

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) WEDNESDAY, THE 24TH  
JUSTICE HAINEY ) DAY OF APRIL 2019



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., 9845488 CANADA INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(the "**Applicants**")

**EMPLOYEE HARDSHIP FUND TERM SHEET AMENDMENT ORDER**

**THIS MOTION** made by Ursel Phillips Fellows Hopkinson LLP, as Employee Representative Counsel (as defined in the Employee Representative Counsel Order granted by this Court on July 13, 2017), for an Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), in the ongoing CCAA proceedings of Sears Canada Inc. and its affiliates (the "**Sears Canada Entities**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of Employee Representative Counsel, the Affidavit of Erin Epp, affirmed March 11, 2019 (the "**Epp Affidavit**"), and on hearing the submissions of counsel for FTI Consulting Canada Inc., in its capacity as monitor (the "**Monitor**") and Employee Representative Counsel, and those other parties present, no one else appearing

although duly served as appears from the affidavit of service of Christien Lam sworn March 11, 2019,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Epp Affidavit, the Initial Order, the Employee Representative Counsel Order, and the Employee Hardship Fund Order.
3. **THIS COURT ORDERS** that the terms of the Employee Hardship Fund Term Sheet dated August 11, 2017, which is attached at Schedule "A" to the Employee Hardship Fund Order dated August 18, 2017, is amended to strike out paragraph 8.
4. **THIS COURT ORDERS** that for clarity, Appendix "A" to the Employee Hardship Fund Term Sheet, which is the Notice Respecting Hardship Payment Applications and the Eligibility Requirements and Procedure with Respect to Hardship Payment Application is also amended to strike out paragraph 5(a) thereto.
5. **THIS COURT ORDERS** that the effect of striking out paragraph 8 of the Employee Hardship Fund Term Sheet shall be that any payments made pursuant to the Employee Hardship Fund to any Employee of the Sears Canada Entities shall not be deducted from any payments on claims allowed pursuant to the Employee and Retiree Claims Procedure Order.
6. **THIS COURT ORDERS** that despite the removal of paragraph 8 of the Employee Hardship Fund Term Sheet, in no case shall any recipient of payments from the Employee Hardship Fund be required to return any payments received.
7. **THIS COURT ORDERS** that other than the removal of paragraph 8 of the Employee Hardship Fund Term Sheet and paragraph 5(a) of the Eligibility Requirements and Procedure with Respect to Hardship Payment Application, nothing in this Order shall affect the terms of the Employee Hardship Fund Term Sheet or the continued administration of the Employee Hardship Fund.

8. **THIS COURT ORDERS** that the amended Employee Hardship Fund Term Sheet attached as Schedule "A" to this Order is hereby approved (the "**Amended Employee Hardship Fund Term Sheet**").

9. **THIS COURT ORDERS** that the Sears Canada Entities, the Monitor, Employee Representative Counsel and the Employee Representatives are hereby authorized and directed to take all steps and do all acts necessary or desirable pursuant to and in accordance with the terms of the Amended Employee Hardship Fund Term Sheet.

10. **THIS COURT ORDERS** that the Sears Canada Entities, the Monitor, Employee Representative Counsel and the Employee Representatives shall incur no personal liability or obligation as a result of the performance of their duties in carrying out the provisions of the Amended Employee Hardship Fund Term Sheet or this Order, save and except for liability arising out of gross negligence or wilful misconduct.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Sears Canada Entities, the Monitor, Employee Representative Counsel and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Sears Canada Entities, Employee Representative Counsel, and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Sears Canada Entities, Employee Representative Counsel, and the Monitor and their respective agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

APR 25 2019

PER / PAR:

*um*

*Hainey J*

**SEARS CANADA / EMPLOYEE REPRESENTATIVES AND COUNSEL**

**AMENDED EMPLOYEE HARDSHIP FUND TERM SHEET**

Subject to the terms and conditions set out below, Ursel Phillips Fellows Hopkinson LLP, as employee representative counsel ("**Employee Representative Counsel**") and the Employee Representatives (as defined in the Employee Representative Counsel Order issued by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on July 13, 2017 in the proceedings (the "**CCAA Proceedings**") of Sears Canada Inc. ("**SCI**") and certain of its subsidiaries (collectively, and together with SCI, the "**Sears Canada Entities**") under the *Companies' Creditors Arrangement Act*) agree not to oppose: (i) the Key Employee Retention Plan (the "**KERP**") approved by the Court in the CCAA Proceedings pursuant to the Amended and Restated Initial Order dated June 22, 2017 (the "**Initial Order**"), and to withdraw with prejudice their responding motion record returnable July 13, 2017, including the Notice of Motion contained therein dated July 12, 2017, to the extent that it deals with the KERP; and (ii) the stay of payment of termination and severance to any former employees of the Sears Canada Entities.<sup>1</sup>

1. Creation of an Employee Hardship Fund      The Sears Canada Entities, in consultation with FTI Consulting Canada Inc. in its capacity as Court-appointed monitor of the Sears Canada Entities (the "**Monitor**") and Employee Representative Counsel, and with the approval of the Court, shall establish and fund the creation of an "Employee Hardship Fund", in accordance with the terms and conditions set out below.
2. Notice      Notice of the "Eligibility Criteria" and the "Application Process" set forth below shall be posted on the Monitor's website and the website of Employee Representative Counsel, in the form attached as Appendix "A" to this Term Sheet, subject to any modifications approved by the Court.
3. Eligibility Criteria      A former employee of any of the Sears Canada Entities (including, for greater certainty, an employee of any of the Sears Canada Entities whose employment is terminated after the date of this Term Sheet) whose entitlement to receive a payment from a Sears Canada Entity has been stayed or suspended pursuant to the CCAA Proceedings may be eligible to receive hardship payments from the Employee Hardship Fund (the "**Hardship Payments**") if:
  - (a) he or she is resident in Canada;
  - (b) he or she has no available source of income, being all monies receivable by the former employee, including, without limitation, employment income such as wages, salary or bonuses, consulting income, or pension income, or unless otherwise determined by the Monitor or, if applicable, the Hardship Committee (as defined below), disability payments or income replacement payments (other than employment insurance ("**EI**") and limited disability payments) (collectively, "**Income**"), as of the date of their application to the Employee

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<sup>1</sup> Notwithstanding (ii), Employee Representative Counsel shall be permitted, with the consent of the Sears Canada Entities, to pursue recoveries for former employees of the Sears Canada Entities under the *Wage Earner Protection Program Act*, and nothing in this Term Sheet shall prevent Employee Representative Counsel and/or individual active and former employees of the Sears Canada Entities from making claims for termination and severance in any claims process which may be instituted in the CCAA Proceedings.

Hardship Fund;

- (c) he or she has no reasonable expectation of being in receipt of Income during the "Application Period" set forth below; and
- (d) he or she:
  - (i) is unable to work due to illness and is incurring costs in excess of 20% of his or her limited disability payments where he or she has no access to any program which would cover such costs, or is incurring costs in excess of 20% of his or her EI, such costs, in either case, being incurred as a result of treatment for illness or healthcare costs, or as a result of the illness of a family member who is dependent on the former employee for support; or
  - (ii) is not receiving EI as a result of ineligibility for EI or exhaustion of EI benefits, and demonstrates some other significant hardship in dealing with financial obligations.

In all cases, the former employee must demonstrate urgent or immediate hardship in dealing with their financial obligations and funds must not be available to such former employee from any alternative sources to satisfy the obligations for which the Employee Hardship Fund has been established.

4. Application Process

In order to receive Hardship Payments from the Employee Hardship Fund, a former employee shall be required to complete an application form in the form attached as Appendix "B" to this Term Sheet, subject to any modifications approved by the Court (the "**Application Form**"), and shall be required to submit such Application Form to the Monitor.

The Monitor shall assess completed applications within 14 calendar days and make an initial determination to approve or reject each such application. If approved, the first Hardship Payment will proceed within seven (7) business days following the date of such approval, subject to the payment parameters set out below. If not approved, the application is to be reviewed by an informal committee (the "**Hardship Committee**") and the applicant will be given the right to be heard by such committee. The Hardship Committee shall be composed of one appointee of the Sears Canada Entities, one appointee of Employee Representative Counsel and one appointee of the Monitor, and shall convene meetings (whether in person, by phone or other means) as necessary, but no more than weekly, to review and determine any applications not approved by the Monitor. All decisions of the Hardship Committee shall be final and binding and there shall be no right of appeal, review or recourse to the Court from any of the Hardship Committee's decisions.

5. Payment Parameters

Any successful applicant may be approved for a maximum payment of up to eight (8) weeks' of the applicant's regular wages (as determined by applicable employment standards legislation) up to a

maximum weekly amount of \$1,200 per week, payable in monthly installments. The Hardship Committee shall have the discretion to approve additional amounts in cases of medical and other emergencies in an amount up to \$2,500.

In determining the amount to be paid, the Monitor and, if applicable, the Hardship Committee, shall consider the amount payable to the applicant from a Sears Canada Entity which has been stayed or suspended under the CCAA Proceedings (the "**Stayed Amount Owing**"). Payment to an applicant shall only exceed the Stayed Amount Owing in exceptional circumstances.

All Hardship Payments are subject to all applicable tax and other withholdings, which shall not be incremental obligations of the Sears Canada Entities.

6. Maximum Employee Hardship Fund Amount

The Sears Canada Entities shall contribute to the Employee Hardship Fund an aggregate, maximum amount of no more than \$500,000, as follows:

- (a) upon Court approval of this Term Sheet<sup>2</sup>, \$300,000 from otherwise earned but foregone executive payment entitlements under the KERP; and
- (b) following the second installment payment date under the KERP, up to \$200,000 from otherwise earned but foregone executive payment entitlements under the KERP.

No additional contributions to the Employee Hardship Fund shall be made by the Sears Canada Entities for the duration of the CCAA Proceedings without further order of the Court and unless: (i) the DIP Facilities (as defined in the Initial Order) have been repaid in full and have been terminated; (ii) the DIP ABL Agent and the DIP Term Agent (as each such term is defined in the Initial Order) have consented to such contribution; or (iii) such contribution is made from further otherwise earned but foregone payment entitlements to the first installment payment and/or the second installment payment under the KERP. For greater certainty, there is no obligation to increase the Maximum Employee Hardship Fund Amount without Court approval, even if (i), (ii) or (iii) above occur.

Any amounts remaining in the Employee Hardship Fund upon the termination of the CCAA Proceedings shall be forthwith returned to the Sears Canada Entities with no further claims thereon.

7. Application Period

From the date of Court approval of the Employee Hardship Fund to October 4, 2017, or in the event of the extension of the stay of proceedings, such further date as determined by the Court.

8. ~~Terms and Any Hardship Payments made to any former employee of the Sears~~

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<sup>2</sup> The order of the Court approving this Term Sheet shall provide that any foregone executive payment entitlements under the KERP directed to fund the Employee Hardship Fund shall correspondingly reduce the KERP entitlements and the KERP Priority Charge (as defined in the Initial Order).

Conditions

~~Canada Entities shall be deducted from any payments on claims that may be allowed in any claims process conducted by the Sears Canada Entities in the CCAA Proceedings or any related bankruptcy, receivership or insolvency proceeding, but in no case shall any recipient be required to return any Hardship Payments received.~~

9.8. Reporting

The Monitor shall report to the Court on or before October 4, 2017, with respect to the processing and administration of Hardship Payment applications.

**Appendix "A"**

Court File No.: CV-17-11846-00CL

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC.,  
CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT  
SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA  
INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO  
LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

**NOTICE RESPECTING HARDSHIP PAYMENT APPLICATIONS**

On August ●, 2017, the Honourable Mr. Justice Hainey approved a process for former employees of Sears Canada Inc., Corbeil Électrique Inc., S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs Inc., Initium Trading and Sourcing Corp., Sears Floor Covering Centres Inc., 173470 Canada Inc., 2497089 Ontario Inc., 6988741 Canada Inc., 10011711 Canada Inc., 1592580 Ontario Limited, 955041 Alberta Ltd., 4201531 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc. and SearsConnect, who are experiencing financial hardship to apply to receive payment from the Employee Hardship Fund. The eligibility requirements and application process that have been approved by the Court are attached to this notice.



## Eligibility Requirements and Procedure with Respect to Hardship Payment Application

1. **Eligibility** – A former employee of any of the Sears Canada Entities<sup>1</sup> whose entitlement to receive a payment from a Sears Canada Entity has been stayed or suspended pursuant to the proceedings of the Sears Canada Entities under the *Companies' Creditors Arrangement Act* (the "**CCA Proceedings**") may be eligible to receive hardship payments from the Employee Hardship Fund (the "**Hardship Payments**") if:
  - (a) he or she is resident in Canada;
  - (b) he or she has no available source of income, being all monies receivable by the former employee, including, without limitation, employment income such as wages, salary or bonuses, consulting income, or pension income, or unless otherwise determined by the Monitor or, if applicable, the Hardship Committee (as defined below), disability payments or income replacement payments (other than employment insurance ("**EI**") and limited disability payments) (collectively, "**Income**"), as of the date of their application to the Employee Hardship Fund;
  - (c) he or she has no reasonable expectation of being in receipt of Income during the "Application Period" set forth below; and
  - (d) he or she:
    - (i) is unable to work due to illness and is incurring costs in excess of 20% of his or her limited disability payments where he or she has no access to any program which would cover such costs, or is incurring costs in excess of 20% of his or her EI, such costs, in either case, being incurred as a result of treatment for illness or healthcare costs, or as a result of the illness of a family member who is dependent on the former employee for support; or
    - (ii) is not receiving EI as a result of ineligibility for EI or exhaustion of EI benefits, and demonstrates some other significant hardship in dealing with financial obligations.

In all cases, the former employee must demonstrate urgent or immediate hardship in dealing with their financial obligations and funds must not be available to such former employee from any alternative sources to satisfy the obligations for which the Employee Hardship Fund has been established.

2. **Application Process** – In order to receive Hardship Payments from the Employee Hardship Fund, a former employee shall be required to complete the application form for hardship payments (the "**Application Form**") found on the websites of FTI Consulting Canada Inc. in its capacity as Court-appointed monitor of the Sears Canada Entities (the "**Monitor**") or Ursel Phillips Fellows Hopkinson LLP, as employee representative counsel ("**Employee Representative Counsel**"), and shall be required to submit the Application Form to the Monitor at the address set forth therein.

The Monitor shall assess completed applications within 14 calendar days and make an initial determination to approve or reject each such application. If approved, the first Hardship Payment will proceed within seven (7) business days following the date of such approval, subject to the

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<sup>1</sup> The "Sears Canada Entities" are Sears Canada Inc., Corbeil Électrique Inc., S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs Inc., Initium Trading and Sourcing Corp., Sears Floor Covering Centres Inc., 173470 Canada Inc., 2497089 Ontario Inc., 6988741 Canada Inc., 10011711 Canada Inc., 1592580 Ontario Limited, 955041 Alberta Ltd., 4201531 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc. and SearsConnect.

**Appendix "B"**

Court File No.: CV-17-11846-00CL

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

**APPLICATION FORM FOR HARDSHIP PAYMENTS**

**APPLICANT INFORMATION**

1. Name: \_\_\_\_\_
2. Address: \_\_\_\_\_  
\_\_\_\_\_
3. Telephone Number(s): \_\_\_\_\_
4. Email Address: \_\_\_\_\_
5. Social Insurance Number: \_\_\_\_\_
6. Sears Canada Employee Number: \_\_\_\_\_

**SEARS CANADA EMPLOYMENT INFORMATION**

1. Date Employment with Sears Canada Began: \_\_\_\_\_
2. Date Employment with Sears Canada Terminated: \_\_\_\_\_
3. Province or Region employed in: \_\_\_\_\_
4. Store or Head Office: \_\_\_\_\_ Store No.: \_\_\_\_\_
5. Position: \_\_\_\_\_
6. Gross Monthly Income: \$ \_\_\_\_\_
7. If any, amount of severance received: \_\_\_\_\_
8. If eligible, date of eligibility to receive Sears Canada pension: \_\_\_\_\_

**CURRENT SOURCES OF INCOME**

1. Employment Insurance:

- a. Amount: \_\_\_\_\_
- b. Actual/Expected End Date: \_\_\_\_\_
- c. If no EI, or EI terminated, reason(s):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Social Assistance:

- a. Type of Social Assistance: \_\_\_\_\_
- b. Commencement Date: \_\_\_\_\_
- c. Amount: \_\_\_\_\_
- d. Actual/Expected End Date:  
\_\_\_\_\_
- e. If social assistance is being terminated, reason(s) why:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Other Sources of Income (including LTD, other disability payments, other employment, pension, workers' compensation, etc.):

- \_\_\_\_\_
- a. Amount: \_\_\_\_\_
  - b. Actual/Expected End Date: \_\_\_\_\_

4. Provincial Drug Benefit Programs:

- a. Have you applied for, or been granted, any provincial drug benefit program? If so, which program?  
\_\_\_\_\_  
\_\_\_\_\_
- b. What are the conditions of your receiving this benefit?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- c. Why does this benefit not cover your needs?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Other Extended Health and Dental Benefits:

a. Do you have access to other extended health and dental benefits through a family member (i.e. a spouse)?

\_\_\_\_\_

b. If so, please explain how those benefits do not cover your needs:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Other Sources of Income:

a. Gross yearly income of your spouse? \_\_\_\_\_

**PERSONAL CIRCUMSTANCES REQUIRING HARDSHIP PAYMENT**

Medical expenses for self or dependent (including nature of expense, amount, whether can be reimbursed from another source):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other reason for immediate or urgent need for funds (for example, risk of loss of housing in the next 30 days):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify the contents hereof to be true and that I have obtained all necessary consents for the disclosures set forth herein.

\_\_\_\_\_

Witness

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

**Please deliver your completed application form to the Monitor at the following address:**

FTI Consulting Canada Inc., in its capacity as Court Appointed Monitor of Sears Canada Inc. et al.  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M4K 1G8  
Fax: (416) 649-8101  
Email: searscanada@fticonsulting.com

**SEARS CANADA / EMPLOYEE REPRESENTATIVES AND COUNSEL**

**AMENDED EMPLOYEE HARDSHIP FUND TERM SHEET**

Subject to the terms and conditions set out below, Ursel Phillips Fellows Hopkinson LLP, as employee representative counsel ("**Employee Representative Counsel**") and the Employee Representatives (as defined in the Employee Representative Counsel Order issued by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on July 13, 2017 in the proceedings (the "**CCAA Proceedings**") of Sears Canada Inc. ("**SCI**") and certain of its subsidiaries (collectively, and together with SCI, the "**Sears Canada Entities**") under the *Companies' Creditors Arrangement Act*) agree not to oppose: (i) the Key Employee Retention Plan (the "**KERP**") approved by the Court in the CCAA Proceedings pursuant to the Amended and Restated Initial Order dated June 22, 2017 (the "**Initial Order**"), and to withdraw with prejudice their responding motion record returnable July 13, 2017, including the Notice of Motion contained therein dated July 12, 2017, to the extent that it deals with the KERP; and (ii) the stay of payment of termination and severance to any former employees of the Sears Canada Entities.<sup>1</sup>

1. Creation of an Employee Hardship Fund      The Sears Canada Entities, in consultation with FTI Consulting Canada Inc. in its capacity as Court-appointed monitor of the Sears Canada Entities (the "**Monitor**") and Employee Representative Counsel, and with the approval of the Court, shall establish and fund the creation of an "Employee Hardship Fund", in accordance with the terms and conditions set out below.
2. Notice      Notice of the "Eligibility Criteria" and the "Application Process" set forth below shall be posted on the Monitor's website and the website of Employee Representative Counsel, in the form attached as Appendix "A" to this Term Sheet, subject to any modifications approved by the Court.
3. Eligibility Criteria      A former employee of any of the Sears Canada Entities (including, for greater certainty, an employee of any of the Sears Canada Entities whose employment is terminated after the date of this Term Sheet) whose entitlement to receive a payment from a Sears Canada Entity has been stayed or suspended pursuant to the CCAA Proceedings may be eligible to receive hardship payments from the Employee Hardship Fund (the "**Hardship Payments**") if:
  - (a) he or she is resident in Canada;
  - (b) he or she has no available source of income, being all monies receivable by the former employee, including, without limitation, employment income such as wages, salary or bonuses, consulting income, or pension income, or unless otherwise determined by the Monitor or, if applicable, the Hardship Committee (as defined below), disability payments or income replacement payments (other than employment insurance ("**EI**") and limited disability payments) (collectively, "**Income**"), as of the date of their application to the Employee

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<sup>1</sup> Notwithstanding (ii), Employee Representative Counsel shall be permitted, with the consent of the Sears Canada Entities, to pursue recoveries for former employees of the Sears Canada Entities under the *Wage Earner Protection Program Act*, and nothing in this Term Sheet shall prevent Employee Representative Counsel and/or individual active and former employees of the Sears Canada Entities from making claims for termination and severance in any claims process which may be instituted in the CCAA Proceedings.

Hardship Fund;

- (c) he or she has no reasonable expectation of being in receipt of Income during the "Application Period" set forth below; and
- (d) he or she:
  - (i) is unable to work due to illness and is incurring costs in excess of 20% of his or her limited disability payments where he or she has no access to any program which would cover such costs, or is incurring costs in excess of 20% of his or her EI, such costs, in either case, being incurred as a result of treatment for illness or healthcare costs, or as a result of the illness of a family member who is dependent on the former employee for support; or
  - (ii) is not receiving EI as a result of ineligibility for EI or exhaustion of EI benefits, and demonstrates some other significant hardship in dealing with financial obligations.

In all cases, the former employee must demonstrate urgent or immediate hardship in dealing with their financial obligations and funds must not be available to such former employee from any alternative sources to satisfy the obligations for which the Employee Hardship Fund has been established.

#### 4. Application Process

In order to receive Hardship Payments from the Employee Hardship Fund, a former employee shall be required to complete an application form in the form attached as Appendix "B" to this Term Sheet, subject to any modifications approved by the Court (the "**Application Form**"), and shall be required to submit such Application Form to the Monitor.

The Monitor shall assess completed applications within 14 calendar days and make an initial determination to approve or reject each such application. If approved, the first Hardship Payment will proceed within seven (7) business days following the date of such approval, subject to the payment parameters set out below. If not approved, the application is to be reviewed by an informal committee (the "**Hardship Committee**") and the applicant will be given the right to be heard by such committee. The Hardship Committee shall be composed of one appointee of the Sears Canada Entities, one appointee of Employee Representative Counsel and one appointee of the Monitor, and shall convene meetings (whether in person, by phone or other means) as necessary, but no more than weekly, to review and determine any applications not approved by the Monitor. All decisions of the Hardship Committee shall be final and binding and there shall be no right of appeal, review or recourse to the Court from any of the Hardship Committee's decisions.

#### 5. Payment Parameters

Any successful applicant may be approved for a maximum payment of up to eight (8) weeks' of the applicant's regular wages (as determined by applicable employment standards legislation) up to a

## Eligibility Requirements and Procedure with Respect to Hardship Payment Application

1. **Eligibility** – A former employee of any of the Sears Canada Entities<sup>1</sup> whose entitlement to receive a payment from a Sears Canada Entity has been stayed or suspended pursuant to the proceedings of the Sears Canada Entities under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**") may be eligible to receive hardship payments from the Employee Hardship Fund (the "**Hardship Payments**") if:
  - (a) he or she is resident in Canada;
  - (b) he or she has no available source of income, being all monies receivable by the former employee, including, without limitation, employment income such as wages, salary or bonuses, consulting income, or pension income, or unless otherwise determined by the Monitor or, if applicable, the Hardship Committee (as defined below), disability payments or income replacement payments (other than employment insurance ("**EI**") and limited disability payments) (collectively, "**Income**"), as of the date of their application to the Employee Hardship Fund;
  - (c) he or she has no reasonable expectation of being in receipt of Income during the "Application Period" set forth below; and
  - (d) he or she:
    - (i) is unable to work due to illness and is incurring costs in excess of 20% of his or her limited disability payments where he or she has no access to any program which would cover such costs, or is incurring costs in excess of 20% of his or her EI, such costs, in either case, being incurred as a result of treatment for illness or healthcare costs, or as a result of the illness of a family member who is dependent on the former employee for support; or
    - (ii) is not receiving EI as a result of ineligibility for EI or exhaustion of EI benefits, and demonstrates some other significant hardship in dealing with financial obligations.

In all cases, the former employee must demonstrate urgent or immediate hardship in dealing with their financial obligations and funds must not be available to such former employee from any alternative sources to satisfy the obligations for which the Employee Hardship Fund has been established.

2. **Application Process** – In order to receive Hardship Payments from the Employee Hardship Fund, a former employee shall be required to complete the application form for hardship payments (the "**Application Form**") found on the websites of FTI Consulting Canada Inc. in its capacity as Court-appointed monitor of the Sears Canada Entities (the "**Monitor**") or Ursel Phillips Fellows Hopkinson LLP, as employee representative counsel ("**Employee Representative Counsel**"), and shall be required to submit the Application Form to the Monitor at the address set forth therein.

The Monitor shall assess completed applications within 14 calendar days and make an initial determination to approve or reject each such application. If approved, the first Hardship Payment will proceed within seven (7) business days following the date of such approval, subject to the

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<sup>1</sup> The "Sears Canada Entities" are Sears Canada Inc., Corbeil Électrique Inc., S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs Inc., Initium Trading and Sourcing Corp., Sears Floor Covering Centres Inc., 173470 Canada Inc., 2497089 Ontario Inc., 6988741 Canada Inc., 10011711 Canada Inc., 1592580 Ontario Limited, 955041 Alberta Ltd., 4201531 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc. and SearsConnect.

payment parameters set out below. If not approved, the application is to be reviewed by an informal committee (the "**Hardship Committee**") and the applicant will be given the right to be heard by such committee. The Hardship Committee shall be composed of one appointee of the Sears Canada Entities, one appointee of Employee Representative Counsel and one appointee of the Monitor, and shall convene meetings (whether in person, by phone or other means) as necessary, but no more than weekly, to review and determine any applications not approved by the Monitor. All decisions of the Hardship Committee shall be final and binding and there shall be no right of appeal, review or recourse to the Ontario Superior Court of Justice (Commercial List) (the "**Court**") from any of the Hardship Committee's decisions.

3. **Payment Parameters** – Any successful applicant may be approved for a maximum payment of up to eight (8) weeks' of the applicant's regular wages (as determined by applicable employment standards legislation) up to a maximum weekly amount of \$1,200 per week, payable in monthly installments. The Hardship Committee shall have the discretion to approve additional amounts in cases of medical and other emergencies in an amount up to \$2,500.

In determining the amount to be paid, the Monitor and, if applicable, the Hardship Committee, shall consider the amount payable to the applicant from a Sears Canada Entity which has been stayed or suspended under the CCAA Proceedings (the "**Stayed Amount Owing**"). Payment to an applicant shall only exceed the Stayed Amount Owing in exceptional circumstances.

All Hardship Payments are subject to all applicable tax and other withholdings, which shall not be incremental obligations of the Sears Canada Entities.

4. **Application Period** – From the date of Court approval of the Employee Hardship Fund to October 4, 2017, or in the event of the extension of the stay of proceedings, such further date as determined by the Court.

5. **Miscellaneous**

- (a) The Sears Canada Entities shall contribute to the Employee Hardship Fund an aggregate, maximum amount of no more than \$500,000, as follows:
  - (i) upon Court approval of the Employee Hardship Fund, \$300,000 from otherwise earned but foregone executive payment entitlements under the Key Employee Retention Plan (the "**KERP**") approved by the Court in the CCAA Proceedings; and
  - (ii) following the second installment payment date under the KERP, up to \$200,000 from otherwise earned but foregone executive payment entitlements under the KERP.



Appendix "B"

Court File No.: CV-17-11846-00CL

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

**APPLICATION FORM FOR HARDSHIP PAYMENTS**

**APPLICANT INFORMATION**

1. Name: \_\_\_\_\_
2. Address: \_\_\_\_\_  
\_\_\_\_\_
3. Telephone Number(s): \_\_\_\_\_
4. Email Address: \_\_\_\_\_
5. Social Insurance Number: \_\_\_\_\_
6. Sears Canada Employee Number: \_\_\_\_\_

**SEARS CANADA EMPLOYMENT INFORMATION**

1. Date Employment with Sears Canada Began: \_\_\_\_\_
2. Date Employment with Sears Canada Terminated: \_\_\_\_\_
3. Province or Region employed in: \_\_\_\_\_
4. Store or Head Office: \_\_\_\_\_ Store No.: \_\_\_\_\_
5. Position: \_\_\_\_\_
6. Gross Monthly Income: \$ \_\_\_\_\_
7. If any, amount of severance received: \_\_\_\_\_
8. If eligible, date of eligibility to receive Sears Canada pension: \_\_\_\_\_

**CURRENT SOURCES OF INCOME**

1. Employment Insurance:

- a. Amount: \_\_\_\_\_
- b. Actual/Expected End Date: \_\_\_\_\_
- c. If no EI, or EI terminated, reason(s):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Social Assistance:

- a. Type of Social Assistance: \_\_\_\_\_
- b. Commencement Date: \_\_\_\_\_
- c. Amount: \_\_\_\_\_
- d. Actual/Expected End Date:  
\_\_\_\_\_
- e. If social assistance is being terminated, reason(s) why:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Other Sources of Income (including LTD, other disability payments, other employment, pension, workers' compensation, etc.):

- \_\_\_\_\_
- a. Amount: \_\_\_\_\_
  - b. Actual/Expected End Date: \_\_\_\_\_

4. Provincial Drug Benefit Programs:

- a. Have you applied for, or been granted, any provincial drug benefit program? If so, which program?  
\_\_\_\_\_  
\_\_\_\_\_
- b. What are the conditions of your receiving this benefit?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- c. Why does this benefit not cover your needs?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Other Extended Health and Dental Benefits:

a. Do you have access to other extended health and dental benefits through a family member (i.e. a spouse)?

\_\_\_\_\_

b. If so, please explain how those benefits do not cover your needs:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Other Sources of Income:

a. Gross yearly income of your spouse? \_\_\_\_\_

**PERSONAL CIRCUMSTANCES REQUIRING HARDSHIP PAYMENT**

Medical expenses for self or dependent (including nature of expense, amount, whether can be reimbursed from another source):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other reason for immediate or urgent need for funds (for example, risk of loss of housing in the next 30 days):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify the contents hereof to be true and that I have obtained all necessary consents for the disclosures set forth herein.

\_\_\_\_\_

Witness

Signature

Date

**Please deliver your completed application form to the Monitor at the following address:**

FTI Consulting Canada Inc., in its capacity as Court Appointed Monitor of Sears Canada Inc. et al.  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M4K 1G8  
Fax: (416) 649-8101  
Email: searscanada@fticonsulting.com

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985,  
c. C-36, AS AMENDED**

**Court File No.: CV-17-11846-00CL**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA  
INC., ET AL.**

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

Proceeding commenced at TORONTO

**ORDER**

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