the Applicant is able to manage operations within the constraints of the $25 million DIP Facility.

## UPDATE ON RESTRUCTURING EFFORTS

22. In its Application Record, the Applicant sought an Order for the appointment of a mediator by the Court (the "**Court-Appointed Mediator**") to oversee negotiations with respect to the various restructuring initiatives necessary for the Applicant to achieve financial sustainability, including but not limited to, a restructuring of academic programs, reduction of employee headcount and a restructuring of its Federated Universities model.

23. On February 5, 2021, the Monitor, LU and LUFA attended before the Court at a case conference. During the case conference, this Court indicated that after considering the urgency with which negotiations need to take place, the importance of such negotiations being successful within this compressed time period and the proposed characteristics of a potential Mediator, the Court proposed to appoint the Honourable Justice Sean Dunphy of the Ontario Superior Court of Justice as the Court-Appointed Mediator. During his career, Justice Dunphy was a leading insolvency lawyer with extensive experience in CCAA restructurings, including complex labour negotiations, and is bilingual. All parties at the case conference confirmed that there were no objections to Justice Dunphy's appointment as mediator. Accordingly, the Court issued an order (the "**Mediator Appointment Order**") and endorsement confirming Justice Dunphy's appointment.

24. Since February 5, 2021, the Court-Appointed Mediator has dedicated himself to overseeing discussions between the parties in the mediation process. Justice Dunphy has requested that the Monitor act as the primary facilitator for the mediation and accordingly, the Monitor has played a significant role including: a) liaising with all mediation parties; b) scheduling and hosting mediation sessions; c) facilitating the exchange of information and documents between the parties; and d) providing any other assistance that the parties reasonably require.

25. At the current time, these discussions have focussed on those parties with whom LU needs to negotiate operational changes in order to drive go forward cost savings. As a result, these discussions have included negotiations between Laurentian and:

    a. A committee of representatives elected by the Senate, to address the academic restructuring;

    b. The Federated Universities;

    c. The Laurentian University Faculty Association ("**LUFA**"), the bargaining unit representing the faculty; and

    d. The Laurentian University Staff Union ("**LUSU**"), the bargaining unit representing non-faculty staff.

26. The Monitor notes that while the details of the mediation discussions are currently confidential pursuant to the terms of the Mediator Appointment Order, the Monitor can confirm that the parties listed above are all actively participating in the mediation discussions.

27. Several other parties have expressed an interest in participating in the mediation. These requests have been referred to Justice Dunphy who, in some cases has had a discussion with the particular party or invited the party to submit a written brief or letter setting out their areas of concern for the Mediator and Laurentian to be aware of. To date, Justice Dunphy has determined that the current mediation discussions should continue to be focussed on the parties listed above.

28. It is expected that discussions with a broader group of significant creditors regarding the potential terms of a Plan of Arrangement will begin as the mediation further progresses.

## LEAVE TO APPEAL MOTION

29. Both the Initial Order and the Amended & Restated Initial Order contained a sealing order in respect of two confidential exhibits (the "**Exhibits**") to the Haché Affidavit. The Exhibits contained a letter from the Ministry of Colleges and Universities (the "**MCU**") to

the Applicant dated January 21, 2021 and a letter from the Applicant to MCU dated January 25, 2021.

30. The Court issued a Supplementary Endorsement on February 26, 2021 containing the detailed reasons for granting the sealing order.

31. On March 4, 2021, the Ontario Confederation of University Associations, LUFA and the Canadian Union of Public Employees (collectively, the "**Appellants**") served notices of motion seeking leave to appeal the sealing order from the Court of Appeal for Ontario.

32. The three Appellants, the Applicant and the Monitor have exchanged email correspondence with respect to scheduling of the matter and are to attend a case conference before Associate Chief Justice Alexandra Hoy of the Court of Appeal for Ontario on March 12, 2021 to discuss scheduling and a timeline in respect of the leave to appeal motion.

## ACTUAL RECEIPTS AND DISBURSEMENTS

33. The Amended & Restated Initial Order approved the DIP Facility on terms set out in a term sheet executed by the Applicant and Firm Capital Mortgage Fund Inc. (the "**DIP Lender**") and to be set out in a definitive agreement (the "**DIP Agreement**"). The DIP Agreement was executed by the parties on February 10, 2021 and the first draw pursuant to the DIP Agreement was made on February 16, 2021.

34. The Applicant's weekly cash flow forecast for the period from January 30, 2021 to April 30, 2021 (the "**Cash Flow Forecast**") was appended to the Pre-Filing Report and First Report.

35. Attached at Appendix "**A**" to this Second Report is a summary of the Applicant's actual receipts and disbursements for the Reporting Period. Appendix "**B**" to this Second Report contains a variance analysis with respect to some of the larger variances from the Cash Flow Forecast.

36. The Applicants had net disbursements of approximately $3.1 million during the Reporting Period net of $0.9 million in receipts from restricted funds to be directed to the Segregated Accounts. The Applicant made a draw of $10 million against the $25 million DIP Facility available pursuant to the DIP Agreement.

37. Overall, the Applicant's actual receipts and disbursements do not reflect any material unanticipated negative permanent variances. Receipts including collections of student accounts have come in as forecast with some positive permanent and timing differences. Disbursements have been significantly lower than anticipated during the Reporting Period, however this is primarily a result of timing differences due to the Applicant continuing to

be advanced credit from suppliers as well as some delays in processing invoices due to the significant demands placed on the Applicant's Finance staff. These timing differences are expected to reverse in the coming weeks.

## REVISED CASH FLOW FORECAST

38. The Revised Cash Flow Forecast, attached as Appendix "**C**" to this Second Report, has been prepared by Management, using the probable and hypothetical assumptions set out in the notes to the Revised Cash Flow Forecast (the "**Assumptions**") and represents the estimates of Management of the projected cash flow during the Forecast Period on a weekly basis.

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

40. The Monitor has reviewed the Revised Cash Flow Forecast to the standard required of a Court-appointed Monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a Monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the Monitor's findings.

41. Pursuant to this standard, the Monitor's review of the Revised Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of Management and employees of the Applicant. Since the Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Revised Cash Flow Forecast. The Monitor also reviewed the support provided by Management for the Assumptions and the preparation and presentation of the Revised Cash Flow Forecast.

42. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material respects, that:

    a. The Assumptions are not consistent with the purpose of the Revised Cash Flow Forecast;

    b. As at the date of this Second Report, the Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Assumptions; or

    c. The Revised Cash Flow Forecast does not reflect the Assumptions.

43. The Revised Cash Flow Forecast projects that during the Forecast Period, the Applicant will have estimated total combined receipts of approximately $18.3 million, net of $4.0

million in receipts from restricted funds to be directed to the Segregated Accounts. Estimated total combined disbursements are forecast to be approximately $43.6 million, net of reimbursements from the Segregated Accounts of $1.4 million. This results in projected net cash outflow (net of Segregated Account activity) of approximately $25.2 million. The Applicants projects that it will draw the remaining $15.0 million of available financing pursuant to the DIP Agreement. The Revised Cash Flow Forecast projects that LU will have access to sufficient liquidity during the Forecast Period.

44. The main assumptions of the Revised Cash Flow Forecast are as follows:

a. academic teaching operations, the provision of ancillary services and certain in-process research activity continues in the ordinary course, uninterrupted;

b. the Order sought by the Applicant on this motion is granted, such that payment by the Applicant of its portion of the PBGF assessment (discussed below) is stayed as are special payments to the Applicant's defined benefit pension plan;

c. all payments in respect of goods and services supplied pre-filing and principal and interest payments on pre-filing debt are stayed with the following limited exceptions (and as further discussed later in this Second Report);

i. customary exceptions with respect to wages and benefits (but not termination and severance) owing to active employees;

ii. students will remain unaffected including in respect of ordinary course student refunds, scholarships, bursaries and other amounts; and

iii. funds collected on behalf of the Students' Associations will be remitted in the ordinary course.

**PENSION MATTERS**

45. LU administers three employee pension and benefit plans: (a) a registered defined benefit pension plan (the "**DB Pension Plan**"); (b) a supplementary unfunded retirement plan (the "**SuRP**") and (c) a retirement health benefits plan (the "**RHBP**").

46. The SuRP and RHBP are currently unfunded. Payments pursuant to the SuRP and RHBP have been stayed in accordance with the terms of the Amended & Restated Initial Order.

47. The DB Pension Plan is a plan registered with the Financial Services Regulatory Authority of Ontario ("**FSRA**") under the Ontario *Pension Benefits Act* R.S.O. 1990, c. P.8 (the "**PBA**") and related regulations (the "**Regulations**") and the Income Tax Act. LU is the sponsor and administrator of the DB Pension Plan. The DB Pension Plan is open to all

eligible employees of LU along with eligible employees of the Federated Universities, SNOLab, MIRARCO and CEMI. A copy of the DB Pension Plan dated July 1, 2018 is attached to the Haché Affidavit as Exhibit X.

48. There are currently 406 individuals collecting a lifetime pension from the DB Pension Plan. There are 981 active members currently contributing to the DB Pension Plan but not yet collecting a benefit. In addition, 544 members have deferred (or former member) status, meaning they have left employment with their employer and have not yet started collecting pension benefits. All full-time employees of LU or the other applicable employers who are employed on a continuous full-time basis (as determined by the employer) must participate in the DB Pension Plan. Other employees who are not full-time employees may elect to join the DB Pension Plan once such employee has been continuously employed for at least two years and the employee meets certain minimum salary or employment hour requirements.

49. The most recent actuarial valuation of the DB Pension Plan was made as of January 1, 2020 and filed in December 2020. Pursuant to this actuarial valuation, the DB Pension Plan was 104.7% funded on a going concern basis excluding the provision for adverse deviation and 99.0% funded on a going concern basis including the provision for adverse deviation, representing a going concern deficiency of approximately $4.5 million. The DB pension Plan was 85.4% funded on a solvency basis resulting in a $75.3 million solvency deficit and 65.8% (the "**Transfer Ratio**") funded on a hypothetical wind-up basis resulting in a $237.3 million hypothetical wind-up deficit.

50. Pursuant to the PBA and Regulations, the going concern deficiency is required to be addressed over a period not exceeding ten years, beginning one year after the date of valuation (i.e. January 1, 2021). As a result, the actuary concluded that an annual special payment of $505,000 was required to be made, payable in monthly instalments of approximately $42,083. Pursuant to the Amended & Restated Initial Order, LU's portion of these payments has been stayed. There are currently no special payments required in respect of the solvency deficit.

51. The actuarial valuation also provided that the DB Pension Plan current service contributions for the next three years would be set at $16,188,000, annually, payable in monthly instalment of approximately $1,349,000. Currently, LU makes monthly payments in respect of LU and SNOLab, MIRARCO and CEMI employees (which are reimbursed to LU). The Federated Universities make payments in respect of their employees.

**Commuted Value Transfers**

52. Unlike the majority of defined benefit pension plans which limit the ability to commute pension entitlements (based upon age and/or length of time since leaving employment), the

DB Pension Plan permits members of the Plan who have ceased active service to commute their pension entitlement at any age and at any time prior to starting to receive a pension.

53. The process can be initiated in a number of ways. For example:

    a. When an active employee retires, the individual is provided with a retirement package containing a retirement statement and election form. The package describes the options available to the individual including the monthly benefit if a pension is commenced immediately and the applicable commuted value if a commuted value transfer is elected;

    b. When an active employee terminates employment prior to the age of 55, a similar package is provided with the estimated value of the individual's monthly pension benefit and the applicable commuted value. Options include leaving the pension entitlement in the DB Pension Plan (i.e. a deferred pension) or requesting a commuted value transfer; and

    c. At any time, a former employee who has not commenced receiving a monthly pension can request a current pension statement with the applicable commuted value if a commuted value transfer is requested.

54. Pursuant to the PBA and Regulations, if a pension plan has a transfer ratio less than 100%, the administrator (in this case, the Applicant) may:

    a. transfer the commuted value at the Transfer Ratio from the last valuation report and transfer the balance over no more than five years;

    b. transfer the full commuted value after the employer makes additional contributions to "top-up" the deficiency between the pension plan's transfer ratio and 100%; or

    c. transfer the full amount of the commuted value subject to certain low volume thresholds.

55. The Monitor understands that LU's past practice has been to process commuted value transfers at 100% on the basis that volumes were low.

56. Recently, the number of inquiries regarding commuted value transfers has significantly increased and as a result, LU has determined that it should commence processing commuted value transfers at the Transfer Ratio with the balance to be payable over five years. This will help to mitigate any potential deterioration of the DB Pension Plan's financial position and to treat all Plan members equitably, as it avoids having certain individuals remove assets from the DB Pension Plan at a rate greater than the current Transfer Ratio.

57. In assessing the options and coming to this decision, LU made a decision to temporarily pause processing any commuted value transfers, particularly in light of the increased volume of requests made subsequent to the commencement of the CCAA proceedings. LU plans to resume providing pension statement and options packages to individuals who have requested the same, all of which will set out commuted value transfer options at the Transfer Ratio.

58. As a result, the Monitor understands that there have been numerous requests subsequent to the commencement of the CCAA proceedings for packages setting out the commuted value transfer entitlement in respect of which LU has paused providing any responses.

59. In the March 8, 2021 letter from Eckler Ltd., the third-party administrator of the DB Pension Plan ("**Eckler**"), that the Applicant filed in support of this motion, Eckler has identified a group of 27 individuals who are impacted by the proposed Pension Order. These 27 individuals have received termination packages and / or pension statements reflecting a commuted value transfer option at 100% commuted value. The group includes 8 individuals who had already completed and returned their election forms by February 1, 2021, as well as a further 19 individuals who had either: (a) been issued termination or retirement statements within 120 days but no response has been received, or (b) have indicated an intent to take a transfer or start a pension but had not returned completed election forms by February 1, 2021. We are advised by the Applicant that if an individual does not return their completed election form within 120 days of its issuance, in accordance with the statement that is sent to that individual, the commuted value amount may be recalculated using interest rates and actuarial assumptions in effect at that time and a new termination or retirement statement re-issued.

60. The Monitor understands that the aggregate commuted value amount in respect of the 27 individuals above is approximately $4.8 million if processed at a 100% transfer ratio. If processed at the current Transfer Ratio, this amount would be approximately $1.6 million less.

61. Given LU's decision to commence processing go forward commuted value transfers at the Transfer Ratio (with the balance to be payable in five years), LU is of the view that it would be inequitable for the 27 pending requests above to be transferred at a 100% ratio given that the hypothetical wind-up deficit is significant and the eventual outcome of LU's restructuring efforts is uncertain. Accordingly, the Applicant seeks relief authorizing it to apply the Transfer Ratio to these 27 individuals. Assuming the Court grants this relief, from a process perspective, the Applicant proposes to contact each of the 27 individuals and provide them with an updated pension statement and options package reflecting the application of the Transfer Ratio to the commuted value transfer and permitting the individual to make a revised election with respect to his/her current options.

62. The Monitor understands that each of the 27 individuals have been served with a copy of the Applicant's Motion Record and Factum in respect of relief sought in the Pension Order.

63. The Monitor also understands that the Applicant has consulted with LU's labour unions, the Federated Universities and FSRA in respect of the proposed Pension Order. The Monitor understands that none of these parties intend to object to the relief sought.

64. Given the current status of LU's restructuring efforts, the Monitor is of the view that the Applicant's request is reasonable in the circumstances.

**PBGF Assessment Payment**

65. As the DB Pension Plan is a single employer defined benefit plan pursuant to the PBA, PBGF coverage is applicable. The PBGF is a fund established under the PBA that protects the first $1,500 of monthly pension benefits earned by Ontario members under applicable plans.

66. Pursuant to the Regulations, the PBGF is funded by annual assessments payable by the employers whose employees, former employees and retired employees participate in the applicable plans. Assessments are payable annually within nine months of the plan's year end.

67. The PBGF assessment in respect of the DB Pension Plan for the period July 1, 2019 to June 30, 2020 (the "**PBGF 2020 Assessment**") is payable by March 30, 2021. The Monitor understands that the total amount due is estimated to be $919,234 ($851,143 plus retail sales tax of $68,091). LU's proportionate share of the PBGF 2020 Assessment is estimated to be approximately $842,000 (with the balance relating to the other employers under the DB Pension Plan).

68. The Monitor is advised by FSRA that FSRA agrees with the calculation of the PBGF 2020 Assessment as set out above. However, FSRA has noted that the PBGF assessment for the prior year ended June 30, 2019 (which was due on March 31, 2020 and was paid) was calculated based on a valuation as at July 1, 2018. FSRA is of the view that the assessment amount should have been re-calculated in light of the updated valuation as at January 1, 2020 which would result in an additional amount owing of approximately $288,000 (the "**Incremental PBGF Assessment**"). The Monitor understands that Laurentian has not yet had an opportunity to review this matter and determine its position on whether the amount of the Incremental PBGF Assessment, if any, is accurate.

69. As both the PBGF 2020 Assessment and Incremental PBGF Assessment (collectively, the "**PBGF Assessments**") relate entirely to a period of time prior to the commencement of the CCAA proceedings, the Applicant is of the view that the PBGF Assessments are pre-filing obligations stayed pursuant to the provisions of the Amended & Restated Initial

Order. It is not expected that non-payment of the PBGF Assessments would have any impact on benefits provided to the DB Pension Plan members in the event of a wind-up of the Plan. The Monitor understands that the level of benefits guaranteed through the PBGF is determined under section 84 of the PBA and section 34 of the Regulations and is independent of an employer's payment of PBGF assessments.

70. The Applicant seeks relief confirming that the PBGF Assessments are subject to the stay of proceedings and that the Applicant as employer and its directors and officers shall have no liability in connection with the non-payment of these amounts.

71. The Monitor has reviewed the matter and concurs that the PBGF Assessments appear to be pre-filing obligations that are stayed. The Monitor is also advised by FSRA that it does not object to the position that the PBGF Assessments are stayed or the relief sought in the Pension Order, subject to reserving its right to assert claims against LU in respect of these amounts in connection with a CCAA claims process or otherwise.

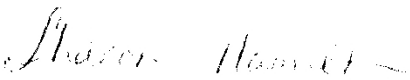
72. Payment of the PBGF Assessments are not included in the Revised Cash Flow Forecast.

## CONCLUSIONS AND RECOMMENDATIONS

73. For the reasons stated herein, the Monitor supports the relief sought by the Applicant including the processing of pending commuted value transfer requests at the Transfer Ratio and confirmation that the PBGF Assessments are stayed. Accordingly, the Monitor recommends that the Court grant the proposed Pension Order.

All of which is respectfully submitted this 11th day of March, 2021.

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



**Sharon S. Hamilton, CPA, CA, CIRP, LIT**
**Senior Vice President**

# Tab 17

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**

# THIRD REPORT OF THE MONITOR
**April 26, 2021**

## INTRODUCTION

1. On February 1, 2021, Laurentian University of Sudbury ("**LU**" or the "**Applicant**") brought an application (the "**CCAA Application**") before this Court seeking an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to, among other things, obtain a stay of proceedings to allow the Applicant an opportunity to financially and operationally restructure itself.

2. On February 1, 2021, the Court granted an initial order (the "**Initial Order**") that, among other things, appointed Ernst & Young Inc. as monitor of the Applicant in these CCAA proceedings (in such capacity, the "**Monitor**"), and approved a stay of proceedings for the initial 10-day period and certain Court-ordered super-priority charges.

3. On February 5, 2021, the Court issued an order (the "**Mediator Appointment Order**") appointing the Honourable Mr. Justice Sean F. Dunphy as mediator (the "**Court-Appointed Mediator**") to oversee negotiations in the restructuring.

4. On February 10, 2021, the Court held a comeback hearing which resulted in the issuance of an amended and restated initial order (the "**Amended and Restated Initial Order**") which among other things, approved a debtor-in-possession interim financing arrangement in the principal amount of $25 million (the "**DIP Facility**") and extended the stay of proceedings to April 30, 2021 (the "**Stay Period**").

5. On March 17, 2021, the Court granted an order (the "**Pension Order**") (a) that LU shall apply a transfer ratio of 65.8% for any commuted value transfer requests by any individual

who has received a retirement or termination statement and election form and for whom such transfers have not yet been made; and (b) confirming that the PBGF Assessment Payment and the Incremental PBGF Assessment Payment (as those terms are defined in the Pension Order) are stayed pursuant to the Amended and Restated Initial Order.

**PURPOSE**

6. The purpose of this Third Report of the Monitor (the "**Third Report**") is to provide information to the Court on:

   a. The Applicant's operations since the date of the Monitor's Second Report;

   b. An update on the leave to appeal motion brought before the Court of Appeal for Ontario as described in the Second Report;

   c. An update on a motion brought by the Assemblée de la francophonie de l'Ontario (the "**AFO**");

   d. An update on matters in respect of the Northern Ontario School of Medicine ("**NOSM**") and l'Université de Hearst ("**Hearst**");

   e. An update with respect to information requests pursuant to the *Freedom of Information and Privacy Act* ("**FIPPA**");

   f. The status of the Applicant's restructuring efforts;

   g. Information with respect to term sheets entered into between LU and two of its labour unions;

   h. Information with respect to certain disclaimer notices issued by the Applicant to each of its three federated universities;

   i. The Applicant's actual receipts and disbursements for the period from March 6, 2021 to April 16, 2021 (the "**Reporting Period**") compared to the cash flow forecast appended to the Second Report;

   j. The Applicant's cash flow forecast (the "**Revised Cash Flow Forecast**") for the period April 17, 2021 to September 3, 2021 (the "**Forecast Period**");

   k. The Applicant's request for approval of an order that, among other things:

      i. approves the term sheets entered into between LU and two of its labour unions;

ii. approves an agreement entered into between LU and Huntington University;

iii. approves the amendment to the DIP facility entered into between LU and its DIP Lender (as defined below) including an increase of $10 million in the maximum principal amount available under the DIP Facility and a corresponding increase to the DIP Lender Charge; and

iv. extends the stay of proceedings from April 30, 2021 to August 31, 2021,

in each case, substantially in the form included in the Applicant's Motion Record; and

l. The Monitor's recommendations with respect to the above.

**TERMS OF REFERENCE AND DISCLAIMER**

7. In preparing this Third Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Applicant and discussions with senior management of the Applicant ("**Management**") (collectively, the "**Information**"). Except as described in this Third Report in respect of the Applicant's Revised Cash Flow Forecast:

a. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not 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 Assurance Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and

b. Some of the information referred to in this Third Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.

8. Future oriented financial information referred to in this Third Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

9. Unless otherwise indicated, the Monitor's understanding of factual matters expressed in this Third Report concerning the Applicant and its business is based on the Information, and not independent factual determinations made by the Monitor.

10. This Third Report does not take into account all future impacts of COVID-19 (SARSCoV-2) ("**COVID-19**" or the "**Pandemic**") on the forecasts or projections or other actions taken by the Applicant as a result of the Pandemic. Any references made to the impact of the Pandemic on the Applicant in this Third Report are based on preliminary enquiries and are not to be interpreted as a complete commentary or as an accurate assessment of the full impact of the Pandemic. The full impact of the Pandemic is not capable of being qualitatively or quantitatively assessed at this time.

11. Capitalized terms not defined in this Third Report are as defined in the Pre-Filing Report of the Proposed Monitor, the First or Second Report of the Monitor or in the Amended and Restated Initial Order, as applicable.

12. Certain documents referred to in this Third Report are as attached to the initial affidavit of Dr. Robert Haché (the "**Initial Haché Affidavit**") sworn January 30, 2021 or the second affidavit of Dr. Robert Haché (the "**Second Haché Affidavit**") sworn April 21, 2021 in connection with this motion.

13. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian dollars.

## BACKGROUND

14. On March 28, 1960, LU was incorporated under *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151 C. 154 (the "**Laurentian Act**"). A copy of the Laurentian Act is attached as Exhibit "A" to the Initial Haché Affidavit.

15. LU is a non-share capital corporation and a registered charity pursuant to the *Income Tax Act*, R.S.C. 1985, c.1 (the "**Income Tax Act**"). Pursuant to Section 149 of the Income Tax Act, LU is exempt from the payment of income tax because of its status as a registered charity. As a registered charity, LU also receives donations and issues tax receipts to donors.

16. LU is a publicly funded, bilingual and tricultural post-secondary institution. Its operations are located in the City of Greater Sudbury, Ontario. LU has consistently been one of the largest employers in Sudbury.

17. As described in the Initial Haché Affidavit and Second Haché Affidavit, the governance structure of LU is bi-cameral. It has a Board of Governors (the "**Board**") and a Senate (the

"**Senate**"), both of which derive their powers from the Laurentian Act. The Board, and the President and Vice-Chancellor generally have powers over the operational and financial management of LU, whereas the Senate is responsible for decisions in respect of educational policy at LU.

18. LU has contractual relationships with three independent federated universities: the University of Sudbury ("**SU**"), the University of Thorneloe ("**Thorneloe**") and Huntington University ("**Huntington**") (collectively, the "**Federated Universities**").

19. Further background information with respect to the Applicant is provided in the Pre-Filing Report.

## UPDATE ON THE APPLICANT'S OPERATIONS

20. As set out in the Second Report, since the date of the Initial Order, the Applicant has focused on maintaining normal course day-to-day operations. Student classes are continuing (virtually, due to the Pandemic) with no disruption.

21. Also as set out in the First Report and the Second Report, the Applicant commenced communications with its various stakeholders, including its students, faculty and other employees, suppliers, research-granting agencies and donors immediately after the issuance of the Initial Order. Letters were emailed to certain of these stakeholder groups informing them of the commencement of the CCAA proceedings. The Applicant also launched English and French language websites at www.laurentianu.info and www.ulaurentienne.info, respectively, to provide further information to stakeholders, including a detailed list of frequently asked questions and answers, contact information for support services for students, faculty and staff and a method to contact LU by email for other information. The information on the website has been continually updated as a result of questions received from various parties. The Applicant has also issued numerous follow-up communications to keep stakeholders informed to the extent possible.

22. The Monitor notes that both the Applicant and the Monitor have received a significant volume of calls and emails from stakeholders. Many of these inquiries have sought information as to what will happen after April 30, 2021, as well as detail on how specific restricted funds (research grants and restricted donations) were handled and how the obligations associated with these will be treated in the CCAA process. Both the Applicant and the Monitor have spent considerable time responding to these inquiries, recognizing that neither the Applicant nor the Monitor is in a position today to provide specific details as to how obligations will be treated in a plan of compromise or arrangement or otherwise.

23. Finally, as set out in the First Report, the Applicant implemented new fiscal restraint policies to monitor and authorize only critical and necessary expenses during the pendency of this CCAA proceeding. While these policies represent a change to LU's historical practice as they require senior leadership approval for most expenditures before being incurred (rather than permitting decentralized authority for spending within annual budget limits), these policies are necessary in the Monitor's view to ensure that the Applicant is able to manage operations within the constraints of the DIP Facility available to LU at any given time.

24. In early March, the Applicant opened registration for spring term courses, which would commence in May 2021. In light of the uncertainty with respect to LU's ability to continue operations subsequent to April 30, 2021, the Applicant allowed students to register for spring courses without requiring any deposits. Commensurate with LU's success in negotiating changes to its cost structure as set out below and assuming this Court grants the relief sought in this motion, this uncertainty will be eliminated and LU will be able to proceed with all steps relating to spring courses. As a result, LU plans to bill fees to students in April and payment will be due by May 7, 2021.

25. As of April 26, 2021, approximately 2,920 undergraduate students have registered for courses in the spring semester and approximately 470 graduate students are registered in at least one course.

26. Until recently, Steve Paikin served as Chancellor of LU. He was appointed on July 1, 2013 for a five year term which was renewed on July 1, 2018 for a further three years. Effective April 12, 2021, Mr. Paikin advised LU that he would be resigning as Chancellor.

## LEAVE TO APPEAL MOTION

27. Both the Initial Order and the Amended and Restated Initial Order contained a provision sealing two confidential exhibits (the "**Confidential Exhibits**") to the Initial Haché Affidavit. The Confidential Exhibits contained a letter from the Ministry of Colleges and Universities ("**MCU**") to the Applicant dated January 21, 2021 and a letter from the Applicant to MCU dated January 25, 2021.

28. On February 26, 2021, the Court issued a Supplementary Endorsement containing detailed reasons for granting the sealing order.

29. As set out in the Second Report, on March 4, 2021, the Ontario Confederation of University Faculty Associations, the Laurentian University Faculty Association ("**LUFA**") and the Canadian Union of Public Employees (collectively, the "**Appellants**") served notices of motion seeking leave to appeal the sealing order with the Court of Appeal for Ontario.

30. On March 31, 2021, the Court of Appeal for Ontario issued its decision dismissing the motion for leave to appeal. A copy of the decision is attached as Exhibit "C" to the Second Haché Affidavit.

**AFO MOTION**

31. The AFO alleges it is the "umbrella organization of Franco-Ontarians" with a mandate to consult with and speak on behalf of the Franco-Ontarian community.

32. On March 3, 2021, the AFO served a notice of motion on the Service List seeking an order requiring LU to immediately initiate consultations with the AFO and enter into joint negotiations with the AFO and SU.

33. The Monitor contacted the AFO and suggested that, in light of the ongoing Court-ordered mediation, the appropriate route to seek participation in the process was for the AFO to make the request of the Court-Appointed Mediator. On or about March 12, 2021, the AFO met with the Court-Appointed Mediator and the Monitor through videoconference and requested that it be permitted to participate in the Mediation. After hearing their submissions, Justice Dunphy decided not to designate the AFO as a mediation party.

34. On March 31, 2021, the AFO served a new notice of motion seeking:

    a. An Order that LU immediately initiate consultations with the AFO regarding any restructuring plan or financial sustainability initiatives that may impact the status or use of French;

    b. An Order that LU immediately enter into joint negotiations with the AFO and SU to evaluate any financial or structural proposal that may impact the restructuring in accordance with the objectives of the CCAA and the rights of the Franco-Ontarian community, including those arising from the *French Language Services Act*, section 23 of the *Canadian Charter of Rights and Freedoms* and Part VII of the *Official Languages Act*;

    c. An Order that the Monitor advise the Court regarding any financial or structural proposal that may impact the status or use of French and evaluate its impact on the rate of recovery of creditor claims, the restructuring plan and measures that may impact the status or use of French and the language and constitutional rights of the Franco-Ontarian community; and

    d. An Order that the Monitor advise the Court on the reasonableness and fairness of any restructuring plan and any compromise or arrangement with creditors with regards to the status and use of French at LU.

35. Following two case conferences before Chief Justice Morawetz, the AFO's motion was set down for a bilingual hearing on April 26, 2021, before the Honourable Madam Justice Gilmore.

36. LU, the AFO and the Monitor engaged in discussions that culminated in the parties reaching agreement on a form of consent order (the "**AFO Consent Order**") that resolved, in large part, the issues raised on the AFO's motion scheduled to be heard on April 26, 2021. The AFO Consent Order substantially provides that:

    a. LU and AFO agree to engage in meaningful consultations and information-sharing commencing May 1, 2021, regarding any proposals made by the AFO and any restructuring or financial sustainability initiatives that may impact the status or use of the French language at Laurentian; and

    b. The Monitor shall advise the Court on the reasonableness and fairness of any proposed restructuring plan and plan of arrangement, and its report shall include an assessment of LU's proposed restructuring plan compared with any alternative restructuring plan presented by the AFO, including their relative impact on the rate of recovery of creditor claims.

37. The parties appeared before Justice Gilmore on April 22, 2021, to speak to the AFO Consent Order. Following such appearance, Justice Gilmore granted the AFO Consent Order, which was signed in both English and French.

## NOSM AND HEARST

### NOSM

38. NOSM is a not-for-profit corporation established under the *Corporations Act* (Ontario). LU and Lakehead University, located in Thunder Bay, Ontario ("**Lakehead**"), are the two members of NOSM.

39. Through an agreement between LU and Lakehead, NOSM opened in 2005. NOSM is an independent not-for-profit corporation which serves as the faculty of medicine for both LU and Lakehead. Graduates of NOSM receive either a LU or Lakehead degree depending on the campus attended. NOSM has campuses located in Sudbury and Thunder Bay. LU owns the two buildings that NOSM occupies on the Sudbury campus and leases the buildings to NOSM.

40. While NOSM operates legally, financially and operationally independent of LU, representatives of both LU and Lakehead serve on the Board of Directors. Currently, LU's President, Dr. Haché serves as the Vice-Chair. With respect to NOSM's educational

policy, academic decisions are required to pass at both LU's and Lakehead's senates as ultimately NOSM students receive degrees conferred by one of LU or Lakehead.

41. Both LU and Lakehead provide facilities and support services, student registration and student fee collection, bursary (scholarship) receipt and disbursement, and other educational, research and operational services. As part of the operational services, students have access to most LU or Lakehead campus services. LU and Lakehead provide research support including the administration of NOSM research grants and awards. NOSM is invoiced monthly for the use of these services. NOSM student receipts and registration fees for certain of NOSM's students are deposited into LU's general operating accounts. These amounts are remitted to NOSM at certain points in the year, net of fees charged to NOSM for support services.

42. In addition, LU holds approximately $14 million in endowments designated to fund future scholarships for qualifying NOSM students.

43. On April 15, 2021, the Province of Ontario (the "**Province**") brought forward an omnibus motion in the provincial legislature containing a number of separate bills, one of which is called the Northern Ontario School of Medicine University Act, 2021 which is intended to grant status as an independent university to NOSM. The bill does not include any timeline or guidance for implementation – only that it comes into effect upon Royal Assent. The Monitor understands that LU intends to engage in discussions with MCU with respect to the timing and impact of any such plan, including as it relates to buildings currently occupied by NOSM on LU's campus.

44. NOSM does not contribute to LU's financial sustainability, as tuition and other funds collected by LU on behalf of NOSM are effectively a "flow-through". There is no cross-over of courses, programs or other academic aspects between LU and NOSM. LU does provide certain services to NOSM, and the transition of any such services will need to form part of the discussions if the draft legislation that has been introduced is ultimately passed.

**Hearst**

45. Hearst is a university affiliated with LU that offers undergraduate French-language degree programs, covering areas of study such as history, sociology, philosophy, psychology, French, and geography for Northern Ontario's Franco-Ontarian community. It has approximately 100 students in total, spread between three campuses located in Hearst, Kapuskasing and Timmins.

46. On April 15, 2021, as part of the same omnibus motion referred to above, the Province brought forward a bill called the Université de Hearst Act, 2021 which is intended to grant status as an independent university to Hearst. Similar to the NOSM bill, the Hearst bill is not effective until it receives Royal Assent. Once again, the Monitor understands that LU

intends to engage in discussions with MCU with respect to the timing and impact of any such plan.

47. Hearst does not contribute to LU's financial sustainability. There is no cross-over of courses, programs or other academic aspects between LU and Hearst. Hearst receives its own grants and collects its own tuition.

**FIPPA**

48. The Amended and Restated Initial Order provided for a stay in respect of any existing, pending or future information requests made to the applicant under FIPPA except with the written consent of the Applicant and the Monitor or leave of the Court. This Court's endorsement further provided that the Information and Privacy Commissioner of Ontario (the "**Privacy Commissioner**") could request that this issue be revisited in 30 days and that any request for reconsideration could be made through the Monitor.

49. Since the commencement of the CCAA proceedings, LU has corresponded with counsel to the Privacy Commissioner on several occasions. LU has advised the Privacy Commissioner that:

a. It is LU's view that the stay of proceedings should continue to apply to any FIPPA requests and that any appeal of outstanding FIPPA requests prior to the commencement of the CCAA proceedings should continue to be stayed;

b. LU and the Monitor have not received any complaints about delay, save and except for correspondence regarding one FIPPA matter subject to adjudication; and

c. LU and the Monitor have not received any further FIPPA requests outside of matters related to the insolvency.

**UPDATE ON RESTRUCTURING EFFORTS**

**Appointment of Mediator**

50. In its Application Record, the Applicant provided notice that it would seek an Order for the appointment of a mediator by the Court to oversee negotiations between LU and a number of its stakeholders with respect to various restructuring initiatives necessary for the Applicant to achieve financial sustainability, including but not limited to, a restructuring of academic programs, a reduction of employee headcount and a restructuring of its Federated Universities model.

51. On February 5, 2021, the Monitor, LU and LUFA attended before the Court at a case conference. During the case conference, the Court indicated that after considering the urgency with which negotiations need to take place, the importance of such negotiations being successful within this compressed time period and the proposed characteristics of a potential Mediator, the Court granted an order appointing the Honourable Mr. Justice Sean F. Dunphy of the Ontario Superior Court of Justice as the Court-Appointed Mediator. During his career, Justice Dunphy was a leading insolvency lawyer with extensive experience in CCAA restructurings, including complex labour negotiations, and is bilingual. All parties at the case conference confirmed that there were no objections to Justice Dunphy's appointment as mediator. Accordingly, the Court issued the Mediator Appointment Order and endorsement confirming Justice Dunphy's appointment.

52. Since February 5, 2021, the Court-Appointed Mediator has dedicated himself to overseeing discussions between the parties in the mediation process (the "**Mediation**"). Justice Dunphy requested the Monitor act as the primary facilitator for the Mediation and accordingly, the Monitor has played a significant role including: (a) liaising with all mediation parties; (b) scheduling and hosting mediation sessions; (c) facilitating the exchange of information and documents between the parties; and (d) providing any other assistance that the parties reasonably require.

**Need for Financial Savings**

53. As set out in the Monitor's Pre-Filing Report, the Applicant commenced its CCAA proceedings as a result of severe financial challenges. A pattern of recurring deficits over a number of years, exacerbated by recent significant pressures on revenue, brought the Applicant to the point where it had an immediate and dramatic liquidity crisis. Prior to the negotiation of any cost savings, the Applicant projected that it would incur recurring annual deficits in the range of $13.7 - $16.0 million per year as a result of its pre-filing operating cost structure (as it relates to its status quo teaching operations only) excluding payments to creditors in respect of any stayed amounts. As a result, this does not include any consideration of the following obligations of the Applicant:

    a. Completion of research obligations or other obligations arising from the Deferred Contributions as they are described in the Monitor's Pre-Filing Report. These research activities represent a core aspect of LU's operations, necessary to support graduate student programs and attract students generally. LU's most recent estimate of the Deferred Contributions is approximately $28.5 million;

    b. Costs involved for the implementation of new governance policies and mechanisms, operational controls and processes;

    c. Investment in initiatives to protect and grow revenue such as new programming or courses, recruitment of students or other matters necessary to maintaining

competitiveness, responding to student interest and demand, and building a long-term, financially sustainable university;

d. Establishment of appropriate reserves to avoid a future liquidity crisis as a result of unforeseen events, greater than anticipated enrolment decreases, etc.;

e. Restructuring costs to conclude the Applicant's CCAA proceedings which may be in the range of $6 million, or greater;

f. Repayment of the DIP Facility, which is anticipated to be in the total principal amount of $35 million, subject to Court approval of the DIP Amendment sought by the Applicant at this motion and potentially higher if additional funds are required; or

g. Payments to the Applicant's pre-filing creditors, including the Lenders who are owed amounts well in excess of $100 millionplus any claims that will arise as a result of the restructuring, such as termination and severance claims in respect of terminated employees;

54. A summary of the above analysis is attached at Appendix "**A**" to this Third Report.

55. In light of its situation, LU undertook a full review of all aspects of its operations. That review included a review of its academic programming, faculty and employee complement and reconsideration of the future viability of the relationship between LU and the Federated Universities.

56. Laurentian has limited ability to increase its revenue. Its primary sources of revenue are operating grants and student tuition. Operating grants are generally fixed by the Province and are unlikely to increase materially. The structure of the enrolment portion of operating grants results in decreases to grants if enrolment is materially lower than target but limits increases if enrolment is materially higher. Tuition fees for domestic students are frozen by regulation of the Province. Absent increases in enrolment levels, Laurentian is unable to positively impact its tuition revenue. Accordingly, LU concluded that in order to be financially viable, it was necessary for the Applicant to substantially decrease its operating costs. This included undertaking a complete review of the programs and courses offered by LU to ensure individual programs are financially sustainable.

57. As previously set out for this Court, salaries and benefits represent LU's largest single cost item. As a result of the significant cost and in light of the streamlining of the academic programs and courses offered by LU, LU determined that re-assessing its current faculty and employee complement was necessary to achieve the financial sustainability it requires.

58. The third pillar of this operational restructuring included a review of the Federated Universities model, which represents a significant loss of revenue/cost to LU. A more

detailed description of this model is set out below. As a result, and for the reasons set out below, LU determined that it is necessary to terminate the Federated Universities relationship its operational restructuring, in order to achieve its stated goal of financial sustainability.

**Mediation Process**

59. As a result, Mediation discussions focussed on those parties with whom LU needed to negotiate operational changes in order to drive go forward cost savings. As a result, the primary discussions included negotiations between LU and:

    a. A committee of representatives elected by the Senate (the "**Senate Sub-Committee**"), to address the academic restructuring;

    b. Each of the Federated Universities;

    c. LUFA, the bargaining unit representing the faculty; and

    d. The Laurentian University Staff Union ("**LUSU**"), the bargaining unit representing non-faculty staff.

60. All of the parties listed above actively participated in the Mediation, including attending sessions with the Court-Appointed Mediator and engaging in further negotiations without the presence of the Court-Appointed Mediator. These negotiations were intense with LU and the Monitor participating in negotiations and mediation sessions almost daily and often, over weekends and holidays.

61. In addition, several mediation sessions were held with the Applicant's primary bank lenders, Royal Bank of Canada, the Toronto-Dominion Bank and the Bank of Montreal (collectively, "**the Lenders**").

62. Finally, several other parties expressed an interest in participating in the Mediation. These requests were referred to Justice Dunphy who engaged in discussions with the parties and in some cases invited the party to submit a written brief or letter setting out their requests or areas of concern.

63. The first phase of the Applicant's restructuring efforts and the Mediation focussed on improving LU's operating cost structure, which negotiations resulted in the following:

    a. Agreement with the Senate Sub-Committee on the academic restructuring;

    b. Executed and ratified term sheets with each of LUFA and LUSU;

    c. Issued Notices of Disclaimer (as defined below) to each of the three Federated Universities; and

d. Execution of the Huntington Agreement.

64. Details with respect to each of the above are set out below.

**ACADEMIC RESTRUCTURING**

65. As set out in the Monitor's Pre-Filing Report, LU had a large number of programs relative to its number of students. As at the date of the CCAA filing, LU had approximately 209 different programs offered – 166 undergraduate programs (including specializations) and 43 graduate programs. While the programs that drive student demand and enrolment have evolved over the years, LU's academic program and course list has not been continually refreshed to reflect these shifts in demand. As a result, the majority of students are enrolled in a relatively small subset of programs. A large number of programs have consistently low enrolment and are not financially sustainable. The following statistics highlight the enrolment profile in LU's programs:

a. Of the 166 undergraduate programs, 25% of students are enrolled in the top 5 programs, 62% are enrolled in the top 25 and 83% are enrolled in the top 50 programs;

b. Of these same 166 undergraduate programs, only 1% of students are enrolled in the bottom 25 programs and only 5% are enrolled in the bottom 50 programs;

c. Of the 43 graduate programs, 48% of students are enrolled in the top 5 programs, 65% are enrolled in the top 10 and 91% are enrolled in the top 25 programs; and

d. Of these same 43 graduate programs, less than 1% of students are enrolled in the bottom 5 programs and only 2.5% are enrolled in the bottom 10 programs.

66. As set out above, LU has a bi-cameral governance structure and the Senate is responsible for the academic policy of LU necessitating the involvement of Senate in approving any changes to academic programming.

67. In order to fully participate in the Mediation, on February 9, 2021, the Senate passed a resolution appointing the Senate Sub-Committee to represent it in the Mediation. The Senate Sub-Committee was comprised of six Senators including three faculty members, two students and one member of the academic leadership group. The members of the Sub-Committee included Anglophone, Francophone and Indigenous representation. The Senate Sub-Committee retained independent legal counsel, Mario Forte of Goldman Sloan Nash & Haber LLP to advise them through the process.

68. LU's academic restructuring focussed on three areas: (a) programs to be offered; (b) courses and course sections to be offered; and (c) a faculty and department restructuring designed to increase operational efficiency and reduce cost.

69. LU's approach to the academic restructuring was guided by the principle that LU should focus on programs and courses that are either in higher demand today or will likely be in demand in the future to ensure that the suite of programs and courses LU continues to offer can be financially sustainable. It was also a key principle that LU continue to respect its mandate of being a bilingual and tri-cultural university.

70. As part of the process, LU undertook an extensive analysis of all its current programming to identify programs that are not financially viable. This analysis largely focussed on analyzing enrolment data as programs with very low enrolment are not able to cover even the direct faculty teaching cost of the program, let alone other costs of the program. The analysis also took into account the additional bilingualism grants LU receives as a result of its Francophone programming and accordingly, different criteria were used to assess English and French programs. Several other factors were also considered including whether the program contributes to the success of other related programs, obligations pursuant to the *French Language Services Act* and other factors. This resulted in a list of programs that were recommended for closure.

71. In addition to the review of low-enrollment programs, LU undertook a review of the number of courses and course sections to be offered going forward.

72. The Deans of each faculty were asked to review all of the courses offered by their faculty including the number of course sections of each course and make recommendations as to whether these courses should continue to be offered. To do so, the Deans were provided with extensive historical enrolment data with respect to each course or course section.

73. In general, courses attached to terminated programs were assumed to be recommended for closure unless they were also mandatory course for other ongoing programs or if they have very high enrolment (i.e. as a result of being taken as electives by students in other programs). For courses attached to ongoing programs, courses that are not mandatory for the program were examined from an enrolment perspective to determine whether they were viable to offer from a financial perspective or whether they could be terminated, while still leaving a reasonable offering of elective courses for students and ensuring that students could graduate from the program within a four year period.

74. With respect to the faculty and departmental restructuring, Laurentian currently has six Faculties with a Dean managing each Faculty. Within these Faculties, there are 35 schools and departments. To create greater efficiencies and reduce cost, Laurentian proposed the following changes:

a. The number of faculties is to be reduced from six to four;

b. Schools, departments or units in which all programs are proposed to be closed will also be closed; and

c. A number of remaining schools, departments or units will be merged.

75. The above changes will result in a structure with four Faculties and 11 schools, departments or units.

76. The analysis performed by LU in recommending the program and course closures and faculty and departmental restructuring was rigorous and detailed.

77. This analysis was shared with the Monitor, the Court-Appointed Mediator and the Senate Sub-Committee through the Mediation. Extensive ongoing discussions were had over the course of the Mediation in which the Senate Sub-Committee raised a series of questions and provided input on LU's recommendations resulting in further analysis and follow up by LU. The Monitor was present during all of these discussions.

78. The Senate Sub-Committee spent significant amounts of time throughout this period analyzing the data in detail and considering the academic restructuring needs of LU to provide fulsome input. The Senate Sub-Committee's review considered a number of key factors including balancing English and French language offerings and indigenous offerings, consistent with the mandate of LU, amongst other factors. The Monitor was actively involved in the discussions and review of the reports and information exchanged and commends both the Senate Sub Committee and LU for their collective efforts. It is the Monitor's view that the input of the Senate Sub-Committee was not based on individual members' personal interests or views but clearly reflected an independent and objective view that was consistent with and accepted the guiding principle that LU should only offer programs and course with sufficient demand and which permit LU to be financially viable, while protecting the bilingual and tricultural mandate.

79. This process resulted in a finalized list of program and course closures and faculty and departmental restructuring that was approved and supported by the Senate Sub-Committee.

80. On April 6, 2021, the proposed program closure and the faculty and departmental restructuring was brought before the full Senate for approval. The Senate Sub-Committee supported the motion. On this date, the Senate passed a resolution approving the changes as proposed.

81. The program closures include 38 English-language undergraduate programs and 27 French-language undergraduate programs. This means that LU will continue to offer 63 remaining English-language undergraduate programs and 38 remaining French-language undergraduate programs.

82. Although the number of programs identified for closure represents 39% of the total undergraduate programs offered by LU, only approximately 7.5% of LU's current undergraduate students will be affected by the closure of these programs, either directly or indirectly. This represents approximately 772 undergraduate students (557 in English-language programs and 215 in French-language programs). Further, only a subset of the affected undergraduate students will be wholly affected in the sense that their program is closed and there may be no program at LU that they would consider switching over to (for example, midwifery or radiation therapy). Some of the affected students will be partially affected. That could include, as an example, a student who is currently enrolled in a double major and one program is closed while the other will continue to be offered.

83. In addition, LU will close 11 graduate programs (4 in French; 7 in English). This will impact approximately 3.7% of the current graduate student enrollment.

84. A fundamental concern of LU was minimizing disruption to its existing students. As set out above, while there has been much focus on the percentage of programs to be closed (which is 39%), the resulting number of students impacted (which is 7.5%) means that the disruption is minimized. LU is committed to ensuring that each of its students has an academic path towards completion of a degree and has worked diligently to identify those paths for all affected students. The Second Haché Affidavit sets out some of the steps taken to support students through this process.

**TERM SHEET WITH LUFA**

85. As set out in the Monitor's Pre-Filing Report, at the commencement of the CCAA proceedings, approximately 612 employees were represented by LUFA including 355 full-time faculty, many of whom had tenure pursuant to the collective agreement, 252 sessional faculty or health care professionals and 5 full-time counsellors. The number of sessional employees varies from term to term depending on need.

86. Also as set out in the Monitor's Pre-Filing Report, faculty represented approximately 60% of operating salaries and benefits (excluding research and SNOLab/MIRARCO related salaries and benefits) paid by LU. Therefore, the LUFA CA governs the biggest expense of LU.

87. LUFA and the Board of LU are parties to a collective agreement with a three-year term (the "**LUFA CA**") which expired on June 30, 2020. Pursuant to the provisions of the LUFA CA, the agreement automatically continues year-to-year unless notice is provided that either LUFA or LU intends to terminate or amend the LUFA CA. In February 2020, LUFA provided LU with a notice to bargain. Pursuant to Article 13.15.3 of the LUFA CA, the agreement automatically remains in force during any period of negotiation.

88. Prior to the commencement of the CCAA proceedings, LU and LUFA were engaged in discussions with respect to a new collective bargaining agreement since April 2020. In addition, there were 102 unresolved grievances filed by LUFA as well as an ongoing unfair labour practice complaint and a judicial review with respect to the Provost's decision in 2020 to suspend enrolment in 17 academic programs with very low enrolment.

89. Shortly after the issuance of the Mediator Appointment Order, LU and representatives of LUFA commenced negotiations under the direction of the Court-Appointed Mediator.

90. The LUFA negotiations included the following areas of focus:

    a. Faculty complement – the academic restructuring set out above and the necessity for cost reductions for LU to achieve financial sustainability meant that a substantial reduction in the number of faculty was needed;

    b. A new LUFA CA – the parties worked to agree to terms of a new collective agreement to succeed the expired collective agreement;

    c. Pension arrangements – the parties negotiated amendments to LU's pension plan arrangements for all employee groups to minimize the risk of future special payments; and

    d. Grievances – the parties discussed the resolution of the outstanding grievances.

91. For two months, LU and LUFA actively participated in the Mediation and engaged in negotiations with the assistance of the Court-Appointed Mediator and in separate discussions with LU. The Monitor both observed and assisted in the process. Once again, the commitment and effort made by the parties in the Mediation negotiations was extensive.

92. On April 7, 2021, LU and LUFA signed a term sheet (the "**LUFA Term Sheet**") setting out the key terms and conditions agreed to by the parties. A redacted copy of the LUFA Term Sheet is attached as Exhibit "H" to the Second Haché Affidavit. The redactions are to protect the names of individual faculty members whose positions were made redundant.

93. The key terms of the LUFA Term Sheet are as follows:

    a. LU and LUFA agreed a new collective agreement with a five-year term expiring on June 30, 2025;

    b. 116 full-time faculty positions and 1 counsellor position were declared redundant some of which have or are to be achieved through voluntary resignations and others which are to be effected through termination of employment;

    c. Faculty members who were identified to be terminated and who are teaching courses in the current winter 2021 academic term have an effective termination date

of May 15, 2021 to allow for marking of final exams, papers, and communicating grades;

d. Faculty members who were identified to be terminated and who are not teaching courses in the current winter 2021 academic term have an effective termination date of April 30, 2021;

e. Faculty members who elected early retirement by a specified date will receive certain non-financial incentives;

f. Faculty members' salary will decrease by 5% effective May 1, 2021 and a schedule for further salary changes during the life of the new LUFA CA was agreed;

g. Faculty members will each take five unpaid furlough days during the 2021-22, 2022-23, and 2023-24 academic years, resulting in further costs savings for LU;

h. Workload for faculty members in the Science, Engineering, and Architecture Faculty is increased from 12 credits to 15 credits, consistent with the workload of faculty members in other Faculties;

i. The tuition exemption will only apply to active employees and dependents and no longer be available to former employees;

j. Certain gym benefits will be eliminated;

k. Other amendments will be made to terms of the LUFA CA;

l. Certain terms of the collective agreement not agreed by the parties will be decided by binding arbitration to occur no later than June 18, 2021;

m. Pre-CCAA grievances will be determined with the assistance of the Monitor, Court-Appointed Mediator and/or a third-party mediator by no later than May 31, 2021, including the determination of any associated monetary amounts which shall be treated as pre-filing claims to be resolved through a plan of compromise or arrangement; and

n. Changes will be made to LU's pension and post-employment benefits as further described below.

94. On April 12, 2021, LU provided notice to the faculty members identified to be terminated and on April 13, 2021, the LUFA Term Sheet was ratified in a vote by the LUFA members.

**TERM SHEET WITH LUSU**

95. As set out in the Monitor's Pre-Filing Report, at the commencement of the CCAA proceedings, approximately 268 employees were represented by LUSU. That included all employees of LU in clerical, technical, administrative, service and security positions.

96. On July 1, 2018, LUSU and LU entered into a collective agreement that was set to expire on June 30, 2021. In light of the financial challenges of LU, LUSU agreed in the summer of 2020 to open the existing agreement early for negotiation. Those negotiations resulted in the ratification of a collective agreement that expires on June 30, 2024 (the "**LUSU CA**") and that achieved the following:

    a. Year 1: a 1.0% salary reduction, which previously was a 1.5% salary increase under the LUSU CA;

    b. Year 2: a 0.5% salary increase on July 1, 2021 and January 1, 2022;

    c. Year 3: a 0.5% salary increase on July 1, 2022 and January 1, 2023;

    d. Six furlough days for all LUSU members without pay in 2020;

    e. Confirmation of LU's ability to effect employee transfers and the additional flexibility to reassign and transfer staff during the collective agreement; and

    f. Retirement incentive to maintain salary and pension at the pre-reduced salary level as at June 30, 2020, with the condition to retire on or before October 31, 2020.

97. The furlough days negotiated in 2020 provided LU with a one-time cash payment of $450,000, directly from LUSU to LU, and the reassignment, transfer and retirement provisions resulted in 11.5 position redundancies in 2020 generating total annual savings of approximately $800,000.

98. Following the commencement of the CCAA proceedings and concurrently with the LUFA negotiations, LU and LUSU participated actively in the Mediation engaging in negotiations both with the assistance of the Court-Appointed Mediator and in separate discussions with LU. The Monitor both observed and assisted in the process.

99. The focus of the LUSU Mediation was in respect of reductions in LUSU positions and amendments to pension arrangements. These negotiations were with the aim of achieving cost reductions to allow LU to achieve financial sustainability and to effect the changes required following the academic restructuring and the reduction in faculty. The negotiations acknowledged the changes agreed in the summer of 2020.

100. On April 5, 2021, following intensive negotiation, LU and LUSU entered into a term sheet (the "**LUSU Term Sheet**") setting out the key terms and conditions agreed to in the

negotiations. A redacted copy of the LUSU Term Sheet is attached as Exhibit "I" to the Second Haché Affidavit. The redactions are to protect the names of individual faculty members whose positions were made redundant.

101. The key terms of the LUSU Term Sheet are as follows:

a. 42 LUSU members will be terminated with an effective termination date of April 30, 2021;

b. The terminated LUSU members will have preferential recall rights for a two-year period following the date of termination;

c. The tuition exemption in the LUSU CA will only apply to active employees and dependents and no longer be available to former employees;

d. Certain gym benefits will be eliminated; and

e. Changes will be made to LU's pension and post-employment benefits as further described below.

102. On April 12, 2021, LU provided notice to the affected LUSU Members that their employment was being terminated and on April 13, 2021, the LUSU Term Sheet was ratified in a vote by the LUSU members.

**NON-UNIONIZED EMPLOYEES**

103. As set out in the Monitor's Pre-Filing Report, at the commencement of the CCAA proceedings, the remainder of LU's full-time employees that are not represented by a union included approximately 23 senior leadership employees and 111 administrative and professional staff, most of whom are in managerial roles. The managerial and non-managerial employees are considered part of an informal association that LU recognizes as the Laurentian University Administrative and Professional Staff Association ("**LUAPSA**"). LUAPSA has an executive committee that meets with LU on occasion and LU solicits feedback from the LUAPSA executive committee regarding matters that affect employees that are in positions falling under the LUAPSA umbrella.

104. In addition to the termination of LUFA and LUSU positions, LU reviewed all non-union positions and identified a number of positions that could be consolidated or eliminated. This resulted in the elimination of 37 non-union positions (24 of which were management and executive positions). Certain of these positions were as a result of implementing the Faculty and department restructuring described above.

105. In addition, LU intends to make changes to compensation and benefits for non-union employees to reflect certain common amendments agreed in the LUFA Term Sheet and the LUSU Term Sheet. These include:

    a. A 3% salary roll-back implemented in 2020 will be continued and further planned salary rollbacks will occur to ensure equitable distribution of salary reductions between LUFA, LUAPS and LU's senior leadership group;

    b. The tuition exemption that is consistent with the LUFA CA and LUSU CA will only apply to active employees and dependents and no longer be available to former employees;

    c. Certain gym benefits will be eliminated; and

    d. Changes will be made to LU's pension and post-retirement benefits as further described below.

106. On April 12, 2021, LU provided notice to the affected non-union employees whose positions were made redundant. On this date, notice of termination was also provided to the Vice-President, Administration.

## PENSION AND POST-EMPLOYMENT BENEFITS

### Background

107. LU administers three employee pension and benefit plans: (a) a registered defined benefit pension plan (the "**DB Pension Plan**"); (b) a supplementary unfunded retirement plan (the "**SuRP**") and (c) a retirement health benefits plan (the "**RHBP**").

108. The SuRP and RHBP are currently unfunded. Payments pursuant to the SuRP and RHBP have been stayed in accordance with the terms of the Amended & Restated Initial Order.

109. The DB Pension Plan is a plan registered with the Financial Services Regulatory Authority of Ontario ("**FSRA**") under the Ontario *Pension Benefits Act* R.S.O. 1990, c. P.8 (the "**PBA**") and related regulations (the "**Regulations**") and the Income Tax Act. LU is the sponsor and administrator of the DB Pension Plan. The DB Pension Plan is open to all eligible employees of LU along with eligible employees of the Federated Universities, SNOLab, MIRARCO and CEMI.

110. Current service contributions to the DB Pension Plan have continued to be made by LU since February 1, 2021. Current service contributions and going concern special payments to the DB Pension Plan have continued to be made by or in respect of the other participating employers since February 1, 2021.

111. There are currently 406 individuals collecting a lifetime pension from the DB Pension Plan. Prior to the implementation of the terminations provided for as set out above, there were 981 active members contributing to the DB Pension Plan but not yet collecting a benefit. In addition, 544 members have deferred (or former member) status, meaning they have left employment with their employer and have not yet started collecting pension benefits. All full-time employees of LU or the other applicable employers who are employed on a continuous full-time basis (as determined by the employer) must participate in the DB Pension Plan. Other employees who are not full-time employees may elect to join the DB Pension Plan once such employee has been continuously employed for at least two years and the employee meets certain minimum salary or employment hour requirements.

112. The most recent actuarial valuation of the DB Pension Plan was made as of January 1, 2020 and filed in December 2020. Pursuant to this actuarial valuation, the DB Pension Plan was 104.7% funded on a going concern basis excluding the provision for adverse deviation and 99.0% funded on a going concern basis including the provision for adverse deviation, representing a going concern deficiency of approximately $4.5 million. The DB pension Plan was 85.4% funded on a solvency basis resulting in a $75.3 million solvency deficit and 65.8% (the "**Transfer Ratio**") funded on a hypothetical wind-up basis resulting in a $237.3 million hypothetical wind-up deficit.

113. Pursuant to the PBA and Regulations, the going concern deficiency is required to be addressed over a period not exceeding ten years, beginning one year after the date of valuation (i.e. January 1, 2021). As a result, the actuary concluded that an annual special payment of $505,000 was required to be made, payable in monthly instalments of approximately $42,083. Pursuant to the Amended & Restated Initial Order, LU's portion of these payments has been stayed. There are currently no special payments required in respect of the solvency deficit.

114. The actuarial valuation also provided that the DB Pension Plan current service contributions for the next three years would be set at $16,188,000, annually, payable in monthly instalment of approximately $1,349,000. As a result, total current service contributions of approximately 15.75% of pensionable earnings are currently required, which is comprised of approximately 7.41% of employee contributions and 8.34% of employer contributions. Currently, LU makes monthly payments in respect of LU and SNOLab, MIRARCO and CEMI employees (which are reimbursed to LU). The Federated Universities make payments in respect of their employees.

115. On March 17, 2021, the Court granted the Pension Order which among other things provided that LU shall apply a transfer ratio of 65.8% for any commuted value transfer requests by any individual who had received a retirement or termination statement and election form and for whom such transfers had not yet been made. This affected 27 individuals (the "**Interim CV Applicants**").

116. Pursuant to the Pension Order, each of the Interim CV Applicants was subsequently provided with a copy of the Pension Order and an updated pension statement and options package reflecting the application of the 65.8% transfer ratio in respect of commuted value transfers. The Interim CV Applicants were invited to make a revised election for either (a) a commuted value transfer; or (b) an immediate or deferred pension. Interim CV Applicants were advised that they had 30 days in which to make such an election, failing which they would be deemed to have withdrawn any prior request for commuted value transfer and shall retain the right to a deferred pension. The deadline for the Interim CV Applicants to make the election was April 19, 2021.

117. The Monitor understands that as of April 16, 2021, 16 of the 27 individuals had made or confirmed a revised election.

**DB Pension Plan Amendments**

118. As set out above, the most recent actuarial valuation of the DB Pension Plan reflected a significant solvency deficit and hypothetical wind-up deficit. As a result, as part of LU's negotiations in the Mediation with LUFA and LUSU, LU sought amendments to the DB Pension Plan to ensure that it would be sustainable moving forward and to minimize the risk that LU's funding obligations in the future would jeopardize LU's financial viability.

119. In connection with the Mediation, the DB Pension Plan's actuary, Eckler, undertook comprehensive modelling to assess what potential changes might be required to ensure that LU contributions to the DB Pension Plan are predictable, to limit the risk of special payments arising in the future and to ensure the DB Pension Plan's long-term sustainability.

120. The DB Pension Plan amendments that were formulated based on the Eckler modelling include changes to the availability of commuted value transfers, changes to the DB Pension Plan benefit formula described below, and associated changes to the DB Pension Plan's governance structure. These changes are set out in a term sheet dated April 7, 2021 between LU and each of LUFA and LUSU (the "**Pension Term Sheet**"), which forms part of the LUFA Term Sheet and LUSU Term Sheet.

121. While negotiated with LUFA and LUSU, the DB Pension Plan amendments will be made to the DB Pension Plan as a whole and therefore will apply to all members including non-union employees and employees of the other entities participating in the DB Pension Plan.

122. Pursuant to the Pension Term Sheet, the DB Pension Plan will be amended as follows:

    a. Commuted Value Transfers - Commuted value transfer payments will cease to be available to terminated members who have attained their early retirement date (the first day of July coincident with or next following their 55th birthday) upon leaving employment. For terminated members who have not attained their early retirement

date, there will be a one-time opportunity to elect a commuted value transfer in accordance with PBA requirements.

Certain transitional measures were put in place: (i) LU faculty members who provided an irrevocable notice of intention to retire pursuant to a one-time retirement incentive offered prior to the execution of the LUFA Term Sheet are able to elect to receive a commuted value transfer regardless of their age, provided the election is made before May 15, 2021, and (ii) current deferred vested members, who were advised at the time of their resignation / termination that they could elect a commuted value transfer at any time in the future will be given a one-time option to elect a commuted value transfer.

b. Modified Early Retirement Provisions - Currently, the DB Pension Plan allows all members to retire on an unreduced early retirement pension at age 62. If a member retires before that, their pension is reduced by 0.5% per month from age 62. The age 62 early retirement date is eliminated for LUFA members, Senior Leaders and Designated Executives effective July 1, 2021. Effective July 1, 2021, if these members retire early, their pension entitlements will be actuarially reduced from their normal retirement date. LUSU members and other employees who participate in the DB Pension Plan will continue to be eligible for unreduced early retirement at age 62, but if they retire earlier than that, their pension will be actuarially reduced from age 62.

c. Receipt of Pension While Employed - Effective July 1, 2021, members of the DB Pension Plan will no longer be entitled to commence receipt of their pension from the DB Pension Plan while employed after their normal retirement date, except as required under the Income Tax Regulations C.R.C., c. 945 ("**ITR**").

d. Freeze Best Average Pensionable Earnings - Currently, members' defined benefit pension entitlements are calculated using "Best Average Pensionable Earnings" which is the average of a member's five highest earnings years. The DB Pension Plan will be amended to freeze Best Average Pensionable Earnings on June 30, 2021.

e. Career Average Earnings Benefit Formula & Integration with Enhanced CPP - Effective July 1, 2021, members will accrue benefits based on a career average earnings formula (i.e. calculations will be based on pensionable earnings in each year of credited service). Members' benefits will be integrated with the increased pensionable earnings ceiling under the enhanced Canada Pension Plan, in advance of the Canada Pension Plan enhancement being fully implemented in 2025.

f. Post-Retirement Indexation - For service on and after July 1, 2021, post-retirement indexation will not be provided unless granted in accordance with a new Benefits and Funding Policy as described below.

g. Contributions - Starting July 1, 2021, members will contribute an average of 8% of pensionable earnings to the DB Pension Plan. LU will also contribute a minimum of 8% of pensionable earnings to the DB Pension Plan.

h. Benefits and Funding Policy - The Pension Term Sheet includes the key terms of a new Benefits and Funding Policy which will govern the financial management of the DB Pension Plan including how contributions to the DB Pension Plan are used to build reserves and grant benefit improvements to members. Under the Benefits and Funding Policy, benefit improvements may only be granted if: (i) the DB Pension Plan is at least 95% funded on a solvency basis; (ii) the DB Pension Plan is at least 105% funded on a going concern basis, including provision for adverse deviation, (iii) the granting of any benefit improvement does not cause the funded status of the DB Pension Plan to fall below 90% on a solvency basis or 103% on a going concern basis, including provision for adverse deviation, and (iv) the benefit improvement poses a low risk of requiring total contributions to exceed 16% of pay. No benefit improvements can be granted until at least July 1, 2025 so that reserves can build in and help stabilize the DB Pension Plan.

123. The Pension Term Sheet also provides for the establishment of a new Joint Committee on the Benefits and Funding Policy and Long-Term Sustainability (the "**Joint Committee**"). The mandate of the Joint Committee is to: (a) monitor and advise LU's Pension Committee on the administration and implementation of the Benefits and Funding Policy, and (b) study possible long-term sustainability options for the DB Pension Plan.

124. The Pension Term Sheet also provides for changes to the membership and terms of reference of LU's Pension Committee to incorporate the Benefits and Funding Policy and Joint Committee into its governance structure and remove representation of the Federated Universities on the Pension Committee.

125. LU is in the process of preparing the amendments to the DB Pension Plan to give effect to the changes described above. LU intends to file DB Pension Plan amendments to address the changes described in paragraph 122 (a) with FSRA and Canada Revenue Agency prior to May 1, 2021 and DB Pension Plan amendments to address the changes described in paragraphs 122 (b) through (g) prior to July 1, 2021. DB Pension Plan amendments required discussion with LU's Pension Committee and adoption by the Finance Committee and Board of Governors.

**SuRP**

126. The SuRP was implemented on July 1, 2002, to provide additional retirement benefits to LU employees participating in the DB Pension Plan and earning income over a certain threshold. Retiring employees who qualified for the SuRP were automatically included in the plan and received either an annual or monthly payment. There are also two individual SuRPs in respect of which this section of the Report applies equally.

127. All of the SuRP obligations are unfunded. Historically, LU made annual payments in respect of the SuRP from current operating funds in July of each year. There are currently 32 retired employees eligible to receive payments pursuant to the SuRP. The forecast amount payable in July 2021 to these retired individuals is approximately $260,000. As at April 30, 2020, the accrued benefit obligation in respect of the SuRP was estimated at $3,063,000.

128. All payments from the SuRP ceased on February 1, 2021, as a result of the CCAA stay of proceedings.

129. The LUFA Term Sheet and LUSU Term Sheet provide that all SuRPs will be immediately terminated. Accrued obligations will be dealt with in a plan of compromise or arrangement. No additional obligations will accrue going forward given the termination of the SuRP. SuRP arrangements in respect of current or former non-union employees will also be terminated.

**RHBP**

130. As set out in the Monitor's Pre-Filing Report, since 1998, LU has provided the RHBP to eligible employees. In addition to LU employees, the RHBP has been available to employees of the Federated Universities, SNOLab, MIRARCO and CEMI. There are currently 866 active employees enrolled in and contributing to the RHBP that are not yet collecting benefits. There are currently 358 retirees and surviving spouses who are eligible to collect benefits.

131. To be eligible to participate in the RHBP, employees had to satisfy the following conditions:

    a. The employee must retire at age 55 or older;

    b. The employee must have contributed for at least 15 years to the RHBP; and

        i. The employee must purchase private coverage and provide the employer with receipts for private coverage; or

        ii. The employee may elect not to purchase private coverage but must provide the employer with receipts for medical expenses.

132. Employees do not qualify if the employee qualifies for continued coverage under the Laurentian University Group Benefits Plan.

133. Employees participating in the RHBP were required to pay a monthly premium which varies depending on the employee group (i.e. LU, Federated Universities, SNOLab or LUSU member) and whether the employee enrolls in single or family coverage.

134. The RHBP Policy that had been communicated to employees provided that LU would establish a trust account in respect of the RHBP. This trust account was to receive all contributions by employees participating in the RHBP, an annual $25,000 contribution by LU and the proportionate contributions by the Federated Universities.

135. Rather than establishing a separate trust account, LU historically tracked contributions to the RHBP as a liability in its accounting records and on its balance sheet. However, neither contributions by employees nor LU contributions to the RHBP were set aside in a separate bank account. As at April 30, 2020, the accrued benefit obligation in respect of the RHBP was estimated at $7.2 million.

136. In December 2020, pursuant to a direction of the Board of Governors, LU began segregating RHBP contributions.

137. The LUFA Term Sheet and LUSU Term Sheet provide that the RHBP will be immediately terminated. The termination of the RHBP means that it will also no longer be available to all other participants including LU's current or former non-union employees and current or former employees of the Federated Universities, SNOLab, MIRARCO and CEMI.

138. LU is currently working to refund employee contributions made to the RHBP and placed in the segregated account since it was established in December 2020. This will include a refund of contributions made by employees of the Federated Universities and employees of the other affiliated entities.

## MONITOR'S COMMENTS ON RESTRUCTURING EFFORTS TO DATE

139. As set out above, the quantum of savings required for LU to potentially achieve financial sustainability is formidable. The Monitor recognizes that achieving such savings has significant impacts for many stakeholders. The restructuring of academic programming, while focussed on low enrolment programs, will still affect students, faculty, employees and other stakeholders. The Monitor also recognizes that despite the difficulty of the situation, both LUFA and LUSU acknowledged the significance of the challenges faced by LU and worked constructively with LU through the Mediation to find solutions.

140. While these solutions have required considerable sacrifice on the behalf of LUFA and LUSU members, they understood the difficult decisions that must be made with a view to preserving LU as an important part of the Sudbury community and protecting students and remaining faculty and employees. The Monitor also notes that while not directly involved in the Mediation, material sacrifices are also being made by the non-union employee group including senior management.

141. While the net estimated savings achieved to date is significant, LU still requires additional savings in order to potentially achieve a successful restructuring. Resolution was not achieved with two of the Federated Universities and this model must be addressed to maximize the opportunity for a successful restructuring. LU will also need to address the repayment of the DIP Facility and develop a viable plan of compromise or arrangement to address the significant claims of its creditors.

## FEDERATED UNIVERSITIES

### Background

142. As described in the Monitor's Pre-Filing Report, LU has a federated school structure whereby it has formal affiliations with the Federated Universities: SU, Huntington and Thorneloe.

143. SU is a Roman Catholic bilingual university offering programs in Culture and Communication Studies, Indigenous Studies, Philosophy and Religious Studies including courses in both English and French. It was founded in 1913 as Collège du Sacré-Coeur before changing its name to the University of Sudbury in 1957.

144. Huntington is an independent university founded in 1960 with its own charter, and offers programs in Communication Studies, Gerontology, Religious Studies and Theology.

145. Thorneloe is a university with historic roots and affiliation with the Anglican Church of Canada and offers programs in the departments of Ancient Studies, Religious Studies and Women's, Gender and Sexuality Studies.

146. LU and the Federated Universities are affiliated through a variety of historical relationships and contractual arrangements. Each of the Federated Universities is a separate legal entity and each is governed by a board of governors independent of LU.

147. The Federated Universities do not admit or register their own students, nor do they grant their own degrees (with the exception of Theology at Huntington and Thorneloe). All Federated University programs and courses are offered through LU, and all students apply to LU. Students who enroll in a program at LU may take elective courses at any or all of

the three Federated Universities as well as LU, which are all physically located on LU's campus. Students enrolled in programs, courses, majors and minors that are administered by the Federated Universities are students of LU and these courses are credited towards a degree from LU, which has the sole authority to confer degrees upon students (with the exception of Theology at Huntington and Thorneloe). For students, since credit is granted for courses towards their degree from LU regardless of whether the course is offered by LU or the Federated Universities, there is no distinction between being enrolled in a program or course at LU or one of the Federated Universities. LU provides certain services to the Federated Universities, however, each of the Federated Universities is separately governed and manages its finances separately from LU and each other.

148. The Federated Universities do not currently have the ability to confer degrees, and they do not receive and are not eligible to receive operating grants directly from the Province. With the exception of $1.2 million of special purpose-francophone grants specifically allocated by the Province to SU, Laurentian does not receive grant funding that is in any way designated for the Federated Universities. The structure of grant funding is complex but in general involves three categories of grant funding:

    a. Core enrolment-based grants which are based upon enrolment (weighted to account for discipline) falling within a targeted "corridor" or range. Enrolment is measured considering all LU students, with no specific allocation for students who enrol in programs or take courses through the Federated Universities;

    b. Differentiation-based grants which are based upon meeting certain performance metrics and targets as set out in the Strategic Mandate Agreement 3 ("**SMA3**") between LU and the Province; and

    c. Special purpose grants for certain priorities such as northern university grants, bilingualism grants and access grants.

149. Pursuant to SMA 3, the current government grant structure provides that over the next five years, the proportion of core enrolment-based funding will significantly decline with the proportion of differentiation-based funding increasing. The result of this is that funding will be largely weighted to meeting performance metrics and targets established by the government to be important and less weighted on any enrolment basis.

150. Similarly, as all students are students of LU regardless of whether they are enrolled in programs or take courses at one of the Federated Universities, the Federated Universities do not directly bill or collect tuition. Students cannot apply directly to the Federated Universities for admission into any programs (with the exception of Theology at Huntington and Thorneloe) nor can they register directly with the Federated Universities for courses. Students apply to LU regardless of program. LU manages admission.

Students are billed tuition by LU. Students then choose courses from an LU course catalog which includes courses offered through the Federated Universities.

151. While LU does not receive grant revenue or tuition revenue that is directly intended for the benefit of the Federated Universities (other than $1.2 million for SU as described above), LU and the Federated Universities have certain financial agreements in place pursuant to which LU receives, allocates and distributes a portion of LU's revenue to the Federated Universities in accordance with a funding formula (the "**Federated Funding Formula**"). Through this Federated Funding Formula, LU compensates the Federated Universities for delivering programs and services to LU students. The key terms of the Federated Funding Formula include the following:

    a. A portion of provincial grants received by LU are distributed to the Federated Universities based on the proportion of students enrolled in the Federated Universities' programs;

    b. A portion of tuition fees received by LU are distributed to the Federated Universities based upon student enrolment in courses offered through the Federated Universities; and

    c. An offsetting charge for service fees charged by LU to the Federated Universities in exchange for LU providing certain support services to the Federated Universities (calculated as 15% of grant and tuition revenues distributed to the Federated Universities).

152. Each of the Federated Universities owns certain buildings on land that is owned by LU and leased to the Federated University by LU. LU provides a number of non-academic services to the Federated Universities, which include but are not limited to: (a) student fee collection and accounting; (b) central computing services; (c) administration of all pension and employee benefits; (d) campus security; and (e) student support services.

153. Most of the faculty of the Federated Universities are represented by the same labour union as LU's faculty, LUFA, but each of the Federated Universities has their own collective agreement with LUFA.

154. The employees of the Federated Universities are members of LU's pension plan. Each of the Federated Universities are required, pursuant to the pension plan, to contribute the amount required to fund the defined benefit pension plan in respect of their employees. Each of the Federated Universities directly contribute to the plan on a monthly basis.

**Mediation and Notices of Disclaimers**

155. Shortly after the issuance of the Mediator Appointment Order, LU and the Federated Universities commenced extensive negotiations. The focus of this aspect of the Mediation was to seek a consensual resolution to the termination of LU's current relationship with the Federated Universities with a view to exploring terms that would allow the historical legacy and identities of the Federated Universities to be maintained, while allowing LU to become financially sustainable.

156. After several weeks of Mediation, the parties were unsuccessful in reaching a consensual resolution. Accordingly, on April 1, 2021, with the approval of the Monitor, LU delivered Notices to Disclaim or Resiliate to each of the Federated Universities pursuant to section 32 of the CCAA (the "**Notices of Disclaimer**"). The Notices of Disclaimer disclaim the Federation Agreements and the Financial Distribution Notices with each of the Federated Universities and, subject to the outcome of the motions brought by SU and Thorneloe, will become effective on May 1, 2021. Copies of the Notices of Disclaimer to SU, Thorneloe, and Huntington are attached as Exhibits "L", "M", and "N" to the Second Haché Affidavit.

**Huntington**

157. Subsequent to the issuance of the Notice of Disclaimer to Huntington, LU and Huntington continued negotiations with a view to achieving a consensual resolution.

158. On April 5, 2021, LU and Huntington entered into a term sheet setting out the terms of a consensual resolution and providing that the parties would enter into definitive documentation. On April 16, 2021, LU and Huntington entered into a transition agreement (the "**Huntington Transition Agreement**") formalizing the terms contained in the term sheet between LU and Huntington. A copy of the Huntington Transition Agreement is attached as Exhibit "Q" to the Second Haché Affidavit.

159. The Huntington Transition Agreement includes the following terms:

a. Huntington will not oppose the Notice of Disclaimer;

b. Huntington will cease to have the ability or responsibility to deliver academic courses or programs as credit towards LU degrees, and LU will no longer transfer funding to Huntington on any basis;

c. If Thorneloe and/or SU are permitted to continue to receive funding from LU to teach courses or programs and receive funding from LU, Huntington shall be similarly entitled, at its election;

d. Huntington's current courses and programs will be discontinued by LU and LU will offer affected students enrollment in other courses or programs offered by LU;

e. Huntington will transfer to LU its rights relating to the Gerontology program in consideration for LU's assumption of Huntington's retiree wind-up liabilities under the DB Pension Plan;

f. Huntington will pay the amount of $1,200,000 into the DB Pension Plan in respect of the wind-up deficit for its active and deferred members by no later than June 30, 2021, which amount will be notionally segregated for the benefit of such Huntington members until such time as Huntington former members who elect to receive commuted value transfer payments receive their final installment of such commuted value payments. Upon receipt of the $1,200,000 payment and the transfer of the Gerontology program, Huntington will receive a release from LU for its obligations under the DB Pension Plan;

g. Huntington will cease to be a participating employer in the DB Pension Plan and the RHBP effective on June 30, 2021;

h. Huntington will continue to maintain its building and related facilities for its own benefit and use on LU's land. In turn, LU agrees that the Huntington Transition Agreement and the terms thereof do not trigger the termination rights under the Indenture; and

i. LU will continue to provide certain services to Huntington with the amount to be paid by Huntington for those services to be agreed by the parties.

160. The Huntington Transition Agreement results in LU ceasing to pay Huntington to teach programs and courses, thereby retaining its grant and tuition revenue. It includes LU and Huntington working cooperatively to allow Huntington to continue to have a presence on campus through the operation of a student residence and preserve its historic legacy.

**University of Sudbury**

161. On March 12, 2021, SU made a public announcement, in collaboration with the AFO, that SU's Board of Regents had passed a Resolution declaring that SU would become a Francophone-only university.

162. As stated above, on April 1, 2021, LU delivered a Notice of Disclaimer to SU.

163. On April 12, 2021, SU sent a letter to LU requesting that all French-language programs offered by LU be transferred to SU. The same day, LU's counsel responded to SU indicating that LU was fully committed to its status as a bilingual and tri-cultural institution providing academic programs in both English and French, and therefore would not be transferring any French-language programs to SU.

164. On April 14, 2021, SU delivered a Motion Record opposing the Notice of Disclaimer issued to SU (the "**SU Disclaimer Motion**"). A supplemental affidavit was served on April 18, 2021 and a further supplemental affidavit was served on April 23, 2021.

165. As SU requested a bilingual hearing, following a schedule set at a case conference held on April 20, 2021, the SU Disclaimer Motion will proceed before Justice Gilmore on April 30, 2021.

166. Among other things, the SU Disclaimer Motion cites the following arguments in opposition to the disclaimer:

a. The disclaimer will likely cause significant financial hardship for SU;

b. LU is not acting in good faith; and

c. The disclaimer will not enhance the prospects of a viable compromise being made by LU.

**Thorneloe**

167. As stated above, on April 1, 2021, LU delivered a Notice of Disclaimer to Thorneloe. On April 15, 2021, Thorneloe delivered a Motion Record opposing the Notice of Disclaimer issued to Thorneloe (the "**Thorneloe Disclaimer Motion**", and collectively with the SU Disclaimer Motion, the "**Disclaimer Motions**"). On April 19, 2021, Thorneloe served a Supplementary Motion Record containing two additional affidavits and on April 22, 2021, Thorneloe and SU served a Joint Cross-Motion.

168. Among other things, the Thorneloe Disclaimer Motion cites the following arguments in opposition to the disclaimer:

a. Thorneloe did not cause LU's financial problems;

b. The disclaimer will result in significant financial hardship for Thorneloe and result in Thorneloe having to make an insolvency filing pursuant to the CCAA or*Bankruptcy and Insolvency Act*;

c. Thorneloe is immaterial to LU and therefore, the disclaimer would not result in a material improvement to LU's financial situation;

d. The relationship between LU and Thorneloe is not a commercial relationship to which the disclaimer provisions of the CCAA were intended to apply; and

e. LU is acting in bad faith contrary to section 18.6 of the CCAA.

**Monitor's Comments**

169. The Monitor approved the issuance of the Notices of Disclaimer. For the reasons outlined below, it is the Monitor's view that the Notices of Disclaimer will enhance the prospects of a viable compromise or arrangement being made in respect of the Applicant. In fact, it is the Monitor's view that without the Notices of Disclaimer, the Applicant is unlikely to be able to complete a viable plan of compromise or arrangement.

170. As set out above, the restructuring initiatives to date have resulted in the elimination of close to 200 faculty and employee positions. The estimated annual savings from these reductions, net of any anticipated revenue loss from the academic restructuring is estimated to be approximately $30.3 million growing to $33.5 million over the next few years. A summary of the impact of the savings on LU's forecast deficit is attached at Appendix "**B**" to this Third Report.

171. LU has and continues to review its other cost items, however, many of the remaining cost elements are fixed (i.e. occupancy costs such as utilities, property taxes and insurance) or have little room for discretionary reduction without significantly impacting students and the ability to maintain revenue (i.e. scholarships, library subscriptions, computer and software costs).

172. While the net estimated savings achieved to date is significant and addresses the Applicant's operational deficit, it is unlikely to be sufficient to cover among other items: (a) the repayment of the DIP Facility (even if refinanced over time) and (b) payment of distributions to creditors pursuant to a plan of compromise or arrangement in connection with the compromise of their claims.

173. As a not-for-profit, LU is unable to issue equity to creditors. It has no or limited ability to service additional debt beyond the refinancing of the DIP. As set out above, LU has limited opportunity to drive increased revenue. Therefore, LU must, through its restructuring, generate sufficient savings to provide for the ability to make payments over time to its creditors in in partial satisfaction of their claims. The savings generated to date through the LUFA Term Sheet, LUSU Term Sheet and non-union employee savings represent a significant component of the required savings, but not the entirety.

174. The Federated Universities model represents a significant cost to LU. In Fiscal 2020, LU transferred approximately $7.7 million to the Federated Universities as a result of LU students taking programs and courses offered through the Federated Universities. This included the transfer of approximately $3.5 million of grants received by LU, $5.3 million in net tuition collected from LU students and $0.3 million in material fees in respect of Federated Universities courses all offset by a 15% service fee of approximately $1.4 million. A summary of LU's payments to the Federated Universities is attached hereto as Appendix "**C**".

175. The Monitor understands that the majority of the funds transferred to the Federated Universities relates to the delivery by the Federated Universities of elective courses taken by students enrolled in LU programs as opposed to students enrolled in programs offered through the Federated Universities.

176. In conducting its review of its academic offerings and operational restructuring model, LU determined that it has the ability and capacity to offer a comprehensive list of programs and courses to LU students from the suite of programs and courses delivered by LU faculty in the absence of continuing the Federated Universities relationship. As a result, LU determined that it could retain the vast majority of the funds transferred to the Federated Universities and continue to support students without incurring those incremental costs.

177. As a result, LU is of the view that savings estimated in the range of $7.1 to $7.3 million annually can be generated through the disclaimer of the Federated Universities as part of this restructuring.

178. The Monitor recognizes the potential financial hardship that the Notices of Disclaimer may have for the Federated Universities. However, given the additional savings required for LU to have a reasonable opportunity to put forward a viable plan of compromise or arrangement and effect a successful restructuring, the Monitor is of the view that the disclaimer of the Federated Universities agreements is necessary.

## ACTUAL RECEIPTS AND DISBURSEMENTS

179. The Amended and Restated Initial Order approved the DIP Facility on terms set out in a term sheet executed by the Applicant and Firm Capital Mortgage Fund Inc. (the "**DIP Lender**") and to be set out in a definitive agreement (the "**DIP Agreement**"). The DIP Agreement was executed by the parties on February 10, 2021, and two draws pursuant to the DIP Agreement were made on February 16 and March 26, 2021.

180. The Applicant's weekly cash flow forecast for the period from March 6, 2021 to April 30, 2021 (the "**Cash Flow Forecast**") was appended to the Second Report.

181. Attached at Appendix "**D**" to this Third Report is a summary of the Applicant's actual receipts and disbursements for the Reporting Period. Appendix "**E**" to this Third Report contains a variance analysis with respect to some of the larger variances from the Cash Flow Forecast.

182. The Applicants had net disbursements of approximately $3.2 million during the Reporting Period net of $3.6 million in receipts from restricted funds directed to the Segregated Accounts and $0.2 million in reimbursements from the Segregated Accounts. The

Applicant made a draw of $15 million against the $25 million DIP Facility available pursuant to the DIP Agreement.

183. Net receipts were $17.1 million vs. a previous forecast of $11.1 million. Approximately $1.3 million of the $6.0 million variance relates to a permanent positive difference resulting from the collection of a number of miscellaneous receivables that were not forecast. The remaining $4.7 million is a timing difference as a result of earlier than forecast collection of grants, student amounts, reimbursements and other receipts.

184. Net disbursements were $20.3 million compared to a forecasted amount of $32.3 million resulting in a positive variance of $12.0 million. The majority of this difference relates to certain delays in processing invoices as well as the deferral of expenditures where possible as a result of the previous uncertainty around whether LU would be able to continue operations post April 30, 2021. Given the current status of efforts to reduce costs and the Applicant's request for an extension of the stay of proceedings, it is expected that the majority of these expenditures will resume in the coming weeks.

185. Overall, while the Applicant's actual net cash inflow was materially better than forecast, although much of this is timing and expected to reverse in the next few months.

## REVISED CASH FLOW FORECAST

186. The Revised Cash Flow Forecast, attached as Appendix "**F**" to this Third Report, has been prepared by Management, using the probable and hypothetical assumptions set out in the notes to the Revised Cash Flow Forecast (the "**Assumptions**") and represents the estimates of Management of the projected cash flow during the Forecast Period on a weekly basis.

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

188. The Monitor has reviewed the Revised Cash Flow Forecast to the standard required of a Court-appointed Monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a Monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the Monitor's findings.

189. Pursuant to this standard, the Monitor's review of the Revised Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of Management and employees of the Applicant. Since the Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Revised Cash Flow Forecast. The Monitor also reviewed the support provided by

Management for the Assumptions and the preparation and presentation of the Revised Cash Flow Forecast.

190. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material respects, that:

a. The Assumptions are not consistent with the purpose of the Revised Cash Flow Forecast;

b. As at the date of this Third Report, the Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Assumptions; or

c. The Revised Cash Flow Forecast does not reflect the Assumptions.

191. The Revised Cash Flow Forecast projects that during the Forecast Period, the Applicant will have estimated total combined receipts of approximately $56.0 million, net of $4.0 million in receipts from restricted funds to be directed to the Segregated Accounts. Estimated total combined disbursements are forecast to be approximately $82.7 million, net of reimbursements from the Segregated Accounts of $5.2 million. This results in projected net cash outflow (net of Segregated Account activity) of approximately $26.7 million. The Applicant projects that it will need to draw the full $10 million of additional financing pursuant to the proposed DIP Amendment. The Revised Cash Flow Forecast projects that with the increase in the DIP facility, LU will have access to sufficient liquidity during the Forecast Period.

192. The main assumptions of the Revised Cash Flow Forecast are as follows:

a. Academic teaching operations, the provision of ancillary services and certain in-process research activity continues in the ordinary course, uninterrupted, with the academic restructuring approved by the Senate being implemented;

b. The faculty and employee reductions and other terms contained in the LUFA and LUSU term sheets are implemented;

c. The Notices of Disclaimer in respect of the Federated Universities become effective on May 1, 2021 and the Huntington Agreement is implemented;

d. Payment by the Applicant of its portion of assessments due to the Pension Benefit Guarantee Fund as well as special payments to the Applicant's defined benefit pension plan continue to be stayed as per previous orders granted by this Court; and

e. All payments in respect of goods and services supplied pre-filing and principal and interest payments on pre-filing debt continue to be stayed with the following limited exceptions (and as further discussed later in this Third Report);

i. customary exceptions with respect to wages and benefits (but not termination and severance or pre-filing vacation pay) owing to active employees;

ii. students will remain unaffected including in respect of ordinary course student refunds, scholarships, bursaries and other amounts; and

iii. funds collected on behalf of the Students' Associations will be remitted in the ordinary course.

**AMENDMENTS TO THE DIP AGREEMENT AND DIP LENDER'S CHARGE**

193. The Amended and Restated Initial Order approved a term sheet (the "**DIP Term Sheet**") dated January 19, 2021, between LU and Firm Capital Corporation for the provision of a debtor-in possession loan (the "**DIP Facility**") in the principal amount of $25 million. After executing the DIP Term Sheet, Firm Capital Corporation assigned its interest to Firm Capital Mortgage Fund Inc. (the "**DIP Lender**"). In addition, as contemplated by the DIP Term Sheet, LU and the DIP Lender executed a definitive agreement dated February 10, 2021 (the "**DIP Agreement**") to formally document the terms and conditions set out in the DIP Term Sheet.

194. LU has drawn on the full $25 million available pursuant to the DIP Facility. The DIP Facility currently has a maturity date of May 1, 2021. The DIP Agreement provides that it can be extended for up to 90 days if LU achieves the following milestones, to the satisfaction of the DIP Lender in its sole and unfettered discretion:

a. LU reaches a consensus among all necessary stakeholders on an academic restructuring and reduction of LU's program offerings;

b. LU enters into a negotiated settlement with LUFA with respect to terminations to be effected, resolution of outstanding grievances, and the terms of a new collective agreement between LUFA and LU; and

c. LU provides the DIP Lender with a revised cash flow forecast and a multi-year budget demonstrating to the DIP Lender, in its sole and unfettered discretion, that LU is financially sustainable.

195. As set out above, the Revised Cash Flow Forecast projects that LU will require an additional $10 million of financing for the period of the requested stay extension.

196. Accordingly, on April 20, 2021, LU and the DIP Lender entered into an Amended DIP Term Sheet (the "**DIP Amendment**"), pursuant to which the DIP Lender has agreed to increase the maximum principal amount available under the DIP Facility by a further $10

million subject to the terms and conditions described therein (the "**Amended DIP Facility**"). A copy of the DIP Amendment is attached as Exhibit "Z" to the Second Haché Affidavit.

197. The key terms of the DIP Amendment are as follows:

a. The DIP Lender will increase the total amount available under the DIP Facility by the principal amount of $10 million;

b. The Amended DIP Facility will have a maturity date of August 31, 2021;

c. Interest will accrue at the same rate as pursuant to the DIP Agreement;

d. A Loan Amendment Fee of $200,000 shall be earned and payable to the DIP Lender on the date that the Court approves the DIP Amendment; and

e. The Court shall grant an increase in the super-priority charge (the "**DIP Lender's Charge**") on all the Property (as defined in the Amended and Restated Initial Order) of the Applicant from $25 million to $35 million. The priority of the DIP Lender's Charge shall otherwise remain unchanged.

198. Advances pursuant to the DIP Amendment are also conditional on the satisfaction of several conditions including:

a. The ratification of the LUFA Term Sheet and the LUSU Term Sheet (which condition has been met);

b. An Order is granted in form and substance satisfactory to the DIP Lender:

i. Approving the DIP Amendment;

ii. Increasing the DIP Lender's Charge to $35 million;

iii. Extending the stay of proceedings to August 31, 2021;

iv. Approving the LUFA Term Sheet and LUSU Term Sheet; and

v. Approving the Huntington Agreement.

c. The Notices of Disclaimer issued to the Federated Universities become effective, binding and final on May 1, 2021;

d. No further academic restructuring, other than the academic restructuring described above and approved by Senate on April 6, 2021shall occur without the DIP Lender's consent;

e. LU shall have provided a revised cash flow forecast and multi-year financial forecast to the DIP Lender, demonstrating to the DIP Lender, in its sole discretion, that LU will be financially sustainable and achieve operational stability upon emergence from the CCAA Proceeding;

f. No material changes to LU's governance or senior leadership shall occur that, in the DIP Lender's sole discretion, creates a situation of increased instability during the term of the DIP Facility;

g. No report is filed by the Monitor advising of a material adverse event;

h. Other than as may be requested by LU with the consent of the DIP Lender and with the Monitor's support, no court order is issued which affects LU or its business;

i. The DIP Lender shall not be obligated to advance funds if: (i) the Amended and Restated Initial Order has been vacated, stayed or otherwise caused to become ineffective or is amended in a manner not acceptable to the DIP Lender; or (ii) an order is granted by the Court at any time which the DIP Lender does not support; and

j. LU shall have sought and obtained a claims process order from the Court by May 31, 2021, or such later date as the DIP Lender may agree on terms acceptable to the DIP Lender.

199. The Applicant has made significant accomplishments in the first few months of the CCAA proceedings to address its cost structure as reflected by the execution of the LUFA Term Sheet, LUSU Term Sheet and Huntington Agreement and issuance of the Notices of Disclaimer to the Federated Universities. The Applicant needs time to implement these changes and address next steps in the restructuring. The cyclical nature of the Applicant's cash inflows means that it will need additional financing during the next four months. Without access to the additional DIP financing, the Applicant will be unable to maintain operations and address its operational and financial restructuring needs through the next phase. Approval of the DIP Amendment will provide LU with the necessary funds to continue operating through the spring/summer semester while working with its stakeholders to advance its restructuring. Accordingly, the Monitor is of the view that the Applicant's request for approval of the DIP financing and the DIP Term Sheet is required and reasonable.

**STAY EXTENSION**

200. The Stay Period is currently set to expire on April 30, 2021. The Applicant requests an extension of the Stay Period up to and including August 31, 2021.

201. The Monitor is of the view that the requested extension of the Stay Period is appropriate for the following reasons:

    a. The extension of the Stay Period will provide comfort to LU's existing and new incoming students that the Applicant will continue in the ordinary course for the duration of the spring/summer semester and beyond – i.e the fall semester of 2021;

    b. The Applicant requires the extension in order to undertake a number of steps necessary to advance its restructuring including:

        i. completing the implementation of the workforce changes contemplated by the LUFA Term Sheet and LUSU Term Sheet and in respect of the non-union employees;

        ii. implementing the termination of the Federated Universities arrangements, if the Disclaimer Motions are dismissed;

        iii. commencing and carrying out a claims process for creditors to establish claims;

        iv. exploring potential opportunities to realize on assets that are considered not critical to LU's ongoing operations; and

        v. conducting negotiations with significant creditors in respect of the potential terms of a Plan of Arrangement; and

    c. The Applicant continues to operate in good faith and with due diligence since the date of the Initial Order.

202. Based on the Revised Cash Flow Forecast, and with the approval of the DIP Amendment and increase to the DIP Lender's Charge, the Monitor is of the view that the Applicant should have sufficient liquidity to fund its operations until August 31, 2021. If there are any material events to report upon in the interim period, the Applicant and the Monitor will return to the Court.

203. For the foregoing reasons, the Monitor supports the Applicant's request for an order extending the Stay Period to August 31, 2021.

## CONCLUSIONS AND RECOMMENDATIONS

204. As set out above, the Monitor is of the view that the savings resulting from the Notices of Disclaimer issued to the Federated Universities are necessary to enable LU to make a viable plan of compromise or arrangement.

205. For the reasons stated herein, the Monitor supports the relief sought by the Applicant including the approval of:

    a. The LUFA Term Sheet and LUSU Term Sheet;

    b. The Huntington Agreement;

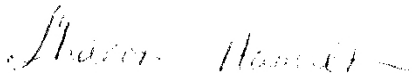
    c. the increase in the maximum permitted loan pursuant to the DIP Agreement and corresponding DIP Lender's Charge; and

    d. the extension of the stay of proceedings to August 31, 2021.

206. Accordingly, the Monitor recommends that the Court grant the relief sought by the Applicant.

All of which is respectfully submitted this 26th day of April, 2021.

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



**Sharon S. Hamilton, CPA, CA, CIRP, LIT**
**Senior Vice President**

# APPENDIX “A”

# PRE – RESTRUCTURING MULTI-YEAR PROJECTIONS

**Laurentian University**
**Pre-Restructuring Multi Year Projections (Fiscal 2022-2026)**
**in $CAD (000's)**

| | Notes | 2021-22 | 2022-23 | 2023-24 | 2024-25 | 2025-26 |
|---|---|---|---|---|---|---|
| ***Operating Surplus / (Deficit)*** | | | | | | |
| Forecast Operating Revenue | 1 | 141,847 | 147,187 | 149,304 | 151,710 | 156,331 |
| Forecast Operating Expenses | 1 | (155,559) | (162,369) | (164,805) | (167,722) | (170,356) |
| Forecast Pre Restructuring Operating Surplus / (Deficit) | 1 | (13,712) | (15,182) | (15,501) | (16,012) | (14,025) |
| | | | | | | |
| Provision for Sustainability Measures | 2 | (7,092) | (7,359) | (7,465) | (7,586) | (7,817) |
| Completion of Deferred Contributions Obligations | 3 | (16,087) | (3,107) | (3,107) | (3,107) | (3,107) |
| Restructuring Costs | | (6,000) | - | - | - | - |
| | | | | | | |
| Forecast Pre Restructuring Adjusted Operating Surplus / (Deficit) | 4 | (42,891) | (25,648) | (26,073) | (26,705) | (24,949) |

**Notes**

1. Represents operating revenues and expenses from teaching and ancillary activities excluding research. Excludes any payment in respect of pre-filing obligations.

2. Represents provisions for necessary go forward expenditures including: (a) costs to invest in new governance, operational controls and processes; (b) investments in initiatives to protect and grow revenues such as development of new programming or courses, recruitment of students etc.; and (c) establishment of reserves to avoid a future liquidity crisis as a result of future unforeseen events. Provision is estimated at 5% of revenues.

3. Represents estimated cost of completing research or other committed projects. These represent post-filing costs to be incurred for which funding was provided in advance prior to the CCAA.

4. This forecast deficit does not include any provision for repayment of the DIP Facility or any distributions on account of pre-filing claims.

# APPENDIX “B”

# POST – RESTRUCTURING MULTI-YEAR PROJECTIONS

**Laurentian University**
**Post-Restructuring Multi Year Projections (Fiscal 2022-2026)**
**in $CAD (000's)**

| | Notes | 2021-22 | 2022-23 | 2023-24 | 2024-25 | 2025-26 |
|---|---|---|---|---|---|---|
| ***Operating Surplus / (Deficit)*** | | | | | | |
| Forecast Pre Restructuring Adjusted Operating Surplus / (Deficit) | 1 | (42,891) | (25,648) | (26,073) | (26,705) | (24,949) |
| Net Estimated Restructuring Savings Achieved to Date | 2 | 30,358 | 33,368 | 33,517 | 33,216 | 33,492 |
| Forecast Post-Savings Operating Surplus / (Deficit) | 3 | (12,533) | 7,719 | 7,444 | 6,512 | 8,543 |
| Forecast Savings from Feds | 4 | 7,163 | 7,213 | 7,160 | 7,212 | 7,288 |
| Anticipated Restructuring Savings after Feds | | (5,370) | 14,932 | 14,604 | 13,724 | 15,831 |
| ***Other Cash Flow Needs*** | | | | | | |
| Repayment of the DIP Facility | 5 | 35,000 - 40,000 | | | | |
| Payments to pre-filing creditors | 6 | TBD | | | | |

**Notes**

1. Forecast deficit as described at Appendix A.

2. Represents forecast net estimated savings from academic restructuring, labour agreements and other miscellaneous items. Excludes any savings arising from the termination of the Federated Universities relationship.

3. Represents forecast operating surplus or deficit from savings achieved to date assuming the termination of the Federated Universities relationship does not occur and transfers of funds to the Federated Universities continue.

4. Represents improvement in operating surplus / (deficit) assuming the Notices of Disclaimer become effective on May 1, 2021 and LU retains revenues historically transferred to Federated Universities.

5. Represents the anticipated principal amount owing on the DIP Facility. The Low end of the range assumes the Court approves the current increase in the maximum permitted DIP Facility to $35 million. The High end of the range assumes an additional $5 million is needed to fund the forecast deficit for FY22. A plan will need to be developed to repay this amount. As there are unlikely to be funds available to repay it in full at one time, this plan assumes the DIP is re-financed and repaid over a longer period of time. For illustration, using the range of $35-$40M in principal, a term of 5-15 years and an interest rate of 6-8%, annual debt servicing (principal and interest) would be in the range of $4 to $10 million.

6. In order to complete a viable Plan of Arrangement, there will need to be some provision for payments to creditors at once or over time. At the current time, the total quantum of claims is unknown. However, at a minimum, this will include: (a) claims of the Lenders in excess of $100 million; (b) significant claims of terminated employees in respect of termination and severance; and (c) claims of other pre-filing creditors.

# APPENDIX "C"

# DISTRIBUTION TO FEDERATED UNIVERSITIES

**Laurentian University**
**Distribution to Federated Universities For Fiscal Year Ended April 30, 2020**
**in $CAD**

| | U of Sudbury | Huntington | Thorneloe | Total |
|---|---|---|---|---|
| Total Grants | 1,849,034 | 1,125,781 | 551,205 | 3,526,020 |
| Net Tuition | 2,417,652 | 1,283,652 | 1,570,964 | 5,272,268 |
| Course Material Fees | 133,848 | 109,181 | 64,922 | 307,951 |
| Administrative Fee | (630,350) | (398,791) | (369,060) | (1,398,200) |
| **Net Distribution to Federated Universities** | **3,770,184** | **2,119,823** | **1,818,031** | **7,708,039** |

# APPENDIX “D”

# SUMMARY OF ACTUAL RECEIPTS AND DISBURSEMENTS

# Laurentian University
## Cash Flow - Actuals
**For the 6 weeks ended April 16, 2021**

LaurentianUniversity UniversitéLaurentienne

| (in 000s CAD$) | Actual 06-Mar-2021 12-Mar-2021 | Actual 13-Mar-2021 19-Mar-2021 | Actual 20-Mar-2021 26-Mar-2021 | Actual 27-Mar-2021 02-Apr-2021 | Actual 03-Apr-2021 09-Apr-2021 | Actual 10-Apr-2021 16-Apr-2021 | Actual 06-Mar-2021 16-Apr-2021 |
|---|---|---|---|---|---|---|---|
| **Receipts** | | | | | | | |
| Operating Grants | $ - | $ 3,470 | $ - | $ 2,934 | $ 181 | $ 4,066 | $ 10,652 |
| Research Grants | 30 | 130 | 364 | 2,668 | 232 | 5 | 3,429 |
| Student Fees | 257 | 263 | 280 | 256 | 296 | 212 | 1,564 |
| Reimbursements | 475 | 620 | 334 | 88 | 462 | 826 | 2,805 |
| Donations | (100) | 1 | 190 | 0 | 0 | 1 | 92 |
| Other Receipts | 37 | 475 | 749 | 703 | 180 | 38 | 2,181 |
| Less Restricted Receipts | (30) | (130) | (555) | (2,668) | (232) | (6) | (3,621) |
| **Total Receipts** | **668** | **4,829** | **1,362** | **3,982** | **1,118** | **5,143** | **17,103** |
| **Operating Disbursements** | | | | | | | |
| Payroll & Benefits | (1,022) | (1,378) | (4,923) | (28) | (3,876) | (944) | (12,173) |
| Pension | - | - | (1,106) | - | - | - | (1,106) |
| Occupancy Costs | (274) | 65 | (199) | (54) | (84) | - | (546) |
| Other Operating Costs | (367) | (93) | (66) | (55) | (947) | (1) | (1,528) |
| Information Technology | (8) | - | (2) | - | (16) | - | (26) |
| Professional Fees | (137) | - | (100) | (101) | (229) | - | (567) |
| Student Refunds | (157) | - | (66) | - | (146) | (11) | (380) |
| Transferred Research Grants | - | - | - | - | - | - | - |
| Transfers to Federated Universities | (415) | - | (94) | (27) | - | - | (536) |
| Transfers to NOSM | - | - | - | - | - | - | - |
| Transfers to the Students' Associations | (1,186) | - | - | - | - | (471) | (1,658) |
| Transfers from / (to) Segregated Accounts | 273 | (36) | (24) | - | (9) | - | 204 |
| **Total Operating Disbursements** | **(3,296)** | **(1,442)** | **(6,579)** | **(265)** | **(5,306)** | **(1,427)** | **(18,315)** |
| **Net Operating Cash Flow** | **(2,628)** | **3,387** | **(5,216)** | **3,717** | **(4,188)** | **3,716** | **(1,212)** |
| **Non operating Receipts/ (Disbursements)** | | | | | | | |
| Capital Project Grants | - | 766 | - | - | - | - | 766 |
| Capital Projects | - | - | - | (8) | - | - | (8) |
| Debt Service | - | - | - | - | - | - | - |
| Restructuring Costs | (1,487) | - | (148) | (964) | (147) | - | (2,747) |
| **Total Non-Operating Disbursements** | **(1,487)** | **766** | **(148)** | **(972)** | **(147)** | **-** | **(1,989)** |
| Total Disbursements | (4,783) | (676) | (6,727) | (1,237) | (5,453) | (1,427) | $ (20,303) |
| **Net Cash Receipts/(Disbursements)** | **$ (4,115)** | **$ 4,153** | **$ (5,365)** | **$ 2,745** | **$ (4,335)** | **$ 3,716** | **$ (3,201)** |
| **Cash Balance** | | | | | | | |
| Beginning cash balance | $ 20,090 | $ 15,976 | $ 20,128 | $ 29,763 | $ 32,415 | $ 28,080 | $ 20,090 |
| Adjustment to Actual, fx adjustment | - | - | - | - | - | - | - |
| Cash Receipts/(Disbursements) | (4,115) | 4,153 | (5,365) | 2,745 | (4,335) | 3,716 | (3,201) |
| DIP Financing Draw/(Interest Payments) | - | - | 15,000 | (93) | - | - | 14,907 |
| **Ending cash balance** | **$ 15,976** | **$ 20,128** | **$ 29,763** | **$ 32,415** | **$ 28,080** | **$ 31,796** | **$ 31,796** |
| **DIP Financing** | | | | | | | |
| Opening Balance | $ 10,000 | $ 10,000 | $ 10,000 | $ 25,000 | $ 25,000 | $ 25,000 | $ 10,000 |
| Draw/(Payback) | - | - | 15,000 | - | - | - | 15,000 |
| Interest and Other Fees | - | - | - | 93 | - | - | 93 |
| Repayment of Interest and Other Fees | - | - | - | (93) | - | - | (93) |
| **Ending Balance** | **$ 10,000** | **$ 10,000** | **$ 25,000** | **$ 25,000** | **$ 25,000** | **$ 25,000** | **$ 25,000** |
| **Available Liquidity** | **$ 30,976** | **$ 35,128** | **$ 29,763** | **$ 32,415** | **$ 28,080** | **$ 31,796** | **$ 31,796** |
| **Endowment Fund** | | | | | | | |
| Beginning balance | $ 55,736 | $ 55,736 | $ 55,736 | $ 55,736 | $ 61,034 | $ 61,034 | $ 55,736 |
| Transfers in/(out) | - | - | - | - | - | - | - |
| Change in Market Value | - | - | - | 5,298 | - | - | 5,298 |
| **Ending Balance** | **$ 55,736** | **$ 55,736** | **$ 55,736** | **$ 61,034** | **$ 61,034** | **$ 61,034** | **$ 61,034** |
| **Segregated Accounts** | | | | | | | |
| Beginning balance | $ 4,281 | $ 4,038 | $ 4,205 | $ 4,783 | $ 7,452 | $ 7,693 | $ 4,281 |
| Restricted Receipts | 30 | 130 | 555 | 2,668 | 232 | 6 | 3,621 |
| Transfers from / (to) Operating Account | (273) | 36 | 24 | - | 9 | - | (204) |
| **Ending Balance** | **$ 4,038** | **$ 4,205** | **$ 4,783** | **$ 7,452** | **$ 7,693** | **$ 7,699** | **$ 7,699** |

# APPENDIX “E”

# CASH FLOW VARIANCE ANALYSIS

# Laurentian University
## Cash Flow - Variance Report
**For the six weeks ended April 16, 2021**

LaurentianUniversity UniversitéLaurentienne

| (in 000s CAD$) | Actual 06-Mar-2021 16-Apr-2021 | Forecast 06-Mar-2021 16-Apr-2021 | Variance 06-Mar-2021 16-Apr-2021 |
|---|---|---|---|
| **Receipts** | | | |
| Operating Grants | $ 10,652 | $ 8,980 | $ 1,672 |
| Research Grants | 3,429 | 2,828 | 601 |
| Student Fees | 1,564 | 699 | 866 |
| Reimbursements | 2,805 | 1,218 | 1,588 |
| Donations | 92 | 51 | 41 |
| Other Receipts | 2,181 | 171 | 2,010 |
| Less Restricted Receipts | (3,621) | (2,879) | (743) |
| **Total Receipts** | **17,103** | **11,068** | **6,035** |
| **Operating Disbursements** | | | |
| Payroll & Benefits | (12,173) | (12,205) | 32 |
| Pension | (1,106) | (2,451) | 1,345 |
| Occupancy Costs | (546) | (3,040) | 2,494 |
| Other Operating Costs | (1,528) | (3,546) | 2,019 |
| Information Technology | (26) | (1,038) | 1,012 |
| Professional Fees | (567) | (1,098) | 531 |
| Student Refunds | (380) | (2,590) | 2,210 |
| Transferred Research Grants | - | (1,188) | 1,188 |
| Transfers to Federated Universities | (536) | (697) | 161 |
| Transfers to NOSM | - | (200) | 200 |
| Transfers to the Students' Associations | (1,658) | (1,671) | 13 |
| Transfers from / (to) Segregated Accounts | 204 | 1,273 | (1,069) |
| **Total Operating Disbursements** | **(18,315)** | **(28,450)** | **10,135** |
| **Net Operating Cash Flow** | **(1,212)** | **(17,382)** | **16,170** |
| **Non operating Receipts/ (Disbursements)** | | | |
| Capital Project Grants | 766 | - | 766 |
| Capital Projects | (8) | (300) | 292 |
| Debt Service | - | - | - |
| Restructuring Costs | (2,747) | (3,537) | 790 |
| **Total Non-Operating Disbursements** | **(1,989)** | **(3,837)** | **1,848** |
| Total Disbursements | (20,303) | (32,287) | 11,984 |
| **Net Cash Receipts/(Disbursements)** | **$ (3,201)** | **$ (21,219)** | **$ 18,018** |
| **Cash Balance** | | | |
| Beginning cash balance | $ 20,090 | $ 20,090 | $ 0 |
| Adjustment to Actual, fx adjustment | - | - | - |
| Cash Receipts/(Disbursements) | (3,201) | (21,219) | 18,018 |
| DIP Financing Draw/(Payback) | 14,907 | 14,905 | 2 |
| **Ending cash balance** | **$ 31,796** | **$ 13,776** | **$ 18,020** |
| **DIP Financing** | | | |
| Opening Balance | $ 10,000 | $ 10,000 | $ - |
| Draw/(Payback) | 15,000 | 15,000 | - |
| Interest and Other Fees | 93 | 95 | (2) |
| Repayment of Interest and Other Fees | (93) | (95) | 2 |
| **Ending Balance** | $ 25,000 | $ 25,000 | $ - |
| **Available Liquidity** | **$ 31,796** | **$ 13,776** | **$ 18,020** |
| **Endowment Fund** | | | |
| Beginning balance | $ 55,736 | $ 55,736 | $ - |
| Transfers in/(out) | - | - | - |
| Change in Market Value | 5,298 | - | 5,298 |
| **Ending Balance** | **$ 61,034** | **$ 55,736** | **$ 5,298** |
| **Segregated Accounts** | | | |
| Beginning balance | $ 4,281 | $ 4,281 | $ 0 |
| Restricted Receipts | 3,621 | 2,879 | 743 |
| Transfers from / (to) Operating Account | (204) | (1,273) | 1,069 |
| **Ending Balance** | **$ 7,699** | **$ 5,887** | **$ 1,811** |

**Variance Analysis**

The following paragraphs set out LU's explanations for the more significant variances between LU's actual cash flows and those included in the cash flow forecast in the Second Report for the period March 6, 2021 to April 16, 2021:

1. Collections related to Operating Grants were higher than forecast by approximately $1.7 million. This variance is primarily due to the following:

    a. Approximately $0.1 million net negative permanent difference due to operating grants forecast but not received; and

    b. Approximately $1.8 million positive timing difference in operating grants received earlier than forecast.

2. Collections related to Research Grants were higher than forecast by approximately $0.6 million primarily due to timing differences in the receipt of restricted research grants;

3. Collections related to Student Fees were higher than forecast by approximately $0.9 million primarily due to timing differences in the receipts from students;

4. Collections related to Reimbursements were higher than forecast by approximately $1.6 million primarily due to timing differences in the receipt of reimbursable expenses earlier than forecast;

5. Collections related to Other Receipts were higher than forecast by approximately $2.0 million. This variance is primarily due to the following:

    a. Approximately $1.3 million positive permanent difference primarily due to greater collection of other receivables than forecast; and

    b. Approximately $0.7 million positive timing difference in other receipts being received earlier than forecast.

6. Collections related to Restricted Receipts were higher than forecast by approximately $0.7 million due to timing differences in receipt of restricted research grants and donations;

7. Disbursements related to Pension were lower than forecast by approximately $1.3 million. This variance is primarily due to the following:

    a. Approximately $0.3 million positive permanent difference due to lower pension contributions than forecast; and

    b. Approximately $1.0 million positive timing difference due to the timing of pension contribution remittances.

8. Disbursements related to Occupancy Costs were lower than forecast by approximately $2.5 million primarily due to the timing of payments to suppliers and timing of maintenance spending;

9. Disbursements related to Other Operating Costs were lower than forecast by approximately $2.0 million primarily due to the timing of payments to suppliers;

10. Disbursements related to Information Technology were lower than forecast by approximately $1.0 million primarily due to the timing of payments to suppliers and timing of IT equipment and software license purchases;

11. Disbursements related to Professional Fees were lower than forecast by approximately $0.5 million primarily due to the timing of payments to suppliers;

12. Disbursements related to Student Refunds were lower than forecast by approximately $2.2 million primarily due to the timing of student refund applications;

13. Disbursements related to Transferred Research Grants were lower than forecast by approximately $1.2 million primarily due to the timing of research grant transfers to research partners;

14. Disbursements related to Transfers to Federated Universities were lower than forecast by approximately $0.2 million. This variance is primarily due to the following:

    a. Approximately $0.1 million positive permanent difference due to expense chargebacks which partially offset forecast disbursements; and

    b. Approximately $0.1 million positive timing difference of payments to the Federated Universities.

15. Disbursements related to Transfers to NOSM were lower than forecast by approximately $0.2 million primarily due to expense chargebacks which partially offset forecast disbursements.

16. Transfers from Segregated Accounts were lower than forecast by approximately $1.1 million primarily due to the timing differences related to Transferred Research Grants;

17. Collections related to Capital Project Grants were higher than forecast by approximately $0.8 million due to the collection of a capital grant receivable which had not been forecast;

18. Disbursements related to Capital Projects were lower than forecast by approximately $0.3 million primarily due to the timing of scheduled work and payments to suppliers; and

19. Disbursements related to Restructuring Costs were lower than forecast by approximately $0.8 million primarily due to the timing of payments to Assistants.

# APPENDIX “F”

# REVISED CASH FLOW FORECAST

**Laurentian University**
**Cash Flow Forecast**

LaurentianUniversity
UniversitéLaurentienne

| (In 000s CAD$) | Week | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 17-Apr-2021 | 24-Apr-2021 | 01-May-2021 | 08-May-2021 | 15-May-2021 | 22-May-2021 | 29-May-2021 | 05-Jun-2021 | 12-Jun-2021 | 19-Jun-2021 | 26-Jun-2021 | 03-Jul-2021 | 10-Jul-2021 | 17-Jul-2021 |
| | Notes | 23-Apr-2021 | 30-Apr-2021 | 07-May-2021 | 14-May-2021 | 21-May-2021 | 28-May-2021 | 04-Jun-2021 | 11-Jun-2021 | 18-Jun-2021 | 25-Jun-2021 | 02-Jul-2021 | 09-Jul-2021 | 16-Jul-2021 | 23-Jul-2021 |
| **Receipts** | | | | | | | | | | | | | | | |
| Operating Grants | 1 | $ - | $ 3,426 | $ - | $ - | $ 2,876 | $ 500 | $ 4,354 | $ - | $ 2,876 | $ - | $ 2,876 | $ - | $ 2,876 | $ - |
| Research Grants | 2 | 180 | 254 | - | - | - | - | 119 | 119 | 119 | 1,688 | 80 | 80 | 80 | 80 |
| Student Fees | 3 | 84 | 84 | 1,392 | 1,392 | 1,392 | 1,392 | 542 | 542 | 542 | 542 | 242 | 242 | 242 | 242 |
| Reimbursements | 4 | - | - | - | - | - | 1,011 | 538 | - | - | 110 | 1,058 | - | - | 98 |
| Donations | 5 | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Other Receipts | 6 | - | - | 5 | 905 | 5 | 5 | 230 | 5 | 5 | 5 | 230 | 5 | 5 | 5 |
| Less Restricted Receipts | 21 | (180) | (1,242) | - | - | - | - | (119) | (119) | (119) | (1,688) | (80) | (80) | (80) | (80) |
| **Total Receipts** | | **84** | **2,523** | **1,397** | **2,297** | **4,273** | **2,908** | **5,663** | **547** | **3,422** | **657** | **4,405** | **247** | **3,123** | **345** |
| **Operating Disbursements** | | | | | | | | | | | | | | | |
| Payroll & Benefits | 7 | (5,624) | (661) | (4,425) | (1,213) | (1,236) | (4,250) | (3,347) | (395) | (1,863) | (3,366) | (2,596) | (367) | (1,564) | (367) |
| Pension | 8 | (1,063) | - | - | - | (1,063) | - | - | - | - | (1,065) | - | - | - | (970) |
| Occupancy Costs | 9 | (230) | (671) | (671) | (671) | (671) | (671) | (671) | (230) | (230) | (230) | (250) | (250) | (250) | (250) |
| Other Operating Costs | 10 | (518) | (595) | (595) | (595) | (595) | (595) | (595) | (518) | (518) | (518) | (274) | (274) | (274) | (274) |
| Information Technology | 11 | (80) | (351) | (351) | (351) | (351) | (351) | (351) | (260) | (80) | (80) | (80) | (80) | (80) | (80) |
| Professional Fees | 12 | (58) | (146) | (146) | (146) | (146) | (146) | (146) | (58) | (58) | (58) | (46) | (46) | (46) | (46) |
| Student Refunds | 13 | (124) | (497) | (497) | (497) | (497) | (497) | (497) | (124) | (124) | (124) | (71) | (71) | (71) | (71) |
| Transferred Research Grants | 14 | - | (1,188) | - | - | - | - | - | - | - | (1,188) | - | - | - | - |
| Transfers to Federated Universities | 15 | (87) | (443) | - | - | - | - | - | - | - | - | - | (53) | - | - |
| Transfers to NOSM | 16 | (3) | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Transfers to the Students' Associations | 17 | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Transfers from / (to) Segregated Accounts | 23 | - | 1,188 | 219 | 16 | 16 | 416 | 16 | 16 | 16 | 1,188 | 506 | 106 | 106 | 106 |
| **Total Operating Disbursements** | | **(7,787)** | **(3,365)** | **(6,467)** | **(3,457)** | **(4,544)** | **(6,094)** | **(5,592)** | **(1,569)** | **(2,857)** | **(5,440)** | **(2,811)** | **(1,034)** | **(2,179)** | **(1,952)** |
| **Net Operating Cash Flow** | | **(7,703)** | **(842)** | **(5,069)** | **(1,160)** | **(271)** | **(3,186)** | **72** | **(1,022)** | **565** | **(4,783)** | **1,595** | **(787)** | **943** | **(1,607)** |
| **Non operating Receipts/ (Disbursements)** | | | | | | | | | | | | | | | |
| Capital Project Grants | 18 | - | 988 | - | - | - | - | - | - | - | - | - | - | - | - |
| Capital Projects | 18 | (192) | (100) | (16) | (16) | (16) | (16) | (16) | (16) | (16) | (16) | (106) | (106) | (106) | (106) |
| Debt Service | 19 | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Restructuring Costs | 22 | (1,044) | (1,044) | (450) | (375) | (375) | (375) | (375) | (375) | (375) | (375) | (375) | (375) | (375) | (375) |
| **Total Non-Operating Disbursements** | | **(1,236)** | **(157)** | **(466)** | **(391)** | **(391)** | **(391)** | **(391)** | **(391)** | **(391)** | **(391)** | **(481)** | **(481)** | **(481)** | **(481)** |
| Total Disbursements | | (9,024) | (3,521) | (6,932) | (3,848) | (4,934) | (6,485) | (5,982) | (1,960) | (3,248) | (5,831) | (3,292) | (1,515) | (2,660) | (2,433) |
| **Net Cash Receipts/(Disbursements)** | | **$ (8,939)** | **$ (999)** | **$ (5,535)** | **$ (1,551)** | **$ (662)** | **$ (3,577)** | **$ (319)** | **$ (1,413)** | **$ 175** | **$ (5,174)** | **$ 1,114** | **$ (1,268)** | **$ 462** | **$ (2,088)** |
| **Cash Balance** | | | | | | | | | | | | | | | |
| Beginning cash balance | | $ 31,796 | $ 22,857 | $ 21,658 | $ 15,948 | $ 14,397 | $ 13,735 | $ 10,158 | $ 9,664 | $ 8,252 | $ 14,427 | $ 9,253 | $ 10,176 | $ 8,907 | $ 13,369 |
| Adjustment to Actual, fx adjustment | | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Cash Receipts/(Disbursements) | | (8,939) | (999) | (5,535) | (1,551) | (662) | (3,577) | (319) | (1,413) | 175 | (5,174) | 1,114 | (1,268) | 462 | (2,088) |
| DIP Financing Draw/(Interest Payments) | | - | (200) | (175) | - | - | - | (175) | - | 6,000 | - | (191) | - | 4,000 | - |
| **Ending cash balance** | | **$ 22,857** | **$ 21,658** | **$ 15,948** | **$ 14,397** | **$ 13,735** | **$ 10,158** | **$ 9,664** | **$ 8,252** | **$ 14,427** | **$ 9,253** | **$ 10,176** | **$ 8,907** | **$ 13,369** | **$ 11,282** |
| **DIP Financing** | 23 | | | | | | | | | | | | | | |
| Opening Balance | | $ 25,000 | $ 25,000 | $ 25,000 | $ 25,000 | $ 25,000 | $ 25,000 | $ 25,000 | $ 25,000 | $ 25,000 | $ 31,000 | $ 31,000 | $ 31,000 | $ 31,000 | $ 35,000 |
| Draw/(Payback) | | - | - | - | - | - | - | - | - | 6,000 | - | - | - | 4,000 | - |
| Interest and Other Fees | | - | 200 | 175 | - | - | - | 175 | - | - | - | 191 | - | - | - |
| Repayment of Interest and Other Fees | | - | (200) | (175) | - | - | - | (175) | - | - | - | (191) | - | - | - |
| **Ending Balance** | | **$ 25,000** | **$ 25,000** | **$ 25,000** | **$ 25,000** | **$ 25,000** | **$ 25,000** | **$ 25,000** | **$ 25,000** | **$ 31,000** | **$ 31,000** | **$ 31,000** | **$ 31,000** | **$ 35,000** | **$ 35,000** |
| **Available Liquidity** | | **$ 32,857** | **$ 31,658** | **$ 25,948** | **$ 24,397** | **$ 23,735** | **$ 20,158** | **$ 19,664** | **$ 18,252** | **$ 18,427** | **$ 13,253** | **$ 14,176** | **$ 12,907** | **$ 13,369** | **$ 11,282** |
| **Endowment Fund** | 20 | | | | | | | | | | | | | | |
| Beginning balance | | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 |
| Transfers in/(out) | | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Change in Market Value | | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| **Ending Balance** | | **$ 61,034** | **$ 61,034** | **$ 61,034** | **$ 61,034** | **$ 61,034** | **$ 61,034** | **$ 61,034** | **$ 61,034** | **$ 61,034** | **$ 61,034** | **$ 61,034** | **$ 61,034** | **$ 61,034** | **$ 61,034** |
| **Segregated Accounts** | | | | | | | | | | | | | | | |
| Beginning balance | | $ 7,699 | $ 7,879 | $ 7,932 | $ 7,713 | $ 7,697 | $ 7,682 | $ 7,266 | $ 7,369 | $ 7,472 | $ 7,574 | $ 8,075 | $ 7,649 | $ 7,623 | $ 7,596 |
| Restricted Receipts | 21 | 180 | 1,242 | - | - | - | - | 119 | 119 | 119 | 1,688 | 80 | 80 | 80 | 80 |
| Transfers from / (to) Operating Account | | - | (1,188) | (219) | (16) | (16) | (416) | (16) | (16) | (16) | (1,188) | (506) | (106) | (106) | (106) |
| **Ending Balance** | | **$ 7,879** | **$ 7,932** | **$ 7,713** | **$ 7,697** | **$ 7,682** | **$ 7,266** | **$ 7,369** | **$ 7,472** | **$ 7,574** | **$ 8,075** | **$ 7,649** | **$ 7,623** | **$ 7,596** | **$ 7,570** |

## Laurentian University
## Cash Flow Forecast

| (In 000s CAD$) | Week: | 15 | 16 | 17 | 18 | 19 | 20 | Forecast |
|---|---|---|---|---|---|---|---|---|
| | | 24-Jul-2021 | 31-Jul-2021 | 07-Aug-2021 | 14-Aug-2021 | 21-Aug-2021 | 28-Aug-2021 | 10-Apr-2021 |
| | Notes | 30-Jul-2021 | 06-Aug-2021 | 13-Aug-2021 | 20-Aug-2021 | 27-Aug-2021 | 03-Sep-2021 | 03-Sep-2021 |
| **Receipts** | | | | | | | | |
| Operating Grants | 1 | $ 2,876 | $ - | $ - | $ 2,876 | $ - | $ 2,891 | $ 28,424 |
| Research Grants | 2 | 80 | 20 | 20 | 20 | 20 | 20 | 2,978 |
| Student Fees | 3 | 242 | 1,000 | 1,000 | 2,763 | 3,184 | 3,632 | 20,694 |
| Reimbursements | 4 | 1,306 | - | - | - | 1,297 | 592 | 6,010 |
| Donations | 5 | - | - | - | - | - | - | - |
| Other Receipts | 6 | 230 | 5 | 5 | 5 | 5 | 230 | 1,890 |
| Less Restricted Receipts | 21 | (80) | (20) | (20) | (20) | (20) | (20) | (3,965) |
| **Total Receipts** | | 4,653 | 1,005 | 1,005 | 5,644 | 4,487 | 7,345 | 56,031 |
| **Operating Disbursements** | | | | | | | | |
| Payroll & Benefits | 7 | (4,288) | (1,909) | (1,140) | (993) | (3,905) | (1,808) | (45,317) |
| Pension | 8 | - | - | - | (994) | - | - | (5,156) |
| Occupancy Costs | 9 | (250) | (235) | (235) | (235) | (235) | (235) | (7,375) |
| Other Operating Costs | 10 | (274) | (343) | (343) | (343) | (343) | (343) | (8,721) |
| Information Technology | 11 | (80) | (75) | (75) | (75) | (75) | (75) | (3,383) |
| Professional Fees | 12 | (46) | (58) | (58) | (58) | (58) | (58) | (1,624) |
| Student Refunds | 13 | (71) | (40) | (40) | (40) | (40) | (40) | (4,035) |
| Transferred Research Grants | 14 | - | - | - | - | - | - | (2,376) |
| Transfers to Federated Universities | 15 | - | - | - | - | - | - | (583) |
| Transfers to NOSM | 16 | - | - | - | - | - | - | (3) |
| Transfers to the Students' Associations | 17 | - | - | - | - | - | - | - |
| Transfers from / (to) Segregated Accounts | 23 | 506 | 85 | 85 | 85 | 485 | 8 | 5,167 |
| **Total Operating Disbursements** | | (4,503) | (2,575) | (1,806) | (2,653) | (4,171) | (2,551) | (73,406) |
| **Net Operating Cash Flow** | | 150 | (1,570) | (801) | 2,991 | 316 | 4,795 | (17,376) |
| **Non operating Receipts/ (Disbursements)** | | | | | | | | |
| Capital Project Grants | 18 | - | - | - | - | - | - | 988 |
| Capital Projects | 18 | (106) | (85) | (85) | (85) | (85) | (85) | (1,372) |
| Debt Service | 19 | - | - | - | - | - | - | - |
| Restructuring Costs | 22 | (375) | (375) | (375) | (375) | (375) | (375) | (8,914) |
| **Total Non-Operating Disbursements** | | (481) | (460) | (460) | (460) | (460) | (460) | (9,298) |
| Total Disbursements | | (4,984) | (3,035) | (2,266) | (3,113) | (4,631) | (3,010) | (82,704) |
| **Net Cash Receipts/(Disbursements)** | | $ (331) | $ (2,030) | $ (1,261) | $ 2,531 | $ (144) | $ 4,335 | $ (26,674) |
| **Cash Balance** | | | | | | | | |
| Beginning cash balance | | $ 11,282 | $ 10,950 | $ 8,683 | $ 7,422 | $ 9,953 | $ 9,809 | $ 31,796 |
| Adjustment to Actual, fx adjustment | | - | - | - | - | - | - | - |
| Cash Receipts/(Disbursements) | | (331) | (2,030) | (1,261) | 2,531 | (144) | 4,335 | (26,674) |
| DIP Financing Draw/(Interest Payments) | | - | (238) | - | - | - | (224) | 8,797 |
| **Ending cash balance** | | $ 10,950 | $ 8,683 | $ 7,422 | $ 9,953 | $ 9,809 | $ 13,919 | $ 13,919 |
| **DIP Financing** | 23 | | | | | | | |
| Opening Balance | | $ 35,000 | $ 35,000 | $ 35,000 | $ 35,000 | $ 35,000 | $ 35,000 | $ 25,000 |
| Draw/(Payback) | | - | - | - | - | - | - | 10,000 |
| Interest and Other Fees | | - | 238 | - | - | - | 224 | 1,203 |
| Repayment of Interest and Other Fees | | - | (238) | - | - | - | (224) | (1,203) |
| **Ending Balance** | | $ 35,000 | $ 35,000 | $ 35,000 | $ 35,000 | $ 35,000 | $ 35,000 | $ 35,000 |
| **Available Liquidity** | | $ 10,950 | $ 8,683 | $ 7,422 | $ 9,953 | $ 9,809 | $ 13,919 | $ 13,919 |
| **Endowment Fund** | 20 | | | | | | | |
| Beginning balance | | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 |
| Transfers in/(out) | | - | - | - | - | - | - | - |
| Change in Market Value | | - | - | - | - | - | - | - |
| **Ending Balance** | | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 | $ 61,034 |
| **Segregated Accounts** | | | | | | | | |
| Beginning balance | | $ 7,570 | $ 7,144 | $ 7,080 | $ 7,015 | $ 6,950 | $ 6,485 | $ 7,699 |
| Restricted Receipts | 21 | 80 | 20 | 20 | 20 | 20 | 20 | 3,965 |
| Transfers from / (to) Operating Account | | (506) | (85) | (85) | (85) | (485) | (8) | (5,167) |
| **Ending Balance** | | $ 7,144 | $ 7,080 | $ 7,015 | $ 6,950 | $ 6,485 | $ 6,497 | $ 6,497 |

**In the Matter of the CCAA of Laurentian University of Sudbury**

**Notes to the Unaudited Cash Flow Forecast of the Applicant**

This Cash Flow Forecast has been prepared by the Applicant, with the assistance of the Monitor, for the purpose of the CCAA proceedings, using the following probable and hypothetical assumptions. The defined terms used in this Cash Flow Forecast are defined in the Monitor's Pre-filing Report.

The following provides a description of revenue and expense items and assumptions used in preparing the forecast:

**General assumptions**

- Receipts and disbursements denominated in US currency have been converted into Canadian dollars using an exchange rate of CDN$1.30 = US$1.00.
- Cash Flow Forecast includes estimates and assumptions concerning the impact of COVID-19 on the Applicant's operations.
- Cash Flow Forecast assumes the necessary availability of financing under the DIP Agreement dated February 10, 2021 and the proposed DIP facility extension.
- Unless otherwise indicated pre-filing amounts owing to third party suppliers and service providers are stayed. Post-filing goods and services from suppliers and service providers will be settled in the normal course.

**Receipts**

**1. Operating Grants:**

- Operating grants are primarily forecast based on the grant funding framework determined by the Province of Ontario and are expected to continue to be funded on a semi-monthly basis.

**2. Research Grants:**

- Research grants are based on revenue forecast by the Applicant's Research group and past funding experience.

**3. Student Fees:**

- Tuition, ancillary fees, and other student fees are billed to students upon registration for each academic semester and are collected on a seasonal basis. Student Fees are projected based on forecast student billings and collection experience.

**4. Reimbursements:**

- Receipts for the reimbursement of costs funded by the Applicant on behalf of certain associated organizations, including, but not limited to SNOLab, CEMI, and MIRARCO, have been forecast based upon the anticipated timing of incurring the costs and the subsequent billing and collection experience of the re-imbursement.

**5. Donations:**

- Donation receipts for operations, restricted use, research projects and capital projects are forecast based on historical experience. Endowment fund contributions are accounted for separately in the Cash Flow Forecast.

**6. Other Receipts:**

- Miscellaneous receipts are forecast based on expected revenues and collection experience, including amounts related to ancillary services, including, parking, copier & printer, campus services, Ontario Universities' Application Centre fees, HST refunds and other miscellaneous receipts.

**Disbursements**

**7. Payroll & Benefits:**

- All outstanding and future wages, salaries, employee and retiree benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), ordinary course pension benefits or contributions, vacation pay, expenses and any director fees and expenses, payable on or after the date of this Order, in each case for costs incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements for current and future employees (but not including any payments to former employees or retirees in respect of the SuRP, the RHBP or termination or severance payments, which are hereby stayed), and all other payroll processing and servicing expenses will be paid in the ordinary course.
- All statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province or other taxing authority that are required to be deducted from employee wages including, in respect of employee insurance, Canada Pension Plan, Quebec Pension Plan and income taxes will be remitted

**8. Pension:**

- DB Pension Plan in respect of required employee contributions, including pre-filing amounts, and the employer current service payments made in ordinary course.
- Payments to former employees or retirees in respect of the SuRP are stayed.
- LU's portion of Special Payments (as defined in the Amended and Restated Initial Order dated February 11, 2021) with respect to the DB Pension Plan are suspended.
- Payments related to amounts owing to Pension Benefit Guarantee Fund are stayed.

**9. Occupancy Costs:**

- Costs of operating and maintaining the Applicant’s facilities and rental properties are forecast based on historical run rates.

**10. Other Operating Costs:**

- Other Operating Costs including equipment purchases, library subscription fees, travel costs, food service costs, and other operating costs are forecast based on historical run rates.

**11. Information Technology:**

- Information Technology costs including licensing fees and purchasing of new hardware are forecast based on historical run rates.

**12. Professional Fees:**

- Professional Fees include fees related to auditors, actuaries and other professionals assisting with research or other university operating projects, as well as the cost of Assistants up to the CCAA Filing Date, are forecast based on historical run rates.

**13. Student Refunds:**

- Amounts owing to students for the current 2020-21 academic year and future amounts owing in respect of rebates, refunds or other similar amounts will be paid in the ordinary course.
- Amounts owing in respect of the current 2020-21 academic year and future amounts payable to students in respect of student scholarship, bursary or grants will be paid in the ordinary course.

**14. Transferred Research Grants:**

- Research grants transferred to other researchers or research partners are forecast based on the forecast availability of segregated research grants.

**15. Transfers to Federated Universities:**

- Transfers to Federated Universities are forecast based on LU's post-filing obligations with respect to its Federated Funding Formula to the Federated Universities.
- The disclaimer of each of the Federation Agreements and Financial Distribution Notices is forecast to become effective May 1, 2021.

**16. Transfers to NOSM:**

- Transfers to NOSM for Student Fees collected on behalf of NOSM are forecast based on post-filing collection of NOSM Student Fees.
- Student fees collected pre-filing are stayed.

**17. Transfers to Students' Associations:**

- Transfers of Student Fees collected on behalf of its Students' Associations are forecast based on the forecast billing and collection of Student Fees.

**18. Capital projects:**

- Due to cash conservation measures taken by LU, most capital projects have been deferred but expenditures may be necessary on a critical basis for maintenance and repairs.

**19. Debt Service:**

- Debt service costs including, interest and principal repayments, are stayed as of the CCAA Filing Date.

**20. Endowment Fund:**

- Endowment Funds include funds for LU scholarships or other purposes as well as for NOSM scholarships.

- The funds are invested in an investment account however, no change in market value has been forecasted.

**21. Restricted Receipts:**

- Restricted receipts include restricted donations and research grants, which are held in segregated accounts and are only available for their restricted use.

**22. Restructuring costs:**

- Restructuring Costs have been forecast based on anticipated run rates. All outstanding fees and disbursements of Assistants retained or employed by the Applicant will be paid.

**23. DIP Financing:**

- The proposed facility is assumed to be advanced in two tranches pursuant to the proposed DIP facility extension.

**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

Court of Appeal File No. M52471
Superior Court File No.: CV-21-656040-00CL

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

# MOTION RECORD
# (VOLUME 1 OF 2)
# ( Motion by Thorneloe University for Leave to Appeal)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