



Sales and investment
solicitation process

Terms and conditions

Kaloom Inc.

July 18, 2023

Business Opportunity



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1 Notice to Reader

Kaloom Inc. (hereinafter the “Kaloom” or the “Company”), started a restructuring process on July 14, 2023. KPMG Inc. (hereinafter “KPMG” or “Receiver”) was appointed by the Court Receiver of the Company. The motion was filed by the secured creditor, Investissement Quebec, under a security agreement (hereinafter the “Receivership”) pursuant the Bankruptcy and Insolvency Act (hereinafter the “BIA” or “Act”).

KPMG, in its capacity of Receiver, initiated a sale process on July 18, 2023. The purpose of this document is to inform potential interested parties of an opportunity to pursue a broad range of executable transaction alternatives for the acquisition of the operations of the Company and/or the purchase of the Company’ assets (a “Transaction”), whether *en bloc* or any portion(s) thereof as a going concern. Any Transaction to be implemented will be subject to the approval of the Superior Court of Québec (the “Court”).

The Receiver hereby solicit Non-binding Letter of Interest (“LOIs”) and Offers for a Transaction, which will be implemented as part of a restructuring process and therefore will remain subject to the approval of the Court. A Data Room will be made available to potential interested parties who have executed a confidentiality agreement in form and substance satisfactory to the Receiver (the “Confidentiality Agreement”). The present Information Memorandum is being communicated subject to the terms and conditions of the Confidentiality Agreement.

This document has been prepared solely for the convenience of potential interested parties in order to assist them in their determination of whether they wish to submit a proposal for a Transaction.

KPMG expressly advises, and the potential interested party acknowledges, that the potential interested party will not and should not solely rely on the information contained in this Information Memorandum in its consideration to submit a proposal for a Transaction.

KPMG has not independently verified any of the information contained herein and makes no express or implied representation or warranty of any kind as to the accuracy or completeness of such information. Nothing contained in this document is or should be relied upon as a representation or warranty of any kind.

Each potential interested party must rely on its own inspection and investigation to satisfy itself as to title, merchantability, encumbrances, description, fitness for purpose, quantity, condition, existence, value or any other matter or thing whatsoever relating to the business and/or assets to be purchased.

This document has been prepared by KPMG Inc., a subsidiary of KPMG LLP, an Ontario limited liability partnership and member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee.

The information contained herein has been prepared for the sole purpose of presenting to potential interested parties an opportunity to submit a proposal for a Transaction and such information is to be held in confidence and is not to be reproduced or used for any other purpose or disclosed to third parties without KPMG’s prior written consent.

Unless otherwise indicated, the currency indicated by the \$ sign is the Canadian dollar.

Neither this document, nor its delivery to any potential interested party, shall constitute an offer to sell any of the business, assets and/or shares of the Company.



If you have any questions, please contact the KPMG representative designated below:



Simon Paquette, Senior Manager
514-840-2345
simonpaquette@kpmg.ca

2 Sale Procedures

The Receiver will consider offers for a broad range of executable transaction alternatives for the acquisition of the operations of the Company and/or purchase of the Company' assets (a "**Transaction**"), whether *en bloc* or any portion(s) thereof, as a going concern. Any Transaction to be implemented will be implemented in the context of a restructuring and will be subject to the approval of the Superior Court of Québec (the "**Court**").

KPMG intends to manage this process with a view to minimizing disruption to the Company' day-to-day operations. All potential interested parties must solely liaise with the designated KPMG representatives with respect to any additional information requests and are not to communicate with management, directors, creditors, shareholders, employees or customers of the Company, or any agent or representative of any of the foregoing, without explicit written consent from KPMG.

The assets may be inspected by appointment only. On request, the technology will be presented and explained. Please schedule an appointment by contacting the designated KPMG representative.

Further information can be obtained by contacting the KPMG representative.

All LOIs and Offers must be submitted in accordance with the Terms and Conditions of Sale detailed in Section 3 of this Information Memorandum.

Non-binding Letter of Interest ("LOI") must be received on or before August 7, 2023, at 11:59am Eastern Prevailing Time (the "LOI Deadline")

Offers ("Offer") must be received on or before, August 30, 2023, at 2:00pm Eastern Prevailing Time (the "Offer Deadline")

All Offers must be accompanied by the required Deposit.

LOIs and Offers must be received at the office of KPMG at the address below before the LOI Deadline or the Offer Deadline, as applicable:

KPMG INC. Attn. Simon Paquette & Stéphane De Broux
600 de Maisonneuve Blvd. West, suite 1500
Montréal (Québec) Canada H3A 0A3
Email: sdebroux@kpmg.ca
Email: simonpaquette@kpmg.ca

All contact by potential interested parties should be made directly with the representative of KPMG designated below:

Simon Paquette
Senior Manager
Telephone: (514) 840-2345
Fax: (514) 840-2121
Email: simonpaquette@kpmg.ca

The Offers will be opened on August 7, 2023, at 3:00 p.m. at KPMG's office in the presence of the representatives of the Company and their secured creditors wishing to be present.

In order to be considered by the Receiver, LOIs and Offers must be received by the applicable deadline and comply with the Terms and Conditions of Section 3 of this Information Memorandum. The Receiver will not have any obligation whatsoever to consider any LOI or Offer that (i) was not received by the applicable deadline and/or (ii) does not comply with the Terms and Conditions of Sale described in Section 3 of this Information Memorandum. Notwithstanding the foregoing, the Receiver may waive compliance with any one or more of the Terms and Conditions of Sale and deem a non-compliant Offer to be a compliant Offer.

Potential interested parties are cautioned that the Receiver shall be under no obligation to accept the highest or best Offer and the selection of the successful Offer shall be entirely in the discretion of the Receiver. Any Offer will be subject to a formal purchase and sale agreement to be agreed and entered into with the Receiver and the Transaction contemplated thereby will be implemented as part of a restructuring process pursuant to the *Bankruptcy and Insolvency Act* ("**Act**").

3 Terms and Conditions of Sale

1. The Receiver will consider written letters of interest (“**LOI**”) and offers (“**Offers**”) for a broad range of executable transaction alternatives for the acquisition of the operations of the Company and/or purchase of the Company’ assets (a “**Transaction**”), whether *en bloc* or any portion(s) thereof, as a going concern.
2. All LOIs and Offers must be sent to:
KPMG INC.
To the attention of Simon Paquette
600 Maisonneuve Blvd. West, suite 1500
Montréal (Québec) H3A 0A3

Deadline for submitting a LOI

3. If you have an interest in exploring a potential Transaction with the Company, we require that you submit your LOI, solely to KPMG, to the attention of Simon Paquette by no later than **August 7, 2023, at 11:59 am Eastern Prevailing Time** (the “**LOI Deadline**”). Your LOI must be marked “**LOI- KALOOM**”.

Format and Content of the LOI

4. Your LOI should reflect your best (non-binding) offer with respect to price, terms and conditions.
5. The Receiver reserve their right to prepare a standard Share Purchase Agreement, Asset Purchase Agreement or similar agreement (any of which being referred to as a “**Purchase Agreement**” below) to be used by all potential interested parties.
6. Unless such a standard Purchase Agreement is prepared and communicated to you by KPMG, your LOI shall take the form of a non-binding letter of intent and shall discuss in detail all matters relating to your interest in the Company including clear statements with respect to the following information (the “**Specified Information**”):
 - a. **Identity of Counterparty:** The name and jurisdiction of the legal entity making the LOI and, to the extent applicable, the jurisdiction and name(s) of the director(s) and controlling shareholder(s), and of all other parties comprising the acquiring party. Confirmation that you are acting on your own behalf, as principal, and not in conjunction with or on behalf of any other party.
 - b. **Background Information:** A brief outline providing background information on the acquiring party and its business.
 - c. **Transaction Structure:** A description of the Transaction structure that you anticipate using for the Transaction, including any specific and material business, legal, financial or tax details.
 - d. **Implementation:** The Transaction will be implemented as part of a restructuring process pursuant to the Act and will have to be approved by the Court pursuant to an approval and vesting order.
 - e. **Consideration:**
 - i. **Value of Consideration:** The value of the purchase price, in Canadian dollars, that you intend to offer to pay as a consideration to the Company (the “**Consideration**”), including the cash component thereof and/or the liabilities to be assumed, including employees related liabilities, shall be provided along with the key assumptions and valuation methodologies used in arriving at the value of the Consideration;

7. **Nature of Consideration:** A description of the type of Consideration, including equity, if any, forming part of the Consideration; and
8. **Allocation:** the proposed allocation of the Consideration offered between the different assets.
 - a. **“As is, where is” Transaction / Representations and Warranties:** The Transaction will be concluded on an “as is, where is basis” and there will be no representations or warranties provided by either the Company, its stakeholders or KPMG.
 - b. **Proposed Capital Structure:** Basic terms, sources and uses of funds, identity of the guarantors if the potential interested party will be a special purpose entity.
 - c. **Conditions:** Any proposed conditions of closing will be a key factor in the evaluation of your LOI. To the extent possible, your LOI should provide that it is not conditional to any further approvals, funding or financing and, if it is, it should describe the scope of such conditions and the status in order to meet them. Specifically, your LOI shall provide/confirm:
 - i. a summary of the planned sources and uses of funds, and in the event that financing comes from internally available funds, evidence of availability;
 - ii. if financing is to be sourced from third parties, the LOI shall include all relevant financing documentation, including financing term sheets that support your planned sources of cash and that specify the contacts (individuals) of the financing institutions. KPMG may contact the individuals of the financing institutions to validate the financing arrangements (and potential interested parties agree to them so doing);
 - iii. specify whether your due diligence is complete or whether you intend to conduct further due diligence and, if applicable, provide a list of outstanding due diligence items and an estimated timeline for the completion of such due diligence;
 - iv. that the LOI has been executed and delivered by an authorized signatory and that all necessary corporate and other approvals to submit the LOI have been obtained; and
 - v. an outline of any anticipated regulatory approvals, filing requirements or authorizations and licenses (collectively, the **“Necessary Approvals”**) that are needed to complete the Transaction and the anticipated time frame and any anticipated impediments for obtaining any such Necessary Approvals.
 - d. **Advisors:** The names of any financial, legal or other advisors you have engaged or plan to engage in pursuing the Transaction.
 - e. **Intentions Regarding the Operations of the Company/Transition Period:** A description of your plans regarding the business of the Company and the employees wished to be continued post transaction.
 - f. **Closing Date:** The estimated closing date, in the event that the Offer filed further to the LOI is determined to be the Successful Offer.
 - g. **Other information:** Any other information that you believe may be of relevance to the assessment of your LOI.
 - h. **Additional Required Terms:** The LOI shall also include the following declarations:
 - i. you have had the opportunity to conduct your own due diligence in relation to the Company and their financial and operational activities prior to submitting an LOI;
 - ii. you have relied solely on your own review and investigation into the Company’ assets and operations, and have relied solely on your own findings;
 - iii. you have not relied on any representations, or warranties, whether written or oral, express, implied, statutory or otherwise, regarding the Company and their assets;
 - iv. you waive all claims against the Company, their officers, directors or employees, or KPMG in respect of any present, past and future activities of the Company, or any use or durability of the Company’ assets, their quality, value, or sustainability;

- v. you confirm you will be responsible for your own costs incurred in connection with your investigation of the Company and any Transaction, including those of your advisors, attorneys, and agents;
 - vi. your LOI is governed by the laws of the Province of Québec and the laws of Canada applicable therein; and
 - vii. you acknowledge that the sale of assets or shares is on an “as is, where is” basis.
- i. **Contacts:** The names, e-mail addresses and phone numbers of those people assigned to answer questions that we may have regarding your LOI.
9. Any creditor that is a potential interested party with a claim against the Company, secured by valid and opposable security and/or benefitting from a priority over secured creditors, may use its debt as consideration or partial consideration for a Transaction in respect of any portion of the business and/or assets subject to that Transaction, and its LOI shall provide for the proposed treatment of other secured creditors as part of the proposed Transaction.
10. Following receipt of your LOI, KPMG will make its recommendation concerning the selection of a potential interested party or potential interested parties with a goal of advancing to the submission of one or several Offers and the closing of a Transaction.
11. KPMG will review and consider each LOI and based on the Assessment Criteria (as defined hereunder) and if it is in the best interests of the Company and their stakeholders to permit the potential interested party to continue to participate in the sale and investment solicitation process (the “SISP”), such potential interested parties shall be deemed a “**Qualified Bidder**” and will be allowed to continue to participate in the SISP. If it is determined that a potential interested parties is a Qualified Bidder, KPMG will promptly notify the potential interested party of such determination. Only Qualified Bidders will be allowed to continue to participate in the SISP and submit an Offer.
12. KPMG will advise all potential interested parties whether they have been deemed a Qualified Bidder at the latest by **August 9, 2023 at 11:59 am Eastern Prevailing Time**
13. In the event that no satisfactory LOIs are received by the LOI Deadline, KPMG, reserve their right to terminate the SISP.

Format and Content of the Offer

14. If you are notified that you are a Qualified Bidder and you have an interest in undertaking a Transaction with the Company, you must submit an Offer, solely to KPMG, to the attention of Simon Paquette, **by no later than August 30, 2023, at 2:00 pm Eastern Prevailing Time**, or at such later date or time as the Company, in consultation with KPMG, may determine appropriate (the “**Offer Deadline**”). Your Offer must be marked “**TENDER- KALOOM**”.
15. Unless a standard Purchase Agreement is prepared and communicated to you by KPMG, your Offer shall take the form of an executed Purchase Agreement which shall include, provide for or comply with, as the case may be, the Specified Information indicated above. In addition to the foregoing, the Offer shall comply with the following:
- a. **Irrevocability:** It includes a letter stating that the Offer is irrevocable until 45 days following the Offer Deadline; provided, however, that if such Offer is selected as the Successful Offer or the Backup Offer (each as defined below), it shall remain irrevocable until the closing of the Successful Offer or the Backup Offer, as the case may be;
16. **Deposit:** It is accompanied by a refundable cash deposit (the “**Deposit**”) in the form of a wire transfer (to a trust account specified by KPMG), or such other form acceptable to KPMG, payable to the order of “**KPMG INC. In Trust – Kaloom**” in an amount equal to the lesser of \$100,000 or 5% of the value of the proposed Consideration, to be held and dealt with in accordance with the terms hereof;

17. **Necessary Approvals:** It includes evidence, in form and substance reasonably satisfactory to the Company and KPMG, of compliance or anticipated compliance with any and all applicable Necessary Approvals, the anticipated time frame for such compliance and any anticipated impediments for obtaining such Necessary Approvals; and
18. **Closing Date:** It provides for the closing of the Transaction by no later than September 8, 2023, subject to any and all of the Necessary Approvals having been obtained by this date.

Assessment of LOIs and Offers

19. KPMG will review and assess LOIs and Offers and in making such assessment will consider, among other things, the following non-exhaustive list of assessment criteria (the “**Assessment Criteria**”):
 - a. the type and amount of the Consideration, with a preference for cash;
 - b. factors affecting the speed, certainty and value of the Transaction (including any conditions to the closing of the Transaction), including the likelihood of closing the Transaction and the time needed for doing so;
 - c. the likelihood of securing all Necessary Approvals for the Transaction;
 - d. the planned treatment of stakeholders;
 - e. the continuity of operations; and
 - f. the counterparties to the Transaction.

Determination of Successful Offer and Backup Offer

20. KPMG considering the Assessment Criteria, will determine whether it will be in the best interests of the Company’ stakeholders to pursue a Transaction on the terms set out in the applicable Offer. Further to its review and assessment of the Offers, KPMG may choose to accept such Offer (in which case, such Offer shall be a “**Successful Offer**”) and take such steps as are necessary to finalize and complete an agreement for the Successful Offer.
21. If any Offer is selected by KPMG as a Successful Offer, KPMG will notify the potential interested party having submitted such offer within 5 business days of such determination, by notice in writing either delivered by email or by registered mail at the addressed set forth in the Successful Offer, such notice to be deemed effectively given and received when deposited in the post office or when delivered or submitted by email as the case may be.
22. KPMG may also select any Offer that is in the interest of the Company’ stakeholders as the “**Backup Offer**” and take such steps as are necessary to finalize and complete an agreement for the Backup Offer. In the event the closing of the Successful Offer does not occur, the Backup Offer shall, upon confirmation of the Company, in consultation with KPMG, become the Successful Offer and be dealt with as such in accordance with the terms hereof.
23. If any Offer is selected by KPMG as a Backup Offer, KPMG will notify the potential interested party having submitted such offer within 5 business days of such determination, by notice in writing either delivered by email or by registered mail at the addressed set forth in the Backup Offer, such notice to be deemed effectively given and received when deposited in the post office or when delivered or submitted by email as the case may be.

General

24. KPMG, reserve the right at all times, to:
 - a. Amend, vary, modify or cancel the SISP and/or the SISP timetable;
 - b. Decline to permit any potential interested party to participate in the SISP;

- c. Terminate negotiations with any potential interested party at any time, including prior to entering into a definitive purchase agreement;
 - d. Reject any or all LOIs, Offers or other proposals;
 - e. Accept, review or consider any LOI, Offer or other proposals, whether or not they represent the highest purchase price proposed by any potential interested party and whether or not they conform with these Terms and Conditions of Sale;
 - f. Deal with one or more potential interested party(ies) to the exclusion of all other parties; and
 - g. Limit access at any time to any additional information;
 - h. the whole without any liability to the Company, their shareholders, officers, directors, employees, representatives or advisors, or KPMG.
25. In addition, the Company and KPMG reserve the right to amend any information which has been made available to interested parties either by way of addition, deletion or amendment.
26. No representation or warranty is made by the Company, their officers, directors, employees, shareholders, affiliates, advisors, including KPMG or any other person, as to the accuracy or completeness of any information or documents provided. Each potential interested party acknowledges and agrees that it shall be entitled to rely solely on the representations and warranties, if any, in a definitive agreement relating to a Transaction when, as, and if it is executed, and subject to any limitations and restrictions as may be specified in such definitive agreement. The potential interested parties shall conduct their own investigation and analysis of the Company including with respect to legal, tax, regulatory and financial matters. By submitting your LOI or Offer, you acknowledge that you are relying solely upon your own independent investigation and evaluation of the business and attorn to the exclusive jurisdiction of the Court with respect to any and all legal proceedings or remedies related, directly or indirectly to this SISP, the LOI, the Offer and the Transaction.
27. Any potential interested party who does not wish to pursue this opportunity is required to promptly give written notice of such termination to KPMG.
28. KPMG may share any LOI, Offer or other proposal received with the Company and their agents, consultants and advisors, as well as with the Company's secured creditors.
29. No finder's fees, commissions, expenses or other compensation will be paid by the Company, their stakeholders, directors or representatives, or KPMG, to agents, consultants, advisors or other intermediaries of any potential interested parties, and the Company, their stakeholders and KPMG will not be responsible for any costs or expenses incurred by potential interested parties in evaluating and pursuing the Transaction.
30. If your Offer is refused or KPMG choose not to proceed on it, you will receive a notice of refusal from KPMG and the Deposit (without any accrued interest thereon) will be promptly returned to you by KPMG, without further recourse by you. If your Offer has been accepted, and you fail to complete the Transaction, or otherwise breach the terms of the SISP, or any definitive Transaction documentation, then (i) you will be absolutely deemed to have completely forfeited the Deposit to and in favour of the Company, and KPMG shall immediately remit such Deposit to the Company, which shall be entitled to retain it on account of damages (and not as a penalty) resulting from such default, and (ii) the Company will be entitled to exercise their rights and recourses against you, including without limitation to claim further damages from you.

31. **Each party submitting an LOI or Offer acknowledges that KPMG is not required to inspect or count, or provide any inspection or count, of the assets or any part thereof and such party shall be deemed, at its own expense, to have relied entirely on its own judgment, inspection and investigation.** It shall be the sole responsibility of a potential interested party to obtain, at its own expense, any consent to such transfer and any further documents or assurance which is necessary or desirable in the circumstances. KPMG shall not be liable for any incorrect description, defect or condition of any of the assets and/or shares, and each person submitting an offer shall make no claim against KPMG or any of its directors, officers or employees in connection with the proposal for the purchase of any of the assets and/or shares.
32. In addition, if the potential interested party is a consumer in respect to the Consumer Protection Act, he acknowledges and agrees that any sale made by the Company or the Receiver in accordance with these Terms and Conditions of Sale is not subject to this same Law and its rules.
33. The assets will be available for inspection as described in Section 2 - Sale Procedures.
34. The currency indicated by the \$ sign is the Canadian dollar.
35. Upon approval of a Transaction by the Court, the Purchaser will have 10 business days following the issuance of an approval and vesting order or reverse vesting order by the Court, as the case may be, to consummate the Transaction and make the full payment of the balance of the Consideration, including applicable taxes.
36. The submission of an LOI or Offer to KPMG shall constitute an acknowledgment that the potential interested party has reviewed, understood, acknowledged, and agreed to the terms of the accompanying "Notice to Reader", as well as these "Terms and Conditions of Sale".
37. All applicable federal or provincial taxes in connection with the Transaction including provincial sales tax (PST) and Goods and Service Tax (GST), if any, shall be over and above the Consideration and shall be in all cases the sole responsibility of the potential interested party.

Dated at Montréal, Québec, this 18th day of July 2023.