

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
as amended*

THE HONOURABLE) MONDAY, THE 13TH
)
JUSTICE CAVANAGH) DAY OF SEPTEMBER, 2021

B E T W E E N:

NATIONAL BANK OF CANADA

Applicant

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., OAKDALE ENTERPRISES INC.,
NIMBUS WATER SYSTEMS INC., 365 PRO INSTALLATIONS INC.,
2242462 ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

**ORDER
(Approving SISP)**

THIS MOTION made by BDO Canada Limited, in its capacity as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondents for an order, *inter alia*, approving the sale and investment solicitation process (the “**SISP**”) and for the return of property of the Respondents, was heard this day via videoconference in light of the COVID-19 pandemic.

ON READING the First Report of the Receiver dated September 8, 2021 (the “**First Report**”) and the Appendices thereto and on hearing the submissions of counsel for the Receiver, and such other parties listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Adam Driedger sworn September 9, 2021.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated such that this Motion is properly returnable today, hereby dispenses with further service thereof, and authorizes substitute service via electronic mail.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the First Report.

APPROVAL OF FIRST REPORT

3. **THIS COURT ORDERS** that the activities described in the First Report, and the activities and conduct of the Receiver set out therein are hereby ratified and approved.

FUNDING OF THE RECEIVERSHIP

4. **THIS COURT ORDERS** that the Receiver’s Borrowing Charge, be and is hereby increased from \$100,000 to \$250,000.

RETURN OF PROPERTY

5. **THIS COURT ORDERS** that any person in possession or control of any Related Party Vehicle attached hereto as **Schedule “A”** or any Passcodes immediately make arrangements with the Receiver for the return of such Related Party Vehicle or Passcodes. In the event that any such

person does not make such arrangements on or before September 17, 2021, the Receiver may seek further direction from the Court.

6. **THIS COURT ORDERS** that any person in possession of any funds properly belonging to the Respondents, including but not limited to Kimolla Blair, immediately make arrangements with the Receiver for the return of such funds. In the event that any such person does not return the funds in their possession on or before September 17, 2021, the Receiver may seek further direction from the Court.

APPROVAL OF SISP AND STALKING HORSE AGREEMENT

7. **THIS COURT ORDERS** that the Transaction is hereby approved, and the execution by the Receiver of the Stalking Horse Agreement with 2752837 Ontario Inc. (the “**Stalking Horse Bidder**”) as purchaser is hereby authorized, *nunc pro tunc*, provided that nothing herein approves the sale and the vesting of the Purchased Assets (as defined in the Stalking Horse Agreement) in and to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement and that the approval of the sale and vesting of such Purchased Assets shall be considered by this Court on a subsequent motion made to this Court following completion of the sale process pursuant to the terms of the SISP.

8. **THIS COURT ORDERS** that that the SISP attached hereto as **Schedule “B”** (subject to any amendments thereto that may be made in accordance therewith and with this Order) be and is hereby approved and the Receiver is authorized and directed to carry out the SISP in accordance with its terms and this Order, and are hereby authorized and directed to take such steps as they consider necessary or desirable in carrying out each of their obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction(s) under the SISP.

9. **THIS COURT ORDERS** that the Receiver, its affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the SISP, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or wilful misconduct of the Receiver, as determined by this Court.

BANKRUPTCY OF RESPONDENTS

10. **THIS COURT AUTHORIZES** the Receiver to file an assignment in bankruptcy on behalf of any of the Respondents with BDO as bankruptcy trustee.

GENERAL


11. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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 Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that the Receiver 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 Receiver 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.

14. **THIS COURT ORDERS** that the Receiver, its counsel and counsel for the Applicant may serve or distribute this Order, or any 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 applicable Respondent's Unitholders, creditors or other interested parties and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

 Digitally signed by
Mr. Justice
Cavanagh

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

NATIONAL BANK OF CANADA

- and -

NIMBUS ENVIRONMENTAL SOLUTIONS INC., et al

Applicant

Respondents

Court File No. CV-21-00667395-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER
(approving SISP)**

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Lawyers for the Receiver

Schedule "A"
List of Related Party Vehicles

	PLATE	DRIVER ASSIGNED	VEHICLE MODEL	VIN #
1.	BWDH906	Iola Bozzo	GMC YUKON XL	1GKS2HKJ5GR396511
2.	CDZS590	Mia Bozzo	JEEP WRANGLER	1C4BJWEG4JL825117
3.	CHRP250	Peter Bozzo	INFINITI Q60	JN1FV7EL0HM702026
4.	CEEA567	Santo Bozzo	JEEP GRAND CHEROKEE	1C4RJFBG8JC262477
5.	BZHN123	Anthony Bozzo	INFINITI JX35	5N1AL0MM4DC331723
6.	AX53770	Unknown	DODGE GRAND CARAVAN	2C4RDGBG5JR349967
7.	AX53673	Peter Bozzo	DODGE GRAND CARAVAN	2C4RDGBG9JR349969
8.	BWSE451	Unknown	INFINITI G37X	JN1CV6EL5AM152891
9.	AR51825	Unknown	DODGE GR CARAVAN	2D4CN1AE3AR225909
10.	CEKF386	Unknown	MERCEDES BENZ GLS450	4JGDF6EE7JB114537
11.	CLCN611	Sergio Musci	INFINITI Q60 SPORT	JN1FV7EL0HM701619
12.	CMEV687	Chrisoula Bozzo	JEEP COMPASS	3C4NJDBB1LT124729

Schedule "B"
Sale and Investment Solicitation Process

INTRODUCTION

By order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated August 23, 2021 (the “**Appointment Order**”), BDO Canada Limited (“**BDO**”) was appointed as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings, and properties (the “**Property**”) of Nimbus Environmental Solutions Inc., Oakdale Enterprises Inc., Nimbus Water Systems Inc., 365 Pro Installations Inc., 2242462 Ontario Limited and Water Filter Cart Inc. (collectively, the “**Nimbus Group**”).

THE OPPORTUNITY

It is anticipated that, on or about September 13, 2021, the Receiver will, *inter alia*, apply to the Court to approve the sale and investment solicitation process (“**SISP**”) described herein (the “**Process Approval Order**”). It is further anticipated that the Process Approval Order will also (i) authorize the Receiver to enter into a fully binding and conditional purchase and sale agreement (the “**Stalking Horse Agreement**”) between the Receiver and 2752837 Ontario Inc. (the “**Stalking Horse Bidder**”) pursuant to which the Stalking Horse Purchaser will make an offer to purchase substantially all of the assets of the Nimbus Group; and (ii) approve the transaction contemplated by the Stalking Horse Agreement.

The Opportunity may involve the recapitalization, investment in, arrangement or reorganization of the Nimbus Group or the business of the Nimbus Group (the “**Business**”) as a going concern or a sale of some or all of the Property as a going concern or otherwise, or some combination thereof (each, a “**Transaction**”).

The Process Approval Order, the procedures in respect of the SISP as contained herein (the “**SISP Procedures**”) and any subsequent orders issued by the Court pertaining to the SISP Procedures shall exclusively govern the process for soliciting and selecting bids for the Transaction.

The purpose of these SISP Procedures is to determine whether a better Transaction than the Stalking Horse Agreement may be obtained by the Receiver in a formal marketing process approved by the Court. For the purposes of these SISP Procedures, a “**Superior Offer**” shall mean:

- a) a credible, reasonably certain and financially viable offer made by a Qualified Bidder (as defined herein) to be a counterparty to a Transaction, the terms of which offer are more favourable and no more burdensome or conditional than the terms contained in the Stalking Horse Agreement; and
- b) an offer that provides for cash consideration in an amount equal to the purchase price in the Transaction, plus (i) the Break Fee and Expense Reimbursement (each as defined terms in the Stalking Horse Agreement) in the total amount of \$300,000.00; and (ii) an incremental increase of \$100,000.

Except to the extent otherwise set forth in a definitive sale or investment agreement with a Successful Bidder (as defined below), any sale of the Property or investment in the Nimbus Group will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Receiver, or any of their respective agents, advisors or representatives, and, in the event of a sale, all of the right, title and interest of the Nimbus Group in and to the Property 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 a Court order, except as otherwise provided in such Court order.

TIMELINE

The following table sets out the key milestones under the SISP:

Milestone	Deadline
Commencement of SISP	September 13, 2021
Distribution of the Notice and Teaser Letter	September 13, 2021
Bid Deadline	October 13, 2021
Auction	No later than October 20, 2021
Sale Approval Hearing	No later than October 29, 2021
Outside Closing Date Deadline	November 26, 2021

The dates set out in the SISP may be extended by the Receiver in their sole discretion.

SOLICITATION OF INTEREST

As soon as reasonably practicable:

1. the Receiver will prepare a list of potential bidders, including (i) parties that have approached the Receiver indicating an interest in the opportunity, and (ii) local and international strategic and financial parties who the Receiver believes may be interested in purchasing all or part of the Business and Property or investing in the Nimbus Group pursuant to the SISP (collectively, “**Known Potential Bidders**”);
2. the Receiver will arrange for a notice of the SISP (and such other relevant information which the Receiver considers appropriate) (the “**Notice**”) to be published in The Globe and Mail (National Edition) and any other newspaper or journal as the Receiver considers appropriate, if any; and
3. the Receiver will prepare: (i) a process summary (the “**Teaser Letter**”) describing the opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Receiver (an “**NDA**”).

The Receiver will publish the Notice and send the Teaser Letter and NDA to all Known Potential Bidders by no later than September 17, 2021 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Receiver as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

INTERESTED PARTIES

Delivery of Confidential Information Package

Any party who wishes to participate in the SISP must provide to the Receiver, unless the Receiver confirms to such potential bidder that the below documents are already available to the Receiver, the following:

1. an NDA executed by it and a letter setting forth the identity of the potential bidder, the contact information for such potential bidder and full disclosure of the direct and indirect principals of the potential bidder; and
2. such form of financial disclosure and credit quality support or enhancement that allows the Receiver to make a reasonable determination as to the potential bidder's financial and other capabilities to consummate a transaction that would constitute a Superior Offer.

If the Receiver determines, exercising its reasonable business judgment that a bidder: (i) has delivered the documents contemplated in the immediately preceding paragraph; and (ii) has the financial capability based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the SISP, then such bidder shall be deemed to be a "**Qualified Bidder**". For greater certainty, no bidder shall be deemed not to be a Qualified Bidder without the approval of the Receiver.

At any time during Phase 1 of the SISP, the Receiver may, in its reasonable business judgment eliminate a Qualified Bidder from the SISP, in which case such Qualified Bidder will be eliminated from the SISP and will no longer be a Qualified Bidder for the purposes of the SISP.

The Receiver will prepare and send to each Qualified Bidder a confidential information package providing additional information considered relevant to the potential Transaction (the "**Confidential Information Package**").

The Receiver and its respective advisors make no representation or warranty as to the information contained in the Confidential Information Package or otherwise made available pursuant to the SISP, except to the extent expressly contemplated in any definitive sale or investment agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Receiver.

Qualified Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any Transaction they enter into with the Receiver.

Due Diligence

The Receiver shall, in its reasonable business judgment and subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence materials and information relating to the Property and Business as they deem appropriate. Due diligence access may include management presentations, access to electronic data rooms, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Receiver in its reasonable business judgment may agree.

The Receiver will designate a representative to coordinate all reasonable requests for additional information and due diligence access from a Qualified Bidder and the manner in which such requests must be communicated. The Receiver will not be obligated to furnish any information relating to the Property or Business to any person other than to Qualified Bidder. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Qualified Bidders if the Receiver determines such information to represent proprietary or sensitive competitive information.

FORMAL BINDING OFFERS

Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Nimbus Group or its Property and Business (a “**Bidder**”) shall submit a binding offer (the “**Bid**”) that complies with all of the following requirements to the Receiver at the addresses specified in Schedule “A” hereto (including by email or fax transmission), so as to be received by them not later than 5:00 PM (Eastern Time) on October 13, 2021 (the “**Bid Deadline**”):

1. the Bid may be an offer to acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”), or to make an investment in, restructure, reorganize or refinance the Business (an “**Investment Proposal**”), or such other structure as the Bidder may propose;
2. in the case of a Sale Proposal, it identifies or contains the following:
 - a. the purchase price in Canadian dollars, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
 - b. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - c. a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;
 - d. a description of the conditions and approvals required for a final and binding offer;
 - e. an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and

- f. any other terms or conditions of the Sale Proposal that the Bidder believes are material to the transaction;
3. in the case of an Investment Proposal, it identifies the following:
 - a. a description of how the Bidder proposes to structure the proposed investment;
 - b. the aggregate amount of the equity and/or debt investment to be made in the Business in Canadian dollars;
 - c. the underlying assumptions regarding the pro forma capital structure;
 - d. a specific indication of the sources of capital for the Bidder and the structure and financing of the Transaction;
 - e. a description of the conditions and approvals required for a final and binding offer;
 - f. an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
 - g. all conditions to closing that the Bidder may wish to impose; and
 - h. any other terms or conditions of the Investment Proposal that the Bidder believes are material to the transaction;
4. in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Receiver and it has a reasonable prospect of resulting in a Superior Offer.
5. the Bid includes a letter stating that the Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder (as defined below), its offer shall remain irrevocable until the closing of the Transaction with the Successful Bidder;
6. the Bid includes duly authorized and executed Transaction agreements, including the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto;
7. the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed Transaction, that will allow the Receiver to make a determination as to the Bidder's financial and other capabilities to consummate the proposed Transaction;
8. the Bid is not conditional on:

- a. the outcome of any further due diligence by the Bidder, apart from, if applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld during the due diligence process prior to the Bid Deadline, or
 - b. obtaining financing;
9. the Bid fully discloses the identity of each entity or person that will be entering into the Transaction, that is participating in, or benefiting from, such bid, including any equity holders;
10. for a Sales Proposal, the Bid includes a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 5% of the Purchase Price offered upon the Bidder being selected as the Successful Bidder (as defined below);
11. for an Investment Proposal, the Bid includes a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 5% of the total new investment contemplated in the bid upon the Bidder being selected as the Successful Bidder (as defined below);
12. the Bid includes acknowledgments and representations from the Bidder that the Bidder:
 - a. has had an opportunity to conduct any and all due diligence regarding the Property, and Business prior to making its offer (apart from, to the extent applicable, the disclosure of any due diligence materials representing proprietary or sensitive competitive information withheld during the due diligence process prior to the Bid Deadline);
 - b. has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
 - c. did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business or the Property or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s);
13. the Bid is received by the Bid Deadline;
14. the Bid constitutes, in the reasonable business judgment of the Receiver, a Superior Offer; and
15. the Bid contemplates closing the Transaction set out therein on or before November 26, 2021 (the “**Closing Date**”).

A Bid that qualifies with the requirements set out above shall be considered a “**Qualified Bid**”. For greater certainty, the Stalking Horse Agreement shall be deemed to be a Qualified Bid.

The Receiver may waive strict compliance with any one or more of the non-material foregoing requirements and deem such non-compliant bids to be a Qualified Bid.

SELECTION OF SUCCESSFUL BIDDERS

Following the Bid Deadline, the Receiver will assess the Bids received in consultation with the Applicant, National Bank of Canada (the “**Bank**”). The Receiver shall approve the disqualification of any Bids that are deemed not to be Qualified Bids. Only Bidders whose Bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

The Receiver shall notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within two (2) business days following the Bid Deadline, or at such later time as the Receiver deems appropriate, in consultation with the Bank.

If no Qualified Bids (either individually or in the aggregate), other than the Stalking Horse Agreement have been received by the Bid Deadline, then the Receiver may consider an extension of the Bid Deadline for up to 7 business days to allow any party that submitted a Bid to consult with the Receiver and to revise such Bid such that it would provide for, or that might reasonably be expected to provide for, a Superior Offer.

Evaluation of Competing Bids

A Qualified Bid will be evaluated upon many factors, including, without limitation, items such as:

1. the Purchase Price and the net value provided by such Qualified Bid,
2. the identity, circumstances and ability of the Bidder to successfully complete such Transaction,
3. the proposed Transaction documents,
4. factors affecting the speed, certainty and value of the Transaction,
5. the assets included or excluded from the Bid,
6. the likelihood and timing of consummating such Transaction, and
7. whether the Transaction results in a Superior Offer.

each as determined by the Receiver, in consultation with the Bank.

Selection of Successful Bid

The Receiver shall:

1. first, review and evaluate each Qualified Bid, provided that the Receiver may contact any Bidder to clarify the terms of any Bid, and the applicable Bidder may amend, modify or vary such Bid for the purpose of clarification;

2. second, identify if any Qualified Bid is a Superior Offer; and
3. third, if one or more Qualified Bids are considered to be Superior Offers, those Qualified Bidders presenting a Superior Offer shall proceed to an auction with the Stalking Horse Bidder to be held on or before October 20, 2021 (the “**Auction**”), which shall proceed according to the Auction Procedures set out in **Schedule “B”** to this SISP to identify the “**Successful Bid**”, and the Bidder making such Successful Bid, the “**Successful Bidder**”.

If no Superior Offer is received by the Bid Deadline, the Auction will not be held and the Stalking Horse Bidder will be declared to be the Successful Bidder. The determination of any Successful Bid by the Receiver shall be subject to approval by the Court.

Sale Approval Motion Hearing

At the hearing of the motion to approve any Transaction with a Successful Bidder (the “**Sale Approval Hearing**”), the Receiver shall seek, among other things, approval from the Court to consummate the Successful Bid. All the Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by the Receiver on and as of the date of approval of the Successful Bid by the Court.

DEPOSIT

All deposits shall be held by the Receiver in a single noninterest-bearing account designated solely for such purpose. A deposit paid by a Successful Bidder shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid. Deposits, and any interest earned thereon, paid by Bidders not selected as the Successful Bidder shall be returned to such Bidder within three business days of Court approval of the Successful Bid.

CONFIDENTIALITY AND ACCESS TO INFORMATION

All discussions regarding a Transaction, Sale Proposal, Investment Proposal, Bid or Successful Bid should be directed through the Receiver. Under no circumstances should the management of the Nimbus Group or its customers be contacted directly without the prior consent of the Receiver. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP at the discretion of the Receiver.

Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Qualified Bidders, Bidders, Qualified Bids, the details of any Bids or Qualified Bids submitted or the details of any confidential discussions or correspondence between the Receiver and such other Bidders or Qualified Bidders in connection with the SISP, except to the extent that the Receiver, with the consent of the applicable participants, is seeking to combine separate Bids into a single Bid.

Notwithstanding the foregoing, under no circumstances will the Receiver share any material information concerning any of the Bids with any person other than the Bank.

SUPERVISION OF THE SISP

This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between the Receiver and any Qualified Bidder, Bidder, or any other party, other than as specifically set forth in a definitive agreement that may be signed with the Receiver.

Without limiting the preceding paragraph, the Receiver shall not have any liability whatsoever to any person or party, including without limitation any Qualified Bidder, Bidder, the Successful Bidder, the Receiver or any other creditor or other stakeholder of the Receiver, for any act or omission related to the process contemplated by this SISP Procedure, except to the extent such act or omission is the result from gross negligence or wilful misconduct of the Receiver. By submitting a Bid, each Bidder or Successful Bidder shall be deemed to have agreed that it has no claim against the Receiver in respect of the SISP for any reason whatsoever, except to the extent that such claim is the result of gross negligence or wilful misconduct by the Receiver.

Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

Schedule "A"

Addresses of Receiver

To the Receiver

BDO Canada Limited
20 Wellington Street East, Suite 500
Toronto, ON M5E 1C5

Attention: Josie Parisi
Email: jparisi@bdo.ca

Schedule "B"

AUCTION PROCEDURES

1. On or before October 15, 2021, the Receiver will confirm those Qualified Bidders who present a Superior Offer ("**Superior Bidders**") that their Bid will be advanced to the Auction.
2. Unless otherwise ordered by the Court, only the authorized representatives, professional advisors or agents of the Stalking Horse Bidder and each Superior Bidder shall be eligible to attend at the Auction and make any Subsequent Bid (as defined below) at the Auction.
3. The Auction, if any, shall be conducted by the Receiver, on or before October 20, 2021 at 10:00 a.m. (Eastern Time) via video conference.
4. At the Auction, all Superior Bidders and the Stalking Horse Bidder shall be permitted to increase their Superior Bids and the Stalking Horse Agreement in accordance with the procedures set forth herein (each, a "**Subsequent Bid**"). All Subsequent Bids presented during the Auction shall be made and received via video conference on an open basis. All participating Superior Bidders and the Stalking Horse Bidder shall be entitled to be present for all bidding with the understanding that the true identity of each participating Superior Bidder shall be fully disclosed to all other Superior Bidders and the Stalking Horse Bidder and that all material terms of each Subsequent Bid presented during the Auction will be fully disclosed to the Stalking Horse Bidder and all other participating Superior Bidders throughout the entire Auction.
5. All Superior Bidders and the Stalking Horse Bidder at the Auction must have at least one individual representative with authority to bind such Superior Bidder and the Stalking Horse Bidder present at the Auction.
6. The Auction shall be recorded by the Receiver for their exclusive use and shall not be recorded by any other party.
7. At least three (3) days prior to the Auction, the Receiver will advise the Stalking Horse Bidder and all other Superior Bidders which of the Superior Bid or of the Stalking Horse Bidder the Receiver has determined in its reasonable business judgment, after consultation with its advisors and with the Bank, constitutes the then highest or otherwise best offer Sale Proposal or Investor Proposal (the "**Starting Bid**").
8. Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid is submitted by a Superior Bidder or the Stalking Horse Bidder that (i) improves upon such Superior Bidder's immediately prior Superior Bid or upon the Stalking Horse Agreement, as the case may be, and meets the overbid requirement set forth in paragraph 8 below, and (ii) the Receiver determines, in its reasonable business judgment, after consultation with its advisors and with the Bank, such Subsequent Bid is a higher or otherwise better offer than the then current leading Superior Bid.

9. Bidding at the Auction shall be in increments of \$100,000 and shall continue until such time as the highest and best bid is determined by the Receiver's reasonable business judgment after consultation with its advisors and with the Bank. For the purpose of evaluating the value of the consideration provided by each bid (including any Subsequent Bid by the Stalking Horse Bidder) presented at the Auction, the value will: (i) be deemed to be the net consideration payable to the Receiver after considering, *inter alia*, any Break Fee and Expense Reimbursement due to the Stalking Horse Bidder under the Stalking Horse Agreement; and (ii) take into account any additional liabilities to be assumed by a Superior Bidder.
10. After the first round of bidding and between each subsequent round of bidding, the Receiver shall announce the Subsequent Bid that the Receiver has determined in its reasonable business judgment, after consultation with its advisors and with the Bank, to be the then highest or best bid (the "**Leading Bid**"). A round of bidding will conclude after each participating Superior Bidder and the Stalking Horse Bidder has had an opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.
11. If no Superior Bidder or the Stalking Horse Bidder submits a Subsequent Bid (as determined by the Receiver) after a period of 30 minutes following the Receiver's acceptance of a Subsequent Bid as the Leading Bid, and the Receiver chooses not to adjourn the Auction further, the Receiver shall enter into a binding agreement of purchase and sale or investment substantially on the same terms as the Superior Bid or the Stalking Horse Agreement (as the case may be), as amended by the Leading Bid, with the Superior Bidder or the Stalking Horse Bidder (the Successful Bidder) that submitted the highest and best bid as determined by the Receiver (the "**Accepted Bid**"), whereupon the Auction will be concluded.
12. At the Auction, the Receiver, after consultation with its advisors and with the Bank, may employ and announce additional procedural rules that are fair and reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction; provided, however, that such rules are (a) not inconsistent with the Auction Procedures, the *Bankruptcy and Insolvency Act*, any order of the Courts entered in connection with the Auction Procedures and (b) disclosed to each Superior Bidder and the Stalking Horse Bidder at the Auction.

Subject: RE: [EXT] National Bank of Canada v. Nimbus Environmental Solutions Inc. et al - Court File No. CV-21-00667395-00CL

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Endorsement:

The Receiver seeks certain relief in relation the receivership of the Nimbus Group including orders (i) requiring certain parties to turn over the property (vehicles and money), (ii) increasing the Receiver's Borrowing Charge from \$100,000 to \$250,000, (iii) approving the proposed sale and investment solicitation process ("SISP") and the Stalking Horse Agreement with 2752837 Ontario Inc., and (iv) authorizing the Receiver to file an assignment in bankruptcy on behalf of any of the Respondents with BDO as trustee.

I have reviewed the Receiver's report. I am satisfied that an order should issue requiring the return of vehicles. If there is a failure to comply with this Order, the Receiver may seek further direction from the Court.

The Receiver's report includes email correspondence dated August 27, 2021 from Kim Blair to Peter Bozzo in which she states that she has "the \$120 in cash" and asks Mr. Bozzo whether he would like to "meet somewhere to pick it up". Ms. Blair has not responded to correspondence from the Receiver directing her to return all funds to which she refers in her email to the Receiver. I am satisfied that an order should issue that any person, including Kimolla Blair, in possession of any funds belonging to the Respondents immediately make arrangements with the Receiver for the return of such funds. If there is a failure to comply with this order, the Receiver may seek further direction from this Court.

I am satisfied that the remaining relief sought should be granted. In respect of the SISP and the Stalking Horse Agreement, I accept the submissions in the Receiver's factum, at paras. 8-12.

Order to issue in form of attached Order signed by me.



Cavanagh J.