

District of Ontario  
Division No. 09 - Toronto  
Estate No. 31-3165297  
Court No. BK-24-3165297-0031

SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
KOGNITIV CORPORATION  
OF THE CITY OF TORONTO  
IN THE PROVINCE OF ONTARIO

**RECITALS:**

**WHEREAS** Kognitiv Corporation (the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) with the Office of the Superintendent of Bankruptcy on December 12, 2024 pursuant to the Act;

**AND WHEREAS** BDO Canada Limited agreed to act as proposal trustee of the Company in the NOI proceedings (in such capacity, the “**Trustee**”);

**AND WHEREAS** the NOI filing was necessary to provide stability to the Company and allow the Company, with the assistance of the Trustee, to develop and present a proposal to its Creditors, which contemplates corporate restructuring and the Company carrying out a sale process (the “**Sale Process**”) for the sale of the Company’s operations and assets;

**AND WHEREAS** the Trustee intends to make a distribution to Ordinary Unsecured Creditors in accordance with the terms of this Proposal in the event there are proceeds of sale generated from the Sale Process that exceed the Claims of any Secured Creditors.

**PROPOSAL**

The Company hereby submits the following Proposal to all of its Creditors pursuant to Part III of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended (the “**Act**”).

**1. Defined Terms**

In and for the purposes of the Proposal (including in the recitals above), the following terms shall have the following meanings:

- 1) **"Administration Fees and Expenses"** means the fees and expenses incurred by or on behalf of the Trustee, as more particularly described in Paragraph 15 of this Proposal;
- 2) **"Affected Claims"** means all Claims which are not Unaffected Claims;
- 3) **"Affected Creditor"** means a Creditor having an Affected Claim;
- 4) **"Claim"** means any indebtedness, liability, action, lien, cause of action, suit, debt, due account, bond, covenant, contract, counterclaim, demand, claim, right and obligation of any nature whatsoever of the Company to any Person, whether liquidated, unliquidated, fixed, contingent, matured, legal, equitable, secured, unsecured, present, future, known or unknown, and whether by guarantee, surety or otherwise, incurred or arising or relating to the period prior to the Date of Filing;
- 5) **"Court"** means the Ontario Superior Court of Justice, in Bankruptcy and Insolvency;
- 6) **"Court Approval Date"** means the date on which the Court makes an Order approving this Proposal pursuant to the provisions of the Act, all appeal periods having expired and no appeal having been filed, or any appeal therefrom having been dismissed and such dismissal having become final;
- 7) **"Creditor"** means any Person having a Claim and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf of or in the name of such Person;
- 8) **"Creditors' Meeting"** means any meeting of the Affected Creditors called for the purpose of considering and voting upon the Proposal;
- 9) **"Date of Filing"** means December 12, 2024, being the date on which the Company filed the Notice of Intention to make a Proposal under the Act;

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- 10) **"Date of the Proposal"** means January 10, 2025, being the date on which this Proposal is filed with the Official Receiver in accordance with the Act;
- 11) **"Director"** means Griffin Rotman;
- 12) **"Event of Default"** means a default in the performance of any provision in the Proposal;
- 13) **"Inspector"** means the Person(s) appointed or elected as inspector(s) under and pursuant to the Act, in respect of the Company;
- 14) **"Levy"** means the levy payable to the Superintendent of Bankruptcy pursuant to section 147 of the Act;
- 15) **"Ordinary Unsecured Creditors"** means those Persons with unsecured claims as at the Date of Filing which are proven in accordance with the Act and which are not secured or preferred under or pursuant to the Act, save and except shareholders of and other Persons related to the Company;
- 16) **"Person"** means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted;
- 17) **"Preferred Creditors"** means those Creditors of the Company whose claims are entitled to be paid in priority to the claims of Ordinary Unsecured Creditors as provided in section 136 of the Act;
- 18) **"Proof of Claim"** means the proof of claim required by the Act to be mailed to each known Creditor prior to the Creditors' Meeting;
- 19) **"Proposal"** means this Proposal;
- 20) **"Proposal Period"** means the period commencing on the Date of Filing and ending on the date when the final dividend is paid to the Ordinary Unsecured Creditors pursuant to Paragraph 12 below;

- 21) **"Proven Claim"** of a Creditor means the amount of the Affected Claim of such Creditor finally determined in accordance with Act;
- 22) **"Required Employee Amount"** means an amount equal to the amount employees and former employees of the Company, not to include independent commissioned sales agents or contractors, would be qualified to receive under paragraph 136(1)(d) of the Act if the Company became bankrupt on the Date of Filing, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approval of the Proposal, together with, in the case of travelling salespersons, disbursements properly incurred by those salespersons in and about the Company's business during the same period;
- 23) **"Required Crown Amount"** means all amounts outstanding at the time of the filing of the NOI to His Majesty in Right of Canada or a Province and that are of a kind that could be subject to a demand under,
- a) subsection 224(1.2) of the *Income Tax Act*;
  - b) any provision of the Canada Pension Plan or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the Canada Pension Plan, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or
  - c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
    - i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or
    - ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;
- 24) **"Secured Creditors"** means "secured creditors" as defined in Section 2 of the Act;

25) **“Trustee”** has the meaning ascribed to it in the Recitals above; and

26) **“Unaffected Claims”** means any claim that is not a Claim of an Ordinary Unsecured Creditors.

## **2. General Intent**

The purpose of this Proposal is to (i) allow the Company to effect a restructuring of its business and affairs, (ii) permit the Company to maintain and continue its business operations, and (iii) carry out the Sale Process, all so as to maximize recoveries and facilitate a possible distribution of any proceeds of its estate generated from the Sale Process that exceed the Claims of any Secured Creditors or the net proceeds, to the Affected Creditors with Proven Claims in the expectation that all Affected Creditors will derive greater benefit from this Proposal than they would otherwise receive from a bankruptcy of the Company.

The Proposal applies to all Affected Creditors, whether or not any such Affected Creditor proves a Claim against the Company under this Proposal. This Proposal provides for the payment in full of Required Crown Amounts, if any, as required by s. 60(1.1) of the Act, and of Required Employee Amounts, if any, required by s. 60(1.3) of the Act. This Proposal does not provide for the payment of any equity claims. This Proposal does not affect Unaffected Claims.

## **3. Effect of the Proposal**

This Proposal restructures the Company’s affairs and may amend the terms of any and all agreements between the Company and the Creditors existing as at the Date of Filing, and further provides that the treatment of all Claims under the Proposal shall be final and binding on the Company and all Creditors (along with their respective heirs, executors, administrators, legal personal representatives, successors and assigns) and the Proposal shall constitute (i) a full, final and absolute settlement of all rights of the holders of the Claims affected hereby; and (ii) an absolute release and discharge of all indebtedness, liabilities and obligations of the Company of or in respect of such Claims.

During the term of this Proposal, and provided that an event of default has not occurred and is continuing hereunder, all Creditors will be stayed from commencing or continuing any

proceeding or remedy against the Company or any of its property or assets in respect of a claim including, without limitation, any proceeding or remedy to recover payment of any monies owing to Creditors, to recover or enforce any judgment against the Company in respect of a claim or to commence any formal proceedings against it other than as provided for under this Proposal. This Proposal will be binding on the Company and all Creditors.

#### **4. Classes of Creditors**

There shall be only one class of Creditors whose claims are being compromised under this Proposal, which shall consist of the Ordinary Unsecured Creditors.

#### **5. Canada Revenue Agency/Crown Claim**

All amounts owing on account of Required Crown Amounts that were outstanding at the Date of Filing, if any, shall be paid within six (6) months following the Court Approval Date.

#### **6. Canada Revenue Agency Compliance Requirements**

- a) The Company will file Harmonized and Sales Tax returns on a current basis as required by the *Excise Tax Act*, R.S.C., 1985, c. E-15 during the Proposal Period;
- b) The Company will remit post-filing payroll deductions returns (Employment Insurance premiums, Canada Pension Plan contributions, and Income Tax deductions) on a current basis as required by law;
- c) Should the Company fail to meet any of the terms set out in Paragraph 6 (a) through (b) inclusive, then such failure shall constitute an Event of Default in the performance of this Proposal.

#### **7. Secured Creditors**

During the Proposal Period, and as long as no Event of Default has occurred, the claims of the Secured Creditors shall, subject to the provisions of the Act, be paid in accordance with the arrangements between the Company and the holders of such claims which were in effect on the

Date of Filing, or such other terms as may be mutually agreed between them following the Date of the Proposal.

#### **8. Preferred Creditors**

The claims of the Preferred Creditors will be paid in full and in priority to the claims of the Ordinary Unsecured Creditors in accordance with the Act.

The claims of any Person for any arrears of wages, such Person being a Preferred Creditor as defined by the Act, shall be paid in preference to the Ordinary Unsecured Creditors immediately following the Court Approval Date of this Proposal and in accordance with the Act. However, the Trustee is not aware of any arrears of wages due as at the Date of Filing.

#### **9. Security**

As security for payment of the proposal pursuant to section 59 (3) of the Act, the Company agrees to execute and deliver a general security agreement in favour of the Trustee.

#### **10. Post-Filing Creditors**

Goods and services provided to the Company after the Date of Filing shall be paid by the Company in the ordinary course of business, on regular trade terms.

#### **11. Payments to the Trustee**

The Company shall cause to be paid to the Trustee the sum equal to any surplus realized from the sale of its assets after the Company has satisfied its obligations to its Secured Creditors.

The Company shall sell its assets in total. Any surplus proceeds as set out above will be paid to the Trustee after the Court Approval Date.

## **12. Dividends**

Provision for the payment of dividends shall be as follows:

- a) The Trustee shall make the payment of all dividends in accordance with the Act at least every twelve months, beginning with the twelfth month following the Court Approval Date or at the discretion of the Trustee and Inspector(s), when substantial fund are available;
- b) All distributions under the Proposal shall be issued by the Trustee and, notwithstanding any other provisions therefor, any distributions made by the Trustee in respect of any claims pursuant to the terms hereof shall be made net of the Levy required to be made, if applicable.

## **13. Directors and Officers**

Upon the issuance of the Certificate of Full Performance of the Proposal, as defined in section 65.3 of the Act, each and every present and former officer and director of the Company (collectively, the "**Released Parties**") shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, liens and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor or Person may be entitled to assert as of the Date of Filing in respect of the potential statutory liabilities of the Released Parties arising in their capacity as former and present directors or officers of the Company, provided that nothing herein shall release or discharge any of the Released Parties from claims that:

- a) relate to contractual rights of one or more Creditors arising from contracts with one or more of the Released Parties; or
- b) are based on allegations of misrepresentation made by the Released Parties to Creditors or of wrongful or oppressive conduct by the Released Parties.

This release shall have no force or effect if the Company becomes bankrupt before the terms of the Proposal are performed.

**14. Reviewable Transactions**

Section 91 through and including section 101 of the Act do not apply to this Proposal.

**15. Administrative Fees and Expenses**

Notwithstanding anything contained herein, all proper Administration Fees and Expenses shall be paid in priority to all claims of the Preferred Creditors and Ordinary Unsecured Creditors. The Company hereby grants to the Trustee a security interest in any funds delivered to it pursuant to this Proposal as security for payment of all Administration Fees and Expenses.

The Trustee may take interim draws of his fees and disbursements in a total amount which shall not exceed the total reasonable and actual time and charges and disbursements at the date of the interim draw, subject to final taxation by the Court and independent of the powers of the Inspector(s), if any Inspector(s) is/are appointed. Such draws shall remain as Trustee's fees, whether or not the Proposal is fully performed.

**16. Time and Manner of Meeting**

The Creditors' Meeting shall be held at a time and in a manner, including by video-conference, to be established by the Trustee in consultation with the Official Receiver, or the nominee thereof, and confirmed in its notice of meeting to be mailed by the Trustee pursuant to the Act. All Proofs of Claim shall be delivered in accordance with the provisions of the Proposal, the Act and any Order which may be issued by the Court in respect of the procedure governing the Creditors' Meeting, but in any event shall be no later than twenty-one (21) days following the filing of the Proposal with the Official Receiver.

**17. Appointment of Inspectors**

At a meeting of Ordinary Unsecured Creditors and Preferred Creditors to consider this Proposal, such Creditors may appoint up to five Inspectors whose power shall be:

- a) To advise the Trustee from time to time on any matter the Trustee may refer to them;
- b) To approve the making of dividend distributions to the Ordinary Unsecured Creditors as recommended by the Trustee; and
- c) To approve, on behalf of the Creditors of the Company, any decision of the Trustee relating to any matter not contained in this Proposal which the Trustee may refer to them from time to time, including any extension of time of payment or any other obligation required under this Proposal.

The Trustee shall notify the Inspectors of any Event of Default of which the Trustee becomes aware and the Trustee shall hold a meeting of Inspectors following such notice for the purpose of obtaining the instruction of the Inspectors with respect to such Event of Default. Any decision, direction or act of the Inspectors may be referred to the Court by the Trustee and the Court may confirm, reverse or modify the decision, direction or act of the Inspectors and make such other order as it thinks just.

#### **18. Proposal Trustee**

BDO Canada Limited shall be the Trustee under this Proposal and is acting solely in its capacity as the Trustee under this Proposal and not in its personal or corporate capacity and shall not be responsible or liable for any obligations of the Company. Upon payment of the dividends provided for in this Proposal, the Trustee will be entitled to be discharged from its obligations under the terms of this Proposal.

#### **19. Valuation of Claims**

The Trustee retains the right to disallow any Proof of Claim and challenge the validity of any secured claims as in any bankruptcy proceeding. The Company and/or the Trustee reserve the right to seek the assistance of the Court in valuing the Claim of any Ordinary Unsecured Creditor,

if required, to ascertain the result of any vote on the Proposal or the amount payable or to be distributed to such Ordinary Unsecured Creditor under the Proposal, as the case may be.

**20. Currency**

Unless otherwise stated herein, all references to currency or distribution in the Proposal are to lawful money of Canada.


**21. Foreign Currency Obligations**

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Date of Filing.

**DATED** at \_\_\_\_\_, Ontario this 10<sup>th</sup> day of January, 2025

**Kognitiv Corporation**

**Per:**

  
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DocuSigned by:  
*Griffin Rotman*  
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Witness

Griffin Rotman