

BIDDING PROCEDURES KOGNITIV CORPORATION

Background

1. On December 12, 2024, Kognitiv Corporation (the “**Vendor**” or the “**Company**”) filed a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (the “**BIA**”) naming BDO Canada Limited (“**BDO**”) as proposal trustee (in such capacity, the “**Proposal Trustee**”) in the proceedings (the “**NOI Proceedings**”).
2. On January 10, 2025, the Company filed a proposal pursuant to Section 62 of the BIA, which terms included, among other things, the Company carrying out a sale process for the sale of the Company’s operations and assets (the “**Sale Process**”).
3. The Proposal Trustee, with the assistance of the Company will conduct the Sale Process.

Assets for Sale under the Sale Process

4. The Sale Process is intended to solicit interest in, and opportunities for, a sale of all or part of the Company’s assets and business operations (the “**Opportunity**”). The Opportunity shall include a sale of all, substantially all or one or more components of the Company’s assets, including its direct or indirect shares in various subsidiaries (collectively, the “**Assets**”) and business operations (the “**Business**”) as a going concern or otherwise, or some combination thereof (each, a “**Transaction**”).
5. The Vendor is inviting Bids for the Assets and Business or any parts thereof. For purposes of this Bidding Procedures, the Company’s Assets will comprise of the following:

| Lot # | Description |
|--------------|---|
| Lot 1 | Loyalty solutions and services business comprised of the shares of Loyalty Solutions Holdings US Inc. |
| Lot 2 | The shares in the Company’s other subsidiaries, including the Tax losses. |

Note (1): Bidders are asked to allocate a purchase price for each unit independently;

6. This document describes the Sale Process, including the manner in which individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures or other entities (each, a “**Person**”) may gain access to or continue to have access to due diligence materials concerning the Company and its subsidiaries, the Assets and the Business, how bids involving the Company, the Assets or the Business will be submitted to and dealt with by the Proposal Trustee and how Court approval will be obtained in respect of a Transaction.
7. The Sale Process contemplates a one stage process that involves the submission by interested parties of binding offers by the Bid Deadline (as defined below).

Disclaimer

8. These Bidding Procedures have been prepared by BDO, solely in its capacity as Proposal Trustee, in consultation with the Company, from information obtained from the Company and other sources, all of which have not been independently verified by BDO (the “**Information**”) to assist the Company with the Sales Process.

9. The Assets listed and Business descriptions are for INFORMATION PURPOSES ONLY. Neither the Company nor the Proposal Trustee provide any representations or warranties as to the accuracy or completeness of the Information. This Information is being provided to Bidders for reference purposes only and to assist them in conducting their evaluation of the Assets of the Company.

10. Unless otherwise noted, all denominations are in CAD dollars.

11. In the Sale Process, (i) “**Business Day**” means any day (other than Saturday or Sunday) that banks are open for business in Toronto, Ontario. If any deadline date referred to in the Sale Process falls on a day that is not a Business Day, then such date shall be extended until the next Business Day; and (ii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase, “without limitation”.

“As is, Where is” Basis

12. Except to the extent otherwise set forth in a definitive sale agreement with a Successful Bidder (as defined below), any Transaction will be on an “**as is, where is**” basis and without surviving representations or warranties of any kind, nature, or description by the Proposal Trustee, the Company, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Company in and to the Assets to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.

Access to Review Assets and Business

13. Interested parties that wish to review the Assets and Business are required to contact Griffin Rotman (grotman@roystonecapital.com), with a copy via email to the Proposal Trustee, Chris Mazur (CMazur@bdo.ca) and Angelo Consoli (aconsoli@bdo.ca) and, upon executing a confidentiality agreement, in form and substance satisfactory to the Proposal Trustee, a review of the Assets and Business will be arranged by way of access to a virtual data room containing preliminary information about the Assets and the Business (the “**Preliminary Date Room**”).

Bid Deadline

14. All Bids (as defined below) must be submitted in accordance with the terms of these Bidding Procedures so that they are actually received by the Proposal Trustee no later than 5:00 p.m. (Toronto time) on Friday, February 14, 2025 (the “**Bid Deadline**”). A Bid received by the Proposal Trustee after the Bid Deadline may not be accepted.

15. Written copies of all Bids shall be delivered via e-mail so that they are received by the Proposal Trustee by the Bid Deadline at:

BDO Canada Ltd.
25 Main St. West, Suite 805
Hamilton, ON L8P 1H1

Attention: Chris Mazur (CMazur@bdo.ca) and Angelo Consoli (aconsoli@bdo.ca)

16. The dates set out in the Sale Process may be extended by the Proposal Trustee with the consent and approval of the Company.

17. Any potential Bidder (as defined below) must rely solely on their own independent review, investigation and/or inspection of all information and of the Assets and Business in connection with their participation in the Sale Process and any transaction they enter into with the Company.

Bid Requirements

18. A party submitting a Bid (a “**Bidder**”) must deliver a Bid to the Proposal Trustee by the Bid Deadline, which satisfies each of the following conditions (a “**Bid**”):

- a. Identification. Identification of the Bidder and representatives thereof who are authorized to appear and act on behalf of the Bidder for all purposes regarding the contemplated Transaction.
- b. Purchase Price and Assets. The Bid must include:
 - i) the purchase price in Canadian dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
 - ii) a description of the Assets that is expected to be subject to the transaction and any of the Assets or Business expected to be excluded; and
 - iii) a description of the conditions and approvals required to complete the closing of the transaction.
- c. Form and Content. A Bid must conform with the terms and conditions set out herein and must be submitted in the Form of Offer attached hereto as **Appendix A**. If the Bid is accepted, the Proposal Trustee will provide to the Bidder with a standard share purchase agreement (“SPA”), which will be used as the basis to complete the purchase and sale.
- d. Deposit. Each Bid must be accompanied by a refundable deposit equal to 5% of the proposed purchase price of the Assets and Business to be bid on. The refundable deposit will be paid by way of certified cheque payable to “BDO Canada Ltd., Proposal Trustee of Kognitiv Corporation” or wire transfer to the Proposal Trustee’s trust account.
- e. Closing Date. A Bid must contain a binding commitment by the Bidder to close on the terms and conditions set forth therein as soon as practicable after satisfaction or waiver of all conditions and the receipt of Court approval and a covenant to use commercial best efforts to satisfy all conditions (the “**Closing Date**”).

- f. Irrevocable. A Bid must be irrevocable and capable of acceptance until at least February 28, 2025.
 - g. Contingencies. A Bid may not be conditional on obtaining financing or any internal approval. It may only be conditional upon review of due diligence based on Access to the virtual data room containing full information on the Assets and Business, which is addition to that contained in the Preliminary Date Room, and is subject to the Company's discretion to work with one or more parties towards a final SPA or waiving of all conditions.
 - h. No Fees payable to Bidder. A Bid may not request or entitle the Bidder to any break-up fee, expense reimbursement, termination or similar type of fee or payment. Further, by submitting a Bid, a Bidder shall be deemed to irrevocably waive its right to pursue any claim in any way related to the submission of its Bid or these Bidding Procedures.
 - i. No Representations and Warranties. By submitting a Bid, the Bidder acknowledges to and in favour of the Proposal Trustee and the Vendor that the Bidder has conducted its own investigations and inspections of the Assets and all matters and things connected with or in any way related to the Assets, that the Bidder has satisfied itself with respect to the Assets, that the Bidder has relied entirely upon its own investigation and inspections in entering into this agreement, that the Bidder is purchasing the Assets on an "as is, where is" basis upon execution of a final SPA, that the Bidder will accept the Assets in their present state, condition and location and the Bidder hereby acknowledges that the Proposal Trustee and the Vendor has made no representations, warranties, statements or promises save and except as are contained herein with respect to any matter or thing whatsoever, including, without limitation, as to title, description, fitness for purpose, merchantability, quantity or the condition of any matter or thing whatsoever. Except as expressly set out herein, no adjustments shall be allowed to the Bidder for any changes in condition, quality or quantity of the Assets. The Bidder acknowledges that the Proposal Trustee and the Vendor is not required to inspect or count, or provide any inspection or counting, of the Assets or any parts thereof and the Bidder shall be deemed, at its own expense, to have relied entirely upon its own inspection and investigation of the Assets. The Bidder acknowledges that it shall be the Bidder's sole responsibility to obtain, at its own expense, any consents, approvals or any further documentation or assurances which may be required to carry out the terms of the SPA, including, without limitation, any approvals with respect to assets subject to lease or any of the Assets which are not assignable without the consent or other action of a third party (or parties).The Bidder will satisfy itself with respect to any successor employer liability.
 - j. Other Information. A Bid shall contain other information reasonably requested by the Proposal Trustee and Vendor.
 - k. No Personal Liability. The Bidder acknowledges that BDO shall have no personal or corporate liability under these Bidding Procedures.
19. Each Bidder shall comply with all reasonable requests for additional information by the Proposal Trustee regarding such Bidder and its contemplated transaction.

Selection of Successful Bid

20. The successful bid (the “**Successful Bid**”) shall be determined by the Proposal Trustee in consultation with the Company. The highest Bid shall not necessarily be accepted by the Vendor. Further, nothing contained herein precludes the Vendor from entering into an agreement to sell any or all Assets prior to the Bid Deadline (as defined herein).

21. If the Proposal Trustee receives multiple Bids, the Proposal Trustee, in consultation with the Company, may conduct and administer an auction (the “**Auction**”). Instructions and the procedure to participate in the Auction, which will take place via video conferencing, will be provided to qualified Bidders not less than 24 hours prior to the Auction. Only parties that provided a qualified Bid by the Bid Deadline, as confirmed by the Proposal Trustee shall be eligible to participate in the Auction. No later than 5:00 p.m. Eastern Time on the day prior to the Auction, each Person with a qualified Bid must inform the Proposal Trustee whether it intends to participate in the Auction. The Proposal Trustee will promptly thereafter inform in writing each Person who has expressed its intent to participate in the Auction of the identity of all other Persons that have indicated their intent to participate in the Auction.

22. The Proposal Trustee shall inform the successful bidder or bidders (the “**Successful Bidder(s)**”) that their Bid was accepted as soon as is reasonably possible after the Bid Deadline or, if needed, following the outcome of any Auction.

Sale Approval

23. As soon as practicable after determination of the Successful Bid, the Company or Proposal Trustee, as applicable, will make a motion to the Court (the “**Approval Motion**”) for an approval and vesting order in respect of the Successful Bid and the underlying purchase agreement (the “**Final SPA**”).

Proposal Trustee’s Reservation of Rights

24. In addition to the other reservations of rights set out herein, the Proposal Trustee and Vendor reserves the right in their reasonable discretion to: (i) waive strict compliance with any one or more of the Bid requirements specified herein; (ii) extend any deadline set forth in these Bidding Procedures, including the Closing Date, for up to 15 calendar days, without further notice; (iii) reject any or all Bids; (iv) accept partial Bids or request an amended Bid to be submitted; and (v) adopt such ancillary and procedural rules not otherwise set out herein for these Bidding Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of these Bidding Procedures.

Closing the Successful Bid

25. The Vendor and the Successful Bidder(s) shall take all reasonable steps to complete the sale transaction contemplated by the Successful Bid(s) as soon as possible in accordance with the SPA and following Court approval. Notwithstanding the foregoing, in the event that there is more than one Successful Bid, the Vendor reserves the right to impose a condition in each Successful Bid that its obligation to complete the sale transaction contemplated by each Successful Bid is conditional upon the completion of the transaction(s) contemplated by each other Successful Bid.

Return of Deposit

26. All Deposits shall be held by the Proposal Trustee in a non-interest-bearing account until returned to the applicable Bidder or otherwise dealt with in accordance with this section.

27. Deposits of all Bidders other than the Successful Bidder(s) shall be returned to such Bidder(s) two (2) Business Days after the day on which one or more Successful Bidder(s) is selected.

28. The Deposit(s) of the Successful Bidder(s) shall be applied to the purchase price of such Transaction(s) at closing. If the Successful Bidder(s) fails to consummate the Transaction(s) contemplated by the Successful Bid(s) by the Closing Date because of a breach or failure to perform on the part of such Successful Bidder(s), the Vendor shall be entitled to retain the Deposit of the applicable Successful Bidder(s) as part of its damages resulting from the breach or failure to perform by the applicable Successful Bidder(s). The Deposit of the Successful Bidder(s) shall otherwise be returned to the Successful Bidder(s) in accordance with the terms of the Successful Bid(s).

29. In the event that a deposit is forfeited for any reason it shall be forfeited as liquidated damages and not as a penalty.

Supervision of Sale Process

30. The Proposal Trustee shall oversee and conduct the Sale Process with the Company, in all respects, and, without limitation to that supervisory role, the Proposal Trustee will participate in the Sale Process in the manner set out in this Sale Process and any orders of the Court, and is entitled to receive all information in relation to the Sale Process.

31. This Sale Process does not, and will not be interpreted to create any contractual or other legal relationship between the Company or the Proposal Trustee and any potential Bidder, any qualified Bidder or any other Person, other than as specifically set forth in a definitive agreement that may be entered into with the Company.

32. Participants in the Sale Process are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, participation at an Auction and any further negotiations or other actions whether or not they lead to the consummation of a Transaction.

33. The Company and the Proposal Trustee shall have the right to modify the Sale Process if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the Sale Process.

APPENDIX A

FORM OF OFFER FOR THE PURCHASE OF THE ASSETS OF KOGNITIV CORPORATION

TO:

Kognitiv Corporation
161 Bay Street, Suite 2700
Toronto, ON M5J 2S1
Email: grotman@roystonecapital.com

BDO Canada Limited
25 Main St. W., Suite 805
Hamilton, ON L8P 1H1
Email : CMazur@bdo.ca and
aconsoli@bdo.ca

Attention: Griffin Rotman

Attention: Chris Mazur and Angelo Consoli

1. _____

Name of Bidder

2. _____

Address of Bidder

3. _____

E-mail and telephone number of Bidder

4. _____

Name, firm and e-mail of Bidder's Solicitor

5. The Bidder hereby offers to purchase the following assets subject to the Terms and Conditions of Sale pursuant to which this offer is being submitted (as identified by Lot number):

| Lot # | Description | Purchase Price Allocation |
|--------------|---|----------------------------------|
| Lot 1 | Loyalty solutions and services business comprised of the shares of Loyalty Solutions Holdings US Inc. | |
| Lot 2 | Tax losses in the form of shares in the Company's subsidiaries. | |
| | Total Purchase Price | |

6. The Purchase Price payable by the Bidder for the Assets shall be the sum of _____ (\$ _____) Canadian dollars payable as follows:

- a. The sum of _____ (\$ _____) by certified cheque / bank draft / money order payable to BDO Canada Limited – in Trust, as a deposit being 5% of the amount tendered pending completion of the purchase agreement arising from the acceptance hereof by the Vendor, (to be returned to the Bidder if the offer is not accepted), to be released as credit against the purchase price upon completion of the purchase agreement, or returned to the bidder in the event of termination in accordance with the terms hereof for any reason not attributable to the default of the Bidder:
 - b. The sum of _____ (\$ _____) more or less, and subject to adjustments by certified cheque / bank draft / money order on the closing date.
7. The undersigned agrees its Bid is subject to the Bidding Procedures issued by Vendor in connection with this transaction, a copy of which the undersigned acknowledges having received and reviewed. The Bidder represents to the Vendor it is not, a non-Canadian person as defined in the Investment Canada Act, nor is it a “non-resident person” of Canada within the meaning of section 116 of the *Income Tax Act* (Canada). The foregoing representations shall survive closing.

DATED: _____

Witness Name (Print)

Bidder Name (Print)

Witness Signature

Bidder Signature

Title: _____

Authorized officer or person

I have authority to bind the corporation