

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**

**MOTION RECORD
(Returnable August 27, 2021)**

August 20, 2021

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MOTION RECORD

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TAB 1

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

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**NOTICE OF MOTION
(Stay Extension and Approval of Second DIP Amendment)**

Laurentian University of Sudbury (the “**Applicant**” or “**LU**”) will make a motion to Chief Justice Morawetz of the Ontario Superior Court of Justice on Friday, August 27, 2021, at 9:00 A.M. (Eastern Time), or as soon after that time as the motion can be heard, via Zoom videoconference due to the COVID-19 pandemic.

PROPOSED METHOD OF HEARING:

This motion is to be heard via Zoom videoconference, the details of which are attached at Schedule “A”.

THIS MOTION IS FOR:

1. An Order (the “**Order**”) substantially in the form attached at Tab 3 of the Motion Record of the Applicant dated August 20, 2021 that, among other things¹:
 - (a) extends the Stay Period to and including January 31, 2022;

¹ All capitalized terms not otherwise defined in this Notice of Motion are as defined in the Affidavit of Dr. Robert Haché sworn August 20, 2021 contained at Tab 2 of the Motion Record dated August 20, 2021 (the “**Haché Affidavit**”).

- (b) approves an amendment (the “**Second DIP Amendment**”) to the Applicant’s DIP Facility (as defined below) that extends the Maturity Date (as defined therein) to January 31, 2022 in accordance with the terms of the Second DIP Amendment annexed as Exhibit “E” to the Haché Affidavit.
2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

Overview

3. On February 1, 2021, the Applicant sought and received an initial order (the “**Initial Order**”) granting it protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and approving a stay of proceedings for the initial 10-day period (the “**Stay Period**”) and certain Court ordered super-priority charges.
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 amount of \$25 million (the “**DIP Facility**”) and extended the Stay Period to April 30, 2021.
5. On May 2, 2021, the Court issued an order (the “**Stay Extension Order**”) extending the Stay Period to August 31, 2021. The Stay Extension Order also approved an amendment (the “**First DIP Amendment**”) to the Applicant’s DIP Facility that, among other things, increased the principal amount available under the DIP Facility by an additional \$10 million and extended the maturity date of the DIP Facility to August 31, 2021.

6. LU now seeks an extension of the Stay Period until and including January 31, 2022.
7. Since the issuance of the Initial Order and the Amended and Restated Initial Order, LU has undertaken significant aspects of its overall restructuring that were necessary for the reasons set out in the materials filed in support of the Initial Order. In particular, LU has undertaken a full academic restructuring, made changes to its faculties and departments to improve efficiencies, reached significant agreements with its two main labour partners LUFA and LUSU and effected a termination of its federated university agreements.
8. Achieving these outcomes within the CCAA proceeding to date has resulted in cost savings for LU of approximately \$40 million/year, representing a reduction of 25% to its annual expenses.

Extension of DIP Maturity Date

9. The Applicant seeks approval of the Second DIP Amendment that extends the Maturity Date of the DIP Facility until January 31, 2022.
10. The Applicant requires the extension of the Maturity Date to provide the time necessary to develop a Plan of Arrangement or Compromise with its creditors, which is a necessary step in order to ultimately exit the CCAA proceedings. Prior to the expiry of the Maturity Date set out in the Second DIP Amendment, the Applicant expects to be in a position to have identified the necessary exit financing in order to re-finance and fully repay the DIP Facility upon implementation of a Plan.
11. In the coming months, the Applicant intends to develop a process to solicit competitive bids for re-financing the DIP Facility and providing exit financing.

12. The Monitor supports the approval of the Second DIP Amendment.

Extension of the Stay of Proceedings

13. The Applicant seeks an extension of the Stay Period up to and including January 31, 2022.
14. The stay extension is required to enable the Applicant to continue operating in the ordinary course while engaging in discussions in order to develop a Plan of Arrangement that is acceptable to its creditors, as well as completing the process of the real estate and governance/operational reviews being conducted to promote efficiencies and accountability.
15. The Revised Cash Flow Forecast prepared by the Applicant with the assistance of the Monitor demonstrates that the Applicant will have sufficient liquidity to operate its business and meet its obligations during the proposed Stay Period.
16. The Applicant has acted, and continues to act, in good faith and with due diligence during the course of this CCAA proceeding.
17. The Monitor supports the proposed stay extension and the relief sought on this motion.

Other Grounds

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

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

1. The Haché Affidavit and the Exhibits attached thereto;
2. The Seventh Report of the Monitor, to be filed; and
3. Such further and other evidence as counsel may advise and this Court may permit.

August 20, 2021

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Schedule “A”
Conference Details to Join Motion via Zoom

Join Zoom Meeting

<https://ca01web.zoom.us/j/67844918360?pwd=aVlZVkF4eGtmMFhpZ2ZvV2JnV2hHdz09>

Meeting ID: 678 4491 8360

Passcode: 263281

One tap mobile

+16475580588,,67844918360#,,, *263281# Canada

+17789072071,,67844918360#,,, *263281# Canada

Dial by your location

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 613 209 3054 Canada

+1 647 374 4685 Canada

855 703 8985 Canada Toll-free

Meeting ID: 678 4491 8360

Passcode: 263281

Find your local number: <https://ca01web.zoom.us/u/gcsInisH0N>

Join by SIP

67844918360@zmca.us

Join by H.323

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

Meeting ID: 678 4491 8360

Passcode: 263281

Schedule “B”**SERVICE LIST**

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

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

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

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

Proceedings commenced at Toronto

**NOTICE OF MOTION
(Stay Extension and Approval of Second DIP
Amendment)**

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TAB 2

**ONTARIO
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(COMMERCIAL LIST)**

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

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

Applicant

AFFIDAVIT OF DR. ROBERT HACHÉ
(sworn August 20, 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 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 August 31, 2021 until January 31, 2022; and
 - (b) approves an amendment to the DIP Loan Agreement (as defined below) between LU, as borrower, and Firm Capital Corporation, as lender, to extend the maturity date under the DIP Loan Agreement (the “**Maturity Date**”) to January 31, 2022.
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. LU had 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. At this time, although it is still too early to determine what the final overall full-time equivalent enrollment numbers will be during the 2021-22 academic year, the headcount number of students registered in courses is roughly consistent with what LU would expect relative to past years, taking into consideration LU’s projected one-time decrease in enrolment for this year.
9. Information is firming up as it relates to new incoming students. Based on information available to LU at this time, the decline in **new** student enrolment numbers appears to be relatively consistent with what had been anticipated by LU when preparing its financial forecasts that were attached as Appendices “B” and “F” to the Monitor’s Third Report to

the Court dated April 26, 2021 (approximately a 30% decline in new student enrolment). This projected decline in new student enrolment took into account a variety of factors, including the impact of the CCAA, the COVID-19 pandemic and declining demographic trends in northern Ontario. For example, as described in the Initial Haché Affidavit, LU's domestic undergraduate direct entry high school enrolment, which represents Ontario high school students who attend LU immediately after high school, has declined 22% since 2011.

10. Based on a historical comparison of the percentage of returning students registered in courses to the percentage of returning students registered in courses for the Fall 2021 semester, it appears that registration levels for returning students is trending as forecast by LU. However, since there is no process or requirement for a **returning** student to inform LU whether they intend to return to LU, the university must wait until Fall registration numbers are finalized to determine actual enrolment.
11. Fall enrolment numbers will become more stable after the add/drop date for registration in courses passes on September 17, 2021, and will not be finalized or officially submitted to the Ministry of Colleges and Universities (“**MCU**”) for reporting purposes until closer to December. As registration is fluid throughout the Fall term, more certain figures will become available in the future and LU will provide updates to stakeholders and the Court.
12. 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.

13. On February 1, 2021, Chief Justice Morawetz granted an initial order (the “**Initial Order**”) that, among other things, appointed Ernst & Young Inc. as monitor (the “**Monitor**”) of LU in this proceeding, approved a stay of proceedings for the initial 10-day period (the “**Stay Period**”) and granted certain Court ordered super-priority charges.
14. On February 5, 2021, Chief Justice Morawetz appointed the Honourable Justice Sean F. Dunphy as the Court-Appointed Mediator in this proceeding (the “**Mediator Appointment Order**”). The Mediator Appointment Order contained a Mediation Confidentiality Protocol to ensure that all aspects of the mediation would remain confidential and the participants could discuss and negotiate all issues openly. Attached hereto as **Exhibit “A”** is a copy of the Mediator Appointment Order and the related Endorsement issued by Chief Justice Morawetz.
15. On February 10, 2021, the comeback hearing was held, which resulted in the issuance of an amended and restated initial order (the “**Amended and Restated Initial Order**”) that, among other things, approved a debtor-in-possession interim financing arrangement in the amount of \$25 million (the “**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.
16. In granting the Initial Order, the Amended and Restated Initial Order and the Orders following the Stay Extension and Approval Motion (as defined below), Chief Justice Morawetz made certain findings including:
 - (i) that LU was experiencing a severe liquidity crisis, was insolvent and also is an entity that is legally entitled to apply for CCAA protection;

- (ii) LU has experienced recurring operational deficits in the millions of dollars each year for a significant period of time;
 - (iii) LU required a stay of proceedings to provide it with the breathing room necessary to financially and operationally restructure itself so it may emerge as a going-concern entity; and
 - (iv) LU has achieved significant progress in its restructuring efforts under very difficult circumstances by drastically reducing its annual expenses.
- 17. Since the commencement of the CCAA filing on February 1, 2021 and the issuance of the Initial Order and the Amended and Restated Initial Order on February 11, 2021, LU has undertaken significant aspects of its overall restructuring that were necessary for the reasons set out in the materials filed in support of the Initial Order. In particular, LU has undertaken a full academic restructuring through the Senate Mediation Committee appointed by Senate, made changes to its faculties and departments to improve efficiencies and reached significant agreements with its two main labour partners LUFA and LUSU. In addition, it terminated its relationship with the three former Federated Universities. As described in more detail below, achieving these outcomes within the CCAA proceeding to date has resulted in cost savings for LU of approximately \$40 million/year, representing a reduction of 25% to its annual expenses.
- 18. While making the necessary changes to achieve these substantial cost savings, LU continued its operations in the ordinary course to ensure that all students were able to complete their Winter term uninterrupted, Spring term classes were offered with higher enrolment numbers than the prior year, and graduation was held (online due to the COVID

pandemic) where the success of this year's cohort of LU graduates could be celebrated. Undertaking these difficult restructuring steps during the academic school year and an ongoing COVID pandemic was very challenging, particularly in view of the thin administrative resources available within LU and the additional demands that were placed on them.

19. LU's goal in this CCAA proceeding has been to ensure that the impact of its restructuring on students would be minimized. The academic restructuring that was undertaken, which resulted in certain low-enrolment programs being eliminated or consolidated, affected less than 10% of students. The number of students who were affected by program closures where: (i) they would not be "taught out" within their existing program; (ii) they were not otherwise graduating in 2021; or (iii) there was no reasonable alternative program for them to complete their degree was approximately 165 students out of a total of approximately 9,300 students enrolled in the Fall 2020 semester. For those 165 affected students, LU has worked with MCU in providing information to permit a program to be implemented wherein specific financial assistance was made available by MCU to allow those affected students to transfer to another university to complete their degree.
20. On April 29 and 30, 2021, certain motions were heard by the Court:
 - (a) the Applicant's motion requesting the following relief: (i) an extension of the Stay Period up to and including August 31, 2021, (ii) the approval of the DIP Amendment and increase to the DIP Lender's Charge; and (iii) the approval of the term sheets entered into with LUFA and LUSU (which included a restructuring of

the Pension Plan (defined below)) and the Huntington Transition Agreement (the “**Stay Extension and Approval Motion**”);

- (b) a joint cross motion by Thorneloe University and University of Sudbury opposing the approval of the DIP Amendment;
 - (c) a motion by Thorneloe University seeking to set aside the Notice of Disclaimer of the Federation Agreement and the Financial Distribution Notice between LU and Thorneloe University; and
 - (d) a motion by University of Sudbury seeking to set aside the Notice of Disclaimer of the Federation Agreement and the Financial Distribution Notice between LU and the University of Sudbury.
21. Following the conclusion of the motions on April 29 and 30, 2021, the Court reserved its decision, but granted a brief extension of the Stay Period up to and including May 2, 2021. On May 2, 2021, Chief Justice Morawetz and Justice Gilmore separately released brief initial endorsements (collectively, the “**May 2 Endorsements**”), with reasons to follow that:
- (a) granted the Applicant’s motion, including extending the Stay Period up to and including August 31, 2021, and dismissed the joint cross motion;
 - (b) dismissed the motion of Thorneloe University; and
 - (c) dismissed the motion of University of Sudbury.

22. On May 7, 2021, Chief Justice Morawetz and Justice Gilmore released their full reasons with respect to the dismissal of the motions by Thorneloe University and University of Sudbury relating to the disclaimer of the Federation Agreements.
23. On May 7, 2021, the Court issued an Order (dated May 2, 2021) granting the Stay Extension and Approval Motion (the “**Stay Extension Order**”).
24. On May 14, 2021, Chief Justice Morawetz issued his reasons regarding the Stay Extension and Approval Motion.
25. On May 31, 2021, following a motion brought by LU, an Order was issued by the Court appointing Mr. Lou Pagnutti as Chief Redevelopment Officer of the Applicant.
26. On June 9, 2021, following a motion brought by LU, an Order was issued (dated May 31, 2021) approving a claims process to identify, determine and resolve claims of creditors of the Applicant, other than employee and related claims (as amended, the “**Amended and Restated Claims Process Order**”).
27. On July 5, 2021, following a motion brought by LU, an Order was issued appointing Cushman & Wakefield as Real Estate Advisor of the Applicant.
28. On August 17, 2021, following a motion brought by LU, an Order was issued approving the methodology for the identification and determination of Compensation Claims (as defined therein) other than Third Party RHBP Claims (the “**Compensation Claims Process Order**”).

29. Throughout this proceeding, LU has operated in accordance with the Amended and Restated Initial Order and has attempted to minimize the impact of this proceeding on students and other stakeholders, recognizing that a restructuring of this nature creates some degree of disruption. LU has worked very closely with the Monitor in advancing the restructuring including commencing the two claims processes, the extensive real estate review process and in issuing an RFP through the university's procurement process to find a consultant or consultants to undertake a comprehensive operational review and a governance review with respect to each of the Board of Governors and the Senate. These initiatives are part of the university's commitment to advance the restructuring towards a Plan of Compromise or Arrangement to be presented to creditors, and to undertake all steps that could identify practices, policies, structures or challenges that may impede LU's future success, and to proactively address same.

III. OPERATIONS OF LU SINCE INITIAL ORDER

30. Since this proceeding commenced, LU has made significant efforts with respect to its operational restructuring. As set out above, as a result of the various agreements reached during the mediation and approved by this Court and other restructuring efforts to date including its disclaimer of the Federation Agreements, LU has reduced its annual operating costs by approximately \$40 million each year. This represents a reduction of approximately 25% of LU's total annual expenses.
31. As set out in the Initial Haché Affidavit, one priority of LU during this proceeding has been to minimize student disruption to the greatest extent possible. Accordingly, LU has focused on maintaining its ordinary operations during the Stay Period.

32. LU's Spring term commenced on May 3, 2021 and concluded successfully. Spring term courses ended on July 22, 2021 and final exams were written from July 23 – 31, 2021. All student classes in Spring term continued (virtually, due to the ongoing COVID-19 pandemic and in accordance with public health guidelines) without disruption.
33. In addition to LU's regular course offerings, LU also offered two Gerontology courses (previously taught by Huntington University) and six Indigenous studies courses (previously taught by the University of Sudbury) through agreements reached with these parties, as described in my Affidavit sworn April 21, 2021 (the "**April 21 Affidavit**").
34. During the Stay Period, LU has been closely monitoring the rapidly changing COVID-19 pandemic and health and safety regulations. In response to the easing of certain restrictions, LU has planned and prepared for a return to campus for its students, consistent with ONTARIO REGULATION 364/20 of the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020.
35. Effective September 8, 2021, LU will be implementing a mandatory vaccination policy for all students, faculty, staff and visitors on campus. Persons with an exemption for health-related reasons or other protected grounds under the *Ontario Human Rights Code* will be accommodated. Persons who are not fully vaccinated against COVID-19 will be required to participate in a rapid screening program for COVID-19 and be subject to additional health measures.
36. LU is also working with Public Health Sudbury & District to ensure it is complying with public health recommendations, including by providing a pop-up COVID-19 vaccination

clinic during the first week of September for those who have not had a chance to get their vaccine before their arrival.

37. Preparation for the return to campus has been significant and LU has adapted to accommodate the return of thousands of students by early September. To provide flexibility for students, LU will continue to offer more than 270+ online and remote courses during the Fall 2021 semester. This demonstrates the continued leadership of LU in the university sector as LU was the first university in Ontario to fully transition to remote learning at the onset of the COVID-19 pandemic.
38. LU has continued to receive a significant volume of telephone calls and emails from stakeholders and interested parties, both with respect to this CCAA proceeding, LU's response to the COVID-19 pandemic, and the return to campus. 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 where appropriate.

IV. DEVELOPMENTS WITH FEDERATED UNIVERSITIES

A. Appeal of Thorneloe University Disclaimer

39. On May 3, 2021, Thorneloe University served a Notice of Motion seeking leave to appeal to the Ontario Court of Appeal (the "**Court of Appeal**") the decision of Chief Justice Morawetz dismissing its motion to set aside the Notice of Disclaimer of the Federation Agreement and the Financial Distribution Notice between LU and Thorneloe University.
40. Thorneloe University filed its motion record (as revised on May 31, 2021) and factum on May 25, 2021, and a reply factum on June 8, 2021. LU filed its factum on June 4, 2021.

41. On June 23, 2021, the Court of Appeal released its decision, dismissing Thorneloe University's motion for leave to appeal the decision of Chief Justice Morawetz.

B. Services

42. Pursuant to the Huntington Transition Agreement, which was previously approved by the Court, LU and Huntington agreed to arrangements for the continued provision of certain services by LU to Huntington, as well as the transition of other services from LU to Huntington.
43. Since the Stay Extension Order, LU has been providing those services to Huntington in accordance with the Huntington Transition Agreement and Huntington has made the corresponding payments. Following discussions by LU with each of Huntington, Thorneloe and University of Sudbury, LU made a request to the City of Sudbury to create separate municipal addresses for each of those entities, independent from LU's municipal address. Once that process has been completed and new addresses have been created by the City of Sudbury, it will facilitate the billing of certain utilities directly to each of the three separate universities rather than having same coordinated by and through LU. It will also create direct addresses for emergency responders and facilitate the direct delivery of mail and other services.
44. In addition to Huntington, Thorneloe University and the University of Sudbury also rely on LU for the provision of certain facilities-related services. In connection with the independence of each university from LU following the disclaimers, LU is currently working with these parties to finalize a similar arrangement for facilities services as LU has with Huntington, whereby LU will continue to provide certain services at a cost to be paid by each party to LU, until such time as direct services can be coordinated by the

independent universities. Some aspects of this will be subject to further change upon separate municipal addresses being assigned by the City of Sudbury.

V. POST-EMPLOYMENT BENEFITS

A. *Implementation of Pension Plan Amendments and Related Matters*

45. As further explained in the Initial Haché Affidavit, LU maintained three post-employment benefit plans for its employees, being: (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**”). Employees of the former Federated Universities and the employees of certain other participating employers also participated in the Pension Plan and the RHBP through their employers.
46. In an effort to ensure the long-term sustainability of the Pension Plan for the benefit of its members, LU negotiated certain changes to the Pension Plan with LUFA and LUSU, as the Pension Plan forms part of their respective collective agreements. These amendments were set out in a term sheet dated April 7, 2021 between LU and each of LUFA and LUSU (the “**Pension Term Sheet**”), which formed part of the LUFA and LUSU Term Sheets that were approved by the Court as part of the Stay Extension Order. A summary of the negotiated changes to the Pension Plan was provided in the April 21 Affidavit.
47. Following the Stay Extension and Approval Motion, LU has implemented the Pension Plan amendments. To that end, LU has filed the amendments with the Financial Services Regulatory Authority and the Canada Revenue Agency. Registration of the amendments is pending.

48. I am advised by Simon Deschenes of Eckler Ltd., the Pension Plan's actuary, and believe to be true that the following amendments to the Pension Plan and changes to administrative practices, as described in further detail in the April 21 Affidavit, reduce the risk that LU will be required to make going concern or solvency special payments to the Pension Plan and will support the long-term sustainability of the Pension Plan:
- (a) subject to certain transition provisions, restricting the right of members to receive commuted value transfers if terminating membership after attaining early retirement age to limit capital outflow from the Pension Plan;
 - (b) providing former members a "last chance" to elect a commuted value transfer (approximately 4% of Pension Plan liabilities);
 - (c) converting the Pension Plan from a Final Average Earnings benefit formula to a Career Average Earnings benefit formula for service post-July 1, 2021;
 - (d) removing contractual post-retirement indexation for service post-July 1, 2021;
 - (e) removing early retirement subsidy for Senior Leaders and LUFA members (subject to grandparenting);
 - (f) amending the contribution formula so that employers and members each contribute 8% of pensionable earnings on average; and
 - (g) changing the administrative practice of paying 100% commuted value transfers to instead paying commuted value transfer in two instalments over 5 years based on the funded status of the Pension Plan as determined by the actuarial report.
49. In accordance with the Pension Term Sheet, a Benefits and Funding Policy has been created for the Pension Plan which provides for the restoration of certain benefits if: (i) the Pension

Plan funded status reaches specified thresholds (95% solvency threshold and 105% going concern threshold (inclusive of PfAD)), (ii) there is a low risk of special payments in the five years following benefit restoration, and (iii) there is a low risk of requiring more than 16% of pensionable earnings as the total contribution to the Pension Plan. A copy of the Benefits and Funding Policy is attached hereto as **Exhibit “C”**.

50. A Joint Union-Management Committee has been established to study the benefits of converting to a jointly sponsored pension plan (JSPP) and to monitor the administration of the Benefits and Funding Policy.
51. The last actuarial valuation report prepared in respect of the Pension Plan that was filed with the pension regulatory authorities was effective as at January 1, 2020. A new valuation report of the Pension Plan is in the process of being prepared effective as of July 1, 2021. LU's expectation is that both the going concern and solvency funded positions of the Pension Plan will be improved as of July 1, 2021.
52. The SuRP and RHBP have been terminated by LU.

B. Other Participating Employers

53. Employees of the former Federated Universities, MIRARCO, CEMI and SNOLab (collectively, the “**Participating Employers**”) historically participated in the Pension Plan.
54. Changes have been made to the treatment of certain Participating Employers' participation in the Pension Plan. In particular, no new employees of Thorneloe University or University of Sudbury are permitted to join the Pension Plan. Huntington University has been removed as a Participating Employer under the Pension Plan following its cash payment into the

Pension Plan and the transfer of the Gerontology course to LU in accordance with the Huntington Transition Agreement. As of July 2021, there are less than 10 active members at each of Thorneloe University and University of Sudbury who are active members in the Pension Plan and there are no active members at Huntington University.

55. LU is considering further measures to mitigate the risk to the Pension Plan relating to the liabilities for pension entitlements earned by employees and former employees of Thorneloe University and University of Sudbury in the event they are unable to fund these obligations over time. In this regard, there are various options being considered regarding the participation of Thorneloe University and University of Sudbury in the Pension Plan and those discussions are ongoing.

C. Termination of Administration of Active Employee Benefit Programs of Federated Universities

56. LU maintains several insurance plans for its employees. In addition, the employees of certain other employers, including each of the former Federated Universities, participate in the insurance plans. These include: (a) extended health and drug coverage, (b) dental insurance, (c) long-term disability, (d) accidental death and dismemberment, and (e) life insurance.
57. The nature of these insurance plans means that the experience of all covered participants (including employees of the former Federated Universities) has an impact on the costs and risks of LU as the contract holder. As a result, a decision was made to remove each of the former Federated Universities from the plans as part of LU's ongoing restructuring efforts.
58. On July 30, 2021, by way of letter to each of the former Federated Universities, LU provided 60 days' notice that employee coverage under each of the benefit plans will be

terminated effective September 30, 2021. In the letter, LU advises each of the former Federated Universities that Eckler Ltd., who assisted in brokering LU's policies with one of the insurance providers, has offered to assist to explore options for obtaining replacement coverage.

VI. LABOUR RELATIONS MATTERS

A. Resolved Grievances

59. As of February 1, 2021 when the CCAA proceeding was commenced, there were 102 outstanding grievances filed by LUFA. LU and LUFA, working with mediator William Kaplan, were able to resolve all the outstanding grievances by May 30, 2021.

B. Interest Arbitration

60. Pursuant to the LUFA Term Sheet, the parties proceeded to interest arbitration on June 15, 2021, to have a number of outstanding collective bargaining issues determined in order to finalize the parties' collective agreement. Arbitrator Kaplan issued his award on June 21, 2021.

C. Unfair Labour Practice Complaint

61. Pursuant to the LUFA Term Sheet, LU and LUFA agreed to litigate LUFA's outstanding Unfair Labour Practice complaint on September 21, 2021. LU and LUFA have mutually agreed for Arbitrator Kevin Burkett to expeditiously hear the matter in a one-day hearing. As part of the LUFA Term Sheet, LUFA agreed that no damages would arise from any award.

VII. ENGAGEMENT ON FRANCOPHONE ISSUES

A. *Consultation with AFO*

62. On March 31, 2021, the Assemblée de la francophonie de l'Ontario (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 at Laurentian, and enter into negotiations with the AFO and the University of Sudbury regarding any alternative proposal that may be brought forward for LU’s consideration.
63. On April 22, 2021, an Order was granted on the consent of LU and the AFO directing the parties to engage in meaningful consultations and information-sharing regarding any proposals made by the AFO in accordance with the objectives of the CCAA and any restructuring or financial sustainability initiatives that may impact the status or use of the French language at LU (the “Consent Order”).
64. LU and the AFO have engaged in consultations since the Consent Order was issued, and those discussions will continue.

B. *Correspondence with Ministry of Francophone Affairs*

65. Since the academic restructuring was approved by the Senate of LU, the Ministry of Francophone Affairs (the “MFA”) (Ontario) has corresponded with LU to better understand the effects of the academic restructuring on LU’s francophone mandate.
66. The MFA has requested further information regarding LU’s academic restructuring and its impact on French-language programming at LU. In particular, the MFA has sought clarification on LU’s intention in respect of the *Maîtrise en kinésie humaine*, *Maîtrise en activité physique* and *Maîtrise ès arts* degrees as well as confirmation that LU plans to

continue to provide robust pathways for students so that they can pursue their studies towards designated French Language degrees.

67. LU has provided detailed information to the MFA, and has re-iterated its ongoing, firm commitment to the delivery of robust, dynamic French-language programming at the university. LU will continue to encourage its Senate and faculty members to develop and offer cutting-edge programming in disciplines that are of current and future interest for students.
68. LU will continue to keep MFA apprised of all aspects of its francophone programs and provide responses to all information requests.

VIII. INVESTIGATIONS AND REVIEWS

A. *Ontario Auditor General “Value-For-Money” Audit*

69. On April 28, 2021, a committee of the Legislature of Ontario, the Standing Committee on Public Accounts (the “**Committee**”), passed a motion requiring the Auditor General of Ontario (the “**AGO**”) to perform a value-for-money audit of LU under s. 9.1 of the *Auditor General Act*, RSO 1990, c A.35, for the period 2010 to 2020.
70. The Auditor General’s staff thereafter began to make requests to LU for documents and information. As we have learned through the process, this type of audit is a very extensive exercise that touches on virtually every aspect of the university’s operations and involves many of the same LU personnel who are key members of the management team responsible for leading the university through its CCAA restructuring.

71. LU has fully cooperated with the AGO's investigation and is facilitating the voluminous production of documents and information in response to the AGO's requests. LU has hosted information sessions for certain employee groups and management in order to relay the university's cooperative approach, provide guidance on information and documents that may be subject to privilege or other legal constraints (including pursuant to court Order), and to make resources available should anyone have questions or require assistance. For several days during the week of August 10, 2021, the AGO together with eight members of her staff came to the LU campus for the on-site portion of the audit. LU facilitated extensive access to its campus and personnel for the AGO staff.
72. At the AGO's request, LU has directed its staff to send documents directly to the AGO's staff unless they are within a limited category that may be subject to privilege or where disclosure may be subject to a court Order made within this proceeding. I understand that a great deal of documentation has been provided in this manner, as well as through LU's Office of the University Secretary and General Counsel. In addition, the AGO has been given direct electronic access to LU's financial records for all transactions, and the platform used for enrolment data. Documentation and information will continue to be provided by LU as requested by the AGO. Where any documentation is subject to a review for privilege, or to ensure that its disclosure does not contravene the terms of any court Order issued in this proceeding, the documentation or information will be provided once that review has been completed by counsel.

B. *FLSA Ombudsman Investigation*

73. Ms. Kelly Burke, the *French Language Services Act* ("FLSA") Commissioner with the Office of the Ombudsman of Ontario (the "**Commissioner**") indicated in June 2021 that

the Commissioner would be launching an investigation pursuant to section 12.4(2) of the FLSA to determine whether LU upheld its obligations as a partially-designated agency when it eliminated certain French-language academic programs as part of its academic review and restructuring process in the CCAA Proceedings.

74. LU has been, and will continue to be directly and actively engaged with the Commissioner's office on an ongoing basis and has provided information and documents in response to requests made. LU and the Commissioner's office remain engaged in an open dialogue and LU will continue to provide any information requested by the Commissioner.

IX. COMMUNICATIONS WITH STAKEHOLDERS

A. Northern Ontario School of Medicine

75. 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* (the "NOSM Act"). The NOSM Act is intended to grant status as an independent university to NOSM. The bill does not include any timeline or any regulations that would be required to bring such a plan to fruition, such that NOSM could become an independent degree-granting institution. The NOSM Act does not come into force and effect until it receives proclamation of the Lieutenant Governor, on a date to be named.
76. 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.
77. LU and NOSM have been engaged in certain discussions regarding the transition of services provided by LU to NOSM. Pursuant to a Relationship Agreement dated December

- 18, 2018 (the “**Relationship Agreement**”), LU and Lakehead University each agreed to provide certain support services and faculty to NOSM. Both LU and Lakehead provide facilities and support services, student registration and student fee collection, scholarship receipt and disbursement, and other educational, research and operational services.
78. LU has held preliminary discussions with NOSM with respect to amending the relationship between LU and NOSM as set out in the Relationship Agreement. However, LU understands that NOSM does not wish for any changes to the relationship to become effective until after the NOSM Act is declared in force and NOSM becomes its own independent university. As a result, LU remains focused on its own restructuring.
79. The Relationship Agreement expires in December 2021. LU expects that it will re-engage with NOSM to discuss its relationship during the Fall. LU is still considering all of its options with respect to its relationship with NOSM and no path forward has been decided on at this time. In any event, LU will carefully consider the terms on which any amendment or extension of the Relationship Agreement will be agreed to.
80. As part of the tuition collection and registration services that LU has historically provided to NOSM, NOSM and LU enter into a Service Level Agreement (Tuition and Incidental Fees) each year. On August 6, 2021, NOSM and LU executed the Service Level Agreement (Tuition and Incidental Fees) for the 2021-22 academic year (the “**Service Level Agreement**”).
81. The Service Level Agreement updates the tuition and incidental fees that LU collects from NOSM students and remits to NOSM. The Service Level Agreement provides that NOSM students pay their fees to LU and those funds are deposited into LU’s general operating

account with all other student fees. LU provides monthly outstanding balance reports for NOSM students to NOSM, and issues the relevant tax forms directly to NOSM students. Amounts collected by LU must be remitted by LU to NOSM in accordance with certain timelines, as set out in the Service Level Agreement.

82. The Service Level Agreement is an addendum and a schedule to the existing Relationship Agreement, and there is a provision in this year's Service Level Agreement providing that the purpose of entering into the new agreement is to reflect changes made to annual tuition fees and incidental fees payable for the 2021-22 academic year and that the Service Level Agreement shall not be construed or deemed to be an agreement entered into following the commencement of this CCAA proceeding. A copy of the Service Level Agreement is attached hereto as **Exhibit "D"**.

B. Lenders

83. LU's pre-filing lenders, Royal Bank of Canada, The Toronto-Dominion Bank and Bank of Montreal (collectively, the "**Lenders**") have filed aggregate claims in excess of \$100 million. LU and the Lenders are regularly engaged in a dialogue regarding all aspects of the CCAA Proceeding including the claims process, Pension Plan changes, the real estate review and the operational and governance RFP.
84. In accordance with the Claims Process Order, the Lenders are permitted two inspectors to form part of the inspector group. Each of Royal Bank of Canada and The Toronto-Dominion Bank have nominated an Inspector, and both inspectors have signed the acknowledgment required by the Claims Process Order. In addition, LU has received signed acknowledgments from each of their respective financial and legal advisors.

C. *Research-Granting Agencies*

85. I am advised by LU's Vice-President Research, Dr. Tammy Eger, and do verily believe, 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 together with information on the segregated bank account for research funds. The Tri-Agencies have continued to release new research funds to LU.
86. Similar meetings were previously held with the Ontario Centre for Innovation and Natural Resources Canada who have also agreed to release new research funds to LU.
87. The Vice-President Research has been in communication with the Canada Foundation for Innovation ("**CFI**") throughout the CCAA Proceeding. CFI has not finalized new awards with LU during the CCAA Proceeding but it has given approval for LU to continue to spend funds currently held at the university.
88. The Vice-President Research has continued to meet with research funders to provide an update on research account balances and management of research funds, in order to rebuild trust and maintain the ability for LU to undertake critical research as part of its academic mandate. LU faculty continue to apply for and receive research grants.
89. LU is expected to be able to provide further findings regarding its review and reconciliation of research funds as the CCAA Proceedings progress.

D. *Indigenous Stakeholders*

90. LU and the Weeneebayko Area Health Authority (“**WAHA**”) are parties to a Collaboration Agreement dated April 1, 2018 (the “**Collaboration Agreement**”) whereby they agreed to collaborate on the design and implementation of a data surveillance system that will support public health initiatives in the James and Hudson Bay region. The overall objectives of this collaborative relationship are to improve the collection, analysis, dissemination and use of First Nations’ data in the James and Hudson Bay region.
91. WAHA reached out to the Monitor’s counsel regarding the Collaboration Agreement. WAHA sought a meeting with LU to discuss the status of funds WAHA had provided in furtherance of the objectives of the Collaboration Agreement and to discuss the intentions of WAHA and LU moving forward.
92. On June 30, 2021, WAHA and LU had an initial meeting to discuss the collaboration agreement between LU and WAHA, including how the CCAA proceeding has affected the agreement and the intentions of LU going forward. The Vice-President Research reached out to WAHA on August 20, 2021 to inquire about further meetings.
93. LU has been working with the Laurentian University Native Education Council (LUNEC) and the Indigenous community to develop Indigenous content for LU’s full complement of academic programs. This novel approach will promote multidisciplinary perspectives among our graduates, whether they study in health, education, business, science, engineering, architecture, social sciences or the arts.
94. In addition, integrating Indigenous content into all of our academic programs will enhance the global and cultural knowledge of all of our students. This approach will benefit all of

LU's students, stakeholders and the communities served by the university, including the Indigenous community.

E. Information and Privacy Commissioner

95. Since the commencement of this proceeding, I am advised by Mitch Grossell at TGF that TGF has had several discussions with internal counsel at the Office of the Information and Privacy Commissioner (the “**IPC**”) with respect to any information requests made to LU under the *Freedom of Information and Protection of Privacy Act* (“**FIPPA**”).
96. As of today's date, there are three FIPPA information requests (two pre-filing and one post-filing) that are currently stayed by the stay of proceedings in the Amended and Restated Initial Order. In addition, there are an additional three outstanding information requests (all pre-filing) under FIPPA that are subject to the adjudication process. LU disputes that the information is required to be provided pursuant to FIPPA because the information is either personal information that is not required to be disclosed under section 21 of FIPPA or is subject to solicitor-client privilege and is not required to be disclosed under section 19 of FIPPA. In each case, the person requesting the information has not accepted that the information is not required to be provided and has appealed to the IPC.
97. One of the appeals is awaiting the release of a determination by the FIPPA adjudicator. The other two appeals remain ongoing. With respect to one appeal, on July 28, 2021, the FIPPA adjudicator requested that LU provide submissions with respect to the applicability of the stay of proceedings on the outstanding appeal. On August 12, 2021, counsel to LU provided the written submissions on behalf of LU. The Adjudicator advised that she will provide the submissions to the appellant and provide the appellant with an opportunity to

respond. With respect to the other appeal, the FIPPA adjudicator advised that the appeal is on hold pending the determination of the applicability of the stay on the first appeal.

98. On July 28, 2021, the Adjudicator of one of the appeals requested submissions from LU regarding the applicability of the stay of proceedings on the outstanding appeal. On August 12, 2021, counsel to LU provided the written representations on behalf of LU. The Adjudicator has advised that she will provide the submissions to the appellant and provide the appellant with the opportunity to respond.
99. Given the significant amount of time that is required to be devoted by LU personnel during this restructuring and the limited resources at the university, LU continues to seek the stay of proceedings to extend to information requests under FIPPA.
100. In many instances, personnel at LU are working on multiple time-sensitive work streams (including the Auditor General audit, the FLSA investigation and responding to other stakeholder requests) and do not have further capacity to satisfy FIPPA requests. Further, many of the records kept by LU are in physical hard copy form only and would require someone to physically attend on campus and search through the books and records of LU. To the extent that any information request involves multiple departments at LU (for example, Facilities and Finance), personnel at LU who are knowledgeable about the location of such documentation would need to individually search those records.
101. Finally, any given information request under FIPPA could potentially involve the disclosure of a multitude of documents and require a considerable amount of time by LU personnel in order to locate and comply with the information request. Given the many ongoing and competing work streams as part of the CCAA restructuring and attrition of

personnel during the CCAA proceeding, LU faces an extreme shortage of human capital. Continuing to suspend any existing, pending, or future information requests, including the appeals is only a temporary measure to allow LU the time and breathing space to restructure. As soon as LU emerges from the CCAA proceeding, it will continue to comply with its obligations under FIPPA and address FIPPA information requests in a timely and orderly manner.

X. DIP FINANCING AND CASH FLOW FORECAST

A. *Extension of DIP Maturity Date*

102. On January 29, 2021, LU and Firm Capital Corporation, as assigned to Firm Capital Mortgage Fund Inc. (the “**DIP Lender**”), entered into a binding debtor-in-possession (“**DIP**”) financing term sheet agreement (the “**DIP Term Sheet**”) setting out the terms and conditions of a non-revolving DIP credit facility (the “**DIP Facility**”) up to the maximum principal amount of \$25,000,000 (the “**DIP Financing**”), subject to Court approval.
103. On February 10, 2021, LU and the DIP Lender entered into a DIP Loan Agreement (the “**DIP Loan Agreement**”) pursuant to which the DIP Lender agreed to advance the DIP Financing to the Borrower in accordance with the terms and conditions of the DIP Loan Agreement.
104. On February 11, 2021, the Court approved the DIP Term Sheet, the DIP Financing and DIP Lender's Charge pursuant to the Amended and Restated Initial Order.
105. Pursuant to a DIP Financing amendment letter dated April 19, 2021 (the “**Amended DIP Term Sheet**”), the DIP Lender agreed to amend the original terms of the DIP Financing as set out in the DIP Term Sheet and the DIP Loan Agreement, which Amended DIP Term

Sheet included, among other things, an increase of \$10,000,000 to the maximum principal amount under the DIP Facility to a maximum principal amount of \$35,000,000, and an increase of the DIP Lender's Charge to \$35,000,000;

106. The Stay Extension Order approved the Amended DIP Term Sheet. On May 19, 2021, the DIP Lender and LU entered into the First Amendment to the DIP Loan Agreement (the **“First DIP Amendment”**).
107. The DIP Loan Agreement has a Maturity Date of August 31, 2021 pursuant to the First DIP Amendment. LU sought an extension of the Maturity Date to January 31, 2022 to correspond with the extension to the Stay Period being sought by LU on this motion.
108. LU and the DIP Lender have settled on the terms of an amendment to extend the Maturity Date to January 31, 2022 in exchange for a 1% extension fee of \$350,000 (the **“Second DIP Amendment”**). A copy of the unexecuted Second DIP Amendment is attached hereto as **Exhibit “E”**. The Second DIP Amendment is in the process of being executed, subject to court approval.
109. LU seeks Court approval of the Second DIP Amendment. LU requires the extension of the Maturity Date to provide the time necessary to develop a Plan of Arrangement or Compromise with its creditors, which is required in order to be able to exit from the CCAA Proceedings. As part of LU’s exit from the CCAA Proceedings, the DIP Facility will need to be re-financed and exit financing will need to be obtained. In the coming months, LU will develop appropriate parameters for identifying parties who may be interested in re-financing the DIP Facility and providing exit financing. Prior to the expiry of the Maturity Date set out in the Second DIP Amendment, LU expects to be in a position to have

identified a source of exit financing in order to re-finance and fully repay the DIP Facility upon exit from the CCAA proceedings.

110. I have been advised by Sharon Hamilton that the Monitor supports the Second DIP Amendment and the extension of the Maturity Date and believes the quantum of the extension fee to be reasonable in the circumstances.

C. Cash Flow Forecast

111. A cash flow forecast for the period covering the requested stay extension has been developed, is being finalized and reviewed by the Monitor (the “**Revised Cash Flow Forecast**”). This Revised Cash Flow Forecast reflects the most current information available.
112. The Revised Cash Flow Forecast will be attached to a Monitor’s Report that the Monitor will be serving and filing prior to the motion.

XI. REAL ESTATE REVIEW

113. On July 5, 2021, the Court approved the appointment of the Real Estate Advisor. The Real Estate Advisor is undertaking a comprehensive review of all real estate in which LU has an interest in order to determine whether there are efficiencies that should be considered, whether there is any surplus real estate that LU may wish to dispose of, or whether there are other opportunities to monetize or create value for LU and its stakeholders. The review includes the following components:
- (a) reviewing and understanding LU’s current portfolio of real estate;

- (b) consideration of potential strategies with respect to the monetization of any redundant or excess assets that may exist within the real estate portfolio (land and buildings);
 - (c) review of third-party leases within the real estate portfolio;
 - (d) consideration of different strategies to monetize real estate assets; and
 - (e) recommendations to optimize space utilization, including opportunities to consolidate, and the feasibility of doing so.
114. Since the Real Estate Advisor's appointment, the Real Estate Advisor has been working closely with the LU team and its advisors to complete the initial information sharing stage. LU, through the assistance of its external counsel, has created a comprehensive data room based on the various information requests provided by the Real Estate Advisor and continues to upload documents to the data room as they become available.
115. On July 28, 2021, the Real Estate Advisor, LU, and the Monitor held a Project Mobilization Meeting to assist with the coordination of the real estate review. Following that meeting, on August 3, 2021, certain members of the Real Estate Advisor attended at LU's campus with key members of the LU team to conduct a site tour to visit the buildings and land and answer preliminary questions from the Real Estate Advisor.
116. The Real Estate Advisor will be keeping LU apprised as it continues the real estate review, and the Real Estate Advisor will have bi-weekly meetings with LU to discuss the status of the analysis and any remaining information that is required from LU.

117. LU expects that the Real Estate Advisor will be in a position to provide preliminary input to it as part of the real estate review by the end of September, 2021. The Real Estate Advisor's preliminary analysis may help inform the framework of the Plan of Compromise or Arrangement in terms of any potential opportunities that arise from the review that is undertaken.

XII. OPERATIONAL AND GOVERNANCE REVIEW

118. In addition to the real estate review, LU has agreed to undertake a full-scale operational and governance review. LU also committed to its labour partners as part of the LUFA and LUSU Term Sheets that this review would be conducted in consultation with the unions.
119. On August 5, 2021, LU issued a Request for Proposals to be submitted by interested parties for bids to undertake any one, a combination, or all of: (i) a Senate Governance Review; (ii) a Board of Governors Governance Review; and (iii) an Operational Review (the "**RFP**"). The RFP has a deadline for submissions of August 31, 2021. A copy of the RFP is attached hereto as **Exhibit "F"**.
120. The RFP sets out the evaluation criteria that will be used to select the successful proponent from among the submissions received, which include:
- (a) experience and qualifications;
 - (b) proposed team and availability;
 - (c) proposed schedule, work plan, approach and methodology; and
 - (d) proposed fee.

121. The scope of the Senate and Board Governance Reviews are expected to include:
- (a) the size and constitution of the Board and the Senate, including the various sub-committees and the delegation of authority;
 - (b) the composition of the Board and the Senate including as it relates to diversity, experience and skills, and the communities comprising LU;
 - (c) the review and development of appropriate governance frameworks at the Board and the Senate that are consistent with other comparable post-secondary organizations;
 - (d) the review of the status of the *Laurentian Act*, all governance documentation, and the review of existing policies and procedures and/or amendments to, or development of new policies and procedures to ensure that all documentation is accurate and current, and that appropriate systems are in place to ensure continual compliance with same;
 - (e) the review and, if necessary, development of policies and guidelines for the Board and the Senate that are consistent with all applicable laws and regulations including the *Laurentian Act*. These policies should reflect the bilingual and tri-cultural mandate of Laurentian, provide guidance for decision-making and streamline internal processes for efficiency and transparency in implementation and application;
 - (f) if necessary, the documentation of new governance processes and procedures and recommendations for changes that may be needed to the *Laurentian Act* in order to enable the new governance frameworks;

- (g) the review and development of effective procedures for reporting to the Board and the Senate, which reports contain sufficient information for the Board and the Senate to make well-informed decisions and to develop strategies for short and long-term goals; and
- (h) the development and implementation of Board and Senate training and evaluations to ensure that Board and Senate participants keep up to date with legislation, regulations and best practices.

122. The scope of the Operational Review is expected to include:

- (a) internal operations, risk and compliance;
- (b) finance;
- (c) information technology systems and reporting;
- (d) human resources;
- (e) policies and procedures of LU in order to recommend any necessary changes to structure, processes, procedures and policies to ensure that best practices are established and maintained in all operational functions;
- (f) recommendations for build out of key functions to ensure the necessary controls and operational processes to drive continued future financial sustainability; and
- (g) the planning, development and implementation of a Continuous Improvement Committee to ensure that once service-delivery and other operational processes, procedures and policies have been reviewed and improved, continual review and improvement occurs such that LU can utilize best practices within the sector.

123. LU and the consultant(s) who are selected through the RFP process will consult with key stakeholders, most notably LUFA and LUSU, during the course of the operational and governance review. The RFP contemplates that the framework and recommendations with respect to the governance and operational review should be completed within LU's CCAA timeline, however the implementation of many of the recommendations will involve a longer-term project that would be expected to continue after the CCAA Proceedings have been completed.

XIII. NEXT STEPS IN RESTRUCTURING

A. Claims Resolution/Determination

124. The Amended and Restated Claims Process Order established a claims bar date of July 31, 2021. Therefore, save and except for Compensation Claims, all of the claims against LU should already have been received. The Compensation Claims Process Order establishes a bar date for Compensation Claims of October 14, 2021 in most cases. In the event that any Notices of Dispute are received in respect of Compensation Claims, those will be reviewed by LU and the Monitor as received and efforts will be made to resolve any Notices of Dispute.
125. The next few months will involve the determination and resolution of claims made against LU in accordance with the Amended and Restated Claims Process Order and the Compensation Claims Process Order.

B. Development of Plan of Compromise or Arrangement

126. As Phase 2 of LU's restructuring concludes, the final Phase 3 of the CCAA restructuring will commence during the period of the requested stay extension. The main focus of Phase

3 will be negotiations and the development of a Plan of Compromise or Arrangement to be presented to LU's creditors.

127. LU will be engaged in extensive consultations with its creditors during Phase 3 in an effort to arrive at a Plan of Arrangement or Compromise that will provide an acceptable level of recovery for creditors and allow LU to exit from the CCAA Proceedings and continue as a financially sustainable and successful university. LU expects to seek a Meeting Order from the Court prior to the end of 2021.

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

128. The purpose of the real estate review is to develop a framework of recommendations and potential options for LU to consider. The operational and governance reviews will be to identify all areas for improvement and find ways to address existing challenges, to ensure that they do not hinder LU's successful path forward. The reviews will be concluded prior to the termination of the CCAA Proceedings, however, the implementation of many aspects of same will continue after LU's exit.
129. The implementation of the recommendations of the reviews will be carried out in consultation with the affected stakeholders to ensure that LU and its stakeholders will emerge from the CCAA Proceedings with a clear path forward.

XIV. STAY EXTENSION

130. LU seeks an extension of the Stay Period until January 31, 2022.
131. The stay extension is required to enable LU to continue operating in the ordinary course while engaging in discussions with the aim of developing a Plan of Arrangement that is acceptable to its creditors, as well as implementing the recommendations of the real estate

and governance/operational reviews being conducted to promote efficiencies and accountability.

132. The Revised Cash Flow Forecast demonstrates that LU will have sufficient liquidity to meet its obligations during the proposed extension to the Stay Period.
133. LU has acted and continues to act diligently and in good faith in respect of all matters relating to these CCAA Proceedings.
134. In the circumstances, I do not believe that any creditor will suffer material prejudice as a result of the extension of the Stay Period. An extension of the Stay Period will permit a continued period of stability and allow LU to proceed in its restructuring efforts.

XV. CONCLUSION

135. LU seeks an Order under the CCAA, in the proposed form of order attached at Tab 3 in LU's Motion Record.
136. This affidavit is sworn in support of LU's motion for, among other things, an extension to the Stay Period and to the DIP Facility Maturity Date, and for no other or improper purpose.

SWORN before me via videoconference by
ROBERT HACHÉ located in the City of
Sudbury, in the Province of Ontario, before
me at the City of Toronto, in the Province
of Ontario, this 20th day of August, 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 August 20th, 2021 in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

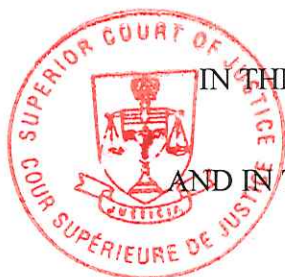


A Commissioner for taking affidavits

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	FRIDAY, THE 5TH
	)	
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

ORDER
(Re: Appointment of Mediator)

THIS APPLICATION, made by Laurentian University of Sudbury (the "**Applicant**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order appointing a mediator as an officer of the Court to act as a neutral third party, was heard this day by videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Notice of Application of the Applicant dated February 1, 2021, the affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits thereto (the "**Haché Initial Affidavit**") and the Report of Ernst & Young Inc. (the "**Monitor**") dated January 30, 2021 and on hearing the submissions of counsel for the Applicant, counsel for the Monitor and counsel for the Laurentian University Faculty Association ("**LUFA**").

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Notice of Case Conference is hereby abridged and validated so that this case conference 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.

COURT-APPOINTED MEDIATOR

3. **THIS COURT ORDERS** that Justice Sean Dunphy is hereby appointed, as an officer of the Court and shall act as a neutral third party (the “**Court-Appointed Mediator**”) to assist the Applicant and its relevant stakeholders with the mediation of the following issues:

- (a) the review and restructuring of the Applicant’s existing academic programs;
- (b) the review and restructuring of the faculty necessary to deliver the Applicant’s restructured academic programs;
- (c) a new collective agreement between the Applicant and LUFA, including resolving all outstanding grievances;
- (d) the review and restructuring of the Applicant’s Federated Universities’ model;
- (e) the framework for the Applicant’s restructuring and future operations; and
- (f) any other matters that are referred to the Court-Appointed Mediator by the Applicant, the Monitor, the relevant stakeholders or this Court;

(together, the “**Mediation Objectives**”).

4. **THIS COURT ORDERS** that in carrying out his mandate, the Court-Appointed Mediator may, among other things:

- (a) adopt processes, procedures, and timelines which, in his discretion, he considers appropriate to facilitate an effective and efficient negotiation of the Mediation Objectives (the “**Mediation Process**”); and
 - (b) consult with any appointed representative(s) of the parties relevant to the Mediation Objectives, the Monitor, the Applicant, and such creditors, stakeholders of the Applicant, and other persons the Court-Appointed Mediator considers appropriate.
5. **THIS COURT ORDERS** that the Monitor shall provide the Court-Appointed Mediator with such assistance as the Court-Appointed Mediator shall reasonably request.
6. **THIS COURT ORDERS** that the Mediation Confidentiality Protocol (the “**Protocol**”) attached hereto as Schedule “A” is hereby approved and that the entirety of the Mediation Process or anything reasonably incidental to the Mediation Process shall be subject to the Protocol.
7. **THIS COURT ORDERS** that the Court-Appointed Mediator is authorized to take all steps and to do all acts reasonably necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.
8. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Court-Appointed Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order. Nothing in this Order shall derogate from the protections afforded to a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).
9. **THIS COURT ORDERS** that the Court and the Court-Appointed Mediator may communicate between one another directly to discuss, on an ongoing basis, the conduct of the Mediation Process and the manner in which it will be coordinated with the CCAA proceedings, including but not limited to individual matters referred specifically by the Court to the Court-Appointed Mediator for resolution.
10. **THIS COURT ORDERS** that the Court shall not disclose to the Court-Appointed Mediator how the Court will decide any matter which may come before the Court for determination

and the Court-Appointed Mediator will not disclose to the Court the negotiating positions or confidential information of any of the parties in the Mediation Process.

GENERAL

11. **THIS COURT ORDERS** that the Applicant and the Monitor may apply to this Court from time to time for directions from this Court with respect to this Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order.

12. **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.

13. **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.

14. **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.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 05:2021

PER / PAR:



CHIEF JUSTICE G.B. MORAWETZ

SCHEDULE "A" to Proposed Form of Mediator Appointment Order

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

**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**

MEDIATION CONFIDENTIALITY PROTOCOL**1. THE PROCESS:**

Pursuant to the Court's Order (the "**Mediation Order**"), Justice Sean Dunphy was appointed as an officer of the Court and to act as a neutral third party (the "**Court-Appointed Mediator**") to assist the Applicant and stakeholders with a mediation of various issues in the Applicant's CCAA proceeding. The Mediation Order authorizes the Court-Appointed Mediator to adopt processes, procedures, and timelines that, in his discretion, are considered appropriate to facilitate an effective and efficient mediation. Further to that authority, this Mediation Confidentiality Protocol shall apply to all written and oral communications related to or arising out of the mediation undertaken pursuant to the Mediation Order (the "**Mediation**").

2. PARTY AND MONITOR CONFIDENTIALITY:

All written and oral communication at the Mediation shall be deemed to be without prejudice settlement discussions. For the purposes of this section, a Mediation communication shall also include all conduct, statements, discussion, promises, offers, views, opinions, admissions and communications for purposes of conducting, considering, initiating, continuing, or reconvening the Mediation together with the delivery and exchange of any documents in the course of the Mediation made by any party, their agents, employees, representatives, or other invitees, and by the Court-Appointed Mediator.

The parties and the Monitor acknowledge and agree that:

- a) the Mediation is a settlement negotiation;
- b) the Mediation is confidential and no stenographic, visual, or audio recordings shall be made;

- c) no Mediation communication shall be discoverable, admissible or referred to in Court for any purpose, including impeachment in the action or in any other proceeding or to establish the meaning and/or validity of any settlement or alleged settlement arising from the Mediation, and shall not be discussed with anyone, provided that communications otherwise admissible or subject to discovery do not become inadmissible or protected from discovery or admission by reason of their use in Mediation;
- d) any notes, records, statements made, discussions had, and recollections of the Court-Appointed Mediator in conducting the Mediation shall be confidential and without prejudice and protected from disclosure for all purposes; and
- e) except as permitted by law, the parties will not subpoena or otherwise require the Court-Appointed Mediator to testify or produce the records or notes in an action or in any other proceeding.

3. MEDIATOR CONFIDENTIALITY:

During the Mediation process, the Court-Appointed Mediator may disclose to either party any information provided by either party, unless the disclosing party has specifically requested the Court-Appointed Mediator to keep the information confidential, in which case the Court-Appointed Mediator will attempt to keep that information in confidence.

The Court-Appointed Mediator will not disclose to anyone who is not a party to the Mediation anything said, or any materials submitted to the Court-Appointed Mediator, except:

- a) where applicable, to the lawyers or other professionals retained on behalf of the parties or to non-parties consented to in writing by the parties, as deemed appropriate or necessary by the Court-Appointed Mediator;
- b) to the Court, to the extent specifically permitted in the Mediation Order; or
- c) where otherwise ordered to do so by a judicial authority or where required to do so by law.

Except as noted above, the notes, records, statements made, and recollections of the Court-Appointed Mediator shall be confidential and protected from disclosure for all purposes.

4. CONSENT TO THIS AGREEMENT:

Each party present during all or any part of the Mediation shall review this Mediation Confidentiality Protocol and agrees to proceed with the Mediation on the terms herein contained.

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
(Appointment of Mediator)

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Tel: 416-304-1616
 Fax: 416-304-1313

Lawyers for the Applicant

CITATION: Laurentian University of Sudbury, 2021 ONSC 951

COURT FILE NO.: CV-21-656040-00CL

DATE: 2021-02-05

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*, for the Applicant

Michael Kennedy, Labour Counsel for the Applicant

Charles Sinclair, Susan Philpott and David Wright, for Laurentian University
Faculty Association ("LUFA")

Ashley Taylor and Ben Muller, for the Monitor

Sharon Hamilton, Ernst & Young Inc., the Court-appointed Monitor

HEARD: February 5, 2021

ENDORSEMENT

[1] In my Endorsement of February 1, 2021, at paragraphs 72 to 79, I addressed the possible appointment of a Court-Appointed Mediator to oversee negotiations with respect to the various restructuring initiatives necessary for the Applicant to achieve a successful restructuring.

[2] In recognition of the compressed timeline in these proceedings, I indicated that if the Applicant, LUFA and the Monitor wished to address this matter prior to the Comeback Hearing on February 10, 2021, a case conference could be scheduled through the Commercial List Office. A case conference was held this morning to consider this issue.

[3] The parties in attendance all support the immediate appointment of a mediator and are agreeable to the appointment of the Honourable Justice Sean F. Dunphy as Court-Appointed Mediator.

[4] The parties are also in agreement with the draft form of order presented by the Applicant (the "Mediator Appointment Order"), which I have signed.

[5] The Mediator Appointment Order sets out the Mediation Objectives and the Mediation Process.

[6] Justice Dunphy can consult with such parties as he considers appropriate, including the Senate of Laurentian University.

[7] I express my appreciation to the parties in arriving at a consensual resolution of the issues addressed today.



CHIEF JUSTICE G.B. MORAWETZ

Date: February 5, 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 August 20th, 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**

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 RHP, 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.

A handwritten signature in black ink, appearing to read 'G.B. Morawetz', written in a cursive style.

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**

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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

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")

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 August 20th, 2021 in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

Benefits and Funding Policy

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Section 1 – Preamble & Purpose

On February 1, 2021, Laurentian University filed for insolvency protection under the Companies' Creditors Arrangement Act ("**CCAA**"). In conjunction with Laurentian University's restructuring under the CCAA, Laurentian University, Laurentian University Faculty Association ("**LUFA**") and Laurentian University Staff Union ("**LUSU**") (or collectively "the **Stakeholders**") agreed to changes to the Retirement Plan of Laurentian University of Sudbury and its Federated and Affiliated Universities ("**Plan**"). These changes are described in an agreement executed among the Stakeholders, which is attached with its appendices as Schedule A (the "**Pension Term Sheet**") and approved by court order dated May 2, 2021 ("**Court Order**"). This Benefits and Funding Policy ("**Policy**") has been adopted by the Stakeholders for the purpose of managing the benefits and funding of the Plan pursuant to the Pension Term Sheet. In the event of any conflict between the Policy and the Pension Term Sheet, the Pension Term Sheet shall control.

The Policy is to be implemented and administered by the Laurentian University Pension Committee (the "**Pension Committee**") through advice to the Finance Committee of the Board of Governors which is ultimately bound to comply with its terms pursuant to the Pension Term Sheet. Additionally, a Joint Committee on the Benefits and Funding Policy and Long-Term Pension Sustainability (the "**Joint Committee**") comprised of representatives of Laurentian, LUFA and LUSU was established for the purpose of monitoring the implementation of the Policy, among other advisory responsibilities with respect to the future of the Plan, pursuant to the Pension Term Sheet.

The purpose of this Policy is to provide a framework for the implementation of the Pension Term Sheet, the prudent financial management of the Plan and to guide decisions that will have to be made from time to time, balancing two primary **goals**:

1. **Building reserves;** and
2. **Granting benefit improvements.**

This Policy is to be read in conjunction the Pension Term Sheet and with other documents that have authority over the Plan, which include:

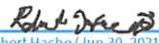
- The Retirement Plan of Laurentian University of Sudbury, including all amendments
- Terms of Reference of the Joint Committee and the Pension Committee
- The Pension Benefits Act (Ontario) and Regulations
- The Income Tax Act (Canada) and Regulations
- The Statement of Investment Policies and Procedures

This Policy is effective July 1, 2021. A copy of this Policy is required to be distributed to the Stakeholders, the Pension Committee and the Joint Committee to guide the management of the Plan. A copy of this Policy is also required to be provided to the actuary engaged to prepare actuarial valuations in respect of the Plan. Copies of the Policy shall include the Pension Term Sheet and its appendices as Schedule A.

This Policy shall be reviewed by the Stakeholders no later than July 1, 2025. All amendments to the Policy require the agreement of the Stakeholders and will consider then-current economic

conditions, the Registered Pension Plan's funded status, and other relevant factors to determine whether and how further benefit reserves or benefit improvements should be incorporated into the Policy. The Policy shall be reviewed earlier than July 1, 2025 if the Stakeholders determine that the Registered Pension Plan will be converted to a jointly-sponsored pension plan prior to that date.

Adopted by:


Robert Haché (Jun 30, 2021 07:47 EDT)

Dr. Robert Haché, President and Vice-
Chancellor
For Laurentian University

Jun 30, 2021

Date

Adopted by:


Linda St Pierre (Jun 29, 2021 23:35 EDT)

Dr. Linda St. Pierre, Executive Director
For LUFA

Jun 29, 2021

Date

Adopted by:



Tom Fenske, President
For LUSU

Jun 30, 2021

Date

Section 2 – Key Plan Provisions Relevant to this Policy

The Plan was established effective July 1, 1975 to provide retirement and related benefits to eligible employees. The Plan is a defined benefit plan that provides a lifetime pension delivered through a combination of contributions by Laurentian University, participating employers, and Plan members, as well as investment returns on such contributions. The Plan has a hybrid component for service prior to 2012.

Prior to July 1, 2021, the Plan provided pensions based on members' Best Average Earnings over 5 years, and annual indexation of post-retirement pensions was guaranteed at 100% of CPI, up to 3%. The Plan design changes agreed by the Stakeholders pursuant to the Pension Term Sheet, largely effective July 1, 2021, institute a Career Average Earnings formula for determining pension benefits and removed built-in inflationary increases to pensions. Once reserves are established as contemplated by the Pension Term Sheet, and not before July 1, 2025, unless prior to that time the surplus in the Plan exceeds the *Income Tax Act* (Canada) ("ITA") maximums, benefits will be restored by granting Conditional Benefits in accordance with this Policy.

Plan Provisions

1) Key Benefits for the future

The Plan's **key** benefit features in respect of post-July 1, 2021 service fall into two main categories, Core Benefits and Conditional Benefits, and are summarized below:

Career Average Lifetime Pension:	• 1.3% of pensionable earnings up to the YAMPE, plus • 2% of pensionable earnings above the YAMPE in respect of each year of contributory service	Core Benefits
Conditional Indexation:	• Pre-retirement increases to the post-July 2021 Career Average Lifetime Pension • Pre-retirement increases to the pre-July 2021 Frozen Accrued Pension • Post-retirement indexation for post-July 2021 Career Average Lifetime Pension • Post-retirement indexation for increases on the pre-July 2021 Frozen Accrued Pension	Conditional Benefits

2) Contributions

The Plan provisions were amended during Laurentian University's CCAA proceeding. Pursuant to the Pension Term Sheet, Laurentian University contributes a minimum of 8% of pensionable earnings (inclusive of employer current service contributions, special payments and administrative expenses), and members contribute 8% of pensionable earnings in aggregate, resulting in a target aggregate contribution rate of 16% of pensionable earnings. In practice, the contribution from Plan members is apportioned with a lower contribution rate for earnings up to the YAMPE and a higher contribution rate for earnings in excess of the YAMPE. The total cost of such contributions will be 8% of pensionable earnings.

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 re-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.

Laurentian University and other participating employers are also required to contribute a minimum of 8% of pensionable earnings to the Plan.

Contributions to the Plan are subject to the *Pension Benefits Act* and ITA. Employer contribution holidays and reductions in employer contribution rates are prohibited.

Section 3 – Benefits and Funding Objectives

The following key benefits and funding objectives were identified by the Stakeholders in the development of this Policy.

1) Contribution Stability

Decisions under this Policy have a low risk of requiring contributions that would exceed 16% of pensionable earnings.

2) Meaningful Conditional Benefits Improvement

Decisions under this Policy should deliver a high degree of probability that the Conditional Benefits can be granted in a stable, meaningful and sustainable manner.

3) Sustainability

The long-term sustainability of the Plan in its current form is of great importance. A sustainable pension plan is one that delivers reliable retirement income for the life of its beneficiaries at a cost that is unlikely to require contributions above an aggregate 16% contribution rate.

4) Equity Considerations

The Stakeholders agree that consideration should be given to equity among Plan members. As benefit improvements are considered, there should be a reasonable degree of equity across generations of Plan members and within any given generation of members, and all Plan members should be treated even-handedly with respect to the apportionment of the risks and rewards of the Plan.

Section 4 – Criteria for 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.

Where these criteria are met, the intent is to grant benefit improvements, as set out in Section 6. 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.

No benefit improvements will be considered prior to July 1, 2025, unless prior to that time the surplus in the Plan exceeds the ITA maximums, in order to build reserves.

Section 5 – Risks related to Funding and Risk Tolerance

Primary risks faced by the Plan

The Plan faces a number of risks that could prevent the delivery of benefit improvements as a result of emerging deficits and/or threaten Laurentian University's sustainability by way of volatility of funding requirements. The following are the most significant of these risks:

1) Economic Risks

The most significant risks facing the Plan are related to the invested assets of the Plan. These risks are primarily managed through the Plan's investment policy, and include:

- **Investment Performance**
To the extent that the Plan's investments do not generate investment returns at the expected long-term rate used to establish the funding requirements, additional contributions may be required to make up the shortfall. This risk is partially managed by the PfAD included in the plan's liabilities and normal cost.
- **Interest Rates and Mismatch between Assets and Liabilities**
Pension benefits can be thought of as a series of regular payments made over a long period of time, and therefore have a payment structure similar to that of a bond instrument. In a "matched" portfolio, pension assets are invested in debt securities, such as bonds, with cash flows similar to those of the underlying pension payments. Under this investment approach, changes in market interest rates can be expected to impact assets and liabilities in a similar way. However, to the extent that assets are not invested to match liabilities, there is a risk that changes in market interest rates will affect assets and liabilities differently, causing volatility in the funded position of the Plan, particularly on a solvency or wind-up basis, and consequently in contribution requirements. This risk is partially managed by the PfAD included in the plan's liabilities and normal cost.
- **Inflation**
Pension benefits for service up to July 1, 2021 are automatically adjusted to compensate for the effect of inflation. This inflation risk is mitigated by imposing a cap of 3% on post-retirement indexation adjustments as they apply to pre-July 1, 2021 service. The compounded funding cost of this benefit over every member's lifetime is material to the overall Plan liability and departures in inflation relative to assumptions will result in gains and losses over time. The Plan changes required by the Pension Term Sheet mitigate this risk for service post July 1, 2021 by introducing the conditionality of those benefits.

2) Plan Demographics

There is the risk that member demographics may evolve in a way that adversely impacts the funded status of the Plan. These risks include:

- **Longevity**

There is a risk that the mortality experience actually observed for the Plan's retirees differs from the mortality assumption adopted for the going concern valuation, which could impact the funding requirements of the Plan. The main risk is that retired members will live longer than expected, which would increase the liabilities of the Plan. This risk is partially managed by periodically adopting new mortality tables and other updates.

- **Plan Maturity**

A pension plan's maturity can be represented by the proportion of total liabilities that relate to retirees. The maturity of a plan is an important factor that can increase the cost of the plan in proportion to total payroll and operational costs. The more mature a pension plan is, the greater the impact a change in liabilities will have on the costs of the plan in proportion to total payroll.

While the Plan remains open, this risk is of lesser concern. If the Plan was closed to new entrants, the risks associated with a maturing plan would have to be carefully monitored.

- **Other Experience**

Over time, other aspects of actual Plan experience will differ from the assumptions made in the valuations. For example, members may retire earlier on average than assumed. External factors could change hiring practices or departures in ways that are currently unplanned.

3) Changes in Legislation or Actuarial Standards

Changes in legislation or actuarial standards may suddenly impact Plan liabilities and necessitate additional funding. While this risk is difficult to manage, Plan administrators and service providers will advocate on behalf of the best interests of the Plan and its members with respect to proposed changes to legislative and actuarial standards.

4) Plan Sponsor Bankruptcy or Insolvency

The Plan will be terminated if Laurentian University can no longer operate because of bankruptcy or insolvency. Coming out of the CCAA proceedings, the Plan was redesigned and this Policy was put into place to make the Plan sustainable and to reduce pension related risk. However, there is still future risk of Plan sponsor bankruptcy or insolvency. If the Plan sponsor becomes bankrupt or insolvent, the appointed Plan administrator will follow the necessary steps related to this event with respect to the Plan and its stakeholders.

Section 6 – Process for Implementing Benefit Improvements

Conducting Actuarial Valuations

1. Actuarial valuations of the Plan shall be performed and filed with the regulatory authorities at least once every three years for the purposes of monitoring the financial health of the Plan and establishing contribution requirements.
2. In between the dates that actuarial valuations are filed with the regulatory authorities, and not less frequently than annually, estimates of the financial position of the Plan will be provided for information purposes to the Pension Committee and the Joint Committee.
3. The valuations and estimates will provide meaningful information based on robust actuarial analysis to measure the building of reserves and to implement Conditional Benefit Improvements.
4. The Pension Committee and the Joint Committee, in accordance with their respective roles as set out in the applicable Terms of Reference, will review the actuarial results, along with related information, to evaluate decisions to be made to build reserves, manage ongoing risks to the Plan, and grant Conditional Benefits.

Implementation Guidelines

1. No benefit improvements will be considered prior to July 1, 2025 unless, prior to that date, the surplus in the Plan exceeds ITA maximums.
2. Each actuarial valuation or financial position update starting with July 1, 2025, and annually thereafter, shall initially calculate the funded status of the Plan using the then-current benefit level.
3. Based on those actuarial results, the Pension Committee shall annually determine if the Criteria for benefit improvements, as set out in Section 4 of this Policy (the "**Criteria**"), have been met.
4. The amount available for benefit improvement purposes will be determined in accordance with the Criteria.
5. The Pension Committee will cause the Plan Actuary to determine the cost of various benefit improvements, not necessarily in this order, from the following menu:

Menu of Conditional Benefit Improvements

- Pre-retirement increases to the post-July 2021 Career Average Lifetime Pension
- Pre-retirement increases to the pre-July 2021 Frozen Accrued Pension
- Post-retirement indexation for post-July 2021 Career Average Lifetime Pension
- Post-retirement indexation for increases on the pre-July 2021 Frozen Accrued Pension

Provided that, at the date of the analysis, Conditional Benefit improvements have been restored to the level of benefits in effect prior to July 1, 2021, the Pension Committee may request the Plan Actuary to provide costings for establishing further benefit reserves or for granting additional benefit improvements not listed above.

6. The Pension Committee shall annually determine whether the Criteria set out in Section 4 of this Policy are met and what benefit improvements will be granted in consideration of the Criteria.
7. Where the Criteria for benefit improvements have been met, the Pension Committee shall determine what benefit improvements best meet the objectives set out in Section 3 of the Policy and in what order to grant benefit improvements from the above menu. The Pension Committee will also have authority to make immaterial discretionary adjustments to potential improvements, as necessary, provided it shall communicate them to the Joint Committee in advance of implementation.
8. Once a determination on benefit improvements is made by the Pension Committee in accordance with this Policy, it shall be implemented by Laurentian University. The Joint Committee shall monitor the administration of the Policy in accordance with the Terms of

Reference of the Joint Committee. Failure of Laurentian University to implement benefit improvements, as recommended by the Pension Committee, shall be subject to enforcement in accordance with the Terms of Reference of the Joint Committee.

9. Once a conditional benefit improvement has been implemented it shall become a Core Benefit.
10. Plan amendments shall be effective on July 1st of each applicable year unless the Pension Committee determines a different implementation date.

Key Definitions

"Conditional Benefits" mean those benefits which are to be granted when the Benefit Improvement Criteria in Section 4 are met. Conditional Benefits include:

- Pre-retirement indexation to the lifetime pension accrued as at July 1, 2021 and/or the lifetime career earnings benefit accrued on and after July 1, 2021.
- Post-retirement indexation adjustments to pensions in pay for pension benefits accrued in respect of service after July 1, 2021.
- Post-retirement indexation adjustments on any pre-retirement indexation to the lifetime pension accrued as at July 1, 2021

Once a Conditional Benefit has been granted under the terms of this Policy, it becomes a Core Benefit.

For greater clarity:

- Pre-retirement and/or post-retirement indexation need not be granted at the same time nor at the same level.

"Core Benefits" mean benefits provided for under the Plan in respect of service:

- Prior to July 1, 2021, and
- On or after July 1, 2021, as provided in the Plan text, as amended pursuant to the Pension Term Sheet, and effective July 1, 2021; and
- Any previously granted Conditional Benefit as determined under this Policy.

"Frozen Accrued Pension" is the pension accrued as at July 1, 2021 based on Plan provisions at June 30, 2021.

"PfAD" is the percentage determined under the Pension Benefits Act (Ontario) and Regulations in respect of the going concern liabilities of the Plan.

"YAMPE" or "Year's Additional Maximum Pensionable Earnings", is defined as 114% of the Year's Maximum Pensionable Earnings ("YMPE") until 2024 after which it will be a published figure for purposes of the Canada Pension Plan.

Schedule "A"

Strictly Confidential – Subject to Provisions of Appointment of Mediator Order dated February 5, 2021

**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 55th 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,

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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.

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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.

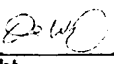
E. Collective Agreement Proposals Relating to Pensions and Retiree Benefits

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".

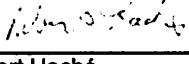
F. Joint Committee on the Benefits and Funding Policy and Long-Term Pension Sustainability:

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

Strictly Confidential – Subject to Provisions of Appointment of Mediator Order dated February 5, 2021

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

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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.

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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. 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	<u>Employer</u> 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 <i>Pension Benefits Act</i> 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	<u>Employer</u> 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 <i>Pension Benefits Act</i> 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. The Employer may take a contribution holiday in accordance with the <i>Pension Benefits Act</i> and after discussion with the Pension Committee only when required under the <i>Income Tax Act</i> due to excess surpluses as defined under the <i>Income Tax Act</i> 147.2(2) (d). Any contribution holiday shall be shared equally between the Employer and Employees. <u>Employee</u> (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; (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; (c) Effective June	to the Plan will be credited at the Plan rate of return. The Employer may take a contribution holiday in accordance with the <i>Pension Benefits Act</i> and after discussion with the Pension Committee only when required under the <i>Income Tax Act</i> due to excess surpluses as defined under the <i>Income Tax Act</i> 147.2(2) (d). Any contribution holiday shall be shared equally between the Employer and Employees. <u>Employee:</u> Each Member shall contribute by regular payroll deduction as follows. Effective July 1, 2021, the sum of: a) 6.7% of Pensionable Earnings up to the YAMPE; and b) 10.4% of Pensionable Earnings above the YAMPE. [Placeholder for further adjustments to reflect Pension Term Sheet] (a) — Effective June July 30, 2017, 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; (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; (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. 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 to July 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 to July 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 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 <i>Pension Benefits Act</i> and regulations there under based upon the	Employer Contribution 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 <i>Pension Benefits Act</i> and regulations there under based upon the

LUSU Collective Agreement			
Provision	Intended Amendment	Current	Proposed Revised
		actuarial valuations for the Retirement Plan that the Employer files with the Financial Services Commission of Ontario. Interest on the Employee contribution to the Plan will be credited at the Plan rate of return. The Employer may take a contribution holiday in accordance with the <i>Pension Benefits Act</i> and after discussion with the Pension Committee only when required under the <i>Income Tax Act</i> 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. Member's Required Contribution Each Member shall contribute by regular payroll deduction as follows: Effective July 1, 2018, the sum of:	actuarial valuations for the Retirement Plan that the Employer files with the Financial Services Commission <u>Regulatory Authority</u> of Ontario. Interest on the Employee contribution to the Plan will be credited at the Plan rate of return. The Employer may take a contribution holiday in accordance with the <i>Pension Benefits Act</i> and after discussion with the Pension Committee only when required under the <i>Income Tax Act</i> 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. Member's Required Contribution: Each Member shall contribute by regular payroll deduction as follows: 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; 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 c) 9.9 % of the partof the Member's Pensionable Earnings that is in excess of the Y.M.P.E.	20182021, the sum of: a) <u>6.7% of Pensionable Earnings up to the YAMPE; and</u> b) <u>10.4% of PensionableEarnings above the YAMPE.</u> [Placeholder for further adjustments to reflect Pension Term Sheet] 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; 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 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]

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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 "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 August 20th, 2021 in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

COLLECTION AND ACCOUNTING OF TUITION AND INCIDENTAL FEES

ADDENDUM TO AN EXISTING AGREEMENT BETWEEN

LAURENTIAN UNIVERSITY OF SUDBURY (“**LAURENTIAN UNIVERSITY**”)

AND

THE NORTHERN ONTARIO SCHOOL OF MEDICINE (“**NOSM**”)

This document constitutes an Addendum to the existing agreement between NOSM and Laurentian University relating to the collection and accounting of tuition and incidental fees for the 2021-22 academic year and constitutes an Addendum to be attached to the existing relationship agreement dated December 19, 2018 (the “**Relationship Agreement**”).

This Addendum relates to the period beginning July 1, 2021 and ending June 30, 2022.

Laurentian University will provide services relating to the collection and accounting of tuition and incidental fees of NOSM students based on the following:

1. Tuition fees for students enrolled in the MD program have been established by NOSM at \$23,247 per year.
2. Tuition fees for full-time students registered in the Master of Medical Studies program have been established by NOSM at \$15,000 per year (3 terms per year).
3. Tuition fees for part-time students registered in the Master of Medical Studies program have been established by NOSM at \$7,500 per year (3 terms per year).
4. Incidental fees for students enrolled in the MD program will follow the standard approved fees for 2021-22 set for Laurentian University students (see [Appendix D](#)). Incidental fees have been set at \$1,208.03 per year for first and second year students and \$996.03 for third and fourth year students belonging to the Students’ General Association (SGA). For students belonging to the Association des etudiantes et etudiants francophones (AEF), the incidental fees have been set at \$1,002.47 for first and second year students and \$790.47 for third and fourth year students. All relevant student incidental fees will be detailed on the student account in compliance with the MTCU incidental

fee classification framework. There will be no refund of the incidental fees, except in accordance with paragraph 14 hereof.

5. Incidental fees for students enrolled in the Master of Medical Studies program will follow the standard approved fees for 2021-22 set for Laurentian University graduate students (see [Appendix E](#)). All relevant student incidental fees will be detailed on the student account. There will be no refund of the incidental fees, except in accordance with paragraph 14 hereof.
6. The dates established for the payment of MD Program tuition and incidental fees have been set as follows: August 20, 2021 – first installment or total fees to be paid; December 10, 2021 – Final installment due date.
7. The dates established for the payment of the Master of Medical Studies tuition and incidental fees will follow the payment due dates as established by Laurentian University.
8. A late payment administrative fee of \$72.50 will be assessed for each missed due date. In addition, interest of 1.5% monthly will be added automatically to past due accounts and is payable to Laurentian University.
9. Upon acceptance of an Offer of Admission into the MD program with NOSM, first year students will remit a non-refundable confirmation deposit of \$1,000 to NOSM. This deposit will be forwarded to Laurentian University with registration information for that student.
10. Upon acceptance of an Offer of Admission into the Master of Medical Studies Program, first year students will remit a non-refundable confirmation deposit of \$1,000 to NOSM. This deposit will be forwarded to Laurentian University with registration information for that student.
11. Laurentian University will collect the tuition and incidental fees for students enrolled in the MD program at NOSM. Students with an unpaid balance will not be permitted to register in a subsequent year until their accounts have been paid. Students will not have access to final grades including official transcripts and/or degree certificates if their student account is in arrears unless approval for access to the account is provided by NOSM.
12. Laurentian University will collect the tuition and incidental fees for students enrolled in Master of Medical Studies on behalf of NOSM based on the Schedule in [Appendix B](#). Students with an unpaid balance will not be permitted to register in a subsequent year until their accounts have been paid. Students will not have access to final grades including official transcripts and/or degree certificates if their student account is in arrears unless approval for access to the account is provided by NOSM.

13. Amounts collected by Laurentian University on behalf of NOSM will be remitted by Laurentian University to NOSM as follows: Amounts collected on behalf of NOSM up to and including September 24, 2021, will be remitted no later than October 29, 2021. Amounts collected by Laurentian University from September 25, 2021 to February 4, 2022 will be remitted to NOSM no later than April 1, 2022. Amounts received by Laurentian University after February 4, 2022 will be remitted to NOSM no later than May 6, 2022.
14. The refund policy as established by NOSM is outlined in [Appendix C](#). The amount of the refund or amount owing to the student will be calculated based on the date that the student withdraws from the program. Only the tuition amount will be refunded. The incidental fees will not be refunded except when withdrawal occurs prior to September 18, 2021. On withdrawal of a student from the program, Laurentian University will be notified in writing by NOSM and will be reimbursed the amount of the tuition fee that was previously forwarded by Laurentian University to NOSM. Laurentian University will, upon receipt of the reimbursed amount by NOSM, either issue a refund cheque to the student or credit the student account based on the amounts as outlined in [Appendix C](#).
15. NOSM learners that are granted a leave of absence from the program will not receive a refund of tuition fees paid. Instead, the balance of the tuition fees paid relative to when the leave is approved, will be deferred to the next year. NOSM will be responsible to communicate to Laurentian University in a timely manner, the individual student leaves and the reinstatements.
16. All students in the MD program will be registered as full-time students of Laurentian University, and Laurentian University will issue the form T2202 to each student. All students of NOSM must provide their Social Insurance Number (SIN) to Laurentian University to comply with Canada Revenue Agency (CRA) requirements.
17. Students in the Master of Medical Studies program at NOSM may be registered as either full-time or part-time students, and Laurentian University will issue the form T2202 to the student. All students of NOSM must provide their Social Insurance Number (SIN) to Laurentian University to comply with Canada Revenue Agency (CRA) requirements.
18. NOSM will provide e-mail addresses (@nosm.ca) for each student to the Office of Financial Services of Laurentian University for the purposes of communications and collections.
19. Ontario Student Award Program (OSAP) funds received by NOSM on behalf of the students will be forwarded to Laurentian University. The student name

and number and the amount to be credited to the individual student account will be provided by the NOSM Learner Affairs Unit.

20. All other fees to be paid by NOSM students will follow the schedule of amounts as established by Laurentian University. These will include but are not limited to the following: Parking fees; locker rentals; transcript fees; residence fees.
21. The fee payable by NOSM to Laurentian University for administering the collection of tuition and fees pursuant to this Addendum will be \$500.00 per student for the 2021-22 academic year.
22. Laurentian University agrees to provide NOSM with a monthly outstanding balance report for NOSM students, which is to be provided to the NOSM Financial Aid office or to the NOSM Director of Finance.
23. Laurentian University and NOSM acknowledge and agree that the purpose and intent in entering into this Service Level Agreement is to reflect changes made to the annual tuition fees and incidental fees payable for the 2021-22 academic year and the compensation payable to Laurentian University for providing such services. Nothing in this Service Level Agreement shall be construed to amend, modify, replace or restate the Relationship Agreement in any way. For greater certainty, and notwithstanding anything else contained in this Addendum, the parties acknowledge and agree that this Addendum to the Relationship Agreement and the Relationship Agreement itself, shall not be construed as or deemed to be an agreement entered into following the commencement of the proceedings under the *Companies' Creditors Arrangement Act*.

Signing Authorities

Northern Ontario School of Medicine	Laurentian University of Sudbury
 Sarita Verma Dean, President and CEO	 Robert Hache President & Vice-Chancellor
 Grace Vita Acting Chief Operating Officer	 Normand Lavallee Associate Vice President, Financial Services

Appendix A: Tuition and Incidental Fees Due Dates – MD Program

Students' General Association (SGA)

	Due Date	Amount			
		First Year	Second Year	Third Year	Fourth Year
Full Payment of Tuition and Incidental Fees	August 20, 2021	\$23,455.03*	\$24,455.03	\$24,243.03	\$24,243.03
First Installment	August 20, 2021	\$11,227.51*	\$12,227.51	\$12,121.51	\$12,121.51
Second Installment	December 10, 2021	\$12,227.52	\$12,227.52	\$12,121.52	\$12,121.52

Tuition Fees	\$23,247.00	\$23,247.00	\$23,247.00	\$23,247.00
Incidental Fees (Appendix D)	\$1,208.03	\$1,208.03	\$996.03	\$996.03
Total	<u>\$24,455.03</u>	<u>\$24,455.03</u>	<u>\$24,243.03</u>	<u>\$24,243.03</u>

* First Year students pay a deposit of \$1,000 on admission which is credited to their account prior to August 15, 2021.

Association des etudiantes et etudiants francophones (AEF)

	Due Date	Amount			
		First Year	Second Year	Third Year	Fourth Year
Full Payment of Tuition and Incidental Fees	August 20, 2021	\$23,249.47*	\$24,249.47	\$24,037.47	\$24,037.47
First Installment	August 20, 2021	\$11,124.73*	\$12,124.73	\$12,018.73	\$12,018.73
Second Installment	December 10, 2021	\$12,124.74	\$12,124.74	\$12,018.74	\$12,018.74

Tuition Fees	\$23,247.00	\$23,247.00	\$23,247.00	\$23,247.00
Incidental Fees (Appendix D)	\$1,002.47	\$1,002.47	\$790.47	\$790.47
Total	<u>\$24,249.47</u>	<u>\$24,249.47</u>	<u>\$24,037.47</u>	<u>\$24,037.47</u>

* First Year students pay a deposit of \$1,000 on admission which is credited to their account prior to August 6, 2021.

Appendix B: Tuition and Incidental Fees Due Dates – Master of Medical Studies Program

Full-Time

Full-Time (Three Terms)	Due Date	Amount	
		First Year	Second Year
Fall Term Tuition and Incidental Fees	August 20, 2021	\$4,354.63*	\$5,354.63
Winter Term Tuition and Incidental Fees	December 10, 2021	\$5,354.63	\$5,354.63
Spring/Summer Term Tuition and Incidental Fees	May 8, 2022	\$5,354.63	\$5,354.63
Tuition Fees		\$15,000.00	\$15,000.00
Incidental Fees (Appendix E)		\$1,063.89	\$1,063.89
Total		<u>\$16,063.89</u>	<u>\$16,063.89</u>
* First Year students pay a deposit of \$1,000 on admission which is credited to their account prior to August 15, 2021.			

Part-Time

Part-Time (Three Terms)	Due Date	Amount	
		First Year	Second Year
Fall Term Tuition and Incidental Fees	August 20, 2021	\$1,702.55*	\$2,702.55
Winter Term Tuition and Incidental Fees	December 10, 2021	\$2,702.55	\$2,702.55
Spring/Summer Term Tuition and Incidental Fees	May 8, 2022	\$2,702.55	\$2,702.55
Tuition Fees		\$7,500.00	\$7,500.00
Incidental Fees (Appendix E)		\$607.65	\$607.65
Total		<u>\$8,107.65</u>	<u>\$8,107.65</u>
* First Year students pay a deposit of \$1,000 on admission which is credited to their account prior to August 15, 2021.			

Appendix C: Refund Schedules

Refund Schedule – MD Program

Withdrawal Date	Percentage Refund
On or before September 18, 2021	100%
September 19, 2021 to October 9, 2021	75%
October 10, 2021 to January 1, 2022	50%
January 2, 2022 to January 29, 2022	10%
On or after January 29, 2022	0%

Refund Schedule – Master of Medical Studies Program

Fall Term (September to December 2021)

Withdrawal Date	Percentage Refund
On or before September 30, 2021	75%
October 1, 2021 to October 31, 2021	50%
November 1, 2021 to November 30, 2021	25%
On or after December 1, 2021	0%

Winter Term (January to April 2022)

Withdrawal Date	Percentage Refund
On or before January 31, 2022	75%
February 1, 2022 to February 28, 2022	50%
March 1, 2022 to March 31, 2022	25%
After March 31st	0%

Spring/Summer Term (May to August 2022)

Withdrawal Date	Percentage Refund
On or before May 31, 2022	75%
June 1, 2022 to June 30, 2022	50%
July 1, 2022 to July 31, 2022	25%
After July 31st	0%

Appendix D: Incidental Fees – MD Program

Students' General Association (SGA)

SGA	First Year	Second Year	Third Year	Fourth Year
Laurentian University Mandatory Incidental Fees	\$426.21	\$426.21	\$426.21	\$426.21
SGA Mandatory Incidental Fees	\$781.82	\$781.82	\$781.82	\$781.82
Less: UPASS fees			(\$212.00)	(\$212.00)
Total Mandatory Incidental Fees	<u>\$1,208.03</u>	<u>\$1,208.03</u>	<u>\$996.03</u>	<u>\$996.03</u>

Association des etudiantes et etudiantes francophones (AEF)

AEF	First Year	Second Year	Third Year	Fourth Year
Laurentian University Mandatory Incidental Fees	\$426.21	\$426.21	\$426.21	\$426.21
AEF Mandatory Incidental Fees	\$576.26	\$576.26	\$576.26	\$576.26
Less: UPASS fees			(\$212.00)	(\$212.00)
Total	<u>\$1,002.47</u>	<u>\$1,002.47</u>	<u>\$790.47</u>	<u>\$790.47</u>

Appendix E: Incidental Fees – Master of Medical Studies Program

Full-Time

Full-Time	First Year	Second Year
Laurentian University Mandatory Incidental Fees	\$426.21	\$426.21
GSA Mandatory Incidental Fees	\$637.68	\$637.68
Total Mandatory Incidental Fees	<u>\$1,063.89</u>	<u>\$1,063.89</u>

Part-Time

Part-Time	First Year	Second Year
Laurentian University Compulsory Incidental Fees (per semester)	\$152.96	\$152.96
GSA Compulsory Incidental Fees (per semester)	\$49.59	\$49.59
Total Compulsory Incidental Fees (per semester)	<u>\$202.55</u>	<u>\$202.55</u>
Total Compulsory Incidental Fees (per year, 3 semesters)	<u>\$607.65</u>	<u>\$607.65</u>
Part-time incidental fees are paid over two semesters		

This is Exhibit "E" 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 August 20th, 2021 in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

**SECOND AMENDMENT TO THE DIP LOAN AGREEMENT
DATED AS OF AUGUST 20, 2021
(the “Second DIP Amendment”)**

WHEREAS on January 29, 2021, Laurentian University of Sudbury (the “**Borrower**”) and Firm Capital Corporation, as assigned to Firm Capital Mortgage Fund Inc. (the “**DIP Lender**”), entered into a binding debtor-in-possession (“**DIP**”) financing term sheet agreement (the “**DIP Term Sheet**”) setting out the terms and conditions of a non-revolving DIP credit facility (the “**DIP Facility**”) up to the maximum principal amount of \$25,000,000 (the “**DIP Financing**”), subject to Court approval;

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

AND WHEREAS on February 10, 2021, the Borrower and the DIP Lender entered into a DIP Loan Agreement (the “**DIP Loan Agreement**”) pursuant to which the DIP Lender agreed to advance the DIP Financing to the Borrower in accordance with the terms and conditions of the DIP Loan Agreement;

AND WHEREAS on February 10, 2021, the Borrower sought Court approval at the comeback hearing of the DIP Term Sheet, the DIP Financing and a Court-ordered super-priority charge in the amount of \$25,000,000 (the “**DIP Lender’s Charge**”);

AND WHEREAS on February 11, 2021, the Court approved the DIP Term Sheet, the DIP Financing and DIP Lender’s Charge pursuant to the Amended and Restated Initial Order granted by Chief Justice Morawetz dated February 11, 2021;

AND WHEREAS the DIP Lender agreed to amend the original terms of the DIP Financing as set out in the DIP Term Sheet and the DIP Loan Agreement (together, the “**Commitment**”), pursuant to a DIP Financing amendment letter dated April 19, 2021 (accepted April 20, 2021) (the “**Amended DIP Term Sheet**”), which Amended DIP Term Sheet included, among other things, an increase of \$10,000,000 to the maximum principal amount under the DIP Facility to a maximum principal amount of \$35,000,000, and an increase of the DIP Lender’s Charge to \$35,000,000;

AND WHEREAS on or about May 2, 2021, the Court approved the Amended DIP Term Sheet;

AND WHEREAS on May 19, 2021, the DIP Lender and the Borrower entered into the First Amendment to the DIP Loan Agreement (the “**First DIP Amendment**”);

AND WHEREAS the DIP Loan Agreement has a Maturity Date of August 31, 2021 and the Borrower has requested an extension of the Maturity Date to January 31, 2022 on, and subject to the terms set out in this Second DIP Amendment;

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

1. The DIP Loan Agreement is hereby amended as follows:
 - i. The definition of the Maturity Date and the Term, as originally defined in the DIP Loan Agreement and as amended in the First DIP Amendment, shall be further amended to: “January 31, 2022”.
 - ii. Paragraph 17 is amended to state the following:

Any amounts received in repayment of the DIP Obligations owing under this Agreement shall be paid and applied in accordance with the following waterfall: (i) first, towards outstanding interest payable hereunder; (ii) second, towards fees, expenses, and Costs permitted and due hereunder; and (iii) third, towards the outstanding Advances.
 - iii. Paragraph 23 is amended by adding the following Negative Covenants: 23(i) Permit changes to the composition of the board of directors (or equivalent) or management of the Borrower that in the opinion of the DIP Lender, in its sole and unfettered discretion, creates uncertainty, instability or has a negative effect regarding the Borrower's restructuring efforts; and 23(j) Permit any material change that in the opinion of the DIP Lender, in its sole and unfettered discretion, has a negative effect on the Borrower.
 - iv. Paragraph 11 is amended by adding the following Extension Fee: 11(d) Extension Fee: The Borrower shall pay the DIP Lender an extension fee of \$350,000.00 for the extension of the Maturity Date and the Term under this Second DIP Amendment. The Borrower directs the DIP Lender to pay the extension fee to the DIP Lender from the proceeds of the next advance under the DIP Financing.
2. The amendments set out herein shall be in addition to the original terms of the Commitment, as amended in the First DIP Amendment, and, except as expressly amended herein, all terms of the Commitment, as amended in the First DIP Amendment, shall remain in effect.
3. This Amendment shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties irrevocably attorns to the non-exclusive jurisdiction of the Courts of the Province of Ontario. The parties consent to the jurisdiction and venue of the Court for the resolution of any disputes under this Amendment.
4. This Amendment may be executed by the parties in counterparts and may be delivered by electronic delivery in portable document format (PDF) and all such PDF copies together will constitute one and the same instrument.

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

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

AS DIP LENDER:

FIRM CAPITAL MORTGAGE FUND INC.

Per: _____

Name: Jonathan Mair

Title: Senior Vice-President

I have authority to bind the Corporation

AS BORROWER:

LAURENTIAN UNIVERSITY OF SUDBURY

Per: _____

Name: Dr. Robert Haché

Title: President and Vice-Chancellor

I have authority to bind the Corporation

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 August 20th, 2021 in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits



Request for Proposals

For

**Services for any one of, a
combination of, or all of the
following;**

**(1) Senate Governance Review;
and/or (2) Board of Governors
Governance Review; and/or (3)
Operational Review**

RFP No. 21-LCD-15

Issue Date: August 5th, 2021

Submission Deadline: August 31, 2021 at 3:00:00 p.m. (Local Time)

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REQUEST FOR PROPOSALS

SECTION 1 - INTRODUCTION

1.1 General

(1) Laurentian University (the “**University**”) is issuing the RFP Documents (as defined in RFP Section 2.1(1)) to retain a supplier to provide the goods and/or services briefly described in the RFP Data Sheet (as defined in RFP Section 11.2(36)) the general terms of which will be as set out in the Draft Agreement (as defined in RFP Section 2.1(1)(g)) (the “**Goods and/or Services**”) and ultimately a Final Agreement (as defined in RFP Section 1.1(2)) if the Proponent becomes a Successful Proponent. The RFP number is set out in the RFP Data Sheet (the “**RFP Number**”).

This RFP is to retain supplier(s) for services **for any one of, a combination of, or all of** the following:

1. Senate Governance Review;
2. Board of Governors Governance Review;
3. Operational Review.

Proponents may choose to submit proposals for:

1. Senate Governance Review; and/or
2. Board of Governors Governance Review; and/or
3. Operational Review;

Proponents who choose to submit two (2) or more proposals may receive additional value-added synergy points.

(2) The University, in consultation with its advisors, the court-appointed Monitor in its CCAA proceeding Ernst & Young Inc. (the “**Monitor**”) and its Chief Redevelopment Officer (“**CRO**”) intends to award the final agreement that will be entered into pursuant to the RFP process (the “**Final Agreement**”) through an open, fair and competitive RFP process. The RFP competition will be open either to,

- (a) any entity described in RFP Section 3.12(1); or
- (b) only those entities that have been invited to submit a response to this RFP process as specified in the RFP Data Sheet,

as applicable. In the RFP Documents, individuals or firms that submit documents in response to this RFP process are referred to as “**Proponents**”. The entity or entities that the University selects to negotiate an agreement with in respect of the Goods and/or Services are referred to as “**Negotiations Proponent(s)**”. The Proponent that the University enters into the Final Agreement with is referred to as the “**Successful Proponent**”. For ease of reference, prospective proponents, whether or not they submit a proposal in response to this RFP process (a “**Proposal**”), are also referred to as “Proponents”.

(3) The process to select the Successful Proponent for the purposes of the Goods and/or Services will commence with the issuance of the RFP Documents and will terminate when the University selects a Successful Proponent and a Final Agreement has been executed by Laurentian and the Successful Proponent (the “**RFP Process**”).

1.2 Laurentian University

Serving close to 10,000 students Laurentian University, located on the traditional territory of the Atikameksheng Anishnawbek First Nation, is committed to strengthening the foundation of knowledge in

RFP No.: 21-LCD-15 - (1) Senate Governance Review; and/or (2) Board of Governors Governance Review; and/or (3) Operational Review

higher education and research in order to offer an outstanding university experience in English and French with a comprehensive approach to Indigenous education. Together with its federated partners, Laurentian University prepares leaders who bring innovative and intelligent solutions to local and global issues. Laurentian's students benefit from small class sizes and exceptional post-graduation employment rates.

At Laurentian University, these are the shared values:

1. The North inspires us;
2. Student success is our success;
3. Teaching and Learning define us;
4. Curiosity drives our Research; and
5. Relationships are our priority.

Laurentian University seeks out opportunities for collaborations, investments, and accomplishments that align with these strengths:

1. Indigeneity – Laurentian University is committed to reconciliation.
2. Francophone Cultures and Language – Laurentian University is renowned for fostering Franco-Ontarian cultural institutions.
3. Interdisciplinarity – Laurentian University promotes collaboration through interdisciplinary programs and research.
4. Mining and Environmental Sustainability – Laurentian University is a world leader in mining education and research, and is internationally acclaimed for environmental remediation work.
5. Well-being – Laurentian University excels in education and research on health and well-being.

Laurentian University's key clients and stakeholders include:

- Prospective students
- Current students
- Staff and faculty,
- Alumni,
- Donors, friends, and other stakeholders,
- Parents, teachers, and guidance counsellors.

1.3 Contact Person

(1) The Proponents are required to submit all questions and other communications regarding the RFP Documents, the RFP Process and their Proposals by e-mail to the contact person named in the RFP Data Sheet (the "**Contact Person**") at the email address set out in the RFP Data Sheet. During this RFP Process, Proponents may only contact the University through the Contact Person.

1.4 Conflict of Interest

(1) For the purposes of this RFP Process, "**Conflict of Interest**" includes any situation or circumstance where a Proponent or any of its Advisors (as defined in RFP Section 11.2(2)), or any of the employees of a Proponent or Proponent Advisor engaged in the development or oversight of development of the Proponent's Proposal (including for such employees in their personal capacities):

- (a) has commitments, relationships or financial interests or involvement in any litigation or proceeding that:

- (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment by any personnel of the University or its Advisors; or
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent's obligations under the Draft Agreement if that Proponent was determined to be a Successful Proponent under the RFP Process;
- (b) has contractual or other obligations to the University that could or could be seen to have been compromised or otherwise impaired as a result of its participation in the RFP Process; or
- (c) has knowledge of confidential information (other than Confidential Information (as defined in RFP Section 3.10(1))) that,
 - (i) has been made available to the Proponent or any of its Advisors;
 - (ii) is of strategic and/or material relevance to the RFP Process or to the Goods and/or Services; and
 - (iii) is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage.

(2) If a Proponent believes that a Proponent or a person who has had or who will have significant involvement in the preparation and/or oversight of the preparation of the Proposal may have a perceived, potential or actual Conflict of Interest prior to the submission of a Proposal, then that Proponent is required to deliver to the Contact Person through e-mail and no later than the deadline set out in the Timetable (as defined in RFP Section 3.1(1)) a completed and executed Schedule C of this RFP – Conflict of Interest Declaration, which will be used by the University in its assessment of the presence of a perceived, potential or actual Conflict of Interest involving any Proponent or any employee or Advisor of the University in respect of the Goods and/or Services. For clarity, all Proponents are also required to submit updated, completed and executed versions of Schedule C of this RFP – Conflict of Interest Declaration as part of their Proposals. Following submission of its Proposal, if a Proponent discovers any perceived, potential or actual Conflict of Interest, the Proponent will promptly disclose such Conflict of Interest to the Contact Person.

(3) Proponents are advised to review the Laurentian University Supply Chain Code of Ethics <https://laurentian.ca/policies-accountability/policies> and to ensure that the Proponent and its Advisors have complied with these policies and with any instructions from the University arising from the application of these policies. For clarity, Proponents have an ongoing obligation to comply with this RFP Section 1.4(2) in addition to complying with the foregoing policies.

(4) At the request of the University, the Proponent will provide the University with the Proponent's proposed means to mitigate and minimize to the greatest extent practicable any perceived, potential or actual Conflict of Interest. The Proponent will submit any additional information to the University that the University considers necessary to properly assess the perceived, potential or actual Conflict of Interest.

(5) The final determination of whether a perceived, potential or actual Conflict of Interest exists will be made by the University in its sole discretion. The University may, in its sole discretion,

- (a) exclude any Proponent or Proponent's Advisor on the grounds of Conflict of Interest;

- (b) require the Proponent or a Proponent's Advisor to substitute a new person or entity with similar qualifications for the person or entity giving rise to the Conflict of Interest; and/or
- (c) waive any and all perceived, potential or actual Conflicts of Interest of Proponents or any of their respective Advisors, upon such terms and conditions as the University, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring the Proponent to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to the University, in its sole discretion, to manage, mitigate and minimize the impact of such Conflict of Interest.

(6) Without limitation to any other rights of the University hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the University may, in its sole discretion

- (a) impose at any time on all Proponents additional conditions, requirements or measures, with respect to bidding practices or ethical behaviour of the Proponents; and
- (b) require that any or all Proponents at any time during the RFP Process provide the University with copies of its internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance by the Proponent with such policies, processes and controls.

(7) If, in the opinion of the Board of Governors of the University or the University's General Counsel, there are reasonable grounds to believe that it would not be in the best interests of the University to enter into a contract with the successful Proponent as a result of the background of the Proponent, which background details include but are not limited to the following issues:

- (a) the conviction of that person or any person with whom that person is not at arm's length within the meaning of the Income Tax Act (Canada) of an offence under any taxation statute in Canada;
- (b) the conviction or finding of liability of that person under the Criminal Code or other legislation or law, whether in Canada or elsewhere and whether of a civil, quasi-criminal or criminal nature, of moral turpitude including but not limited to fraud, theft, extortion, threatening, influence peddling and fraudulent misrepresentation;
- (c) the conviction or finding of liability of that person under the Environmental Protection Act, or corresponding legislation of any other province or any member of the European Union or the United States of America, where the circumstances of that conviction evidence a gross disregard of the part of that person for the environmental well-being of the communities in which it carries on business;
- (d) the conviction or finding of liability of that person relating to product liability or occupational health or safety, whether of Ontario, Canada or elsewhere, where the circumstances of that conviction evidence a gross disregard on the part of that person for the health and safety of its workers or customers;
- (e) the conviction or finding of liability of that person under the Securities Act or the corresponding legislation of any other province of Canada or any member of the European Union or the United States of America or any state thereof,

then the University may, in its sole discretion, disqualify the Proponent's Proposal or cancel its decision to identify a Proponent as a Successful Proponent.

1.5 University Policies

(1) Proponents are required to adhere to and comply with the commitments set out in all University policies which are available on the University's website, including the following and any other policies set out in the RFP Data Sheet:

(a) Accessibility for Ontarians with Disabilities Act:

- (i) The Accessibility for Ontarians with Disabilities Act, 2005 – O. Reg. 429/07, applies to the services provided by the Proponent. This Regulation establishes accessibility standards for customer service and it applies to every designated public sector organization and to every other person or organization that provides goods or services to members of the public or other third parties and that has at least one employee in Ontario. The University's policy on accessibility can be found on Laurentian's website at <http://laurentian.ca/accessibility>

(b) Respectful Workplace and Learning Environment

- (i) Laurentian University is committed to providing a working and learning environment that is free of discrimination, harassment and bullying, where all individuals are treated with respect and dignity. To this end, the University has a Policy and a Program for a Respectful Workplace and Learning Environment, and while on site, there is an expectation that all contractors and visitors will abide by this policy which can be found on Laurentian's website at <http://laurentian.ca/respectful-workplace-and-learning-environment>

1.6 Research Environment

(1) If set out in the RFP Data Sheet, the Goods and/or Services are to be financed in part by The Canada Foundation for Innovation ("CFI") and the provisions of this RFP Section 1.6(1) will apply. CFI is an independent corporation created by the Government of Canada to fund research infrastructure. The CFI's mandate is to strengthen the capacity of Canadian universities, colleges, research hospitals and non-profit research institutions to carry out world-class research and technology development that benefits Canadians. Further information about CFI can be found at www.innovation.ca. CFI requires all Proponents to identify and document the standard market price for the equipment/service proposed and the University's one-time special pricing, the difference being an "in-kind" contribution. The standard market price must be the price normally provided to educational institutions. In addition, Proponents must identify and document the standard market price of any equipment supplied at no charge. Proponents are asked to provide these details in their Proposal. It is not mandatory for Proponents to provide an in-kind contribution and all in-kind contributions are voluntary. If the list price and the normal educational prices are the same, Proponents should provide a statement in their response to explain the rationale behind their pricing strategy.

SECTION 2 - THE RFP DOCUMENTS

2.1 Request for Proposals Documents

(1) The Request for Proposals documents (the "RFP Documents") are:

- (a) the Request for Proposals (the "RFP");

RFP No.: 21-LCD-15 - (1) Senate Governance Review; and/or (2) Board of Governors Governance Review; and/or (3) Operational Review

- (b) Schedule A – RFP Data Sheet;
- (c) Schedule B – Proposal Submission Form;
- (d) Schedule C – Conflict of Interest Declaration;
- (e) Schedule D – Submission Requirements and Evaluation Criteria (the “**Evaluation Criteria**”), including,
 - (i) Schedule D Part 1 – Technical Submission Requirements and Evaluation Criteria;
 - (ii) Schedule D Part 2 – Financial Submission Requirements and Evaluation Criteria;
- (f) Schedule E – Reference Form;
- (g) Schedule F – Framework of Terms for Draft Agreement (the “**Draft Agreement**”); and
- (h) Addenda (as defined in RFP Section 11.2(1)) to the RFP Documents, if any.

(2) The Proponents are instructed to read the RFP Documents as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference.

2.2 Distribution of Documents to Proponents

(1) Except as provided in RFP Section 2.2(2), the University will circulate this RFP and all other RFP Documents, including Addenda, by placing them on BONFIRE. In addition, but not in place of the placing of the RFP Documents on BONFIRE, the RFP Notice of Public Procurement shall be posted on the website maintained by the Monitor under the CCAA proceeding, with all documents relating to the CCAA proceeding (the “**Monitor’s Website**”). If the University chooses to notify Proponents that documents have been added on BONFIRE, such notification is a courtesy only and Proponents are solely responsible to ensure that they have reviewed all documents on BONFIRE in accordance with RFP Section 2.3(2) and, in particular, have reviewed all documents on BONFIRE immediately prior to submitting Proposals.

(2) If a Proponent requires the RFP Documents in paper copy, the Proponent may submit a request to the Contact Person, along with a reason for why the Proponent requires the RFP Documents in paper copy. Following consideration of the Proponent’s request, the University may, in its sole discretion, choose to circulate RFP Documents in paper copy to the Proponent who made the request.

2.3 BONFIRE

- (1) The University will use BONFIRE to,
 - (a) distribute RFP Documents, Notices (as defined in RFP Section 11.2(23)) and Addenda; and
 - (b) provide Questions and Answers Documents (as defined in RFP Section 3.2(2)) for the Proponents’ review.

The University may add, delete or amend documents on BONFIRE at any time.

- (2) Each Proponent is solely responsible to ensure that it:

- (a) notifies the Contact Person if the Proponent is having difficulty viewing the RFP Documents, Addenda, Notices or any Questions and Answers Document on BONFIRE;
- (b) has the appropriate software which allows the Proponent to access and download RFP Documents, Notices, Addenda, and the Questions and Answers Documents from BONFIRE; and
- (c) checks BONFIRE frequently for the addition, deletion or amendment of RFP Documents, Notices, Addenda, and any Questions and Answers Document and, at all times during the RFP Process, keeps itself informed of and takes into account the most current RFP Documents, Notices, Addenda, and Questions and Answers Documents.

2.4 Proponent Investigations

(1) Each Proponent is solely responsible, at its own cost and expense, to carry out its own independent research and due diligence and to perform any other investigations, including seeking independent advice, considered necessary by the Proponent to satisfy itself as to all existing conditions affecting the Goods and/or Services or the Draft Agreement. The Proponents' obligations set out in this RFP Section 2.4 apply irrespective of any information contained in the RFP Documents or in any Questions and Answers Documents.

(2) The University does not represent or warrant the accuracy or completeness of any information that is set out in the RFP Documents or of any other background or reference information or documents prepared by the University or by third parties and which may be made available to Proponents by or through the University. Proponents will make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Proponents on any and all such information will be at the Proponents' sole risk and without recourse against the University.

SECTION 3 - THE RFP PROCESS

3.1 RFP Process Timetable

(1) The deadline for the submission of Proposals (the "**Submission Deadline**") and the general timetable for the RFP Process (the "**Timetable**") are set out in the RFP Data Sheet.

(2) The University may, without liability, cost or penalty and in its sole discretion amend the Timetable,

- (a) for matters that are to take place on or before the Submission Deadline, at any time prior to the Submission Deadline; and
- (b) for matters that are to take place after the Submission Deadline, at any time during the RFP Process.

(3) If the University extends the Submission Deadline, all obligations of Proponents will thereafter be subject to the extended deadline.

(4) In the event of any conflict, inconsistency or ambiguity between the deadlines set out in the Timetable and any deadline set out or displayed on Bonfire or BONFIRE, the deadlines set out in the Timetable will govern.

3.2 Questions and Requests for Clarifications or Information

(1) In addition to the requirement set out in RFP Section 1.3, the following rules will apply to Proponents when submitting questions or requests for clarifications or information ("**Questions**") to the University during the RFP Process:

- (a) Proponents are required to submit all Questions to the Contact Person electronically by e-mail and in accordance with the deadlines set out in the Timetable. Proponents are required to clearly identify in each Question,
 - (i) whether or not the Proponent considers the Question to be a "General Question" or a "Commercially Confidential Question";
 - (ii) the RFP Number, as set out in the RFP Data Sheet; and
 - (iii) if the Proponent is referencing a document and section of the RFP Documents in the Question, the document and section that the Proponent is referencing.
- (b) Proponents are permitted to submit Questions categorized as follows:
 - (i) Questions that are of general application and that would apply to other Proponents ("**General Questions**"); and
 - (ii) Questions that the Proponent considers to be commercially sensitive or confidential to that particular Proponent ("**Commercially Confidential Questions**");
- (c) If the University disagrees with the Proponent's categorization of a Question as a Commercially Confidential Question, the University will give the Proponent an opportunity to either categorize the Question as a General Question or to withdraw the Question;
- (d) If the University determines, in its sole discretion, that a Commercially Confidential Question, even if it is withdrawn by a Proponent, is of general application or would provide a significant clarification of the RFP Documents or RFP Process to Proponents, the University may provide a clarification to Proponents in a Questions and Answers Document that deals with the same subject matter as the withdrawn Commercially Confidential Question; and
- (e) If the University agrees with the Proponent's categorization of a Commercially Confidential Question, then the University will provide a response to that Question to only the Proponent that submitted the Question.

(2) The University will respond to General Questions by posting a "**Questions and Answers Document**" or a series of "**Questions and Answers Documents**" to BONFIRE in accordance with the schedule set out in the Timetable. The University may, in its sole discretion, distribute responses to Questions of a minor or administrative nature to only the Proponent who submitted the minor or administrative Question.

(3) The Questions and Answers Documents prepared and posted or circulated by the University are not RFP Documents and do not amend the RFP Documents. If, in the University's sole discretion, responses to Questions require an amendment to the RFP Documents, such amendment will be prepared and circulated by Addendum in accordance with RFP Section 3.4. Only a response to a Question that has been incorporated into or issued as an Addendum will modify or amend the RFP Documents and, otherwise, the Questions and Answers Documents will have no force or effect whatsoever and will not be relied upon by any Proponent.

(4) It is the Proponent's obligation to seek clarification from the University of any matter it considers to be unclear in accordance with this RFP Section 3.2. The University is not responsible in any way whatsoever for any misunderstanding by the Proponent of the RFP Documents, the Questions and Answers Documents, any documents placed on BONFIRE or any other type of information provided by or communication made by the University or any third party.

3.3 Notices

(1) The University may, in its sole discretion, issue Notices on BONFIRE to Proponents for the purpose of communicating on issues of importance to the RFP Process. Such Notices are not RFP Documents and do not amend the RFP Documents.

3.4 Addenda/Changes to the RFP Documents

(1) The University may, in its sole discretion, amend or supplement the RFP Documents prior to the Submission Deadline. The University will issue changes to the RFP Documents by Addenda only by placing them on BONFIRE. No other statement, whether spoken or written, made by the University or the University's Advisors, including, for clarity, the Contact Person, or any other person, will amend the RFP Documents. The approximate final date that the University will issue an Addendum is set out in the Timetable, however, the University may issue Addenda at any time.

(2) The Proponent is solely responsible to ensure that it has received all Addenda issued by the University. Proponents may, in writing, seek confirmation of the number of Addenda issued pursuant to the RFP Documents from the Contact Person.

3.5 General Proponents Meeting(s)

(1) The University may, in its sole discretion, convene general Proponents meetings (each, a **"Proponents Meeting"**). Whether or not the University intends to convene Proponents Meeting(s) is set out in the RFP Data Sheet. If the University does convene Proponents Meeting(s), the approximate date(s) of the Proponents Meeting(s) are set out in the Timetable. While attendance at a Proponents Meeting is not mandatory, Proponents are strongly encouraged to attend. A Proponent's failure to attend a Proponents Meeting is at the Proponent's sole risk and responsibility.

(2) Unless otherwise set out in the RFP Data Sheet, the University will communicate locations and particulars with respect to Proponents Meetings in advance by Notice. The University reserves the right, in its sole discretion, to limit the number of Proponent attendees that may attend any Proponents Meeting. The University will notify the Proponents in advance in the event any such limitation is to be imposed.

(3) Proponents may ask questions and seek clarifications at a Proponents Meeting. Notwithstanding that the University may give spoken answers at a Proponents Meeting, those answers will not be considered final unless issued in writing. Therefore, Proponents are strongly encouraged to submit these questions in accordance with RFP Section 3.2 for response in accordance with RFP Section 3.2.

(4) No statement, consent, waiver, acceptance, approval or anything else said or done in any Proponents Meeting by the University or its Advisors will amend or waive any provision of the RFP Documents, or be binding on the University or be relied upon in any way by Proponents or their Advisors, except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.4.

3.6 Prohibited Contacts

(1) Proponents and their respective Advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFP Process.

(2) Without limiting the generality of RFP Section 3.6(1), neither Proponents nor any of their respective Advisors, employees or representatives will contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, or their Proposals:

- (a) any Advisor to the University;
- (b) any employee or representative of,
 - (i) the University; or
 - (ii) any other person or entity listed in the RFP Data Sheet; or
- (c) any directors, officers, employees, agents, representatives or consultants of any entity listed in RFP Sections 3.6(2)(a) and 3.6(2)(b), including any member of the Board of Governors of the University.

(3) If a Proponent or any of its respective Advisors, employees or representatives, in the opinion of the University, contravenes RFP Section 3.6(1) or RFP Section 3.6(2), the University may, in its sole discretion,

- (a) take any action in accordance with RFP Section 7.1; or
- (b) impose conditions on the Proponent's continued participation in the RFP Process that the University considers, in its sole discretion, to be appropriate.

For clarity, the University is not obliged to take the actions set out in this RFP Section 3.6(3).

3.7 Ineligible Persons

(1) As a result of their involvement with respect to the Goods and/or Services, the persons named as "**Ineligible Persons**" in the RFP Data Sheet, (collectively, "**Ineligible Persons**") and their respective Advisors engaged in respect of the Goods and/or Services and, subject to RFP Section 3.7(2), any person controlled by, that controls or that is under common control with the Ineligible Persons (each an "**Ineligible Person's Affiliate**") are not eligible to participate as a Proponent or Advisor to the Proponent. The University may amend the Ineligible Persons list in the RFP Data Sheet from time to time during the RFP Process.

(2) An Ineligible Person's Affiliate may be eligible to participate as a Proponent or Advisor to a Proponent only after it has obtained written consent from the University permitting it to participate as a Proponent or Advisor to the Proponent. The University will, in its sole discretion, make a determination as to whether the University considers there to be a perceived, potential or actual Conflict of Interest (as defined in RFP Section 1.4(1)) and whether the impact of such perceived, potential or actual Conflict of Interest can be appropriately managed, mitigated or minimized.

3.8 Restrictions on Communications between Proponents – No Collusion

(1) Neither a Proponent nor its respective Advisors or representatives will discuss or communicate, directly or indirectly, with any other Proponent (or such Proponent's Advisors or representatives), any information whatsoever regarding the preparation of its own Proposal or the Proposal of any other Proponent in a fashion that would contravene applicable law. Proponents are required to prepare and submit Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.

3.9 Disclosure of Proposal Information

(1) Proponents are advised that the University may be required to disclose the RFP Documents and a part or parts of any Proposal pursuant to the *Freedom of Information and Protection of*

RFP No.: 21-LCD-15 - (1) Senate Governance Review; and/or (2) Board of Governors Governance Review; and/or (3) Operational Review

Privacy Act, R.S.O. 1990, c. F.31, as amended from time to time ("**FIPPA**") or in order to comply with the University's policies or other applicable law.

(2) Subject to the provisions of FIPPA, the University will use reasonable commercial efforts to safeguard the confidentiality of any information identified by the Proponent as confidential but will not be liable in any way whatsoever to any Proponent if such information is disclosed based on an order or decision of the Information and Privacy Commissioner, or otherwise as required under applicable law. Proponents are strongly advised to consult their own legal Advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Proposals.

(3) Notwithstanding RFP Section 3.9(2), the University may disclose the name and address of the Successful Proponent and any pricing information provided by that Proponent in their Proposal.

3.10 Confidential Information

(1) For the purpose of this RFP Process, "**Confidential Information**" means all material, data, information or any item in any form, whether spoken or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by the University or the University's Advisors, in connection with the RFP Process, the RFP Documents or the Goods and/or Services, whether supplied, obtained from or provided before or after the RFP Process.

(2) The Proponent agrees that all Confidential Information:

- (a) will remain the sole property of the University and the Proponent will treat it as confidential;
- (b) will not be used by the Proponent for any purpose other than developing and submitting a Proposal in response to this RFP Process or the performance of any subsequent agreement relating to the Goods and/or Services with the University;
- (c) will not be disclosed by the Proponent to any person who is not involved in the Proponent's preparation of its Proposal, or the performance of any subsequent agreement relating to the Goods and/or Services with the University, without prior written consent of the University, in its sole discretion;
- (d) will not be used in any way detrimental to the University; and
- (e) if requested by the University, all Confidential Information will be destroyed by the Proponents no later than 10 Business Days (as defined in RFP Section 11.2(5)) after that request.

(3) Each Proponent will be responsible for any breach of the provisions of this RFP Section 3.10 by any person to whom it discloses the Confidential Information including, for clarity, the Proponent's Advisors. Each Proponent will indemnify the University and each of its Advisors and related entities and each of their respective directors, officers, consultants, employees, agents and representatives and save each of them fully harmless from and against any and all loss, cost, damage, expense, fine, suit, claim, penalty, demand, action, obligation and liability of any kind or nature (including, without limitation, professional fees on a full indemnity basis) suffered or incurred by any of them arising as a result of or in connection with any breach of any of the provisions of this RFP Section 3.10 by the Proponent or by any person to whom the Proponent has disclosed the Confidential Information.

(4) Each Proponent acknowledges and agrees that a breach of the provisions of this RFP Section 3.10 would cause the University, its Advisors, and its related entities to suffer loss that could not be adequately compensated by damages, and that the University and its Advisors and related entities may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.10 upon application to a court of competent jurisdiction without proof of actual damage to the University, its Advisors, or its related entities.

(5) Notwithstanding anything else to the contrary in the RFP Documents, the provisions of this RFP Section 3.10 will survive any cancellation of this RFP Process and the conclusion of the RFP Process and, for greater clarity, will be legally binding on all Proponents, whether or not a Proponent submits a Proposal.

(6) The confidentiality obligations of the Proponent will not apply to any information which falls within the following exceptions:

- (a) information that is lawfully in the public domain at the time of first disclosure to the Proponent, or which, after disclosure to the Proponent, becomes part of the public domain other than by a breach of the Proponent's confidentiality obligations or by any act or fault of the Proponent;
- (b) information which was in the Proponent's possession prior to its disclosure to the Proponent by the University, and provided that it was not acquired by the Proponent under an obligation of confidence; or
- (c) information which was lawfully obtained by the Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.

3.11 Copyright and Use of Information in Proposals

(1) Proponents will not use or incorporate into their Proposals any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless Proponents have, or will procure through licensing without cost to the University, the right to use and employ such concepts, products and processes in and for the Goods and/or Services.

(2) All requirements, designs, documents, plans and information supplied by the University to the Proponents in connection with this RFP Process are and will remain the property of the University. Upon request of the University, all such designs, documents, plans and information (and any copies thereof in any format or medium created by or on behalf of the Proponent) must be destroyed.

(3) The Proponent will grant to the University a non-exclusive, perpetual, irrevocable, world-wide, fully paid and royalty free licence (fully assignable without the consent of the Proponent and with the right to sub-licence without the consent of the Proponent) to use the Proposal Information (as defined in RFP Section 3.11(4)) for the purposes of evaluation of Proposals and the negotiation and execution of any Final Agreement.

(4) For the purposes of this RFP Section 3.11, "**Proposal Information**" includes all information contained in a Proposal or which is disclosed by or through a Proponent to the University during the evaluation of Proposals or during the process of executing any Final Agreement and any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by the University, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any Proposal or the Draft Agreement.

(5) Proponents will ensure that all intellectual property rights associated with any and all of the Proposal Information (including copyright and moral rights but excluding patent rights) provide for and give the University the rights set out in this RFP Section 3.11. It is expressly understood and agreed that any actual or purported restriction in the future on the ability of the University to use any of the Proposal Information as contemplated in this RFP Section 3.11, or anything else obtained by or through Proponents, will be unenforceable as against the University and each of their respective Advisors, and that the provisions of this RFP Section 3.11 will take precedence and govern.

3.12 Entities Permitted to Submit Proposals

- (1) A Proposal may be submitted by:
 - (a) a single person or entity as the Proponent; or
 - (b) a prime contractor and subcontractors.
- (2) Where a Proposal is submitted by a prime contractor and subcontractors, the prime contractor shall submit a Proposal on its own behalf and on behalf of its subcontractors and the prime contractor shall be responsible for ensuring its subcontractors perform their obligations under the Final Agreement.

3.13 Proponents' Costs

- (1) The Proponent will bear all costs and expenses incurred by the Proponent relating to any aspect of its participation in this RFP Process.
- (2) In no event will the University be liable to pay any costs or expenses or to reimburse or compensate a Proponent under any circumstances, regardless of the conduct or outcome of the RFP Process.

3.14 Clarification, Verification and Supplementing of Proponent's Proposal

- (1) The University may, in its sole discretion,
 - (a) require the Proponent to verify or clarify the contents of its Proposal or any statement made by the Proponent;
 - (b) require the Proponent to submit supplementary documentation clarifying or verifying any matters contained in its Proposal;
 - (c) seek a Proponent's acknowledgement of a University interpretation of the Proponent's Proposal; and
 - (d) allow the Proponent to supplement its Proposal or amend its Proposal with respect to minor clerical or administrative issues.
- (2) For clarity, a minor clerical or administrative issue is one that does not:
 - (a) impede, in any material way, the ability of the University to evaluate the Proposal; or
 - (b) constitute an attempt by the Proponent to revise the University's or the Proponent's rights or obligations under the RFP Documents or affects the University's ability to enforce the Proponent's obligations pursuant to the RFP Documents in a way not permitted by this RFP.
- (3) The University is not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Proponent, including an ambiguity in a Proposal or in a statement made by a Proponent.
- (4) Any written information received by the University from a Proponent pursuant to a request for clarification or verification from the University as part of the RFP Process may, in the University's discretion, be considered as an integral part of the Proposal.

3.15 Changes to Proponents

(1) If, prior to execution of the Final Agreement, there is a Proposed Proponent Change (as defined in RFP Section 11.2(31)), then the Proponent will promptly notify the University in writing to the Contact Person through e-mail. In response to a notification in accordance with this RFP Section 3.15, the University may, in its sole discretion, provide the Proponent with instructions as to the type of information required by the University to consider the Proposed Proponent Change as well as the deadlines for submission of information that the Proponent must meet in order to have its request considered by the University. The Proponent will provide any further documentation as may be reasonably requested by the University to assess the impact of the Proposed Proponent Change on the Proponent. The University may, in its sole discretion, refuse to accept a Proposed Proponent Change, subject to such terms and conditions as the University, in its sole discretion, may require.

3.16 Insurance and Workplace Safety during the RFP Process

(1) If, during the RFP Process, a Proponent attends a site visit or meeting contemplated in the RFP Documents, such Proponent represents and warrants that it has obtained and maintained sufficient insurance and has fulfilled any requirements with respect to workplace safety as required by applicable law in order to attend such site visits and/or meetings.

SECTION 4 - PROPOSAL CONTENT AND FORMAT

4.1 Format and Content of Proposal

(1) Proponents must prepare their Proposals in accordance with and in the content and format requirements set out in the RFP Data Sheet.

(2) If applicable, the maximum length of the Proposal is set out in the RFP Data Sheet. The University may, in its sole discretion, not evaluate any pages of a Proposal in excess of the page limit set out in the RFP Data Sheet, which may adversely affect the scoring of the Proposal by the University.

(3) Proponents are cautioned to review the provisions of the Draft Agreement with respect to pricing and compensation and will take all provisions into account when completing the Price Form (as defined in RFP Section 11.2(25)).

(4) The entire content of a Proponent's Proposal must be submitted in fixed form, and the content of websites or other external documents referred to in the Proponent's submission will not be considered to form part of its Proposal unless the University specifies otherwise in Schedule D – Submission Requirements and Evaluation Criteria.

4.2 Proposal Submission Form

(1) Each Proponent will complete and execute the Proposal Submission Form attached as Schedule B of this RFP.

(2) Each Proponent will complete and submit any additional forms attached as Appendices to Schedule B – Proposal Submission Form.

4.3 Contents of the Technical Submission

(1) The Proponent is required to prepare and submit its technical submission in the format and containing the information set out in Schedule D Part 1 to this RFP (the “**Technical Submission**”).

4.4 Contents of the Financial Submission

(1) The Proponent is required to prepare and submit its financial submission in the format and containing the information set out in Schedule D Part 2 to this RFP (the “**Financial Submission**”).

4.5 References and Past Performance Issues

(1) If specified in the RFP Data Sheet, Proponents are required to provide reference information using the form attached as Schedule E to this RFP (the “**Reference Form**”). Unless otherwise set out in the RFP Data Sheet, all references are to be with respect to goods and/or services that are similar to the Goods and/or Services and that were provided to similar institutions to Laurentian University in accordance with the instructions set out in the RFP Data Sheet. Unless otherwise set out in the RFP Data Sheet, the Proponent is required to provide a minimum of three references in a form to be specified by the University.

(2) The University may, in its sole discretion, confirm the Proponent’s experience and ability to provide the Goods and/or Services by contacting the Proponent’s references. However, the University is under no obligation to contact references submitted by any Proponent and may determine, in its sole discretion, how and whether the responses of references will be taken into account in the evaluation process.

(3) If the University has reliable information with respect to a Proponent’s poor performance in providing goods and/or services, including to Laurentian University, the University may take such past poor performance into account in its evaluation of the Proponent and the Proponent’s Proposal.

SECTION 5 - PROPOSAL SUBMISSION, WITHDRAWAL, MODIFICATION

5.1 Submission of Proposals and Late Proposals

(1) Each Proponent is required to submit its Proposal on Bonfire at the link that is set out in the RFP Data Sheet before the Submission Deadline and in accordance with the requirements set out in this RFP Section 5.1.

(2) For the purpose of this RFP Process, the determination of whether a Proposal is submitted on or before the Submission Deadline will be based on the electronic time and date set out in the Bonfire portal without consideration as to the time and date it was sent by the Proponent.

(3) It is the sole responsibility of the Proponent to ensure that its Proposal is received by the University on or before the Submission Deadline. It is the sole responsibility of the Proponent when submitting a Proposal to ensure that it is submitted correctly and in accordance with Bonfire’s rules and requirements. For assistance with registration, login credentials, subscription information, fees and general use of Bonfire, Proponents are advised to contact Bonfire directly at Support@GoBonfire.com. Proponents can also visit the Bonfire help forum at <https://Bonfirehub.zendesk.com/hc>.

(4) With respect to submission of Proposals, Proponents are advised as follows:

- (a) Only Proposals received from Proponents who have obtained the documents directly from BONFIRE or from the University pursuant to RFP Section 2.2 will be considered for the purposes of this RFP Process.
- (b) The University will not accept responsibility for the delivery of any Proposal that is delivered other than by submitting in Bonfire, and will not accept, acknowledge, or return hard copy, facsimile or electronically emailed Proposals. For greater certainty, Proponents should not send the Contact Person an e-mail containing any Proposal or portion thereof.
- (c) Each Proponent must submit, electronically in Bonfire, an electronic copy of the complete Proposal on or before the Submission Deadline.
- (d) Each Proponent is required to submit its Proposal electronically in Bonfire in accordance with the requirements set out in Bonfire. Each Proponent should submit separately, in the file format specified in Bonfire, each of the following

portions of its Proposal in the dedicated section of Bonfire that is labeled to correspond with the applicable portion of the Proposal:

- (i) a completed Proposal Submission Form;
- (ii) a completed Conflict of Interest Declaration;
- (iii) a completed Reference Form;
- (iv) a completed Technical Submission; and
- (v) a completed Financial Submission.

Proponents are advised that only one file may be uploaded to each dedicated section of Bonfire unless otherwise specified in Bonfire. Proponents are cautioned that if a Proponent attempts to upload more than one file into the same dedicated section, the file that was originally uploaded to the section will be overwritten.

- (e) Proponents are advised that minimum system requirements for Bonfire include Internet Explorer 11+, Google Chrome, Microsoft Edge or Mozilla Firefox. Proponents are advised that Javascript must be enabled in order for Bonfire to function.
- (f) Proponents should allow sufficient time to submit and upload their Proposals. If a Proposal contains many large documents or if the Proponent is not running on high speed internet, the Proponent may require additional time in order to complete the submission and should budget time for submission of the Proposal accordingly. Proponents are cautioned that Bonfire will not allow the submission of a Proposal or portion of a Proposal if,
 - (i) the Submission Deadline passes prior to a Proponent commencing the upload or submission of the Proposal or portion of the Proposal; or
 - (ii) the Submission Deadline passes while a Proponent is in the process of uploading or submitting its Proposal or portion of a Proposal.

If a Proponent experiences an issue with submission of its Proposal, the Proponent is advised to contact Bonfire directly at the e-mail address set out in RFP Section 5.1(3). The University will be unable to assist with any Bonfire-related issues.

- (g) The largest individual file size that can be submitted by a Proponent through Bonfire is 1000 MB, although there is no limit to the number of files that can be submitted. If any individual file size is over 1000 MB, the Proponent is advised to divide its Proposal portions into multiple files in accordance with the following rules:
 - (i) the Proponent will maintain the separation between the Technical Submission and the Financial Submission, and will ensure that no individual file contains a portion of the Technical Submission and the Financial Submission;
 - (ii) the Proponent will clearly and legibly identify each file as a part of the Technical Submission or a part of the Financial Submission;
 - (iii) the Proponent will clearly and legibly label each file in a sequential manner such that the University is able to re-construct each of the

Technical Submission and the Financial Submission (for example, "Technical Submission, Part 1", "Technical Submission, Part 2"); and

- (iv) the Proponent will ensure that any division of the Proposal into multiple files is done in a logical manner such that clearly identifiable sections of the Proposal are contained in the same file or group of files.

- (h) Each Proponent should receive an email confirmation receipt with a unique confirmation number once it has submitted its Proposal.

(5) A Proposal that is not submitted in accordance with the requirements of this RFP Section 5.1 may be rejected by the University and the University will not be under any obligation to notify the Proponent that the Proposal was not submitted in accordance with the requirements of this RFP Section 5.1. A Proponent has not successfully submitted a Proposal if it has not successfully submitted a Technical Submission and a Financial Submission on or before the Submission Deadline.

5.2 Late Proposals

(1) Proposals that are submitted after the Submission Deadline will be declared non-compliant and rejected.

5.3 Withdrawal of Proposals

(1) A Proponent may withdraw its Proposal on or before the Submission Deadline by un-submitting its entire Proposal on Bonfire prior to the Submission Deadline.

5.4 Proposal Irrevocability

(1) Subject to the Proponent's right to withdraw its Proposal before the Submission Deadline, the Proponent's Proposal will be irrevocable and will remain in effect and open for acceptance for the number of days set out in the RFP Data Sheet after the Submission Deadline.

5.5 One Proposal per Person or Entity

- (1) Except as set out in the RFP Data Sheet and with the University's prior written consent,
 - (a) a person or entity will submit or participate in only one Proposal; and
 - (b) no person or entity will be a subcontractor of a Proponent while submitting a Proposal individually in the same RFP Process.

For greater certainty, and notwithstanding anything else contained herein, the delivery by the same Proponent of Proposals for any or all of the Operational Review Proposal, the Senate Review Proposal and the Board of Governors Governance Review Proposal are expressly permitted under this RFP, and do not constitute more than one Proposal per Person or Entity for purposes of this section 5.5(1).

(2) Except as set out in the RFP Data Sheet, a person or entity may be a subcontractor of a Proponent in respect of more than one Proposal.

(3) If a person or entity submits or participates in more than one Proposal in contravention of RFP Section 5.5(1) the University may, in its sole discretion, disqualify any or all of the Proposals submitted by that person or entity or in which that person or entity is a participant.

5.6 Proposals to be Retained by University

- (1) The University will not return or delete any Proposals or accompanying documentation.

SECTION 6 - PROPOSAL EVALUATION

6.1 Evaluation of Proposals

(1) The Proponents' Proposals will be reviewed and evaluated by the University in consultation with its Advisors, the Monitor and the CRO on the basis of the evaluation criteria set out in the RFP Data Sheet and Schedule D to the RFP - Submission Requirements and Evaluation Criteria. The Proponents acknowledge that the University has agreed to consult with certain stakeholders regarding the operational and governance reviews to be undertaken and that such consultation forms an integral part of the Goods and/or Services to be provided by the Successful Proponent.

(2) The University may require that Proponents receive a pre-established minimum passing score before being eligible to be considered further in the RFP Process (including being eligible for an interview). If the University intends to require a minimum passing score in this RFP Process, the required minimum passing score and any related requirements are set out in the RFP Data Sheet and RFP Schedule D – Submission Requirements and Evaluation Criteria. Failure to achieve a minimum passing score may prevent a Proponent from being eligible to be considered further in the RFP Process.

(3) The Proponents acknowledge that Proposals submitted in response to this RFP Process may not be directly comparable to one another. As a result, notwithstanding the general evaluation criteria set out in the RFP Data Sheet, the University and the Advisors and parties it consults with in connection with this RFP has broad discretion in evaluating Proponents and Proposals.

6.2 Interviews, Site Visits, Demonstrations and Presentations

(1) The University may, in its sole discretion, conduct interviews, demonstrations, site visits or presentations if set out in the RFP Data Sheet.

(2) The evaluation of any interviews, demonstrations, site visits or presentations will be conducted in accordance with the process set out in the RFP Data Sheet.

(3) The University may conduct interviews, demonstrations, site visits or presentations with some or all Proponents.

SECTION 7 - DISQUALIFICATION

7.1 Disqualification

(1) The University may, in its sole discretion, disqualify a Proposal or cancel its decision to identify a Proponent as a Successful Proponent, at any time prior to the execution of the Final Agreement by the University, if,

- (a) The Proposal is determined to be non-compliant pursuant to RFP Section 5.1(5);
- (b) the Proponent fails to cooperate in any attempt by the University to clarify or verify any information provided by the Proponent;
- (c) the Proponent is not, in the University's sole discretion, financially creditworthy;
- (d) the Proponent does not, in the University's sole discretion, satisfy the University's privacy and security requirements;
- (e) the Proponent contravenes RFP Sections 3.6 or 5.5(1);
- (f) the Proponent fails to comply with applicable law;
- (g) the Proposal contains false or misleading information or the Proponent provides false or misleading information in its interview (if an interview is conducted);

- (h) the Proposal, in the sole discretion of the University, reveals a perceived, potential or actual Conflict of Interest that cannot be managed, mitigated or minimized;
- (i) the Proponent misrepresents any information provided in the Proposal;
- (j) a Proposed Proponent Change has occurred which has not been accepted by the University in accordance with RFP Section 3.15;
- (k) the Proponent fails to disclose any information (including in any declaration or form attached to the Proposal in connection with the RFP Documents) that would materially adversely affect the University's evaluation of the Proposal;
- (l) the University becomes aware of a perceived, potential or actual Conflict of Interest as described in RFP Section 1.4 and the Proponent,
 - (i) does not receive a waiver from the University in accordance with RFP Section 1.4(5)(c) or does not receive a consent in accordance with RFP Section 3.7(2), as applicable; or
 - (ii) fails to substitute the person or entity giving rise to the perceived, potential or actual Conflict of Interest in accordance with RFP Section 1.4(5)(b);
- (m) at any time prior to the Submission Deadline, the University became aware that the Proponent failed to disclose an actual Conflict of Interest in any past or current procurement issued by the University, unless the Proponent has demonstrated to the satisfaction of the University that the Proponent has implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest;
- (n) there is evidence that the Proponent or any of its respective employees, agents, consultants, contractors, service providers or representatives directly or indirectly colluded with one or more other Proponents or any of their respective employees, agents, consultants, contractors, service providers or representatives in the preparation or submission of Proposals or otherwise contravened RFP Section 3.8;
- (o) the Proponent has breached any agreement with the University (whether or not the University exercises any right to terminate such agreement) or has breached the Laurentian University's Supply Chain Code of Ethics;
- (p) the Proponent has been convicted of an offence in connection with any services rendered to the University;
- (q) the Proponent has breached an agreement for goods and/or services similar to the Goods and/or Services that are the subject of the RFP Documents with an entity other than the University;
- (r) the Proponent was convicted of a criminal offence within the three years immediately prior to the Submission Deadline;
- (s) a Proponent is, at the time of issuance of the RFP Documents or any time during the RFP Process, engaged in ongoing litigation against the University;
- (t) there are any convictions related to inappropriate bidding practices or unethical behaviour by a Proponent or any of its Affiliates (as defined in RFP Section

11.2(3)) in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction; or

- (u) a Proponent engages in any activity which, at the sole discretion of the University, is contrary to the public interest or is harmful to the integrity or reputation of the University.

SECTION 8 – NEGOTIATIONS PROPONENTS

8.1 Negotiations Proponents

(1) The University, in consultation with its Advisors, the Monitor and the CRO will determine the Negotiations Proponent or Negotiations Proponents in accordance with the ranking of Proponents for each of the Proposals pursuant to RFP Section 6.1.

(2) Notwithstanding anything else to the contrary in the RFP Documents, if the University, in its sole discretion, is of the opinion that a Proponent has submitted a price that is too low to be sustainable and to ensure the delivery of the Goods and/or Services on the terms set out in framework for the Draft Agreement, the University may decline to select that Proponent to be a Negotiations Proponent.

SECTION 9 – NEGOTIATION AND FINALIZATION OF AGREEMENT WITH NEGOTIATIONS PROPONENT

9.1 Agreement Finalization

(1) The University will notify the Negotiations Proponent, in writing, that it has been selected as a Negotiations Proponent for each Proposal.

(2) At the time the Negotiations Proponent is notified pursuant to RFP Section 9.1(1), the Negotiations Proponent and the University will enter into discussions to finalize the Final Agreement for that Proposal.

(3) After the selection of the Negotiations Proponent, if any, for each Proposal, the University may finalize the terms and conditions of the Final Agreement with the Negotiations Proponent, and, as part of that process, may in its sole discretion, negotiate changes, amendments or modifications to the Negotiation Proponent's Proposal or the Draft Agreement.

(4) Each Negotiations Proponent will be required to sign a Final Agreement outlining the terms of the engagement, following negotiations as to the terms of same, which will be based upon the framework of terms for the Draft Agreement attached as Schedule F to this RFP.

(5) The Negotiations Proponent for each Proposal is required to, no later than ten days after receipt of the Final Agreement or such later date as may be specified in written Notice given by the University,

- (a) enter into and execute the Final Agreement; and
- (b) submit to the University a certificate of insurance which,
 - (i) references the Final Agreement by name;
 - (ii) confirms that the requirements set out in the Final Agreement have been met;
 - (iii) sets out any pertinent exclusions contained in the policy or policies; and
 - (iv) is otherwise acceptable to the University.

(6) The Negotiations Proponent acknowledges and agrees that the entering into an agreement by the University is conditional on and subject to: (i) the University obtaining any necessary authorizations and approvals required in connection with the Goods and/or Services, including, for certainty, any required funding approval(s) and the approval of any relevant government authority; and (ii) the review and approval of the Monitor.

9.2 Notification If Successful Or Not

(1) The University will post a Notice that sets out the Successful Proponent(s) on BONFIRE. Proponents acknowledge that this notification may disclose the pricing information submitted by the Successful Proponent(s).

9.3 Debriefing

(1) Unsuccessful Proponents may request a debriefing after the posting of the Notice pursuant to RFP Section 9.2(1) by e-mail to the Contact Person. All Proponent requests should be in writing to the Contact Person no later than 60 calendar days following the posting of such notification. The University will determine the format, timing and contents of the debriefing session. Generally, debriefings shall include a discussion regarding the unsuccessful Proponent's Proposal, why it was unsuccessful, and the relative advantages of the Successful Proponent's Proposal. The debriefing is not for the purpose of challenging the procurement process.

9.4 Dispute Resolution

Further to an unsuccessful debriefing of the Proponent's proposal, a bid protest may be requested by the Proponent.

In the event that a Proponent wishes to dispute the decision of Laurentian University in any respect of any material aspect of the RFP process, and subject to having attended a debriefing, with the Procurement, Contract and Risk Department, the process outlined below is to be followed:

The Proponent is to file their bid protest with the Director Procurement, Contract and Risk, by certified mail, within 10 Business Days of the debriefing meeting. The aggrieved party's filing should include:

- The name and address of the Proponent
- Identification of the contract or bid solicitation being protested
- Detailed and factual statement of the grounds for protest
- Supporting documentation
- Desired relief, action or ruling

The Director Procurement, Contract and Risk will respond to the Proponent, by certified mail, within 10 Business Days of receiving the bid protest notice.

If a resolution cannot be met, the Proponent must contact the Associate Vice-President Financial Services and copy the Director Procurement, Contract and Risk, by certified mail, within 10 Business Days of receiving the first response from the Director Procurement, Contract and Risk.

The Associate Vice-President Financial Services will respond to the Proponent, by certified mail, within 10 Business Days of receiving the bid protest notice.

If a resolution cannot be met, the Proponent can direct their complaint to the VP of Administration (copying both The Associate Vice-President Financial Services and the Director Procurement, Contract and Risk) within 10 Business Days of receiving the response from the Associate Vice-President Financial Services.

The final decision on the issue will come from the VP of Administration and will be resolved within 10 Business Days of receiving the bid protest.

RFP No.: 21-LCD-15 - (1) Senate Governance Review; and/or (2) Board of Governors Governance Review; and/or (3) Operational Review

As Laurentian University is subject to an ongoing proceeding pursuant to the CCAA, it reserves the right to have any dispute brought before the Court supervising the CCAA process for determination.

CONTACT INFORMATION

The following information can be used to contact the individuals listed in the above procedures:

Director of Procurement, Contract and Risk
Laurentian University
Parker Building, Room L-105
935 Ramsey Lake Road
Sudbury, Ontario
P3E 2C6

Associate Vice-President Financial Services
Laurentian University
Parker Building, Room L-1013
935 Ramsey Lake Road
Sudbury, Ontario
P3E 2C6

Vice-President of Administration
Laurentian University
Parker Building, Room L-1117
935 Ramsey Lake Road
Sudbury, Ontario
P3E 2C6

SECTION 10 - RIGHTS OF THE UNIVERSITY

10.1 General Rights of the University

(1) The University may, in its sole discretion and at any time during the RFP Process, take any one or all of the following actions:

- (a) reject or disqualify any or all of the Proposals;
- (b) accept any Proposal, including a Proposal that is not submitted in accordance with the requirements set out in RFP Section 5.1;
- (c) if only one Proposal is received, either elect to accept or reject it;
- (d) elect not to proceed with the RFP Process;
- (e) alter the Timetable;
- (f) waive any threshold or minimum passing score;
- (g) change the RFP Process or any other aspect of the RFP Documents; and
- (h) cancel this RFP Process and subsequently conduct another competitive process for the Goods and/or Services that are the subject matter of the RFP Documents or subsequently enter into negotiations with any person or persons with respect to the Goods and/or Services that are the subject matter of the RFP Documents.

(2) If the University determines that all or the majority of Proposals submitted are non-compliant, the University may take any action in accordance with RFP Section 10.1(1).

(3) The University will not be liable for any expense, cost, loss or damage occurred or suffered by any Proponent, or any person connected with any Proponent, as a result of any action referred to in RFP Section 10.1(1) or RFP Section 10.1(2).

(4) If a Successful Proponent fails or refuses to enter into and execute the Final Agreement and provide the documentation in accordance with RFP Section 9.1(3), the University may, in its sole discretion, take any one or all of the following actions:

- (a) terminate all discussions to enter into the Final Agreement with that Successful Proponent and cancel its identification of a Proponent as a Successful Proponent;
- (b) select another Proponent to enter into the Final Agreement;
- (c) take any action in accordance with RFP Section 10.1(1); and
- (d) pursue any other remedy available to the University under applicable law.

(5) The University may, in its sole discretion, cancel its decision to enter into a Final Agreement with a Successful Proponent if,

- (a) the University elects to exercise its discretion pursuant to RFP Section 7.1, RFP Section 10.1(1) or RFP Section 10.1(4);
- (b) a Proposed Proponent Change has occurred which has not been accepted by the University in accordance with RFP Section 3.15(1); or
- (c) any other material change has occurred with respect to the Successful Proponent's Proposal.

10.2 Limit on Liability

(1) The Proponent and all other entities participating in this RFP Process agree that if the University is found to be liable, in any way whatsoever, for any act or omission of any of them in respect of this RFP Process, the total liability of the University to any Proponent or any other entity participating in this RFP Process, and the aggregate amount of damages recoverable against the University for any matter relating to or arising from any act or omission by any one or more of them, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the University will be no greater than the Proponent's cost of preparing its Proposal or the liability cap amount set out in the RFP Data Sheet, whichever is less.

SECTION 11 - DEFINITIONS

11.1 General

(1) In the RFP Documents, the singular is deemed to include the plural and the plural is deemed to include the singular, except where the context otherwise requires.

(2) All references in the RFP Documents to "discretion" or "sole discretion" means in the sole and absolute discretion of the party exercising the discretion.

11.2 RFP Definitions

Whenever used in the RFP Documents,

- (1) "**Addendum**" means a written addendum to the RFP Documents issued by the University as set out in RFP Section 3.4;

- (2) “**Advisor**” means any person or firm retained to provide professional advice to any one of the University or a Proponent, as applicable;
- (3) “**Affiliate**” means an “affiliate” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto;
- (4) “**Bonfire**” means the electronic bid solicitation website used by the University for this RFP Process and is the University’s web portal tool that will be used for the submission of Proposals in accordance with this RFP Process;
- (5) “**Business Day**” means any day of the week other than Saturday, Sunday, a statutory holiday in the Province of Ontario or any other day that the University has elected to be closed for business;
- (6) “**CFI**” is defined in RFP Section 1.6(1);
- (7) “**Commercially Confidential Question**” is defined in RFP Section 3.2(1)(b)(ii);
- (8) “**Confidential Information**” is defined in RFP Section 3.10(1);
- (9) “**Conflict of Interest**” is defined in RFP Section 1.4(1);
- (10) “**Contact Person**” means the contact person listed in the RFP Data Sheet in respect of RFP Section 1.3(1);
- (11) “**Control**” means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise;
- (12) “**Draft Agreement**” is defined in RFP Section 2.1(1)(f);
- (13) “**Evaluation Criteria**” is defined in RFP Section 2.1(1)(e);
- (14) “**Final Agreement**” is defined in RFP Section 0;
- (15) “**Financial Submission**” is defined in RFP Section 4.4(1);
- (16) “**FIPPA**” is defined in RFP Section 3.9(1);
- (17) “**General Question**” is defined in RFP Section 3.2(1)(b)(i);
- (18) “**Goods and/or Services**” is defined in RFP Section 0;
- (19) “**includes**” and “**including**” means “includes without limitation” and “including without limitation” respectively;
- (20) “**Ineligible Person’s Affiliate**” is defined in RFP Section 3.7(1);
- (21) “**Ineligible Persons**” is defined in RFP Section 3.7(1);
- (22) “**Negotiations Proponent**” is defined in RFP Section 1.1(2);
- (23) “**Notice**” means a written notice issued by the University as set out in RFP Section 3.3;

- (24) **“Person”** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company, corporation or body corporate with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency authority or entity however designated or constituted;
- (25) **“Price Form”** means the form provided in Schedule D Part 2 to the RFP;
- (26) **“Proponent”** is defined in RFP Section 0;
- (27) **“Proponents Meeting”** is defined in RFP Section 3.5(1)
- (28) **“Proposal”** is defined in RFP Section 0;
- (29) **“Proposal Information”** is defined in RFP Section 3.11(3);
- (30) **“Proposal Submission Form”** means the proponent submission form attached as Schedule B to this RFP;
- (31) **“Proposed Proponent Change”** means:
 - (a) an actual or proposed change of Control of the Proponent; or
 - (b) a change in circumstances that may materially adversely affect a Proponent in a way which could impair the Proponent’s ability to perform its respective obligations under or in connection with the Draft Agreement;
- (32) **“Question”** is defined in RFP Section 3.2(1);
- (33) **“Questions and Answers Document”** and **“Questions and Answers Documents”** are defined in RFP Section 3.2(2);
- (34) **“Reference Form”** is defined in RFP Section 4.5(1);
- (35) **“RFP”** is defined in RFP Section 2.1(1)(a);
- (36) **“RFP Data Sheet”** means Schedule A to this RFP;
- (37) **“RFP Documents”** is defined in RFP Section 2.1(1);
- (38) **“RFP Number”** is defined in RFP Section 0;
- (39) **“RFP Process”** is defined in RFP Section 0;
- (40) **“Submission Deadline”** is defined in RFP Section 3.1(1);
- (41) **“Successful Proponent”** is defined in RFP Section 0;
- (42) **“Technical Submission”** is defined in RFP Section 4.3(1);
- (43) **“Timetable”** is defined in RFP Section 3.1(1); and
- (44) **“University”** is defined in RFP Section 0.

SCHEDULE A
RFP DATA SHEET

**RFP DATA SHEET
SCHEDULE A TO THE RFP**

RFP SECTION REFERENCE AND DESCRIPTION	ITEM
RFP Section 1.1(1) – Name and Description of Goods and/or Services	This RFP is to retain supplier (s) for services for any one of, a combination of, or all of the following: (1) Senate Governance Review; (2) Board of Governors Governance Review; (3) Operational Review. Proponents may choose to submit proposals for: 1. Senate Governance Review; and/or 2. Board of Governors Governance Review; and/or 3. Operations Review; Proponents who choose to submit two (2) or more proposals may receive additional value-added synergy points.
RFP Sections 1.1(1), 3.2(1)(a)(ii) – RFP Number	The RFP Number is 21-LCD-15.
RFP Section 1.1(2) – Proponents	The RFP Process is open to all parties submitting a Proposal in accordance with the RFP Documents.
RFP Section 1.3(1) and 3.2(1) – Contact Person and Questions	The name of the Contact Person is: <i>Leeanne Croteau</i> The e-mail address of the Contact Person is: <i>purchasing@laurentian.ca</i>
RFP Section 1.5(1) – University Policies	<i>Per Section 1.5.</i>
RFP Section 1.6(1) – CFI	RFP Section 1.6 <i>is not</i> applicable to the RFP Process.

RFP SECTION REFERENCE AND DESCRIPTION	ITEM
RFP Section 3.1(1) – Timetable	Timetable: (a) Issuance of RFP Documents August 5th, 2021 (b) Deadline for Proponents to submit their Conflict of Interest Declarations August 31st, 2021 (c) Deadline for Proponents to submit Questions August 18th, 2021 [3:00:00 p.m. local time] (d) Deadline for posting all Questions and Answers Documents August 24th, 2021 (e) Deadline for issuance of Addenda (except Addenda related to the Timetable) August 24th, 2021 (f) Deadline for Submission of Proposals (Submission Deadline) August 31st, 2021 [3:00:00 p.m. local time] The Bonfire portal will be used for the purposes of determining the Submission Deadline.
RFP Section 3.5(1) – General Proponents Meeting	The University <i>will not</i> be conducting a Proponents Meeting.
RFP Section 3.6(2)(b)(ii) – Prohibited Contacts	<i>Not applicable.</i>
RFP Section 3.7(1) – Ineligible Persons	<i>Not applicable.</i>
RFP Section 4.1(2) – Format and Content of Proposal	The maximum number of pages for the Proposal is limited to a maximum of 25 pages single sided for each submission for: (1) Senate Governance Review; and/or (2) Board of Governors Governance Review; and/or (3) Operational Review . The page limit is specifically indicated <i>in Schedule D</i>. The page limit specifically excludes requested CVs. NOTE on format and submissions: Submissions are to be no larger than 8.5" x 11", single sided, no smaller than 11 point font. Please follow the maximum number of pages as prescribed above.

RFP SECTION REFERENCE AND DESCRIPTION	ITEM
RFP Section 4.3(1) – References and Past Performance Issues	Proponents are required to submit references of relevant similar experience for their (1) Senate Governance Review; and/or (2) Board of Governors Governance Review; and/or (3) Operational Review; and/or all of the aforementioned for which a Proposal is being submitted by a Proponent.
RFP Section 5.1(1) – Bonfire Link for Submission of Proposals	Each Proponent is required to submit its Proposal on Bonfire at the following link: https://laurentian.bonfirehub.ca
RFP Section 5.5(1) – One Proposal Per Person or Entity	<i>There are no exceptions to RFP Section 5.5(1).</i>
RFP Section 5.5(2) – One Proposal Per Person or Entity	<i>There are no exceptions to RFP Section 5.5(2).</i>

RFP Section 6.1(1) – Evaluation of Proposals	Proponents may choose to submit Proposals for any one of, a combination of, or all of the following: 1. Senate Governance Review 2. Board of Governors Governance Review 3. Operations Review Proponents who choose to submit two (2) or more Proposals may receive additional value-added synergy points. Laurentian University in consultation with its Advisors, the Monitor and the CRO will evaluate and will award based on an individual Proposal basis the Proposals for any one of, a combination of or all of the following: 1. Senate Governance Review 2. Board of Governors Governance Review 3. Operational Review or all of the aforementioned. Laurentian University in consultation with its Advisors, the Monitor, the CRO reserves the right to enter into an agreement with one or more Proponents to obtain the best package of services, as determined by Laurentian University. Stages of Evaluation 1. Technical Proposal Evaluation 2. Financial Proposal Evaluation 3. Interview Proponents must first meet the minimum passing score of 70% on the technical submission evaluated criteria per Proposal submitted. Proponents who have met the minimum passing score of 70% on the technical submission will also be evaluated based on the financial evaluation criteria. Those Proponents who have satisfied the minimum passing score on the technical submission evaluation criteria and who achieve a satisfactory score based upon the financial submission evaluation criteria, will proceed to the Interview phase. Laurentian University, along with its Advisors, the Monitor and the CRO will be conducting the Interview, Question and Answer Session for up to five (5) Proponents with the highest scores per Proposal submission. There will be a series of questions that the Proponents will be asked and Proponents will be rated based on their answers. Cumulative Score and Selection of Highest Scoring Proponent At the conclusion of the Interview, Question and Answer Session for up to five (5) Proponents, the Interview, Question and Answer Session points will be added to the overall scoring and the highest scoring Proponent will be recommended as the Successful Proponent.
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The Evaluation Criteria and weightings to be applied are as follows:

1. Senate Governance Review

Criteria	Weight (in points)	Maximum # of pages
General (presentation, aesthetics, flow,max number of pages adhered)	5	n/a
Executive Summary & Company Profile	5	3
Proposed Team and Availability	15	6
Experience and Qualifications of the Proposed Team	20	6
Schedule, Work Plan, Approach and Methodology	30	7
Proposed Fee for Senate Governance Review (including fee structure)	25	3
Total Senate Governance Review Technical Proposal Evaluation Points	100	

2. Board of Governors Governance Review

Criteria	Weight (in points)	Maximum # of pages
General (presentation, aesthetics, flow,max number of pages adhered)	5	n/a
Executive Summary & Company Profile	5	3
Proposed Team and Availability	15	6
Experience and Qualifications of the Proposed Team	20	6
Schedule, Work Plan, Approach and Methodology	30	7
Proposed Fee for Board of Governors Governance Review (including fee structure)	25	3
Total Board of Governors Governance Review Technical Proposal Evaluation Points	100	

3. Operational Review

Criteria	Weight (in points)	Maximum # of pages
General (presentation, aesthetics, flow,max number of pages adhered)	5	n/a
Executive Summary & Company Profile	5	3
Proposed Team and Availability	15	6
Experience and Qualifications of the Proposed Team	20	6
Schedule, Work Plan, Approach and Methodology	30	7
Proposed Fee for Operational Review (including fee structure)	25	3
Total Operational Review Technical Proposal Evaluation Points	100	

Value-Added Synergy

Proponents who choose to submit Proposals on two (2) or more components may receive additional value-added synergy points as follows:

Additional Points	Weight (in points)
Proponent submits a proposal for two (2) components (Senate, Board of Governors or Operational Review)	5
Proponent submits a proposal for three (3) components (Senate, Board of Governors or Operational Review)	10

The value-added synergy points will be awarded only if the individual technical proposals attain the 70% minimum threshold.

Interview, Question and Answer

RFP SECTION REFERENCE AND DESCRIPTION	ITEM				
	Proponents must first meet the minimum passing score of 70% on the technical submission evaluated criteria per Proposal submitted. Proponents who have met the minimum passing score of 70% on the technical submission will also be evaluated based on the financial evaluation criteria. Those Proponents who have satisfied the minimum passing score on the technical submission evaluation criteria and who achieve a satisfactory score based upon the financial submission evaluation criteria, will proceed to the Interview phase. Laurentian University, along with its Advisors, the Monitor and the CRO will be conducting the Interview, Question and Answer Session for up to five (5) Proponents with the highest scores per Proposal submission. There will be a series of questions that the Proponents will be asked and Proponents will be rated based on their answers. <table border="1"> <tr> <th>Criteria</th><th>Weight (in points)</th></tr> <tr> <td>Interview, Question and Answer</td><td>50</td></tr> </table>	Criteria	Weight (in points)	Interview, Question and Answer	50
Criteria	Weight (in points)				
Interview, Question and Answer	50				
RFP Section 6.1(2) – Minimum Passing Score	Each Proposal submitted by a Proponent that meets the minimum passing score of 70% of the technical submission evaluated criteria, will proceed to the Financial Evaluation and a Proponent that achieves a satisfactory score based upon the financial submission evaluation criteria will proceed to the Interview, Question and Answer.				
RFP Section 6.2(1) and 6.2(2) – Interviews, Demonstrations, Site Visits and Presentations	The University intends to invite the Proponents to Interviews and the University intends to evaluate such Interviews in accordance with the Evaluation Criteria. Proponents that meet the minimum passing score of 70% of the technical submission and achieve a satisfactory score on their financial submission will proceed to the Interview phase.				
RFP Section 10.2(1) – Limit on Liability	The Limit on Liability cap is \$10,000 .				

SCHEDULE B

PROPOSAL SUBMISSION FORM

**PROPOSAL SUBMISSION FORM
SCHEDULE B TO THE RFP**

TO: Laurentian University, 935 Ramsey Lake Road, Sudbury, ON P3E 2C6, LEEANNE CROTEAU

RE: 21-LCD-15

RE: (1) Senate Governance Review; and/or (2) Board of Governors Governance Review; and/or (3) Operational Review

1. Proponent Information

(a) Proponent's registered legal business name and any other name under which it carries on business:

(b) Proponent's address, telephone and facsimile numbers:

(c) Name, address, telephone, e-mail and facsimile numbers of the contact person(s) for the Proponent:

(d) Name of the person who is primarily responsible for the Proposal:

(e) Whether the Proponent is an individual, a sole proprietorship, a corporation, a partnership, an incorporated consortium or a consortium that is a partnership or other legally recognized entity:

(f) Name(s) of the proprietor, where the Proponent is a sole proprietor; each of the directors and officers where the Proponent is a corporation; each of the partners where the Proponent is a partnership; and applicable combinations of these when the Proponent is a not-for-profit organization, whichever applies:

2. Regulatory Matters

We confirm as follows:

Schedule B to RFP No.: 21-LCD-15 - (1) Senate Governance Review; and/or (2) Board of Governors Governance Review; and/or (3) Operational Review

- (a) With respect to the *Excise Tax Act*, we are either:
- (i) a Harmonized Sales Tax registrant for purposes of the *Excise Tax Act* and our HST registration number is _____; or
 - (ii) not a HST registrant for the purposes of the *Excise Tax Act*.

[Note: Proponents to strike the provision not applicable to them.]

3. Proposal

With respect to the above noted RFP, we confirm as follows:

- (a) capitalized terms used in clauses (b) through (t) below will have the meanings given thereto in the RFP Documents;
- (b) except to the extent that we have sought and received written approval in accordance with RFP Section 3.15, there have been no changes to the Proponent;
- (c) there have been no changes in circumstance that could have a material adverse effect on the Proponent in a way that could impair our ability to perform the obligations under the Draft Agreement;
- (d) there are no actions, suits or proceedings pending that could have a material adverse effect on our ability to provide the Goods and/or Services or, to the best of our knowledge after reasonable inquiry, threatened against us and we are not aware of any ground on which such an action, suit or proceeding might be commenced, except for the following:
 - (i) actions, suits or proceedings, if applicable:
 1. _____
 2. _____
 3. _____

[Proponent to add more rows if necessary.]

- (e) we have not and, to the best of our knowledge, our Advisors have not engaged in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of this RFP Process in contravention of RFP Section **Error! Reference source not found.**;
- (f) we have and, to the best of our knowledge, our Advisors have complied fully with RFP Section 3.8. We confirm that:
 - (i) we have not discussed or communicated, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of our Proposal or the Proposal of the other Proponents in a way that would contravene applicable law; and
 - (ii) we have prepared and submitted our Proposal independently and without connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent;
- (g) we have and, to the best of our knowledge, our Advisors have complied fully with RFP Sections 3.10 and 3.11 and the provisions of any confidentiality agreement entered into in connection with the RFP Process;

- (h) at the time of submitting our Proposal, we are in full compliance with all tax statutes administered by the Ministry of Finance for Ontario and that, in particular, all returns required to be filed under all provincial tax statutes have been paid or satisfactory arrangements for their payment have been made and maintained;
- (i) our Proposal is based on and relies solely upon our own examinations, knowledge, information, judgement, and investigations and not upon any statement, representation, investigation or information made or provided by the University whether provided through MERX or in any other way whatsoever;
- (j) we have obtained tax advice from our own advisors and experts, including obtaining any advance interpretations or rulings that we consider appropriate or necessary in relation to the Goods and/or Services, Goods and/or Services or Draft Agreement;
- (k) we have examined the RFP Documents and confirm that we have received all pages of the RFP Documents;
- (l) we have made any necessary inquiries with respect to Addenda issued by the University and have ensured that we have received and examined all Addenda to the RFP Documents;
- (m) our Proposal is based on the terms and conditions of the RFP Documents;
- (n) we acknowledge and accept the obligations set out in RFP Section 3.10;
- (o) we acknowledge and accept the limit of liability set out in RFP Section 10.2;
- (p) we acknowledge that, except as explicitly provided in RFP Section 3.10 and RFP Section 10.2, the submission of this Proposal creates no legal or contractual obligations or rights on the University or the Proponent, all as set out in RFP Section **Error! Reference source not found.**;
- (q) the prices contained in our Financial Submission are based on the terms and conditions of the RFP Documents;
- (r) we understand that any negotiations with the University with respect to the Goods and/or Services will assume that we will hold our prices submitted pursuant to RFP Schedule D Part 2 – Financial Submission Requirements and Evaluation Criteria and that, in the event we do not hold our prices, the University may, in its sole discretion, cease negotiations with us with respect to the Goods and/or Services; and
- (s) we have conducted ourselves with integrity and propriety and we have not engaged in any inappropriate bidding practices or unethical behaviour in the course of the RFP Process.

4. Conflict of Interest, Confidential Information, and Inappropriate Bidding Practices

(a) We confirm that we do not have any perceived, potential or actual Conflict of Interest or any other type of unfair advantage in submitting our Proposal or performing or observing the contractual obligations set out in the Draft Agreement, except as disclosed in the Conflict of Interest Declaration included in our Proposal.

(b) We confirm that we have not had access to University confidential information, other than the RFP Documents themselves, with respect to this RFP Process, except as disclosed as follows.

(c) We confirm that there are no charges or investigations by a public body related to inappropriate bidding practices or unethical behaviour by the Proponent or any of its Affiliates in relation to a public or broader public sector tender or procurement in any jurisdiction, other than as described below.

(1) Confidential Information

In addition to the RFP Documents, we have access to the following confidential information relating to the RFP Process.

1. _____
2. _____
3. _____

[Proponent to add more rows if necessary.]

(2) Inappropriate Bidding Practices and Unethical Behaviour

The following is a description of all charges or investigations by a public body related to inappropriate bidding practices or unethical behaviour by the Proponent or any of its Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction:

1. _____
2. _____
3. _____

[Proponent to add more rows if necessary.]

Signed by person or persons authorised to
bind the Proponent

Print Name and Title of Person Signing

SCHEDULE C

CONFLICT OF INTEREST DECLARATION

**CONFLICT OF INTEREST DECLARATION
SCHEDULE C TO THE RFP**

To: Laurentian University (the “University”)

Re: Request for Proposals RFP No. 21-LCD-15 (the “RFP”)

This Conflict of Interest Declaration is delivered to the University pursuant to the RFP. All capitalized terms used in this Conflict of Interest Declaration have the meaning set out in the RFP.

The undersigned Proponent hereby declares on its own behalf that, to the best of its knowledge, having made all necessary inquiries and investigations to permit the Proponent to make this Conflict of Interest Declaration and except as disclosed, accurately and completely, in Attachment 1 hereto:

1. No Proponent or person who has had or who will have significant involvement in the preparation and/or oversight of the preparation of our Proposal (together, the **“Proponent Conflict Declaration Parties”**) has any relationships with employees (both current or former) of the University or individuals or firms who have been involved on the University’s behalf in this RFP Process or the design, planning or implementation of the Goods and/or Services, that could constitute a Conflict of Interest or unfair advantage, or could otherwise affect or impair or appear to affect or impair the integrity of this RFP Process;
2. There is no perceived, potential or actual Conflict of Interest, collusion or any other type of unfair advantage in any of the Proponent Conflict Declaration Parties’ participation in this RFP Process;
3. No Proponent Conflict Declaration Party has any knowledge of or the ability to avail themselves of Confidential Information, other than Confidential Information which may have been disclosed by the University to the Proponent Conflict Declaration Party in the normal course of this RFP Process, that is or was relevant to the Goods and/or Services or this RFP Process;
4. None of the Proponent Conflict Declaration Parties, or any Affiliate of any of them has been charged in the last five years for any criminal offence involving fraud, fraudulent misrepresentation, bribery, collusion, anti-corruption, conspiracy, breach of competition laws, destruction of records or professional misconduct;
5. None of the Proponent or any of its Affiliates has sought protection under any bankruptcy or insolvency laws during the past five years;
6. None of the Proponent or any of its Affiliates has been the subject of a final determination that it has breached any applicable law relating to worker health and safety and/or protection of the environment within the past five years;
7. This Conflict of Interest Declaration has not been modified in any manner, except to complete the required information.

Dated _____, 20[•].

[INSERT NAME OF PROPONENT]

Name of Authorized Signatory:

Title:

I have authority to bind the Proponent.

Attachment 1

to

Schedule C Exceptions

**EXCEPTIONS
ATTACHMENT 1 TO SCHEDULE C**

[The Proponent should complete this Attachment 1 to Schedule C, setting out accurately and completely, any exceptions to the statements made in the Declaration. If there are no such exceptions, the Proponent should insert the word “NIL” in this Attachment 1 to Schedule C.

If there are exceptions set out in this Attachment 1 to Schedule C, the Proponent should submit to the University, as a separate document, the Proponent’s suggested measures for addressing each such conflict or potential conflict. The University will review such suggested measures and determine whether, in the University’s opinion, such measures satisfactorily address the conflict or potential conflict. If the conflict or potential conflict cannot be addressed to the satisfaction of the University, the University may, in its sole and absolute discretion, disqualify the Proponent.]

SCHEDULE D

SUBMISSION REQUIREMENTS AND EVALUATION CRITERIA

Schedule D Part 1

Technical Submission Requirements and Evaluation Criteria

TECHNICAL SUBMISSION REQUIREMENTS AND EVALUATION CRITERIA SCHEDULE D PART 1 TO THE RFP

A. TECHNICAL SUBMISSION – GENERAL

- (1) The Proponent is advised to prepare its Technical Submission such that the Technical Submission demonstrates both the Proponent's understanding of the scope of the Goods and/or Services and the Proponent's ability to provide the Goods and/or Services in accordance with the Draft Agreement.
- (2) In preparing its Technical Submission, the Proponent is encouraged to cite relevant lessons learned by the Proponent with respect to its past experiences.
- (3) The maximum permitted pages for each component of the Technical Submission, indicated in the title to each Technical Submission component below, is exclusive of maps, drawings, sketches, renderings, specifications, calculations and images which the Proponent may be required to or choose to include with such component.

A.1 Introduction and Background

Laurentian University of Sudbury ("**Laurentian**") is a non-share capital corporation that was incorporated pursuant to *An Act to Incorporate Laurentian University of Sudbury*. LU is also a registered charity pursuant to the *Income Tax Act*.

Since its inception, Laurentian has operated in Sudbury, Ontario, as a publicly-funded, bilingual and tri-cultural postsecondary institution, with a focus on undergraduate programming. Laurentian is an integral part of the economic fabric of Northern Ontario and serves as the primary postsecondary institution for a large geographic region.

On February 1, 2021, Laurentian obtained protection from its creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), pursuant to the Initial Order granted by Chief Justice Morawetz on the same date (as amended and restated and extended from time to time).

In order to ensure that Laurentian is well positioned for future success and embodies best practices within the sector following its comprehensive financial and operational restructuring under the CCAA, Laurentian will be undertaking along with its Advisors, the Monitor and the CRO and in consultation with certain of its stakeholders, a thorough review of:

- a. Operations (including all processes, systems, procedures and policies);
- b. Governance structure, processes and effectiveness of the following:
 - i. Senate of Laurentian (the "**Senate**")
 - ii. Board of Governors of Laurentian (the "**Board**")

A.2 Scope of Proposal(s)

1. **Governance at the Senate Levels:** The governance review should consider how both the Senate is structured and functions. Areas of review should include, without limitation:
 - (a) the size and constitution of the Senate, including the various sub-committees and the delegation of authority;
 - (b) the composition of the Senate including as it relates to diversity, experience and skills, and the communities comprising LU;

- (c) the review and development of appropriate governance frameworks at the Senate that are consistent with other comparable post-secondary organizations;
- (d) the review of the status of the Laurentian Act, all governance documentation, and the review of existing policies and procedures and/or amendments to, or development of new policies and procedures to ensure that all documentation is accurate and current, and that appropriate systems are in place to ensure continual compliance with same;
- (e) the review and, if necessary, development of policies and guidelines for the Senate that are consistent with all applicable laws and regulations including the Laurentian Act. These policies should reflect the bilingual and tri-cultural mandate of Laurentian, provide guidance for decision-making and streamline internal processes for efficiency and transparency in implementation and application;
- (f) if necessary, the documentation of new governance processes and procedures and recommendations for changes that may be needed to the Laurentian Act in order to enable the new governance frameworks;
- (g) the review and development of effective procedures for reporting to the Senate, which reports contain sufficient information for the Senate to make well-informed decisions and to develop strategies for short and long-term goals; and
- (h) the development and implementation of Senate training and evaluations to ensure that Senate participants keep up to date with legislation, regulations and best practices.

2. **Governance at the Board Levels:** The governance review should consider how the Board is structured and functions. Areas of review should include, without limitation:

- (a) the size and constitution of both the Board, including the various sub-committees and the delegation of authority;
- (b) the composition of the Board including as it relates to diversity, experience and skills, and the communities comprising LU;
- (c) the review and development of appropriate governance frameworks at the Board that are consistent with other comparable post-secondary organizations;
- (d) the review of the status of the Laurentian Act, all governance documentation, and the review of existing policies and procedures and/or amendments to, or development of new policies and procedures to ensure that all documentation is accurate and current, and that appropriate systems are in place to ensure continual compliance with same;
- (e) the review and, if necessary, development of policies and guidelines for the Board that are consistent with all applicable laws and regulations including the Laurentian Act. These policies should reflect the bilingual and tri-cultural mandate of Laurentian, provide guidance for decision-making and streamline internal processes for efficiency and transparency in implementation and application;
- (f) if necessary, the documentation of new governance processes and procedures and recommendations for changes that may be needed to the Laurentian Act in order to enable the new governance frameworks;

- (g) the review and development of effective procedures for reporting to the Board, which reports contain sufficient information for the Board to make well-informed decisions and to develop strategies for short and long-term goals; and
- (h) the development and implementation of Board training and evaluations to ensure that Board participants keep up to date with legislation, regulations and best practices.

3. **Operational Review:** The Operational Review should include, but not necessarily be limited to, a review of:

- (a) the internal operations, risk and compliance;
- (b) finance;
- (c) information technology systems and reporting;
- (d) human resources;
- (e) policies and procedures of Laurentian in order to recommend any necessary changes to structure, processes, procedures and policies to ensure that best practices are established and maintained in all operational functions;
- (f) this may include recommendations for build out of key functions to ensure the necessary controls and operational processes to drive continued future financial sustainability; and
- (g) such review should include the planning, development and implementation of a Continuous Improvement Committee to ensure that once service-delivery and other operational processes, procedures and policies have been reviewed and improved, continual review and improvement occurs such that Laurentian can utilize best practices within the sector.

A.3 Consultation with Stakeholders

The review will include consultation with multiple stakeholders including the Laurentian Board, Senate, Administrative units, faculty, staff and students, student associations and with Laurentian's employee and labour groups. The review may also include consultation with other stakeholders as may be identified by Laurentian.

A.4 Project Schedule

Laurentian continues to work diligently to complete its restructuring and emerge from CCAA protection prior to December 31, 2021. Details with respect to Laurentian's commitment to complete the governance review and implement recommendations that are received will be a key aspect of, and commitment under, the Plan of Compromise or Arrangement that Laurentian presents to its creditors in the Fall 2021. As such, the proponent should be prepared to commence the project immediately, work efficiently and not require material extensions to the project schedule once determined. Laurentian recognizes that although the framework and recommendations with respect to the governance review should be completed within Laurentian's CCAA timeline, the implementation of many of the recommendations will involve a longer-term project that continues following the completion of the CCAA proceedings.

B. TECHNICAL SUBMISSION REQUIREMENTS AND EVALUATION CRITERIA

B.1 General Information

Proponents may choose to submit proposals **for any one of, a combination of, or all of** the following:

1. Senate Governance Review
2. Board of Governors Governance Review
3. Operations Review

Proponents who choose to submit two (2) or more Proposals may receive additional value-added synergy points. For greater certainty, and notwithstanding RFP Section 5.5(1)(a), a Proponent who submits a Proposal for any or all of the above is not in contravention of RFP Section 5.5(1)(a).

B.2 Submission Requirements

For **each proposal submission** (1. Senate Governance Review; and/or 2. Board of Governors Governance Review; and/or 3. Operational Review; and/or all of the aforementioned) each Proponent will prepare and submit a Technical Submission consisting of the following:

Executive Summary summarizing the following (maximum 2 pages):

- The proponent's understanding of the full scope of services required.
- An outline statement with description of the intended approach and methodology to be pursued for the provision of the services identified.
- Any potential exclusions.
- Confirm the availability of the proponent and the commitment of appropriate resources to complete the project.

Prime Consultant Company Profile (maximum 1 page)

- Introduction and overview of the company.
- Years currently in business and depth of knowledge and experience.

Proposed Team and Availability (max. 6 pages excluding resumes):

- List the key project personnel who will form part of the proponent's project team including all sub-consultants.
- Describe how project communication will flow between the prime consultant, sub-consultants, owner, and the owner's stakeholders.
- Describe individual capabilities, qualifications, relevant experience and roles for all team members assigned to this project.
- Confirm availability and commitment of the team to complete the project on time.
- Describe how all services may be provided in accordance with the bilingual and tri-cultural mandate of the University.

Experience and Qualifications of the Proposed Team (maximum 6 pages)

- List a minimum of three projects of similar size and scope that demonstrate the proponent's ability to recommend any necessary changes to structure, processes, procedures and policies to ensure that best practices are established and maintained in all operational functions. This may include recommendations for build out of key functions to ensure the necessary controls and operational processes to drive continued future financial sustainability.
- The projects highlighted should include (but are not limited to) experiences in post-secondary institution governance and operational reviews and change management.
- Describe the scope of services provided for the referenced projects and include other potentially helpful information.
- Describe capabilities and qualifications that made these projects successful.

Schedule, Work Plan, Approach and Methodology (maximum 7 pages)

- Provide a complete proposed schedule for the project
- Explain the method and approach with respect to the management of client meetings, communications, approvals, schedules.
- Describe how your team's approach to the project that best reflects best practices in establishing and maintaining all operational functions.
- Describe the team's availability to commence work on the services immediately upon award of the contract and maintain the required levels of service in order to meet the project schedule.
- Describe your understanding of the assignment, including overall scope and objectives, noting any specific issues that may require extraordinary attention.
- Confirm understanding and delivery of the project scope as described in this RFP.

B.3 Stages of Evaluation

1. Technical Proposal Evaluation
2. Financial Proposal Evaluation
3. Interview

Laurentian University along with its Advisors, the Monitor and the CRO will evaluate and will award based on an individual proposal basis **the submissions for any one of, a combination of or all of the following:**

1. Senate Governance Review
2. Board of Governors Governance Review
3. Operational Review or all of the aforementioned;

Laurentian University reserves the right to enter into a Final Agreement with one or more proponents to obtain the best package of services, as determined by Laurentian University, its Advisors, the Monitor and the CRO.

Proponents must first meet the minimum passing score of 70% on the technical submission evaluated criteria per Proposal submitted. Proponents who have met the minimum passing score of 70% on the technical submission will also be evaluated based on the financial evaluation criteria. Those Proponents who have satisfied the minimum passing score on the technical submission evaluation criteria and who achieve a satisfactory score based upon the financial submission evaluation criteria, will proceed to the Interview phase. Laurentian University, along with its Advisors, the Monitor and the CRO will be conducting the Interview, Question and Answer Session for up to five (5) Proponents with the highest scores per Proposal submission. There will be a series of questions that the Proponents will be asked and Proponents will be rated based on their answers.

Cumulative Score and Selection of Highest Scoring Proponent

At the conclusion of the Interview, Question and Answer Session for up to five (5) Proponents, the Interview, Question and Answer Session points will be added to the overall scoring and the highest scoring Proponent will be recommended as the Successful Proponent.

Technical Submission - Evaluation Criteria**1. Senate Governance Review**

Criteria	Weight (in points)	Maximum # of pages
General (presentation, aesthetics, flow,max number of pages adhered)	5	n/a
Executive Summary & Company Profile	5	3
Proposed Team and Availability	15	6
Experience and Qualifications of the Proposed Team	20	6
Schedule, Work Plan, Approach and Methodology	30	7
Total Senate Governance Review Technical Proposal Evaluation Points	75	

2. Board of Governors Governance Review

Criteria	Weight (in points)	Maximum # of pages
General (presentation, aesthetics, flow,max number of pages adhered)	5	n/a
Executive Summary & Company Profile	5	3
Proposed Team and Availability	15	6
Experience and Qualifications of the Proposed Team	20	6
Schedule, Work Plan, Approach and Methodology	30	7
Total Board of Governors Governance Review Technical Proposal Evaluation Points	75	

3. Operational Review

Criteria	Weight (in points)	Maximum # of pages
General (presentation, aesthetics, flow,max number of pages adhered)	5	n/a
Executive Summary & Company Profile	5	3
Proposed Team and Availability	15	6
Experience and Qualifications of the Proposed Team	20	6
Schedule, Work Plan, Approach and Methodology	30	7
Total Operational Review Technical Proposal Evaluation Points	75	

Value-Added Synergy

Proponents who choose to submit two (2) or more proposals may receive additional value-added synergy points as follows:

Additional Points	Weight (in points)
Proponent submits a proposal for two (2) components (Senate, Board of Governors or Operational Review)	5
Proponent submits a proposal for three (3) components (Senate, Board of Governors or Operational Review)	10

The value-added synergy points will be awarded only if the individual technical proposals attain the 70% minimum threshold.

Interview, Question and Answer

Proponents must first meet the minimum passing score of 70% on the technical submission evaluated criteria per Proposal submitted. Proponents who have met the minimum passing score of 70% on the technical submission will also be evaluated based on the financial evaluation criteria. Those Proponents who have satisfied the minimum passing score on the technical submission evaluation criteria and who achieve a satisfactory score based upon the financial submission evaluation criteria, will proceed to the Interview phase. Laurentian University, along with its Advisors, the Monitor and the CRO will be conducting the Interview, Question and Answer Session for up to five (5) Proponents with the highest scores per Proposal submission. There will be a series of questions that the Proponents will be asked and Proponents will be rated based on their answers.

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Criteria	Weight (in points)
Interview, Question and Answer	50

Schedule D Part 2

Financial Submission Requirements and Evaluation Criteria

**FINANCIAL SUBMISSION REQUIREMENTS AND EVALUATION CRITERIA
SCHEDULE D PART 2 TO THE RFP**

A. FINANCIAL SUBMISSION - GENERAL

Proposed Fees

i) Proposed Fee-Senate Governance Review (maximum 3 pages)

- Specify an all-inclusive professional services fee (before taxes), which will include the cost of all disbursements necessary to complete the project. This shall include a fee structure, setting out the estimated particulars that comprise the proposed fees. Disbursements shall include but shall not be limited to: accommodation, travel, communication costs, printing, photocopying, reproduction or transmission of information in an electronic format, and all overhead costs related to the provision of services. Other disbursement costs additional to the Proponent's fee proposal will not be permitted. The all-inclusive fee shall include the cost of services and disbursements of all sub consultants retained by the successful Proponent(s) in the completion of the project. As per the Government of Ontario's Broader Public Sector Expense Directives, hospitality, incidental or food expenses are not considered allowable expenses. Travel and accommodations are acceptable.
- Describe how the Proponent proposes to deal with additional fees related to changes to the contract that may be required due to errors or omissions.
- Hourly Rates:
 - Provide hourly rates (all-inclusive of burdens and overhead and profit) for each of the team members identified in the project team.

ii) Proposed Fee-Board Governance Review (maximum 3 pages)

- Specify an all-inclusive professional services fee (before taxes), which will include the cost of all disbursements necessary to complete the project. This shall include a fee structure, setting out the estimated particulars that comprise the proposed fees. Disbursements shall include but shall not be limited to: accommodation, travel, communication costs, printing, photocopying, reproduction or transmission of information in an electronic format, and all overhead costs related to the provision of services. Other disbursement costs additional to the Proponent's fee proposal will not be permitted. The all-inclusive fee shall include the cost of services and disbursements of all sub consultants retained by the successful Proponent(s) in the completion of the project. As per the Government of Ontario's Broader Public Sector Expense Directives, hospitality, incidental or food expenses are not considered allowable expenses. Travel and accommodations are acceptable.
- Describe how the Proponent proposes to deal with additional fees related to changes to the contract that may be required due to errors or omissions.
- Hourly Rates:
 - a. Provide hourly rates (all-inclusive of burdens and overhead and profit) for each of the team members identified in the project team.

iii) Proposed Fee-Operational Review (maximum 3 pages)

- Specify an all-inclusive professional services fee (before taxes), which will include the cost of all disbursements necessary to complete the project. This shall include a fee structure, setting out the estimated particulars that comprise the proposed fees. Disbursements shall include but shall not be limited to: accommodation, travel, communication costs, printing, photocopying, reproduction or transmission of information in an electronic format, and all overhead costs related to the provision of services. Other disbursement costs additional to the Proponent's fee proposal will not be permitted. The all-inclusive fee shall include the cost of services and disbursements of all sub consultants retained by the successful Proponent(s) in the completion of the project. As per the

Government of Ontario's Broader Public Sector Expense Directives, hospitality, incidental or food expenses are not considered allowable expenses. Travel and accommodations are acceptable.

- Describe how the Proponent proposes to deal with additional fees related to changes to the contract that may be required due to errors or omissions.
- Hourly Rates:
 - b. Provide hourly rates (all-inclusive of burdens and overhead and profit) for each of the team members identified in the project team.

B. Financial Evaluation Criteria

(a) Senate Governance Review

Criteria	Weight (in points)	Maximum # of pages
Proposed Fee for Senate Governance Review (including fee structure)	25	3
Total Senate Governance Review Financial Proposal Evaluation Points	25	

(b) Board of Governors Governance Review

Criteria	Weight (in points)	Maximum # of pages
Proposed Fee for Senate Governance Review (including fee structure)	25	3
Total Board of Governors Governance Review Financial Proposal Evaluation Points	25	

(c) Operational Review

Criteria	Weight (in points)	Maximum # of pages
Proposed Fee for Senate Governance Review (including fee structure)	25	3
Total Operational Review Financial Proposal Evaluation Points	25	

C. FINANCIAL SUBMISSION – SCORING**Scoring:**

Each Proposed Fee (Senate Review, Board of Governors Governance Review and Operational Review) will be scored based on a “relative” pricing formula. For example, if the lowest total proposed fee is \$120, and two other proposed fees come in at \$140 and \$150, respectively, then the scoring calculation for the three proponents would be as follows:

1. Lowest proposed fee of \$120 receives **25 points**.
2. Second lowest proposed fee of \$140 receives:

Lowest proposed fee	\$120	

2 nd lowest proposed fee	\$140	= $.85714 \times 25 \text{ pts} = \mathbf{21.43 \text{ points}}$

3. Third lowest proposed fee of \$150 receives:

Lowest proposed fee	\$120	

3 rd lowest proposed fee	\$150	= $.80 \times 25 \text{ pts} = \mathbf{20 \text{ points}}$

Etc. for each proposal

SCHEDULE E

REFERENCE FORM

REFERENCE FORM

[Note to Proponents: Include additional references if the RFP Data Sheet indicates more than three references are required.]

Reference #1

Company Name:	
Company Address:	
Contact Name:	
Contact Telephone Number:	
Contact Email:	
Date Work Undertaken:	
Nature of Assignment:	

Reference #2

Company Name:	
Company Address:	
Contact Name:	
Contact Telephone Number:	
Contact Email:	
Date Work Undertaken:	
Nature of Assignment:	

Reference #3

Company Name:	
Company Address:	
Contact Name:	
Contact Telephone Number:	
Contact Email:	
Date Work Undertaken:	
Nature of Assignment:	

SCHEDULE F

FRAMEWORK OF TERMS FOR DRAFT AGREEMENT

Proponents are invited to provide the form of Agreement that they would expect to enter into if they are selected as the Successful Proponent, for informational purposes.

23338835.5

Schedule “F”**Framework of Terms for Draft Agreement**

The Final Agreement to be negotiated will contain the essential terms reflected in this outline of a Draft Agreement, and such other terms as the University and the Successful Proponent may agree to, consistent with the Proposal submitted by the Successful Proponent. The Final Agreement will be on terms satisfactory to the University, and be subject to review and approval of the Monitor and CRO. The Successful Proponent acknowledges and agrees that the terms set out herein are essential to the University and shall form part of the Final Agreement, unless the University, in its sole discretion, waives any of the following terms:

I. Term

- 1) The framework and recommendations with respect to the operational and governance review must be completed expeditiously. As such, the Successful Proponent should be prepared to commence the project immediately, work efficiently and not require material extensions to the project schedule once determined.
- 2) The University understands that the implementation of many of the recommendations will involve a longer-term project that may continue following the completion of the CCAA proceedings.
- 3) The University may terminate this Agreement, with or without cause, by providing written notice to the Successful Proponent upon thirty (30) days' notice.

II. Scope of Services

- 4) During the Term, the Successful Proponent shall provide services that are consistent with that set out in the Proposal submitted by the Successful Proponent, as same may be further developed in the negotiation of the Final Agreement (the “**Mandate**”).

III. Price

- 5) The price of the Goods and/or Services to be supplied by the Successful Proponent will be set out in the Final Agreement and be consistent with the Proposal of the Successful Proponent.

IV. Breakdown of Price

- 6) A breakdown of the price charged by the Successful Proponent (which shall include, but is not limited to, the hourly rate of each individual responsible for carrying out the Mandate) will form part of the Final Agreement.

V. Representations and Warranties

- 7) The Successful Proponent will provide covenants, representations and warranties in form and substance satisfactory to the University.

VI. Confidentiality

- 8) The Final Agreement shall contain terms regarding the protection of the University's confidential information, which terms shall be in form and substance satisfactory to the University.

VII. Expectations

- 9) The Successful Proponent covenants and agrees to perform its obligations under the Final Agreement with the degree of care, skill and diligence consistent with the highest professional standards applicable within the sector and industry.
- 10) The Successful Proponent covenants and agrees to diligently carry out the Mandate in a professional manner and to respect the University's commitment to consult with certain of its stakeholders.
- 11) The Successful Proponent agrees that time shall be of the essence in carrying out the Mandate.

VIII. Insurance

- 12) The Successful Proponent agrees that it shall, at its sole cost and expense, take out and keep in full force and effect at all times during the Term, professional liability (errors and omissions) insurance, risk property insurance and occurrence based comprehensive commercial general liability insurance on terms acceptable to the University.

IX. Governing Law

- 13) The terms of this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

X. Personal Information

- 14) The Parties acknowledge that Laurentian is subject to the Ontario *Freedom of Information and Protection of Privacy Act* (the "**Act**"). To the extent that either Party provides any personal information to the other in connection with this Agreement, the Parties shall comply with the requirements of the Act and shall only use this personal information for the purposes necessary to fulfill its obligations under this Agreement, and shall not disclose such personal information except as authorized or required by law.

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

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

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

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

Proceedings commenced at Toronto

AFFIDAVIT OF DR. ROBERT HACHÉ

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Lawyers for the Applicant

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF	)	FRIDAY, THE 27TH
	)	
JUSTICE MORAWETZ	)	DAY OF AUGUST, 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

(Stay Extension and Approval of Second DIP Amendment)

THIS MOTION, brought by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") proceeded on August 27, 2021 by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Dr. Robert Haché sworn August 20, 2021 (the "**Haché Affidavit**") and the Exhibits thereto and the Seventh Report of Ernst & Young Inc. in its capacity as court-appointed Monitor (the "**Monitor**") and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and those other parties listed on the Counsel Slip, no one else appearing although duly served with the Applicant's Motion Record as appears from the Affidavit of Service of Derek Harland sworn August 20, 2021,

SERVICE AND DEFINITIONS

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

EXTENSION OF STAY PERIOD

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

APPROVAL OF SECOND DIP AMENDMENT

4. **THIS COURT ORDERS** that the Second DIP Amendment attached as Exhibit "E" to the Haché Affidavit is hereby approved and the Applicant is authorized and empowered to enter into the Second DIP Amendment.

GENERAL

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

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

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
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Proceeding commenced at Toronto

**ORDER
(Stay Extension and Approval of Second DIP
Amendment)**

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
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Court File No.: CV-21-656040-00CL

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**MOTION RECORD
(Returnable August 27, 2021)**

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