

Court File No. _____

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

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

BETWEEN:

SKILLSOFT CANADA, LTD.

APPLICANT

-and-

SKILLSOFT CORPORATION, AMBER HOLDING INC., SUMTOTAL
SYSTEMS LLC, MINDLEADERS, INC., ACCERO, INC., CYBERSHIFT
HOLDINGS, INC., CYBERSHIFT, INC. (U.S.), POINTWELL LIMITED, SSI
INVESTMENTS I LIMITED, SSI INVESTMENTS II LIMITED, SSI
INVESTMENTS III LIMITED, SKILLSOFT LIMITED, SKILLSOFT IRELAND
LIMITED, THIRDFORCE GROUP LIMITED, SKILLSOFT U.K. LIMITED AND
SKILLSOFT CANADA, LTD.

RESPONDENTS

APPLICATION OF SKILLSOFT CANADA, LTD. UNDER PART IV OF
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

FIRST REPORT OF THE PROPOSED INFORMATION
OFFICER RICHTER ADVISORY GROUP INC.

JUNE 17, 2020

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I. INTRODUCTION

1. On June 14, 2020 (the "**Petition Date**"), Skillsoft Corporation, Amber Holding Inc., SumTotal Systems LLC, MindLeaders, Inc., Accero Inc., CyberShift Holdings Inc., CyberShift Inc. (U.S.), Pointwell Limited, SSI Investments I Limited, SSI Investments II Limited, SSI Investments III Limited, Skillsoft Limited, Skillsoft Ireland Limited, ThirdForce Group Limited, Skillsoft U.K. Limited (collectively, the "**US and Foreign Debtors**") and Skillsoft Canada, Ltd. ("**Skillsoft Canada**") and together with the US and Foreign Debtors, the "**Skillsoft Group**" or the "**Debtors**" or the "**Company**"), commenced voluntary reorganization proceedings (the "**Chapter 11 Proceedings**") in the United States Bankruptcy Court for the District of Delaware (the "**US Court**") by each filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. 101-1532 (the "**US Bankruptcy Code**").
2. On the same Petition Date, the Debtors filed various motions for orders (the "**First Day Motions**" and the orders granted by the US Court in respect thereof, the "**First Day Orders**") in the Chapter 11 Proceedings to permit the Debtors to advance their reorganization. The First Day Orders include an order authorizing Skillsoft Canada to act as the foreign representative (in such capacity, the "**Foreign Representative**") of the Debtors for the within Canadian recognition proceedings (the "**Foreign Representative Order**").
3. On June 16, 2020, the US Court granted the Foreign Representative Order and other First Day Orders (as described below).
4. On June 18, 2020, Skillsoft Canada, in its capacity as Foreign Representative, commenced an application before the Court of Queen's Bench of New Brunswick (Trial Division) (the "**Canadian Court**") pursuant to Part IV of the *Companies' Creditors Arrangement Act* (R.S.C. 1985, c. C-36, as amended) (the "**CCAA**") in order to obtain the following orders (the "**CCAA Recognition Proceedings**"):
 - a) an initial recognition order (the "**Initial Recognition Order**"), *inter alia*: (i) declaring that Skillsoft Canada is a "foreign representative" as defined in section 45 of the CCAA; (ii) declaring that the Chapter 11 Proceedings are recognized as a "foreign main proceeding" under the CCAA; and (iii) granting a stay of proceedings against the Skillsoft Group in Canada; and
 - b) a supplemental order (the "**Supplemental Order**"), pursuant to section 49 of the CCAA, *inter alia*: (i) recognizing and giving full force and effect in Canada to certain of the First Day Orders; (ii) appointing Richter Advisory Group Inc. ("**Richter**" or the "**Proposed Information Officer**") as the information officer (the "**Information Officer**") in respect of these proceedings; (iii) staying any proceeding, rights or remedies against or in respect of the Skillsoft Group, the business and property of the Skillsoft Group, the directors and officers of the Skillsoft Group in Canada, and the Information Officer; (iv) restraining the right of any person or entity to, among other things, discontinue or terminate any supply of products or services required by the Skillsoft Group in Canada; (v) granting a super-priority charge over the Debtors' property in Canada in favor of the Information Officer and its counsel,

as security for their professional fees and disbursements incurred in respect of these proceedings, up to a maximum amount of CAD\$150,000 (the “**Administration Charge**”); and (vi) granting a super-priority charge over the Debtors’ property in Canada to secure obligations of the Skillsoft Group, including Skillsoft Canada, under the DIP Facility (as hereinafter defined) (the “**DIP Lenders’ Charge**”).

5. Other than the CCAA Recognition Proceedings and the Chapter 11 Proceedings (collectively, the “**Restructuring Proceedings**”), there are currently no other foreign proceedings in respect of the Skillsoft Group of which the Proposed Information Officer is aware.
6. As further explained below, the primary purpose of the Chapter 11 Proceedings is to implement a pre-negotiated, comprehensive consensual restructuring that will substantially delever the Debtors by reducing their balance sheet liabilities from approximately \$2.1 billion in funded debt to approximately \$585 million in funded debt upon emergence.

II. PURPOSE OF REPORT

7. The purpose of this report of the Proposed Information Officer (the “**Pre-Filing Report**”) is to assist the Canadian Court in considering the Foreign Representative’s request for the Initial Recognition Order and the Supplemental Order, and to provide the Canadian Court with certain background information concerning the Skillsoft Group, including:
 - a) Terms of reference;
 - b) Richter’s qualifications to act as Information Officer;
 - c) Skillsoft Group’s business and operations;
 - d) Skillsoft Canada;
 - e) The Debtors’ centre of main interest;
 - f) The events leading up to the Chapter 11 Proceedings and the CCAA Recognition Proceedings;
 - g) The Reorganization transaction;
 - h) The First Day Orders of the US Court for which recognition is sought;
 - i) The proposed Canadian Court-ordered charges;
 - j) The proposed initial activities of the Proposed Information Officer; and
 - k) The Proposed Information Officer’s recommendations.

III. TERMS OF REFERENCE

8. In preparing this Pre-Filing Report, the Proposed Information Officer has relied solely on information and documents provided by the Debtors and their advisors, including unaudited financial information, declarations and affidavits of the Debtors’ executives and other information provided in the Chapter 11 Proceedings (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in the Pre-Filing Report, Richter has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Richter has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountant of Canada Handbook* and, as such, Richter expresses no opinion or other form of assurance contemplated under GAAS

in respect of the Information.

9. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars, which is the Debtors' common reporting currency.
10. Capitalized terms not otherwise defined herein are as defined in the application materials, including the declarations of John Frederick Chief Administrative Officer of the Debtors in support of Debtors' Chapter 11 Proceedings and First Day Motions, dated June 14, 2020 and June 15, 2020 (the "**Frederick US Declarations**") the affidavit of John Frederick, sworn June 17, 2020 (the "**Frederick Cdn Affidavit**" and together with the Frederick US Declarations the "**Frederick Affidavits**") and the declaration of Christopher A. Wilson in support of the US DIP Motion¹ (the "**Wilson US Declaration**"), each as filed in support of the Foreign Representative's application. This Pre-Filing Report should be read in conjunction with the Frederick Affidavits and the Wilson US Declaration, as certain information contained therein has not been included herein in order to avoid unnecessary duplication.

IV. RICHTER'S QUALIFICATION TO ACT AS INFORMATION OFFICER

11. Richter has significant experience in connection with proceedings under the CCAA, including acting as monitor in plenary CCAA proceedings or information officer under Part IV of the CCAA in a wide variety of cases.
12. Andrew Adessky and Olivier Benchaya, the individuals at Richter with primary carriage of this matter, are certified Chartered Insolvency and Restructuring Professionals and Licensed Insolvency Trustees. Further, Messrs. Adessky and Benchaya have acted in cross-border restructurings and CCAA matters of a similar nature in Canada.
13. Richter has consented to act as Information Officer should the Canadian Court approve the requested Supplemental Order. A copy of Richter's consent to act as Information Officer is attached as **Appendix "A"**.

V. SKILLSOFT GROUP'S BUSINESS AND OPERATIONS

Corporate Overview and Organizational Structure

14. The Proposed Information Officer understands that the Company is a global leader and innovator in the corporate learning market, providing a single solution to meet all learning requirements of organizations across the globe.
15. The Company's North American headquarters are located in Nashua, New Hampshire. It operates in eleven (11) countries and has a total of approximately 2,200 employees worldwide. Skillsoft Canada is the only Debtor incorporated in Canada.

¹ The term "US DIP Motion" refers to *Motion of Debtors for Entry of Orders (I) Authorizing Debtors to (A) Obtain Postpetition Senior Secured Superpriority Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Granting Liens and Superpriority Claims, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* filed by the Applicant before the US Bankruptcy Court.

16. The Company was founded in 1989, as an information technology and business skills courseware company ultimately changing its legal name to SmartForce in late 1998. Skillsoft Corporation was founded in 1998 and merged with SmartForce in 2002 (SmartForce changed its name to Skillsoft PLC). The Company continued its growth through various mergers and acquisitions.
17. The Company operates three systems that support learning, performance and success for its corporate customers and their users:
 - a) **Skillsoft** – a business that designs and updates an extensive database of learning content, including courses, videos, books and other learning assets.
 - b) **Percipio** – an intelligent learning experience platform designed to engage modern learners via consumer-led experience to accelerate learning.
 - c) **SumTotal** – a talent development technology platform that supports an organization’s talent acquisition, learning management and talent management.
18. An abridged organizational chart setting out the corporate structure of the Skillsoft Group is attached as Exhibit “F” to the Frederick Cdn Affidavit. The Debtors are incorporated in the United States, Canada, the Republic of Ireland or in the United Kingdom.
19. Each member of the Skillsoft Group’s incorporating jurisdiction and registered office location is set out below:

Debtor	Jurisdiction/Incorporation	Registered Office
Skillsoft Corporation	United States - Delaware	Nashua, New Hampshire
Amber Holding Inc.	United States - Delaware	Nashua, New Hampshire
Sumtotal Systems LLC	United States - Delaware	Nashua, New Hampshire
Mindleaders, Inc.	United States - Delaware	Nashua, New Hampshire
Accero, Inc.	United States - Delaware	Nashua, New Hampshire
Cybershift Holdings, Inc.	United States - Delaware	Nashua, New Hampshire
Cybershift, Inc. (U.S.)	United States - NY	Nashua, New Hampshire
Pointwell Limited	Ireland	Dublin, Ireland
SSI Investments I Limited	Ireland	Dublin, Ireland
SSI Investments II Limited	Ireland	Dublin, Ireland
SSI Investments III Limited	Ireland	Dublin, Ireland
Skillsoft Limited	Ireland	Dublin, Ireland
Skillsoft Ireland Limited	Ireland	Dublin, Ireland
Thirdforce Group Limited	Ireland	Dublin, Ireland
Skillsoft U.K. Limited	United Kingdom	Bracknell, UK
Skillsoft Canada, Ltd	Canada - New Brunswick	Fredericton, NB

Capital Structure – Debt Obligations

20. The Debtors' consolidated long-term debt obligations totaled approximately \$2.1 billion as at the Petition Date and are outlined in the below table and in the paragraphs that follow:

Funded Debt	Principal Amount Outstanding (in \$M)
First Lien Term Loan Facility	1,290
First Lien Revolving Facility	80
Second Lien Term Loan Facility	670
AR Facility	68
Total	<u>2,108</u>

First Lien Term Loan Facility

21. As noted in the Frederick Affidavits, on April 28, 2014, a certain First Lien Credit Agreement (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**First Lien Credit Agreement**") was entered into among certain of the Debtors, including Skillsoft Canada, and certain of the Company's affiliates, as borrowers (the "**First Lien Borrowers**"), and various lenders (the "**First Lien Lenders**"), pursuant to which the First Lien Lenders agreed to provide the First Lien Borrowers with the First Lien Term Loan Facility and the First Lien Revolving Credit Facility. Wilmington Savings Fund Society, FSB ("**WSFS**") (as successor agent to Barclays Bank PLC) is the administrative agent and collateral agent under the First Lien Credit Agreement.
22. The First Lien Borrowers' obligations under the First Lien Credit Agreement are guaranteed by certain subsidiaries of the Company, the First Lien Borrowers (including Skillsoft Canada), and the non-debtor Evergreen Skills Intermediate Lux S.à r.l. (collectively, the "**First Lien Guarantors**") and are secured by a first-priority security interest in substantially all of the assets of the First Lien Guarantors, subject to certain limitations and exclusions.
23. The first lien term loan facility (the "**First Lien Term Loan Facility**") is in an original principal amount of \$900 million, plus an incremental facility in an original principal amount of \$465 million incurred on September 30, 2014. As at the Petition Date, approximately \$1.29 billion of principal amount is outstanding under the First Lien Term Loan Facility.

First Lien Revolving Facility

24. Pursuant to the First Lien Credit Agreement, certain of the First Lien Lenders agreed to provide the First Lien Borrowers (including Skillsoft Canada) with revolving commitments in an aggregate principal amount not to exceed \$80 million (the "**First Lien Revolving Facility**"). As at the Petition Date, approximately \$79.5 million of revolving loans are outstanding and letters of credit with an aggregate face amount of approximately \$500,000 have been issued. The First Lien Revolving Facility expires in October 2020.

25. As at the Petition Date, an aggregate principal amount of approximately USD \$1.37 billion is outstanding under the First Lien Credit Agreement (the **"First Lien Debt"**).

Second Lien Term Loan Facility

26. On April 28, 2014, a certain Second Lien Credit Agreement (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the **"Second Lien Credit Agreement"**) was entered into among certain of the Debtors (excluding Skillsoft Canada), among others, as borrowers (the **"Second Lien Borrowers"**), and various lenders (the **"Second Lien Lenders"**) pursuant to which the Second Lien Lenders agreed to provide to the Second Lien Borrowers the Second Lien Term Loan Facility. WSFS (as successor agent to Barclays Bank PLC) is the administrative agent and collateral agent under the Second Lien Credit Agreement.
27. The Second Lien Borrowers' obligations under the Second Lien Credit Agreement are guaranteed by, among others, Skillsoft Canada. The Second Lien Borrowers' obligations under the Second Lien Credit Agreement are secured by a second-priority security interest in substantially all of the assets of, among others, Skillsoft Canada, subject to certain limitations and exclusions.
28. The second lien term loan facility (the **"Second Lien Term Loan Facility"**) in an original principal amount of \$485 million and an incremental facility in an original principal amount of \$185 million incurred on September 30, 2014. As at the Petition Date approximately \$670 million of principal amount is outstanding under the Second Lien Term Loan Facility (the **"Second Lien Debt"**).

AR Credit Facility

29. On December 20, 2018, the non-debtor Skillsoft Receivables Financing LLC (the **"AR Borrower"**) entered into a certain Credit Agreement (as may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the **"AR Facility Agreement"**) among (i) the AR Borrower, as borrower; (ii) the lenders party thereto (collectively, the **"AR Facility Lenders"**); and (iii) CIT Bank, N.A., as administrative agent, collateral agent, and accounts bank. Pursuant to the AR Facility Agreement, the AR Facility Lenders agreed to provide the AR Borrower with revolving loans, subject to borrowing base availability, comprised of a Class A revolving line of credit up to \$75 million and a Class B revolving line of credit up to \$15 million.
30. Certain of the Debtors, including Skillsoft Canada, are "Originators" under the AR Facility, originating receivables which are then sold to the AR Borrower. However, none of the Debtors guarantee the obligations in connection with the AR Facility except in limited circumstances relating to a breach by such Debtor of certain representations or warranties made in respect of the underlying receivables sold by such Debtor. As at the petition date approximately \$68 million is outstanding under the AR Facility.

VI. SKILLSOFT CANADA

31. Skillsoft Canada is a subsidiary of Skillsoft Limited and is a Debtor in the Chapter 11 Proceedings. Skillsoft Canada was incorporated pursuant to the *Business Corporations Act* (New Brunswick), with a registered and physical office located in Fredericton, New Brunswick. The Proposed Information Officer understands that all material decisions regarding Skillsoft Canada and its business operations are made by Company personnel in the United States.
32. Skillsoft Canada provides cloud-based learning solutions and talent management solutions for customers ranging from global enterprises, government, educational institutes and to mid-sized and small businesses.
33. Skillsoft Canada is also involved in research and development to support the Company's primary business.

Financial Position of Skillsoft Canada

34. The Proposed Information Officer understands that Skillsoft Canada does not independently report its financial results. Skillsoft Canada's financial reporting is included as part of consolidated reporting for the Skillsoft Group.
35. As at March 31, 2020 (the date of the most recent internal unaudited financial information for Skillsoft Canada), Skillsoft Canada had assets with a book value of approximately \$4.6 million and total liabilities of approximately \$9 million.
36. Skillsoft Canada's assets consist primarily of:
 - a) Cash and cash equivalents of approximately \$1.4 million;
 - b) Accounts receivable of approximately \$5.2 million;
 - c) Prepaid expenses of approximately \$1.4 million;
 - d) Intellectual property;
 - e) Property and equipment of approximately \$500,000;
 - f) Negative goodwill of approximately \$865,000; and
 - g) Intercompany liabilities included with the assets of approximately \$3 million.
37. Skillsoft Canada's liabilities consist primarily of:
 - a) Trade creditors of approximately \$27,000;
 - b) Accrued compensation of approximately \$760,000; and
 - c) Deferred revenue of approximately \$8.4 million.
38. As previously noted, (although not reflected in the above internal unaudited financials), Skillsoft Canada is a borrower and/or guarantor and jointly and severally liable for the First Lien Debt and the Second Lien Debt. As at the Petition Date, approximately \$2.1 billion was outstanding under the prepetition credit facilities.

Employees of Skillsoft Canada

39. As at the Petition Date, Skillsoft Canada had 259 employees of which 229 employees work from the Fredericton, New Brunswick office and 30 employees work remotely. The Skillsoft Canada employees are not represented by a union and Skillsoft Canada does not sponsor any pension plans for its employees.
40. Skillsoft Canada maintains compensation and benefits programs for its employees, including the following programs: basic life and disability insurance, medical benefits plan and a Structured Retirement Savings Plan. The Wages Order (as hereinafter defined) provides for the ongoing payment of wages and benefits to all employees of the Skillsoft Group in accordance with its terms.

Skillsoft Canada's Cash Management System

41. The Skillsoft Group uses an integrated, centralized cash management system operated by the treasury team in the United States to collect, transfer and disburse funds generated by the Skillsoft Group (the "**Cash Management System**").
42. The Cash Management System (a) controls corporate funds; (b) ensures the maximum availability of funds when and where necessary; (c) reduces costs and administrative expenses by facilitating the movement of funds; and (d) allows the Company to operate at maximum efficiency.
43. Skillsoft Canada maintains bank accounts in Canada denominated in both Canadian and US dollars.
44. Further details regarding the Cash Management System, including Skillsoft Canada's involvement in the Cash Management System, are provided in the Frederick Affidavits.

VII. THE DEBTORS' CENTRE OF MAIN INTEREST

45. The Skillsoft Group operates a highly integrated business managed out of the United States where the Debtors maintain their head office. Although Skillsoft Canada's registered office is in Fredericton, New Brunswick, the Proposed Information Officer understands that:
 - a) all material decisions regarding Skillsoft Canada's business and operations are managed by Skillsoft Group personnel located in the United States. In particular, all of Skillsoft Canada's main business and corporate decisions are made at the Debtors' head office located in Nashua, New Hampshire (the "**US Head Office**");
 - b) the Skillsoft Group utilizes shared services across the globe. Shared services include, among other areas, human resources, legal, accounting, information technology, marketing, sales and business applications. Shared services are predominantly conducted from:
 - The US Head Office (45% of the shared services);

- Hyderabad, India (15% of the shared services);
- Fredericton, New Brunswick (10% of the shared services);

- c) the majority of the Skillsoft Group's assets are located in the United States;
- d) human resource matters for Skillsoft Canada are managed through its personnel in Canada and by the US Head Office;
- e) there are no senior management personnel employed directly by Skillsoft Canada or located in Canada;
- f) all of Skillsoft Canada's accounts payable and accounts receivable are managed from the US Head Office;
- g) Skillsoft Canada's two directors (Gregory Porto, Bobby Jenkins) and a significant portion of the directors of the Skillsoft Group, reside in the United States; and
- h) the prepetition credit facilities are for the benefit of the Skillsoft Group, including Skillsoft Canada, and the Proposed Information Officer understands that the location that a significant portion of the creditors under such facilities recognize as being the center of the Company's operations is the United States.

46. Based on the foregoing, the Proposed Information Officer believes it is reasonable to conclude that the Debtors' (including Skillsoft Canada's) "centre of main interest" (the "COMI") is in the United States.

VIII. EVENTS LEADING TO THE CHAPTER 11 PROCEEDINGS AND CCAA RECOGNITION PROCEEDINGS

47. The Proposed Information Officer understands that in recent years, the Skillsoft Group has faced several challenges that have significantly and adversely impacted the operating performance of the Debtors' business, including:
- a) customer attrition resulting from steep market competition from the entry of global enterprise technology companies in the Company's core markets;
 - b) the Company's core markets have seen growth from companies providing free access to services that overlap with the Company's platform; and
 - c) the Company's difficulty adapting its business model to address market shifts in a timely matter, the lack of growth across the Company's core business segments and integration issues with recent acquisitions.

Transformation Plan

48. In late 2018 and throughout early 2019, the Company conducted a comprehensive review of its business model and, in April 2019, launched a transformation plan aimed at stabilizing the business (the "**Transformation Plan**"). As part of the Transformation Plan, the Company took a number of steps to reinvigorate its business model and achieve success in the market.
49. The Company also conducted extensive evaluations of its technologies and delivery platforms, including by surveying its customers' preferences among several different platforms and software tooling offered by the Company. As part of its technology reevaluation, and in an effort to increase its renewal rates, the Company has migrated approximately 50,000 of its customers from its legacy Skillport platform to its recently developed intelligent learning experience platform, Percipio, which was first introduced by the Company in late 2016. This migration process has progressed significantly, but the Company anticipates that full migration of all customers to the Percipio platform will require another several years to complete.
50. The Transformation Plan has already demonstrated successful results, with Q1 FY20 results showing increases over Q1 FY19 in order intake, customer renewal rates, and new business on both a Company-wide level and in each of the content and SumTotal business segments. Additionally, the Company has seen a relative increase in overall revenues from products sold and a decrease in operating expenses.
51. However, notwithstanding these positive results, the Company remains over-levered, with looming debt maturities in 2020 and 2021.

IX. THE REORGANIZATION TRANSACTION

52. For several months, the Company has been evaluating its strategic options, including, certain sale transactions, balance sheet or recapitalization transactions, and other restructuring alternatives.
53. In connection with this strategic process, the Company has engaged with its major stakeholders, including an ad hoc group of first lien lenders, an ad hoc group of first and second lien lenders, the Company's AR Facility Lenders agent and each of their respective advisors (collectively, the "**Creditor Groups**").
54. The Company has reached an agreement with the Creditor Groups to pursue a consensual restructuring transaction effectuated through (i) a balance sheet restructuring pursuant to the Prepackaged Plan (as defined below) (the "**Reorganization Transaction**"); or (ii) potentially, a sale of substantially all of the Company's business to prospective third party purchaser (the "**Potential Purchaser**", and the "**Alternative Transaction**").

55. In light of the Company's anticipated liquidity shortfall, the Company has decided to commence the Chapter 11 Proceedings to implement the Reorganization Transaction.
56. The Proposed Information Officer nevertheless understands that the Company, the Creditor Groups, and the Potential Purchaser are continuing to negotiate in parallel the timing and definitive terms of the Alternative Transaction such that a restructuring based on the Alternative Transaction remains a possibility.
57. The Reorganization Transaction is set forth in detail in the Joint Prepackaged Plan of Reorganization of Skillsoft Corporation and its Affiliates Debtors (the "**Prepackaged Plan**"), which was filed in support of the CCAA Recognition Proceedings.
58. In summary, the Proposed Information Officer understands that the Reorganization Transaction provides for the following (capitalized terms used in this paragraph 58 and not defined in the Pre-Filing Report have the meaning set forth in the Prepackaged Plan):
- a) each holder of a First Lien Debt will receive its pro rata share of (i) \$410 million of Second Out Term Loans and (ii) 96% of the Newco Equity (subject to dilution by the Incentive Plans);
 - b) each holder of a Second Lien Debt will receive its pro rata share of (i) 4% of the Newco Equity; (ii) Tranche A Warrants; and (iii) Tranche B Warrants (in each case subject to dilution by the Incentive Plans);
 - c) the Debtors' general unsecured creditor claims will receive payment of their claims in full in the ordinary course; and
 - d) existing equity interests in the Parent will be cancelled on the Effective Date.
59. The effect of the Reorganization Transaction on the Debtors' capital structure is summarized as follows:

Pre-Petition Capital Structure		Reorganized Capital Structure	
First Lien Term Loan	\$1.29 billion	New First Out Term Loans (DIP Facility plus \$50 million of exit financing)	\$110.0 million
First Lien Revolver	\$80.0 million	New Second Out Term Loans	\$410.0 million
Second Lien Term Loan	\$670.0 million	Exit AR Facility	\$63.0 million
AR Credit Facility	\$68.0 million		
Total:	\$2.1 billion	Total:	\$583.0 million

60. The Proposed Information Officer has been informed that the holders of First Lien Debt claims and Second Lien Debt claims are the only classes of claims entitled to vote on the Prepackaged Plan and that it is not anticipated that the amounts owed to trade creditors or employees of Skillsoft Canada will be affected under the Prepackaged Plan.
61. The Proposed Information Officer has been advised that the Reorganization Transaction is supported by the overwhelming majority of the First Lien Lenders and Second Lien Lenders.
62. In fact, pursuant to that Restructuring Support Agreement dated as of June 12, 2020 (the "**Restructuring Support Agreement**"), filed under confidential seal in support of the CCAA Recognition Proceedings, holders of approximately 81% of the First Lien Debt and the holders of approximately 84% of the Second Lien Debt have agreed, subject to the terms and conditions of the Restructuring Support Agreement, to vote in favor of the Prepackaged Plan (the "**Consenting Creditors**").
63. The Proposed Information Officer further understands that on June 12, 2020 the Debtors and the Consenting Creditors entered into a cooperation agreement and a mutual release agreement, to become effective on the Effective Date (as defined in the Prepackaged Plan), with Charterhouse Capital Partners (an European private equity firm which acquired the Company in 2014) and each of the four (4) Luxembourg parent entities of Debtor Pointwell Limited (collectively, the "**Evergreen Entities**") pursuant to which the Sponsor and the Evergreen Entities agreed to support the Prepackaged Plan.
64. The Proposed Information Officer is informed that the Company, with the support of the Consenting Creditors, may enter into an exclusivity agreement with the Potential Purchaser and is continuing negotiations regarding an Alternative Transaction. Due to the Company's deteriorating liquidity position, immediate need to access the DIP Facility (as defined below) and the need for an agreed upon reorganization path should the Company not be able to consummate the Alternative Transaction, the Company commenced the Chapter 11 Proceedings and is seeking to implement the restructuring as per the Restructuring Support Agreement.
65. The Proposed Information Officer is further informed that should the Company enter into the Alternative Transaction with the support of the Consenting Creditors, the Company may seek to amend the Prepackaged Plan and disclosure statement to reflect the Alternative Transaction prior to any plan confirmation hearing before the US Court.
66. The Proposed Information Officer has been advised that in order to realize the full benefits of the Reorganization Transaction, the Debtors must exit the Restructuring Proceedings quickly. Therefore, the Debtors have agreed under the Restructuring Support Agreement to certain milestones for the restructuring process, including (i) confirmation of the Prepackaged Plan by no later than sixty (60) days after the Petition Date and (ii) the Prepackaged Plan becoming effective no later than eighty (80) days after the Petition Date.

67. The Proposed Information Officer is informed that with the support of the Consenting Creditors, the Debtors began soliciting votes on the Prepackaged Plan before filing the Chapter 11 Proceedings. The Debtors asked holders of impaired claims entitled to vote on the Prepackaged Plan to submit their ballots by June 26, 2020.
68. Further, the Debtors have requested that the US Court schedule a combined hearing to approve a disclosure statement and confirm the Prepackaged Plan on July 23, 2020 or as soon thereafter as the US Court's schedule permits.
69. The Debtors expect that the votes tabulated and received from the voting creditors will, consistent with the Restructuring Support Agreement, overwhelmingly support confirmation of the Prepackaged Plan.

X. FIRST DAY ORDERS OF THE US COURT FOR WHICH RECOGNITION IS SOUGHT

70. Contemporaneously with the request for the Initial Recognition Order, the Foreign Representative is seeking the issuance of the Supplemental Order recognizing and giving full force and effect in Canada to the following First Day Orders that have been entered by the US Court in the Chapter 11 Proceedings, each of which is attached as an Exhibit to the Frederick Cdn Affidavit:
 - 1) **Joint Administrative Order:** an order directing the joint administration of the Chapter 11 cases of the Skillssoft Group in the US Proceedings. The Proposed Information Officer understands that the consolidation is of a procedural nature only, such that there will be no substantive consolidation of the Debtors' estates;
 - 2) **Creditor Matrix Sealing Order:** an order granting the authority to file under seal and redact certain portions of the Debtors' consolidated creditor mailing matrix. The Proposed information Officer understands that the information the Debtors seek to redact consists of confidential commercial information, including customer lists, and confidential personal information, including names and home addresses of individual employees, creditors, and stakeholders;
 - 3) **Scheduling Order:** an order (i) scheduling a combined hearing to approve the Disclosure Statement and Solicitation Procedures, and confirm the Prepackaged Plan; (ii) approving objection procedures and deadlines in connection with the Prepackaged Plan and Disclosure Statement; (iii) approving the objection procedures and deadlines in connection with the Debtors' assumption or rejection of executory contracts and leases; (iv) approving the notice of the combined hearing, objection deadline, and notice of commencement; (v) conditionally waiving the requirement to file statements of financial affairs and schedules of assets and liabilities; and (vi) conditionally waiving the Section 341 Meeting. The Proposed Information Officer is informed that the Claims Agent transmitted a solicitation package on June 14, 2020, to the holders of First Lien Debt claims and Second Lien Debt claims which are the only classes of claims entitled to vote on the Prepackaged Plan and that such solicitation of the Prepackaged Plan is in compliance with the US Bankruptcy Code and related rules;

- 4) **Claims Agent Order:** an order authorizing the appointment of Kurtzman Carson and Consultants (the “**Claims Agent**”) as claims and noticing agent in the Chapter 11 Proceedings. Pursuant to the Claims Agent Order, the Claims Agent is fully responsible for the distribution of notices and the maintenance, processing and docketing of proofs of claim, if any, filed in the Chapter 11 Proceedings. The Proposed Information Officer understands that the mandate of the Claims Agent is purely administrative;
- 5) **Cash Management Order:** an order authorizing the Skillsoft Group to continue to use the Cash Management System, including bank accounts, honor certain prepetition obligations related thereto, and implement changes to the Cash Management System in the ordinary course of business, as well as other related relief. The Proposed Information Officer understands that given the Debtors’ corporate and financial structure, it would be extremely difficult and expensive to establish and maintain a separate cash management system for each Debtor;
- 6) **Wages Order:** an order authorizing the Skillsoft Group to (i) pay certain employee compensation and benefits, (ii) maintain such benefits and other employee-related programs, and (iii) pay the prepetition claims and obligations. The Wages Order authorizes Skillsoft Canada to continue to pay Skillsoft Canada’s employees in the ordinary course. Pursuant to the Wages Order, any amounts owed to Skillsoft Canada’s employees, including amounts for vacation pay, expenses, and benefits are expected to be paid in the ordinary course;
- 7) **Trade Claims Order:** an order authorizing, but not directing, the Skillsoft Group to pay in full, in their discretion, the ordinary course of business prepetition claims of creditors that provide goods or services to the Debtors’ operations, including critical vendors and trade creditors who, prior to the Petition Date, in the ordinary course of business, delivered goods to the Debtors within 20 days of the Petition Date, giving rise to administrative expense claims under section 503(b)(9) of the US Bankruptcy Code, and ordinary course professionals and all other trade claimants holding non-priority prepetition claims against the Debtors;
- 8) **Taxes Order:** an order authorizing, but not directing, the Skillsoft Group, in its sole discretion, to pay certain taxes, assessments, fees and charges in the ordinary course of business, whether arising prior to, on or after commencement of the Chapter 11 Proceedings. The Company is of the view that if the Taxes Order is not rendered, it could cause a material adverse impact on the Debtors’ ability to operate in jurisdictions where they do business and may lead to the imposition of liens on the Debtors’ assets, the accrual of interest charges, and/or the imposition of fees and penalties, thereby depleting the value of the Debtors’ estates. The Taxes Order applies to Canadian taxation authorities, including with respect to sales taxes;

- 9) **Insurance Order:** an order (i) authorizing, but not directing, the Skillsoft Group to maintain and renew its insurance policies and programs, including paying their post-petition insurance related obligations in the ordinary course of business and paying any outstanding pre-petition amounts due. The Company has advised that the Insurance Order is essential to mitigating risk and to the preservation of the value of the Company's business and assets;
- 10) **Utilities Order:** an order (i) prohibiting the Skillsoft Group's utility service providers, such as electricity, natural gas, water, sewage, telecommunications, and waste services, from altering or discontinuing service; and (ii) establishing procedures for resolving any subsequent requests by the utility service providers for additional adequate assurance of payment. The Utilities Order includes certain Canadian utility providers;
- 11) **Automatic Stay Order:** an order enforcing the automatic stay provisions of the US Bankruptcy Code. The Proposed Information Officer understands that the Automatic Stay Order does not purport to create any protections that are not already automatically applicable under the US Bankruptcy Code, but merely seeks a "comfort order" embodying specific protections under the US Bankruptcy Code that can be shown to parties of interest;
- 12) **Foreign Representative Order:** an order recognizing Skillsoft Canada as the foreign representative of the Skillsoft Group in Canada. The Foreign Representative Order authorizes Skillsoft Canada to act as the Foreign Representative of the Skillsoft Group to, among other things, seek recognition of the Chapter 11 Proceedings in Canada. Pursuant to the Foreign Representative Order, the US Court requested the aid and assistance of the Canadian Court to recognize the Chapter 11 Proceedings as a "foreign main proceeding" and Skillsoft Canada as a "foreign representative" under the CCAA. As explained in Section VI of this Pre-Filing Report, the Proposed Information Officer believes that the COMI of each entity of the Skillsoft Group, including Skillsoft Canada, is in the United States;
- 13) **Financing Fee Letters Sealing Order:** an order authorizing the Skillsoft Group to file the proposed debtor-in-possession financing fee letters (the "**Fee Letters**") under seal. The Proposed Information Officer understands that the information the Debtors seek to redact consists of confidential commercial information. Furthermore, the Proposed Information Officer is advised that the Debtors have provided un-redacted versions of the Fee Letters to the US Bankruptcy Court and shall provide un-redacted versions of the Fee Letters to Receiving Parties (as such term is defined in the Financing Fee Letters Sealing Order) on a confidential "professionals' eyes only" basis in accordance with the terms of the Financing Fee Letters Sealing Order;

- 14) **Exclusivity Order:** an order authorizing the Debtors to enter into a letter agreement granting exclusivity to the Potential Purchaser (the “**Exclusivity Letter**”) which would allow the Debtors to continue negotiating the Alternative Transaction which, if consummated, could maximize the value of the Debtors’ estates. The Proposed Information Officer understands that the Debtors require the authority of the US Bankruptcy Court to enter into the Exclusivity Letter and that any delay in signing same may put an end to the negotiations with the Potential Purchaser and jeopardize the Alternative Transaction. Moreover, the Proposed Information Officer has been advised that the Exclusivity Letter obligates the Debtors to pay the Potential Purchaser an amount to cover the Potential Purchaser’s fees and expenses in connection with its diligence of the Alternative Transaction. However, such fees and expenses are only payable in a situation where the Debtors and the Potential Purchaser enter into a definitive agreement for the Alternative Transaction;
- 15) **Exclusivity Letter Sealing Order:** an order authorizing the Debtors to file under seal and redact certain identity information relating to the Exclusivity Letter; and
- 16) **Interim DIP Order:** an order (I) authorizing the Debtors to (a) obtain postpetition financing and (b) utilize cash collateral, (II) granting liens and superpriority administrative expense claims, (III) granting adequate protection to prepetition secured parties, (IV) modifying automatic stay, (V) scheduling final hearing, and (VI) granting related relief. The Interim DIP Order is more fully discussed below.

71. The Proposed Information Officer understands that Canadian parties/creditors were specifically identified and provided for in the First Day Orders (as applicable) and corresponding DIP budgets/cashflows.

Interim DIP Order

72. The Foreign Representative is seeking the recognition in Canada of the Interim DIP Order issued by the US Bankruptcy Court.

73. As at the Petition Date and based on the cash flow projections prepared by the Skillsoft Group (the “**DIP Cash Flow**”), the Proposed Information Officer understands that the Skillsoft Group lacked sufficient liquidity to maintain normal course operations during the proposed restructuring without access to additional financing.

74. In reviewing the DIP Cash Flow for the Skillsoft Group, the Proposed Information Officer noted the following:

- a) The pre-DIP Cash Flow projected that the Skillsoft Group’s liquidity would fall below its minimum cash threshold of \$15 million during the week ending June 12, 2020 and through at least July 31, 2020; and
- b) The pre-DIP cash flow does not take into account professional fees related to the Chapter 11 Proceedings.

75. The Interim DIP Order (which is being sought on an interim basis, and will be subject to a further hearing and final order (the “**Final DIP Order**”)), among other things, provides the Skillsoft Group access to a \$60 million term loan facility (the “**DIP Facility**”) financed by certain of the Company’s existing First Lien Lenders of which \$30 million is available under the DIP Facility upon entry of the Interim DIP Order, and an additional \$30 million would be available upon entry of a Final DIP Order.
76. It is contemplated the DIP Facility would convert to a \$110 million senior secured exit facility (\$60 million of which will be rolled from the DIP Facility) upon consummation of the Reorganization Transaction.
77. The Proposed Information Officer has been informed that (i) the DIP Facility is the only DIP proposal that the Company has received despite the fact that several financial institutions were invited to submit postpetition debtor-in-possession financing and (ii) the terms of the DIP Facility were actively negotiated by the Company with the assistance of its advisors.
78. The Proposed Information Officer understands that the borrower under the DIP Facility is Skillsoft Corporation and that the obligations thereunder are guaranteed by certain of Skillsoft’s subsidiaries, including Skillsoft Canada.
79. The DIP Cash Flow indicates that the DIP Facility will provide the working capital necessary for the Skillsoft Group, including Skillsoft Canada, to continue its business until the conclusion of the proposed Reorganization Transaction.
80. Financing under the AR Credit Facility from the existing lenders thereunder would also continue throughout the Chapter 11 Proceedings.

XI. THE PROPOSED CANADIAN COURT-ORDERED CHARGES

81. Pursuant to the proposed Supplemental Order, Skillsoft Canada is seeking an Administrative Charge and a DIP Lenders’ Charge.

Administration Charge

82. The draft Supplemental Order contemplates an Administration Charge in respect of the fees and disbursements of the Information Officer and its counsel in an amount not to exceed CAD\$150,000. The Administration Charge is required to protect the Information Officer and its counsel in the event that their reasonable fees and expenses are unpaid. The Proposed Information Officer considers the amount of the proposed Administration Charge to be reasonable and appropriate in the circumstances. The Administration Charge is proposed to rank in priority to any other security interests, trust, liens, charges and encumbrances on the Debtors’ property in Canada, including the DIP Lenders’ Charge.

DIP Lenders' Charge

83. The draft Supplemental Order contemplates the granting of a super-priority charge to secure the obligations owing under the DIP Facility. The Proposed Information Officer understands that it is a requirement of the DIP Facility that the DIP Lender's Charge be granted by the Canadian Court.
84. The DIP Lenders' Charge is proposed to rank in priority to any other security interests, trust, liens, charges and encumbrances on the Debtors' property in Canada, except for the Administration Charge.
85. Considering that Skillsoft Canada will benefit from the DIP Facility and is a borrower and guarantor under the First Lien Credit Agreement and the Second Lien Credit Agreement pursuant to which its obligations thereunder are covered by security charging all of its assets, the Proposed Information Officer is of the view that the terms of the DIP Facility, as well as the priority of the DIP Lenders' Charge are reasonable and appropriate in the circumstances.

XII. PROPOSED INITIAL ACTIVITIES OF THE INFORMATION OFFICER

86. The draft Supplemental Order provides that following its appointment, the initial activities of the Information Officer will include, *inter alia*:
 - a) publishing a notice of the Chapter 11 Proceedings and the CCAA Recognition Proceedings in the Globe and Mail, National Edition and the Telegraph Journal, within five (5) business days or as soon as practical following the date of the Supplemental Order, if granted, once a week for two consecutive weeks (as required by the Foreign Representative pursuant to subsection 53(b) of the CCAA);
 - b) providing such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
 - c) reporting to the Canadian Court with respect to the status of these proceedings and the Chapter 11 Proceedings at such times and intervals as the Information Officer deems appropriate; which reports may include information relating to the property and the business of the Debtors or such other matters as may be relevant to these proceedings; and
 - d) establishing a website at <https://www.richter.ca/insolvencycase/skillsoft-canada-ltd/> to make available copies of the Orders granted in the CCAA Recognition Proceedings, reports of the Information Officer, motion materials, and other materials as the Canadian Court may order or the Information Officer deems appropriate.

XIII. PROPOSED INFORMATION OFFICER'S RECOMMENDATIONS

87. The Proposed Information Officer is satisfied that the terms of the Initial Recognition Order and the Supplemental Order are fair and reasonable, including in that the Initial Recognition Order is consistent with the terms of appointments of information officers in other recognition proceedings under the CCAA. The Proposed Information Officer is also satisfied that no Canadian creditor would be unduly prejudiced by the granting of either the Initial Recognition Order or the Supplemental Order.
88. Accordingly, the Proposed Information Officer respectfully recommends that the Canadian Court grant the relief requested by the Debtors in the Initial Recognition Order and the Supplemental Order.

All of which is respectfully submitted on this 17th day of June 2020.

Richter Advisory Group Inc.
in its capacity as Proposed Information Officer of
Skillsoft Canada, Ltd. *et al*
and not in its personal capacity

Andrew Adessky, CPA, CA, CIRP, LIT



Olivier Benchaya, CPA, CA, CIRP, LIT



IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF SAINT JOHN
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

BETWEEN:

SKILLSOFT CANADA, LTD.

APPLICANT

-and-

**SKILLSOFT CORPORATION, AMBER HOLDING INC., SUMTOTAL
SYSTEMS LLC, MINDLEADERS, INC., ACCERO, INC., CYBERSHIFT
HOLDINGS, INC., CYBERSHIFT, INC. (U.S.), POINTWELL LIMITED, SSI
INVESTMENTS I LIMITED, SSI INVESTMENTS II LIMITED, SSI
INVESTMENTS III LIMITED, SKILLSOFT LIMITED, SKILLSOFT IRELAND
LIMITED, THIRDFORCE GROUP LIMITED, SKILLSOFT U.K. LIMITED AND
SKILLSOFT CANADA, LTD.**

RESPONDENTS

CONSENT TO ACT AS INFORMATION OFFICER

Richter Advisory Group Inc. hereby consents to act as information officer in the above noted proceedings pursuant to the *Companies' Creditors Arrangement Act* and to the terms of the form of Supplemental Order (Foreign Main Proceeding) filed in respect of same.

DATED this 16th day of June, 2020.

RICHTER ADVISORY GROUP INC.



Per: Olivier Benchaya, CPA, CA, CIRP, LIT