

**SUPERIOR COURT**  
(Commercial Division)

**CANADA**  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**  
**No.:** 500-11-058403-201  
**DATE:** January 22, 2021

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**PRESIDING : M<sup>e</sup> PATRICK GOSSELIN, REGISTRAR**

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**IN THE MATTER OF THE PROPOSAL OF:**

**MODASUITE INC.**

Debtor

**-and-**

**KPMG INC.**

Trustee

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**PROPOSAL APPROVAL ORDER**

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- [1] **ON READING** the Trustee's *Application for the Approval of a Proposal* (the "**Application**"), the affidavit and the exhibits in support thereof, as well as the reports of the Trustee dated December 2, 2020 and January 18, 2021 (the "**Trustee's Reports**");
- [2] **SEEING** the notification of the Application and of the Trustee's Reports;
- [3] **SEEING** the submissions of counsel for the Trustee and for the Debtor;
- [4] **SEEING** the provisions of the *Bankruptcy and Insolvency Act* (the "**BIA**").

**WHEREFORE THE COURT:**

- [5] **GRANTS** the Application;
- [6] **PERMITS** service of this Order at any time and place and by any means whatsoever;

JG 1267

## THE PROPOSAL

- [7] **APPROVES** and **RATIFIES** the Debtor's Proposal dated December 2, 2020 (the "**Proposal**"), a copy of which is attached hereto at **Schedule A**;
- [8] **ORDERS** that, as of the Effective Date (as defined in the Proposal), (i) the Proposal and all associated steps, compromises, settlements, satisfactions, releases, discharges, transactions and arrangements effected thereby are approved, binding and effective in accordance with the provisions of the BIA; and (ii) the treatment of the claims of all creditors affected by the Proposal (collectively, the "**Affected Creditors**"), as contemplated thereunder, shall be final and binding for all purposes and enure to the benefit of the Debtor and of all other persons named or referred to in the Proposal or subject to the Proposal (including the Affected Creditors), and their respective heirs, executors, administrators and other legal representatives, successors and assigns;
- [9] **ORDERS** that the Trustee be and is hereby authorized, directed and empowered to perform its functions, to fulfill its obligations under the Proposal and to take all actions necessary or appropriate to enter into, adopt, execute, deliver and implement all agreements, transactions, and documents contemplated by the Proposal and to consummate all matters contemplated thereunder;

## THE REORGANIZATION

- [10] **ORDERS** that on the date of certificate issued by the Director (as defined in and appointed under the *Canada Business Corporations Act*, the "**CBCA**") pursuant to Section 191(5) of the CBCA confirming the Reorganization (the "**Reorganization Date**"), the following steps of the reorganization of the Debtor made in accordance with Section 191(4) of the CBCA (as well as Sections 59(4) and 66(1.4) of the BIA, to the extent applicable) (the "**Reorganization**"), shall occur:
- i. The Debtor shall create by articles of reorganization, attached as **Schedule B** to this Order (the "**Articles of Reorganization**"), (i) a new class of redeemable shares in the capital of the Debtor (the "**Redeemable Shares**"), which shares rank prior to all other authorized classes of shares (the "**Existing Shares**") in right of liquidation and redemption and (ii) a new class of common shares ("**New Common Shares**");
  - ii. The Debtor shall change by Articles of Reorganization any and all issued and outstanding Existing Shares and any other securities in its capital other than the New Common Shares, into an equivalent number of Redeemable Shares for an aggregate redemption price (for all the Existing Shares in their totality) of \$100.00;

- iii. UCG Canada Holdings Inc. (the "**Purchaser**") will subscribe for 100 New Common Shares for a total subscription price of \$100.00;
- iv. The Debtor will be deemed to have redeemed all issued and outstanding Redeemable Shares for a total redemption price of \$100.00;
- v. The \$100.00 aggregate redemption price will be paid by the Debtor segregating it on its books and records and making it available to the then former holders of the Redeemable Shares upon request;
- vi. All rights, options, warrants and other securities convertible or exchangeable into shares or other securities of the Debtor shall be cancelled; and
- vii. The current Directors (as defined in the Proposal) and Officers (as defined in the Proposal) of the Debtor shall be deemed to have resigned, with the exception of Mr. Jeremy Brown.

[11] **ORDERS** that the Articles of Reorganization shall form part of the Reorganization.

[12] **ORDERS** the Debtor to send to the Director the Articles of Reorganization giving effect to the Reorganization, together with such deletions, additions or modifications as the Debtor and the Purchaser may make thereto and therefrom at any time prior to the Reorganization Date.

[13] **ORDERS** that the Purchaser Contribution (as defined in the Proposal) shall be remitted to the Trustee within three (3) Business Days of the Reorganization Date.

### **LIMITATION OF LIABILITY**

[14] **DECLARES** that no action lies or shall lie against the Trustee by reason of this Order or the performance by the Trustee of any act authorized by this Order, except by leave of the Court. The entities related to the Trustee or belonging to the same group as the Trustee shall benefit from the protection arising under the present paragraph.

### **GENERAL**


[15] **ORDERS** that this Order shall have full force and effects in all provinces and territories in Canada and as against all persons against whom it may otherwise be enforced.

[16] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of

America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.

[17] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

**THE WHOLE WITHOUT COSTS.**



M<sup>e</sup> PATRICK GOSSELIN, REGISTRAR

**SCHEDULE A**  
**COPY OF MODASUITE INC.'S PROPOSAL**

(See attached)



CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-058403-201

Estate no.: 41-2653429

SUPERIOR COURT  
(Commercial Division)

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IN THE MATTER OF THE PROPOSAL OF:

MODASUITE INC.

Debtor

-and-

KPMG INC.

Trustee

**PROPOSAL**

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

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

**“Administration Charge”** means the charge in the total amount of \$150,000 on all the property of Modasuite granted by the Court on June 26, 2020, to the Proposal Trustee, legal counsel to the Proposal Trustee and the legal counsel to Modasuite, as security for their professional fees and disbursements incurred in relation to the Proposal Proceedings.

**“Bankruptcy Proceeding”** means any deemed assignment into bankruptcy pursuant to section 57 of the BIA and all estate liquidation and administration proceedings related thereto.

**“Bankruptcy Scenario”** means an immediate liquidation of Modasuite’s remaining assets and distribution of proceeds of realization in a Bankruptcy Proceeding.

**“Basket Amount”** means an amount equal to the aggregate of: (a) the Net Transaction Amount; (b) the Purchaser Contribution; and (c) the Net Tax Refunds.

**“BIA”** means the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.

**“Business Day”** means any day except Saturday, Sunday or any day on which banks are generally not open for business in Montréal, Québec.

**“CBCA”** means the *Canada Business Corporations Act*, RSC 1985, c C-44, as amended.

**“Claim”** means any right of any Person against Modasuite in connection with any indebtedness, liability or obligation of any nature whatsoever, including, without limitation, 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, incurred or arising or related to the period prior to the Filing Date, including, for greater certainty, any right of any Person against Modasuite arising pursuant to sections 65.11 or 65.2 of the BIA. For greater certainty, a Claim does not include a Post-Filing Claim.

**“Court”** means the Superior Court of Québec.

**“Creditors”** means the holders of Claims.

**“Creditors’ Meeting”** means the meeting of Creditors to be held for the purpose of considering and voting upon this Proposal, and any adjournment(s) of such meeting.

**“Creditors’ Meeting Date”** means such date and time as may be set by the Proposal Trustee, but in any event no later than 21 days following the filing of this Proposal with the Official Receiver.

**“Crown Priority Claims”** means all amounts owing to Canada Revenue Agency that could be subject to a demand under subsection 224(1.2) of the *Income Tax Act*, RSC 1985, c 1 (5<sup>th</sup> Supp) or under any substantially similar provision of provincial legislation as at the Filing Date.

**“Crown Priority Creditors”** means the holders of Crown Priority Claims.

**“Directors”** means all current and former directors (or their estates) of Modasuite, in such capacity, and **“Director”** means any one of them.

**“Disputed Claim”** means any Claim which has been received by the Proposal Trustee in accordance with the terms of this Proposal and the BIA, but has not been accepted as proven in accordance with section 135 of the BIA or which is being disputed in whole or in part by the Proposal Trustee, or any other Person entitled to do so and has not been resolved definitively by agreement or by order of the Court.

**“Effective Date”** has the meaning ascribed to it in Article 5 of this Proposal.

**“Employee Priority Claims”** means any Claims of the former employees of Modasuite to be paid in accordance with section 60(1.3) of the BIA.

**“Employee Priority Creditors”** means the holders of Employee Priority Claims.



**"Filing Date"** means June 22, 2020.

**"Modasuite"** means Modasuite Inc.

**"Net Transaction Amount"** means the cash proceeds received by the Proposal Trustee pursuant to the Transaction, after payment in full of all Professional Fees, Post-Filing Claims, and the Claims referred to in paragraphs 2.4(a) to (e) herein.

**"Officers"** means all current and former officers (or their estates) of Modasuite, in such capacity, and **"Officer"** means any one of them.

**"Official Receiver"** means a federal government employee in the office of the Superintendent of Bankruptcy who, among other things, accepts and reviews documents that are filed in BIA proposals.

**"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, any governmental authority, and the executors, administrators or other legal representatives of an individual in such capacity.

**"Post-Filing Claim"** means a claim arising in respect of goods supplied, services rendered or other consideration given to Modasuite subsequent to the Filing Date and prior to the Reorganization Date.

**"Preferred Claims"** means that portion of a Claim that is accepted by the Proposal Trustee as entitling the Preferred Creditor to receive payment in priority to other Proven Creditors as provided in section 136 of the BIA.

**"Preferred Creditors"** means the holders of Preferred Claims.

**"Professional Fees"** means all fees, expenses, liabilities and obligations of the Proposal Trustee, its legal counsel and Modasuite's legal counsel as well as all accounting fees and consulting fees incurred in the context of and incidental to the Proposal Proceedings.

**"Proof of Claim"** means the form to be delivered by the Creditors to the Proposal Trustee in accordance with the BIA.

**"Proposal"** means this Proposal, as may be further varied, amended, modified or supplemented in accordance with the provisions hereof and the BIA.

**"Proposal Approval Order"** means a final and executory order of the Court, in form and substance satisfactory to Modasuite, the Purchaser and the Proposal Trustee, approving and sanctioning this Proposal and the Reorganization.

**"Proposal Proceedings"** means the restructuring proceedings commenced by Modasuite pursuant to section 50.4 of the BIA on the Filing Date.

**"Proposal Trustee"** means KPMG Inc., in its capacity as proposal trustee of Modasuite in the Proposal Proceedings.

**“Proven Claim”** means the amount or any portion of a Claim that is accepted as proven by the Proposal Trustee pursuant to section 135 of the BIA and determined for distribution purposes in accordance with the provisions of the BIA or any applicable orders from the Court.

**“Purchaser”** means UCG Canada Holdings Inc.

**“Purchaser Contribution”** means the amount of \$ 400,000, deposited by the Purchaser with its counsel Stikeman Elliott LLP to be remitted to the Proposal Trustee upon the issuance of the Proposal Approval Order and subsequently distributed by the Proposal Trustee in accordance with the terms of this Proposal.

**“Proven Creditors”** means the holders of Proven Claims.

**“Reorganization”** means a reorganization under section 66(1.4) of the BIA and section 191 of the CBCA providing for, *inter alia*, the creation and issuance of a new class of shares to the Purchaser and the cancellation of all existing shares of Modasuite.

**“Reorganization Date”** means the date of the certificate of amendment issued by the Director (as defined in and appointed under the CBCA) confirming the Reorganization, the whole pursuant to Section 191(5) of the CBCA.

**“Required Majority”** means a majority in number and two-thirds in value of all Proven Claims of Creditors entitled to vote, who are 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.

**“Secured Claims”** means the Claims of any Secured Creditors, to the extent of the value of the security held by the Secured Creditors.

**“Secured Creditors”** means any “secured creditors” (as defined in section 2 of the BIA) of Modasuite.

**“SISP”** has the meaning ascribed to it in Article 2.1 of this Proposal.

**“Superintendent’s Levy”** has the meaning attributed to it in section 147 of the BIA and is payable to the Superintendent in Bankruptcy.

**“Superintendent in Bankruptcy”** has the meaning attributed to it in section 5 of the BIA.

**“Net Tax Refunds”** means any tax credits or refunds with respect to periods prior to the Reorganization Date that may be paid to Modasuite, net of any fees, costs and expenses incurred for their collection.

**“Transaction”** means the transaction for the sale of substantially all assets of Modasuite to the Purchaser, pursuant to the agreement entitled Asset Purchase Agreement entered into on September 30, 2020, between Modasuite, as vendor, and the Purchaser.

**“Trustee’s Certificate”** has the meaning ascribed to it in Article 5 of this Proposal.

**“Unsecured Claims”** means all Claims other than Post-Filing Claims, Crown Priority Claims, Preferred Claims and Secured Claims. For greater certainty, but without limiting the generality of the foregoing, the Unsecured Claims shall include Claims of every nature and kind whatsoever, whether due or not due for payment as of the Filing Date, including any contingent and unliquidated Claims (once quantified) against Modasuite.

## **1.2 Date for 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 day which is a Business Day.

## **1.3 Time**

All times expressed in this Proposal are local time in Montréal, Québec, unless stipulated otherwise.

## **1.4 Section References**

In this Proposal, a reference to section, clause or paragraph shall, unless otherwise stated, refer to a section, clause or paragraph of the Proposal.

## **1.5 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.

## **1.6 Monetary References**

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

## **1.7 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.

# **ARTICLE 2 PROPOSAL**

## **2.1 Overview of Proposal**

On June 22, 2020, Modasuite filed a Notice of intention to make a proposal under the relevant provisions of the BIA.

In the context of the Proposal Proceedings and under the supervision of the Proposal Trustee, Modasuite conducted a sale and investment solicitation process (the **“SISP”**), with a view to maximizing value for Modasuite’s stakeholders.

On September 30, 2020, as a result of the SISP and following the analysis of the offers received, Modasuite entered into an Asset Purchase Agreement with the Purchaser.

On October 6, 2020, the Asset Purchase Agreement and the Transaction contemplated thereunder were approved by the Court, and closing of the Transaction took place on October 8, 2020. In the context of the Transaction, the Purchaser has undertaken to make the Purchaser Contribution, which shall be remitted to the Proposal Trustee upon the issuance of the Proposal Approval Order and subsequently distributed by the Proposal Trustee in accordance with the terms of this Proposal.

Accordingly, upon issuance of the Proposal Approval Order, Modasuite will implement the Reorganization and distribute the Basket Amount to the Proven Creditors in a manner that will result in Proven Creditors receiving a higher and more expeditious distribution on account of their Proven Claims than in a Bankruptcy Scenario.

## **2.2 Professional Fees**

Professional Fees shall be paid in full by Modasuite. The Proposal does not affect the claims of the Proposal Trustee, its legal counsel or Modasuite's legal counsel in connection with Professional Fees and does not affect the Administration Charge in any way. Upon payment of Professional Fees that may be outstanding after the Effective Date and the discharge of the Proposal Trustee, the Administration Charge shall be deemed to be extinguished.

## **2.3 Post-Filing Claims**

Post-Filing Claims will be paid in full by Modasuite in the ordinary course of business, and on regular trade terms and in priority to any distributions set forth in Section 2.4 hereof. On the Effective Date, all Post-Filing claims shall have been paid in full and shall be deemed to be extinguished and discharged for the purposes of any future amalgamation or liquidation of Modasuite.

## **2.4 Proposed Distributions**

Subject to the terms and conditions set forth in this Proposal, Modasuite proposes to pay the following amounts:

- (a) Secured Claims: Secured Claims, if any, will be paid in full in amounts determined by the Proposal Trustee pursuant to section 135 of the BIA.
- (b) Crown Priority Claims: Any Crown Priority Claims, without interest, will be paid in full within six months after issuance of the Proposal Approval Order, or as may otherwise be arranged with the Crown.
- (c) Employee Priority Claims: Any Employee Priority Claims, without interest, will be paid in full immediately after issuance of the Proposal Approval Order.

- (d) Preferred Claims: Any Preferred Claims, without interest, will be paid in full within sixty (60) days after issuance of the Proposal Approval Order, or as may otherwise be arranged with individual Preferred Creditors.
- (e) Superintendent's Levy: the Superintendent's Levy shall be paid in full.
- (f) Unsecured Claims: The Basket Amount will be distributed by the Proposal Trustee to the holders of Proven Claims not addressed by Articles 2.4 (a) to (d) above, within ninety (90) days of the issuance of the Proposal Approval Order as follows: (a) the lesser of \$ 1,000 or the amount of the Proven Claim; and (b) for Creditors with a proven Unsecured Claim in excess of \$ 1,000, for the portion of each such Proven Claim in excess of \$ 1,000, such Creditors will receive an amount equal to their pro rata share of the Basket Amount relative to the aggregate value of the Proven Claims not addressed by Articles 2.4 (a) to (d) of this Proposal. Should there be any Disputed Claims, the distribution referred to in this Article 2.4 (f) may be effected by way of interim distribution(s) net of any amount to be set aside by the Proposal Trustee while such Disputed Claims are being definitively determined as set forth herein, with a final distribution, as the case may be, taking place once final resolution or determination has occurred.

## **2.5 Landlord Disclaimer Claims**

In the case of any lease of immovable or real property disclaimed by Modasuite pursuant to section 65.2 of the BIA, the landlord affected by the disclaimer may file a Proof of Claim for the lesser of: (i) actual losses resulting from the disclaimer of the lease(s); or (ii) the amount calculated in accordance with the formula provided for at Section 65.2 of the BIA which claims will be treated as Unsecured Claims under this Proposal, in accordance with Section 65.2(5) of the BIA.

## **2.6 Payment of the Purchaser Contribution to the Proposal Trustee**

Provided that the Proposal is accepted by the Required Majority of the Proven Creditors and that the Proposal Approval Order is granted by the Court, the Purchaser Contribution shall be remitted to the Proposal Trustee within three (3) Business Days of the Reorganization Date.

## **2.7 Class of Creditors**

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

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

**3.1 Claims Process**

In order to be eligible to vote at the Creditors' Meeting and receive any distribution in accordance with this Proposal, a Creditor must file a Proof of Claim with the Proposal Trustee in accordance with the applicable provisions of the BIA. Pursuant to section 135 of the BIA, the Proposal Trustee shall examine every Proof of Claim and determine whether such Claims are Proven Claims or Disputed Claims, and whether such Claims are Crown Priority Claims, Employee Priority Claims, Preferred Claims or Secured Claims, as applicable.

**3.2 Claims for Voting Purposes**

Each Creditor (other than Secured Creditors, Crown Priority Creditors and Employee Priority Creditors) shall be entitled to a single vote valued at the amount of its Claim or a portion of its Claim, if any, that has been accepted by the Proposal Trustee for voting purposes without prejudice to the rights of Modasuite, the Proposal Trustee and the Creditor to have the quantum of any Disputed Claim finally determined for the purposes of receiving its share of the Basket Amount, if any, or for the purposes of determining whether this Proposal was approved by the Required Majority.

For greater certainty, Secured Creditors, Crown Priority Creditors and Employee Priority Creditors shall not be entitled to vote their Secured Claims, Crown Priority Claims and Employee Priority Claims, respectively.

Without limiting the foregoing, Disputed Claims shall be tracked by the Proposal Trustee as if such claims were Proven Claims but Disputed Claims will not be considered for the purposes of determining the Required Majority. The Proposal Trustee will report to the Court on the impact on the Required Majority had the Disputed Claims constituted accepted claims for voting purposes.

**3.3 Deemed Votes**

Any Creditor, other than a Preferred Creditor, holding a Proven Claim which is to be paid in full hereunder shall be conclusively deemed to vote in favour of this Proposal, unless and until such Creditor votes against the Proposal in accordance herewith and with the BIA.

**3.4 Disputed Claims**

Any Creditor with a Disputed Claim shall not be entitled to receive any distribution hereunder with respect to such Disputed Claim unless and until such Claim becomes a Proven Claim. Distributions pursuant to Article 2.4 of this Proposal shall be made in respect of any Disputed Claim that is finally determined to be a Proven Claim.

### **3.5 Creditors' Meeting, Proxies and Voting Letters**

The Creditors' Meeting will be held on the Creditors' Meeting Date at a location to be determined and provided to all known Creditors in accordance with the BIA.

Proxies, as provided for in the BIA, indicating a Person authorized to act on behalf of a Proven Creditor, may be submitted to the Proposal Trustee at, or any time prior to, the commencement of the vote on the Proposal at the Creditors' Meeting.

Voting letters, as provided for in the BIA, submitted to the Proposal Trustee prior to the Creditors' Meeting must indicate whether the Creditor wishes to cast its vote in favour of or against the Proposal, or to abstain from voting. 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 who are eligible to vote shall cast their vote in the manner prescribed by the Proposal Trustee and the BIA. All votes will be recorded and tabulated by the Proposal Trustee, who may seek the assistance of the Court with respect to any dispute arising from or out of the tabulation of votes. For greater certainty, any Secured Creditors and Preferred Creditors shall not be entitled to vote the value of their Secured Claims and Preferred Claims, respectively.

A quorum shall be constituted for the Creditors' Meeting or any adjournment thereof if there is one Creditor, entitled to vote, present in person or by proxy or if one 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 Proposal Trustee to such date, time and place as determined by the Proposal Trustee.

### **3.6 Approval by Creditors**

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

### **3.7 Modification of the Proposal**

Subject to the consent of the Proposal Trustee, at any time prior to the Creditors' Meeting or at any time prior to the date to which the Creditors' Meeting is adjourned, if it is adjourned, Modasuite reserves the right 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 Proposal Trustee shall provide all Creditors in attendance with details of any modifications or amendments 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 issuance of the Proposal Approval Order) and subject to the consent

of the Proposal Trustee, Modasuite 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 Creditors under the Proposal and is necessary in order to give effect to the substance of the Proposal or the Proposal Approval Order.

#### **ARTICLE 4 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 precedent:

- (a) The Proposal is approved by the Required Majority;
- (b) The Proposal Approval Order has been issued and, for greater certainty, is final and executory;
- (c) The Proposal Trustee has received the Purchaser Contribution; and
- (d) All necessary actions and proceedings to effect the Reorganization have been executed.

With respect to the Proposal Approval Order, if approval by the Required Majority is obtained, the Proposal Trustee shall file with the Court an application for the Proposal Approval Order no later than five Business Days following the Creditors' Meeting or such other date as the Court may order, which application shall be heard as soon as possible according to the procedure set out in section 58 of the BIA.

#### **ARTICLE 5 EFFECTIVE DATE**

Upon the satisfaction of the conditions precedent set out in Article 4 hereof, the Proposal Trustee will file with the Court a certificate which states that all conditions precedent set out in this Proposal have been satisfied and that distribution in accordance with the Proposal has been made (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**

On the Effective Date, this Proposal will become effective and binding on and enure to the benefit of Modasuite 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, liquidators, executors, administrators and other legal representatives, successors and assigns. Without limiting the generality of the foregoing, on the Effective Date, all Creditors shall be deemed to have consented and agreed to all of the provisions of the Proposal in its entirety.



## **ARTICLE 7 PROPOSAL TRUSTEE**

The Proposal Trustee is acting in its capacity as Proposal Trustee and not in its personal capacity and no officer, director, employee or agent of the Proposal Trustee shall incur any obligations or liabilities in connection with the Proposal or in connection with the business or liabilities of Modasuite and no Person shall have any Claim against KPMG Inc. in respect thereof, including without limitation, in connection with any distributions or payments to be made pursuant to this Proposal by the Proposal Trustee for and on behalf of Modasuite.

## **ARTICLE 8 RELEASES**

### **8.1 Proposal Releases**

On the Effective Date, all Claims of the Creditors existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Filing Date relating to, arising out of or in connection with Modasuite or its assets, business or affairs, wherever and however conducted, the Proposal and the Proposal Proceedings shall be deemed to be fully and finally satisfied, settled and discharge and no Creditor shall have any further right, remedy or claim against Modasuite in respect of all or any portion of the Creditor's Claim.

### **8.2 Release of Directors**

On the Effective Date, in accordance with section 50(13) of the BIA, all claims, of any nature or source whatsoever against all of Modasuite's past and present Directors in connection with any Claims, and any indemnification obligations with respect thereto, the business and affairs of Modasuite whenever or however conducted, the administration and/or management of Modasuite, the Proposal, or any document, instrument, matter or transaction involving Modasuite taking place in connection with the Proposal, shall be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred, to the fullest extent permitted by governing law, provided that nothing herein will waive, discharge, release, cancel or bar (a) the right to enforce Modasuite's obligations under the Proposal, or (b) any Claim that is not permitted to be released pursuant to sections 50(13) and 50(14) of the BIA. Nothing herein shall be construed as an acknowledgement of any liability or obligations of any of the current or former Directors.

## **ARTICLE 9 GENERAL**

### **9.1 Undervalued Transactions**

By accepting this Proposal, the Creditors expressly waive their right to exercise against Modasuite and any third party, the recourses provided for in Sections 95 to 101 of the BIA as well as under any other provincial legislation having a similar purpose, including, without limiting the foregoing, the recourses under articles 1631 and 1636 of the Civil

Code of Québec, the whole in accordance with Section 101.1 of the BIA.

## **9.2 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 actions 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.

## **9.3 Governing Law**

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

## **9.4 Language**

This Proposal was drafted in English. In case of discrepancy, the English version shall prevail over any translation.

*[SIGNATURE PAGE FOLLOWS]*

Dated this 2<sup>nd</sup> day of December, 2020.

**MODASUITE INC.**

By: Jeremy Brown  
Name: Jeremy Brown  
Title: CEO



**SCHEDULE B**  
**ARTICLES OF REORGANIZATION**

(See attached)





**Canada Business Corporations Act (CBCA)  
FORM 14  
ARTICLES OF REORGANIZATION  
(Section 191)**

**1 - Corporate name**

MODASUITE INC.

**2 - Corporation number**

0719897 - 3

**3 - In accordance with the court order for reorganization, the articles of incorporation are amended as follows:**

See SCHEDULE attached.

**4 - Declaration**

I hereby certify that I am a director or an authorized officer of the corporation.

Signature: \_\_\_\_\_

Print name: Jeremy Brown Telephone number: \_\_\_\_\_

**Note:** Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding \$5000 or to imprisonment for a term not exceeding six months or to both (subsection 250(1) of the CBCA).



## Instructions FORM 14 ARTICLES OF REORGANIZATION

You are providing information required by the CBCA. Note that both the CBCA and the *Privacy Act* allow this information to be disclosed to the public. It will be stored in personal information bank number IC/PPU-049.

### Item 3

(1) Set out the amendments to the articles in accordance with the court order pursuant to section 191 of the Act. If an amendment involves a change of corporate name (including the addition of the English or French version of the corporate name), the new name must comply with sections 10 and 12 of the CBCA as well as part 2 of the regulations, and the articles of reorganization must be accompanied by a Nuans name search report dated not more than 90 days prior to the receipt of the articles by Corporations Canada. A numbered name may be assigned under subsection 11(2) of the CBCA without a Nuans name search report.

(2) Any amendment shall conform to and correspond to the paragraph and subparagraph references of the existing articles.

If the space available is insufficient, please attach a schedule to the form.

### Item 4

This form must be signed by a director or an authorized officer of the corporation.

### Also include:

- A copy of the court order
- Form 3 - Change of Registered Office Address, if there was a change in the registered office address
- Form 6 - Changes Regarding Directors, if there was a change regarding the directors
- A Nuans name search report if a change of corporate name is requested. A Nuans name search report is not required if a numbered name (for example, 123456 Canada Inc.) is requested
- Fee payable by credit card (American Express, Visa or MasterCard) or by cheque to the Receiver General for Canada. See filing fees at <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs06650.html#corp>.

For more information, consult the Corporations Canada website ([corporationscanada.ic.gc.ca](http://corporationscanada.ic.gc.ca)) or call 1-866-333-5556 (Canada) or (613) 941-9042 (international).

### Send documents:

By e-mail: [IC.corporationscanada.IC@canada.ca](mailto:IC.corporationscanada.IC@canada.ca)

By mail: Corporations Canada  
235 Queen Street  
Ottawa, Ontario K1A 0H5



**SCHEDULE  
TO THE ARTICLES OF REORGANIZATION OF**

**MODASUITE INC.  
(the "Corporation")**

The articles of the Corporation are amended as follows:

- (a) By creating a new class of redeemable shares, which shares are unlimited in number, are designated as "**Redeemable Shares**", and have attached thereto the rights, privileges, restrictions and conditions set forth in the attached Schedule A.
- (b) By creating a new class of common shares, which shares are unlimited in number, are designated as "**New Common Shares**" and have attached thereto the rights, privileges, restrictions and conditions set forth in the attached Schedule A.
- (c) By changing each issued and outstanding share in the capital of the Corporation (the "**Existing Shares**") and any other securities in the capital of the Corporation, other than the New Common Shares, into a Redeemable Share on a one-for one basis, with an aggregate redemption price (for all the Existing Shares in their totality) of \$100.00.
- (d) By cancelling all of the previously authorized classes of shares of the Corporation in order that, after giving effect to the foregoing, the classes and the maximum number of shares that the Corporation is authorized to issue shall consist of:
  - (i) an unlimited number of New Common Shares; and
  - (ii) an unlimited number of Redeemable Shares;having the rights, privileges, restrictions and conditions set forth in the attached Schedule A.
- (e) All provisions and schedules relating to the classes and the maximum number of shares that the Corporation is authorized to issue are deleted and replaced by the attached Schedule A.

## SCHEDULE A

### The classes and any maximum number of shares that the corporation is authorized to issue:

Unlimited number of New Common Shares; and  
Unlimited number of Redeemable Shares.

**I. The New Common Shares shall have attached thereto the following rights, privileges, restrictions and conditions:**

- (a) **Voting.** Each New Common Share shall entitle the holder thereof to one (1) vote at all meetings of the shareholders of the Corporation (except meetings at which only holders of another specified class of shares are entitled to vote pursuant to the provisions hereof or pursuant to the provisions of the *Canada Business Corporations Act* (hereinafter referred to as the "**Act**")).
- (b) **Dividends.** The holders of the New Common Shares shall be entitled to receive, as and when declared by the board of directors, dividends payable in money, property or by the issue of fully paid shares of the capital of the Corporation.
- (c) **Liquidation, etc.** In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or other distribution of property of the Corporation among shareholders for the purpose of winding up its affairs the holders of the New Common Shares shall be entitled to receive the remaining property of the Corporation after payment of all amounts owed to the holders of the Redeemable Shares (if any) on the liquidation, dissolution or winding-up of the Corporation.

**II. The Redeemable Shares shall have attached thereto the following rights, privileges, restrictions and conditions:**

- (a) **Non-Voting.** Subject to the provisions of the Act or as otherwise provided herein, the holders of the Redeemable Shares shall not be entitled to receive notice of, nor to attend or vote at, meetings of the shareholders of the Corporation.
- (b) **Dividends.** The holders of the Redeemable Shares shall not be entitled to receive dividends.
- (c) **Liquidation, etc.** In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or other distribution of property of the Corporation among shareholders for the purpose of winding up its affairs, the holders of the Redeemable Shares shall be entitled to receive an aggregate consideration (for all issued Redeemable Shares, in their totality) of \$100.00 (the "**Redemption Price**"), and shall not be entitled to share any further in the distribution of the property of the Corporation.
- (d) **Redemption by Corporation.** The total number of issued and outstanding Redeemable Shares are redeemable, at the discretion of the Corporation, on payment of the Redemption Price.
- (e) **Deemed Redemption.** By Order of the Superior Court of Quebec (*District of Montreal*) No. 500-11-058403-201 issued on January \_\_\_\_, 2021 approving a Proposal under the *Bankruptcy and Insolvency Act* (Canada), the issued Redeemable Shares are

deemed to have been redeemed on the Effective Date (as defined in the Proposal). Accordingly, the Redeemable Shares are deemed to be redeemed immediately after the issuance of the trustee's Certificate under the Proposal, with no further action or notice required to be sent to the holders of the Redeemable Shares, and the \$100.00 aggregate Redemption Price will be paid by the Corporation segregating it on its books and records and making it available to the then former holders of the Redeemable Shares upon request.

- (f) **No Change.** No change to any of the provisions of paragraphs II(a) to (e) or of this paragraph (e) shall have any force or effect until it has been approved by a majority of not less than two thirds (2/3) of the votes cast by the holders of the preferred shares, voting separately as a class at a meeting of such holders specially called for that purpose, or by a resolution in writing signed by all the holders of the preferred shares, in addition to any other approval required by the Act.

\* \* \*

