

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF LONGUEUIL

SUPERIOR COURT
Commercial Division

No. : 505-11-014522-176

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF

DENSI CORPORATION

Debtor

- and -

KPMG INC.

Trustee

RE-AMENDED PROPOSAL

DENSI CORPORATION hereby submits to its creditors the following proposal pursuant to the *Bankruptcy and Insolvency Act*:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

For all purposes relating to the present Proposal, the following terms shall have the following meanings:

- (a) "BIA" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (b) "Business Day" means any day except Saturday, Sunday or any day on which banks are generally not open for business in the Province of Quebec;
- (c) "Causes of Action" means any and all claims, actions, causes of action, demands, counterclaims, suits, rights, entitlements, litigation, arbitration, proceeding, hearing, complaint, debt, obligation, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, encumbrances and other recoveries of whatever nature that the Company may be entitled to assert against any Person other than the Released Parties, in law, equity or otherwise, whether known or unknown, foreseen or unforeseen, reduced to judgment or not

reduced to judgment, liquidated or unliquidated, contingent or non-contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly, indirectly or derivatively, existing or hereafter arising and whether pertaining to events occurring before, on or after the Effective Date;

- (d) "**Claim**" means any right of any Person against the Company in connection with any indebtedness, liability or obligation, including claims that are liquidated, unliquidated, fixed, contingent, matured, unmatured, legal, equitable, present, future, known, unknown, disputed, undisputed or whether by guarantee, by surety, by subrogation or otherwise incurred and whether or not such a right is executory in nature;
- (e) "**Company**" means Densi Corporation;
- (f) "**Court**" means the Superior Court of Quebec (Commercial Division);
- (g) "**Creditor**" means a Person holding a Claim;
- (h) "**Creditors' Meeting**" means the meeting of Creditors to be held for the purpose of considering and voting upon this Proposal, and any adjournment of such meeting;
- (i) "**Crown**" means Her Majesty in right of Canada or a province of Canada;
- (j) "**Crown Claims**" means all Claims of the Crown described in section 60(1.1) of the BIA that were outstanding on the Filing Date, as accepted by the Trustee or approved by the Court;
- (k) "**Disputed Claim**" means any Claim which has been received by the Trustee in accordance with the terms of this Proposal and the BIA but has not been accepted as proven or which is being disputed in whole or in part by the Company, the Trustee, or any other person entitled to do so and has not been resolved by agreement or by Order of the Court;
- (l) "**Disputed Creditor**" means a Person holding a Disputed Claim to the extent of its Disputed Claim;
- (m) "**Effective Date**" has the meaning ascribed to it in Section 5.2;
- (n) "**Employee Claims**" means Claims of the employees of the Company to be paid in accordance with Section 60(1.3) of the BIA;
- (o) "**Excluded Claims**" means any and all Claims that are secured by Court-ordered charges;

- (p) "**Filing Date**" means March 6, 2017, being the date of the filing of the NOI by the Company;
- (q) "**Inspectors**" has the meaning ascribed thereto in Section 3.7 of this Proposal;
- (r) "**KERP**" means the *Key Employee Retention Agreement* entered into between the Company and its Vice-President of Finance on March 6, 2017, and approved by the Court on March 8, 2017;
- (s) "**KERP Charge**" means the priority charge securing the payment of the amounts owed under the KERP which was approved by the Court on March 8, 2017;
- (t) "**Liquidation**" has the meaning ascribed thereto in Section 2.2 of this Proposal;
- (u) "**Liquidation Proceeds**" has the meaning ascribed thereto in Section 2.2 of this Proposal;
- (v) "**Litigation Claims**" means any or all Causes of Action that may be asserted by or on behalf of the Company against any other Persons, other than the Released Parties. For greater certainty, the Litigation Claims shall include the Verisource Claim;
- (w) "**Litigation Costs**" means the reasonable fees and expenses incurred by the Trustee in connection with the Litigation Claims, including the fees and expenses of its advisors, including any legal counsel retained by the Trustee;
- (x) "**Litigation Proceeds**" means any proceeds or settlement or judgment funds arising from the Litigation Claims after deducting all Litigation Costs;
- (y) "**Litigation Advisory Committee**" means a committee of up to three (3) Persons to be nominated by the Creditors with Proven Claim and approved by the Trustee, with the powers, entitlements and duties set out in this Proposal. Any Person subject to any Litigation Claim or holding a Disputed Claim, in part or in totality, shall not be eligible to act as or be entitled to appoint a member of the Litigation Advisory Committee;
- (z) "**Management Contribution**" means a contribution to be made to this Proposal by the beneficiary of the KERP and the KERP Charge, in the form of a renunciation by such beneficiary to the amounts remaining owing pursuant to the KERP, which amounts represent \$37,500;
- (aa) "**Melka Contribution**" means a contribution to be made to this Proposal by Eric Melka or by any of the other Related Persons under the current ownership of the Company, which contribution amounts to \$125,000, of which \$50,000 shall come from a renunciation to the amounts payable to them pursuant to the Nu-Tone Transaction;

- (bb) "**NOI**" means the Notice of Intention to Make a Proposal filed by the Company on the Filing Date;
- (cc) "**Nu-Tone**" means 9098-5128 Quebec Inc.;
- (dd) "**Nu-Tone Offer**" means the purchase offer submitted by Nu-Tone to the Company on May 5, 2017 (as revised and specified on May 9 and 10, 2017) which purchase offer was approved by the Court on May 18, 2017;
- (ee) "**Nu-Tone Transaction**" means the sale transaction contemplated in the *Asset Purchase Agreement* entered into on May 25, 2017 between Nu-Tone and the Company, reflecting the terms of the Nu-Tone Offer;
- (ff) "**Official Receiver**" means the officer appointed pursuant to Section 12(2) of the BIA;
- (gg) "**Person**" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;
- (hh) "**Post-Filing Claims**" means any Claim arising in respect of services rendered, goods supplied or other consideration given to the Company after the Filing Date;
- (ii) "**Preferred Claims**" means any Claim, including any Employee Claim, as described in Section 136(1)(a) through 136(1)(j) of the BIA, being such Claim directed by the BIA to be paid in priority to all Unsecured Claims in the distribution of the property of the Company;
- (jj) "**Preferred Creditor**" means a Person holding a Preferred Claim, to the extent of its Preferred Claim;
- (kk) "**Professional Fees**" means all fees, expenses, liabilities and obligations of the Trustee and the Company's legal advisors on and incidental to the proceedings arising out of NOI or the Proposal, including advice to the Company in connection with the NOI and the Proposal;
- (ll) "**Proof of Claim**" means the form delivered by the Trustee to creditors of the Company in accordance with the BIA;
- (mm) "**Proposal**" means this Proposal, as varied, amended, modified or supplemented in accordance with the provisions hereof and the BIA;

- (nn) "**Proposal Approval Order**" means an order from the Court, in form and substance satisfactory to the Company and the Trustee approving and sanctioning this Proposal in accordance with the provisions hereof and of the BIA;
- (oo) "**Proven Claim**" means the amount or any portion of the amount of the Claim of a Creditor as accepted by the Trustee or finally determined for distribution purposes in accordance with the provisions of the BIA or any applicable orders from the Court;
- (pp) "**Related Person**" has the meaning ascribed thereto in the BIA. For greater certainty, the Related Persons shall include, inter alia, Mr. Eric Melka, both in his personal capacity and in his capacity as director and officer of the Company, as well as Densi Holding, Les Cartouches DNS Inc. and 9699252 Canada Inc.;
- (qq) "**Released Parties**" means all parties being released in accordance with Article 4 of this Proposal;
- (rr) "**Required Majority**" means a majority in number representing not less than two-thirds in value of all Claims of creditors entitled to vote and who are present and voting at the Creditors' Meeting (whether in person, by proxy or by voting letter) in accordance with the voting procedures established by this Proposal and the BIA. The creditors entitled to vote at the Creditors' Meeting shall be the Unsecured Creditors, to the extent of their Proven Claims;
- (ss) "**Restructuring Claims**" means any Claim resulting from the disclaimer or repudiation of any contract by the Company after the Filing Date, including the portion of the Claims of employees whose employment was terminated after the Filing Date which exceed the Employee Claims;
- (tt) "**Secured Claims**" means the Claims of the Secured Creditors to the extent of the value of the security held by the Secured Creditors, as accepted by the Trustee or approved by the Court;
- (uu) "**Secured Creditors**" has the meaning ascribed to it in Section 2 of the BIA, inasmuch as the security would be opposable to a bankruptcy trustee if the Company had become bankrupt at the Filing Date and includes the holders of charges created and ordered by the Court in the context of the Company's proposal proceedings under the BIA;
- (vv) "**Trustee**" means KPMG Inc., in its capacity as trustee to the notice of intention of the Company and not in its personal capacity;
- (ww) "**Trustee's Certificate**" has the meaning ascribed to it in Section 5.2 of this Proposal;

- (xx) "**Unsecured Claims**" means all Claims (other than Secured Claims, Post-Filing Claims, Crown Claims, Preferred Claims and Excluded Claims) and all Restructuring Claims. Notwithstanding the foregoing, the difference between the Claim of any Secured Creditor and the amount received by such Secured Creditor from the proceeds of the Liquidation shall be considered as an Unsecured Claim. For greater certainty, Excluded Claims shall not be considered as Unsecured Claims;
- (yy) "**Unsecured Creditor**" means a Person holding an Unsecured Claim, to the extent of its Unsecured Claim;
- (zz) "**Unsecured Creditors Class**" means all Unsecured Creditors and Preferred Creditors, who are grouped together for the purposes of considering and voting on this Proposal in accordance with the provisions of this Proposal and the BIA;
- (aaa) "**Verisource Claim**" has the meaning ascribed thereto in Section 2.3 of this Proposal;

1.2 Date of Any Action

In the event that any date on which any action is required to be taken under this Proposal by any of the parties is not a Business Day, the action shall be required to be taken on the next proceeding day which is a Business Day.

1.3 Time

All times expressed in this Proposal are local time Montreal, Quebec, Canada, unless stipulated otherwise. Time is of the essence in this Proposal.

1.4 Statutory References

Any reference in this Proposal to a statute includes all regulations made thereunder and all amendments to such statutes or regulations in force from time to time.

1.5 Monetary References

All references to currency and to "\$" are to Canadian dollars, unless otherwise indicated.

1.6 Gender and Number

Any reference in this Proposal to gender includes all genders. Words importing the singular number only include the plural and vice versa.

1.7 Certain Phrases

In this Agreement, the words "including", "includes" and "include" and any derivatives of such words mean "including (or includes or include) without limitation". The

expressions "Article", "Section" and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of this Agreement.

ARTICLE 2 PROPOSAL

2.1 Proceeds Available For Distribution

Subject to the terms and conditions set forth herein, the following proceeds and contributions shall be made available for distribution to the Creditors with Proven Claims in accordance with the terms and conditions of this Proposal (the "**Proceeds Available For Distribution**"):

- (a) All of the Company's cash;
- (b) All of the proceeds resulting from the collection of the Company's accounts receivables;
- (c) All of the proceeds resulting from the Nu-Tone Transaction that are related to the sale of the Company's assets;
- (d) All of the Liquidation Proceeds;
- (e) All of the Litigation Proceeds, including any and all proceeds arising from the Verisource Claim;
- (f) The Melka Contribution; and
- (g) The Management Contribution.

2.2 Liquidation

Subject to the terms and conditions set forth herein, the Company, under the supervision of the Trustee shall conduct or continue to conduct the orderly liquidation of any and all remaining assets of the Company (the "**Liquidation**"), and all proceeds resulting from such Liquidation, if any, after payment of all costs incurred in connection with the Liquidation (collectively, the "**Liquidation Proceeds**"), shall be paid to and held in trust by the Trustee pending distribution thereof pursuant to the terms and conditions of this Proposal.

2.3 Litigation Claims

Commencing on the Effective Date:

- (a) The Trustee shall administer all Litigation Claims, on behalf and for the benefit of the Creditors with Proven Claim;

- (b) The Trustee shall take all reasonable steps to assess any Litigation Claims and the Trustee shall report to the Litigation Advisory Committee in respect of such Litigation Claims;
- (c) The Trustee, in consultation with the Litigation Advisory Committee, shall be authorized but not obligated to prosecute or settle any Litigation Claim, taking into consideration, among other things, the available information and applicable circumstances;
- (d) Any Litigation Proceeds shall be paid to and held in trust by the Trustee pending distribution thereof pursuant to the terms and conditions of this Proposal;
- (e) All Litigation Costs shall be funded with the Proceeds Available For Distribution, up to an amount to be authorized and approved, from time to time, by Trustee, in consultation with the Litigation Advisory Committee;
- (f) (...).

The Litigation Claims shall include the claims of the Company against Verisource Ltd. (the "**Verisource Claim**") in connection with, *inter alia*, an amount of \$450,000 payable to the Company by Verisource Ltd. in accordance with the *Exclusive Distribution and Rights Agreement* entered into between the Company and Verisource Ltd. on August 31, 2016.

For a period of twelve (12) months after the approval of this Proposal by the Court, or until the Litigation Advisory Committee has determined that there are no Litigation Claims remaining to be prosecuted by the Trustee, whichever is earlier, the Company and Eric Melka will provide their reasonable continued assistance to the Trustee in settling or prosecuting before the Court the Litigation Claims in the context of these proposal proceedings, in a timely and efficient manner.

It is understood that the Trustee shall not bear any liability in respect of any claims or causes of action which may or may not be asserted on behalf of the Company in respect of the Litigation Claims.

2.4 Renunciation by the Related Persons to their Claim

Subject to the terms and conditions set forth herein, all Related Persons under current ownership of the Company agree to renounce to their Claims, including any Post-Filing Claim, Restructuring Claim or Unsecured Claim, whether for unpaid salary, rent or otherwise, against the Company, which Claims exceeds \$1.5 million.

2.5 Proposed Payments

Subject to the terms and conditions set forth in this Proposal, the Company proposes to pay the following fees and claims, as follows, from the Proceeds Available for Distribution:

- (a) Professional Fees: The Professional Fees will be paid in full by the Company as they become due in priority to all other Claims.
- (b) Post-Filing Claims: The Post-Filing Claims, if any, will be paid in full by the Company in the ordinary course of business and on regular trade terms, or as may otherwise be arranged with the holders of such Post-Filing Claims.
- (c) Secured Claims: The Secured Claims, if any, will be paid in accordance with applicable law, or as otherwise arranged with the holders of Secured Claims.
- (d) Employee Claims: Employee Claims, if any, will be paid immediately after issuance of the Proposal Approval Order, or as may otherwise be arranged with the holders of Employee Claims.
- (e) Crown Claims: The Crown Claims, if any, will be paid within six (6) months after issuance of the Proposal Approval Order, or as may otherwise be arranged with the Crown.
- (f) Preferred Claims: The Preferred Claims (other than the Employee Claims), will be paid, without interest, in priority to the Unsecured Claims, within sixty (60) days after issuance of the Proposal Approval Order, or as may otherwise be arranged with individual Preferred Creditors.
- (g) Unsecured Claims: After payment of the fees and claims referred to in Section 2.5 (a) to (f), inclusively, the holders of Unsecured Claim to the extent of their respective Proven Claim will receive their share of the remaining Proceeds Available For Distribution on a *pro rata* and *pari passu* basis.

2.6 Excluded Claims

This Proposal is not, and shall not be, made in respect of the Excluded Claims.

ARTICLE 3
CLASSIFICATION OF CREDITORS, VALUATION OF CLAIMS AND RELATED MATTERS

3.1 Proof of Claims

In order to vote at the Creditors' Meeting and receive any distribution in accordance with this Proposal, a Creditor must file a Proof of Claim in accordance with the provisions of the BIA.

3.2 Class of Creditors

For the purpose of considering and voting upon and receiving distributions under this Proposal, there shall be one class of creditors, being the Unsecured Creditors Class.

3.3 Creditors' Meeting, Proxies and Voting Letters

Proxies as provided for in the BIA indicating a Person authorized to act on behalf of an Unsecured Creditor may be submitted to the Trustee (who, subject to the consent of the Official Receiver, will chair the Creditors' Meeting) at, or any time prior to, the commencement of the Creditors' Meeting. Voting letters as provided for in the BIA submitted to the Trustee prior to the Creditors' Meeting must indicate whether the Unsecured Creditor wishes to cast its vote in favour of or against the Proposal. Voting letters that do not indicate either preference will be deemed to indicate a vote in favour of the Proposal. Persons in attendance at the Creditors' Meeting shall cast their vote in the manner prescribed by the Trustee and the BIA. All votes will be recorded and tabulated by the Trustee, who may seek the assistance of the Court with respect to any dispute arising from or out of the tabulation of votes. A quorum shall be constituted for the Creditors' Meeting or any adjournment thereof if there is one Unsecured Creditor, entitled to vote, present in person or by proxy or if one Unsecured Creditor, entitled to vote, has submitted a voting letter in accordance with the provisions of the BIA and this Proposal. If the requisite quorum is not present at the Creditors' Meeting or if the Creditors' Meeting has to be postponed for any reason, then the Creditors' Meeting shall be adjourned by the Trustee to such date, time and place as determined by the Trustee.

3.4 Claims for Voting Purposes

Each Unsecured Creditor shall be entitled to a single vote valued at the amount of its Proven Claim. If the amount of the Claim of a Disputed Creditor is not finally determined prior to the Creditors' Meeting, the Disputed Creditor shall be entitled to vote at the Creditors' Meeting on the portion of its Unsecured Claim, if any, that has been accepted by the Trustee for voting purposes without prejudice to the rights of the Company, the Trustee and the Disputed Creditor to have the quantum of the Disputed Creditor's Unsecured Claim finally determined for the purposes of receiving its pro rata share of the Proceeds Available For Distribution.

3.5 Approval of the Proposal

In order to be approved, the Proposal must receive the affirmative vote of the Required Majority.

3.6 Modification of the Proposal

Subject to the consent of the Trustee, the Company reserves the right at any time, including at the Creditors' Meeting, to file any modification, amendment or supplement of and to the Proposal, by way of an amended proposal, and file such amended proposal with the Official Receiver as soon as practical, in which case any such amended proposal or proposals shall, for all purposes, be and be deemed to be part of and incorporated into the Proposal. At the Creditors' Meeting, the Trustee shall provide all Unsecured Creditors in attendance with details of any modifications, amendments or supplements of and to the Proposal prior to the vote being taken to approve the Proposal. After the Creditors' Meeting (and both prior to and subsequent to the Proposal Approval Order) and subject to the consent of the Trustee, the Company may at any time and from time to time vary, amend, modify or supplement the Proposal if the Court determines that such variation, amendment, modification or supplement is of a minor, immaterial or technical nature or would not be materially prejudicial to the interest of any of the Unsecured Creditors under the Proposal and is necessary in order to give effect to the substance of the Proposal or the Proposal Approval Order. The details of any such variation, amendment, modification or supplement to the Proposal shall be communicated by the Trustee to all Creditors of the Company affected by the Proposal.

3.7 Inspectors

At the Creditors' Meeting, Creditors with Proven Claim may, with the approval of the Trustee, appoint up to three (3) inspectors under this Proposal (collectively, the "Inspectors"), whose powers shall be restricted to assisting the Trustee in respect of such matters as the Trustee may consider appropriate from time to time, including in respect of the costs and expenses which may be necessary to implement this Proposal, and shall be exercised in the same manner as set forth in Section 116 and following the BIA. For greater certainty, any Person that is either subject to any Litigation Claim or holding a Disputed Claim, in part or in totality, shall not be eligible to act as or be entitled to appoint an Inspector under this Proposal.

ARTICLE 4 RELEASES

4.1 Release in Favour of the Company and the Related Persons

On the Effective Date, all Claims as against the Company and the Related Persons under its current ownership, shall be deemed to be fully and finally satisfied, settled and discharged and no Creditor shall have any further right, remedy or Claim against the Company and the Related Persons under its current ownership.

4.2 Release in Favour of the Directors and Officers

In accordance with Section 50(13) of the BIA, the acceptance of the Proposal by the creditors affected by this Proposal shall, on the Effective Date, release definitively the directors and officers of Company (together with the Company and the Related Persons, the "**Released Parties**") from any and all claims, liability or obligation for which they may be liable by law in their capacity as directors or officers, in respect of any debt of Company which arose before the Filing Date, except for claims that relate to contractual rights of one or more creditors arising from contracts with one or more directors or officers or claims that are based on allegations of misrepresentation made by directors to creditors or of wrongful or oppressive conduct by directors. It is understood however that nothing herein shall be interpreted as an acknowledgment of any claim, liability or obligation on the part of the directors or officers of Company, any such claim, liability or obligation being specifically denied.

ARTICLE 5 CONDITIONS AND EFFECTIVE DATE

5.1 Conditions Precedent to the Implementation of the Proposal

The implementation of the Proposal and distribution thereunder is subject to the satisfaction of the following conditions precedents:

- (a) The Proposal is approved by the Required Majority;
- (b) The Proposal Approval Order has been issued and has not been stayed and there is no outstanding appeal therefrom; and
- (c) All other actions, documents and agreements necessary to implement the Proposal as required herein shall have been effected and executed.

5.2 Trustee's Certificate and Effective Date

Upon the satisfaction that the conditions precedent set out in Section 5.1 have been met and that distributions in accordance with the Proposal have been made, the Trustee will

file with the Court a certificate confirming same (the "Trustee's Certificate"). The date of filing of the Trustee's Certificate shall be deemed to be the "Effective Date".

ARTICLE 6 BINDING EFFECT

6.1 Binding Effect

On the Effective Date, this Proposal will become effective and binding on and enure to the benefit of the Company and all creditors affected by this Proposal and all other Persons named or referred to in, or subject to, this Proposal, and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

ARTICLE 7 GENERAL

7.1 Capacity of the Trustee

KPMG Inc. is acting in its capacity as Trustee under this Proposal and not in its personal capacity, and shall not incur any liabilities or obligations in connection with this Proposal or in respect of the business or obligations of the Company, whether existing as at the Date of Proposal or incurred subsequent thereto and no Person shall have any Claim against KPMG Inc. in respect thereof.

7.2 Settlements and Preferences

The provisions of Section 95 to 101, inclusively, of the BIA and any similar provision of any federal or provincial statute shall not apply to this Proposal.

7.3 Further Assurances

Each of the Persons named or referred to in, or subject to, this Proposal will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of this Proposal and to give effect to the transactions contemplated herein.

7.4 Governing Law

This Proposal will be governed by and construed in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein.

[Signature page follows]

DATED this 16th day of June, 2017

DENSI CORPORATION

WITNESS:

Per: 


