

Court File No. 09-8482-00CL

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

THE HONOURABLE MR.	)	TUESDAY, THE 8 <sup>TH</sup> DAY
JUSTICE NEWBOULD	)	
	)	OF DECEMBER, 2009

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 Brainhunter Inc., TrekLogic Inc., Brainhunter Canada Inc., Brainhunter (Ottawa) Inc. and Protec Employment Services Limited

Applicants

**ORDER**

**(Re Bid Process, Stalking Horse APA and Stay Extension)**

THIS MOTION, made by the Applicants for the relief set out in the Applicants' notice of motion dated December 3, 2009 was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Dennis Jewitt sworn December 4, 2009 (the "**Jewitt Affidavit**") and the First Report of Deloitte & Touche Inc. dated December 4, 2009 (the "**Report**") in its capacity as the monitor appointed in these proceedings (the "**Monitor**") and on hearing the submissions of counsel for the Applicants, the Monitor, The Toronto-Dominion Bank, Roynat Capital Inc., Mr. Dowdall for the majority of Noteholders, no one appearing for any other person on the service list although served as appears from the Affidavit of Service of Andrea D'Aprile sworn December 4, 2009, filed.

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Report and the Motion Record is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the Stay Period, defined in paragraph 14 of the Order of this Court made in these proceedings on December 2, 2009, be extended to and including February 5, 2010.
3. THIS COURT ORDERS that the bidding procedures as described in the Jewitt Affidavit and Report and attached as Schedule "A" hereto are hereby approved and the Applicants shall be authorized to conduct the sale process and auction (the "**Bid Process**") contemplated therein.
4. THIS COURT ORDERS that the execution by the Applicants of the asset purchase agreement dated as of December 1, 2009 (the "**Stalking Horse APA**") between TalentPoint Inc., 2223945 Ontario Limited, 2223947 Ontario Limited and 2223956 Ontario Limited as purchasers (collectively, the "**Purchasers**") and each of the Applicants as vendors, in the form attached as Exhibit "B" to the Jewitt Affidavit, is hereby approved and ratified.
5. THIS COURT ORDERS that the Stalking Horse APA and the transactions contemplated therein, including, without limitation, the Break Fee (as defined in the Stalking Horse APA) are hereby approved.
6. THIS COURT ORDERS that the Applicants' right, title and interest in and to any of the property or assets of the Applicants (collectively, the "**Assets**") shall not vest in the Purchasers until the issuance of the Vesting Orders (as defined in the Stalking Horse APA).
7. THIS COURT ORDERS that, in connection with the Stalking Horse APA and the Bid Process and pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, the Applicants are authorized and permitted to disclose to prospective purchasers or bidders for the Assets and their advisors all human resources and payroll information in the Applicants' records pertaining to the Applicants' past and

current employees, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Assets (a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall (i) return all such information to the Applicants; (ii) destroy all such information; or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser of the Assets shall be entitled to continue to use the personal information provided to it, and related to the Assets, in a manner which is in all material respects similar to the prior use of such information by the Applicants, and shall (i) return all other personal information to the Applicants; (ii) ensure that all other personal information is destroyed; or (iii) in the case of all other personal information that is electronically stored, destroy all such other personal information to the extent it is reasonably practical to do so.

8. 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 Applicants, the Monitor 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

9. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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**PROPOSED AUCTION PROCEDURES**

Set forth below are the bid procedures to be employed with respect to the sale of substantially all of the assets and undertaking of Brainhunter Inc. (the "Company") including its subsidiaries and affiliates, TrekLogic Inc., Brainhunter Canada Inc., Brainhunter (Ottawa) Inc. and Protec Employment Services Limited (collectively, the "Vendor" or the "Applicants") as further described in the APA as defined below (the "Purchased Assets"). The terms and conditions upon which the Vendor contemplates consummating a sale of the Purchased Assets will be on substantially the same terms as the agreement of purchase and sale (the "APA") between Vendor and TalentPoint Inc., 2223945 Ontario Limited, 2223947 Ontario Limited and 2223956 Ontario Limited (collectively, the "Stalking Horse Bidder"). The bid procedures also permit the submission of a sponsored plan of arrangement for the Vendor.

**MARKETING PROCESS**

1. The Vendor and Deloitte & Touche Inc. (the "Monitor") will seek approval from the Ontario Superior Court of Justice (the "Court") of the conditional APA with the Stalking Horse Bidder and the bid process for the Purchased Assets set out herein (the "Bid Process"). Upon Court approval of the Bid Process, the Vendor will immediately commence the following marketing process:
  - (a) a qualified list of potential buyers ("Potential Buyers") has been identified by Ernst & Young Orenda Corporate Finance Inc. and Ernst & Young Corporate Finance (Canada) Inc. (collectively, "E&Y") with the approval of the Company as a result of an existing sales mandate with Brainhunter Inc. Potential Buyers and additional qualified prospects as identified by the Vendor or E&Y will be approached about the current opportunity to acquire the assets or submit a plan of arrangement for the business of the Vendor;
  - (b) two advertisements will be placed in the national edition of the Globe and Mail newspaper during the week immediately following Court approval of the Bid Process;
  - (c) notice(s) will be placed on the websites of the Vendor and the Monitor;
  - (d) a confidential information memorandum has been prepared by the Company and will be provided to all interested parties that sign a confidentiality agreement ("Interested Parties");
  - (e) upon execution of satisfactory confidentiality agreements, E&Y will provide Interested Parties with access to an electronic data room containing detailed information regarding the Purchased Assets and business to enable them to perform their due diligence via secure web access;

- (f) Interested Parties will be provided access to management and other key employees to supplement their due diligence, as necessary, under the supervision of Breakwall Financial, the Vendor's Restructuring Advisor, E&Y or the Monitor;
- (g) The Vendor will seek to provide Qualified Bidders (as defined below) with letters of representation from select clients with respect to certain information considered to be relevant to all Bidders, but there is no certainty that these will be available; and
- (h) Interested Parties will be provided with a template for a purchase agreement ("Template Purchase Agreement").

## **BID PROCEDURES**

1. An Interested Party that desires to make a bid ("Bidder") to purchase the Purchased Assets shall deliver its bid to the Monitor not later than noon (Eastern Time) on January 13, 2010 (the "Bid Deadline").
2. All bids must include:
  - an offer to purchase the Purchased Assets pursuant to an executed copy ("Bidder Purchase Agreement") of an agreement that will be provided by the Vendor, which shall be binding and irrevocable until the date of the Auction (defined below) and shall provide for a cash purchase price greater than the aggregate consideration offered by the Stalking Horse Bidder pursuant to the APA, plus the amount of the Break Fee as defined in the APA of \$700,000. Alternatively, the offer may be an offer to sponsor a plan of arrangement (a "Plan Sponsorship Agreement") provided that the cash portion of the purchase price or the cash amount to be available to the creditors of the Applicants must be not less than the cash consideration in the Stalking Horse Bid plus the amount of the Break Fee of \$700,000. Any Plan Sponsorship Agreement must include a provision to pay the Applicants within one Business Day of acceptance of the proposal by the Vendor a non-refundable cash amount of \$700,000 so that the Company has funds to pay the Break Fee to the Stalking Horse Bidder; this is in addition to the deposit referred to in paragraph (e) below. Any Bidder Purchase Agreement or Plan Sponsorship Agreement must include an agreement to assume the obligations of the Applicants secured by the Directors' Charge and the Contractors' Charge (as defined in the Initial Order) and/or a cash payment sufficient to cover all such Charges and payments and must also include a provision to pay up to \$250,000 of costs incurred by the Applicants in connection with the continuation of CCAA or bankruptcy proceedings;
  - (a) The Bidder Purchase Agreement or Plan Sponsorship Agreement must provide that the offer contained therein, as amended by any changes agreed to by the Bidder at the Auction (as defined herein), shall continue to be open for

acceptance until the earlier to occur of the closing of a transaction with the Successful Bidder (as defined below) or February 25, 2010. Notwithstanding the foregoing, if the Bidder is neither the Successful Bidder nor the Back-Up Bidder (as defined below), the offer may cease to be open for acceptance after the Monitor gives notice of the Successful Bidder and the Back-Up Bidder.

- (b) the Bidder Purchase Agreement blacklined against the Template Purchase Agreement provided by the Vendor.
- (c) In the case of a plan sponsorship proposal, the proposed sponsor shall provide a detailed plan including a description of all securities to be issued to the Vendor's stakeholders, details of the proposed capital structure of the Vendor following the plan and details of any steps necessary to implement the plan;
- (d) a deposit of at least \$500,000 paid by way of certified cheque drawn on a Schedule 1 Canadian chartered bank or wire transfer payable to the Monitor, in trust. This amount will either (i) be applied to satisfy the purchase price; (ii) be returned to the Bidder if its bid is not successful at the Auction (subject to the other provisions of these bid procedures) or if the bid/plan is not approved by the Court, or (iii) be forfeited to the Vendor in the event that the Successful Bidder (as defined below) breaches its obligations pursuant to the Bidder Purchase Agreement or Plan Sponsorship Agreement or an Accepted Bid (as defined below);
- (e) a representation of the Bidder and written evidence of available cash and/or a commitment for financing to evidence the Bidder's ability to consummate the proposed transaction as the Monitor may reasonably request;
- (f) in the case of a Bidder Purchase Agreement where the consideration payable is in a form other than cash or the assumption of liabilities of the Vendor, the Bidder must include a detailed description of the form of consideration as well as sufficient financial information relating to the issuer of any securities (or any guarantor thereof) to enable the Monitor to assess the value and liquidity of the consideration;
- (g) a copy of a Board resolution or similar document demonstrating authority to make an irrevocable bid, and to execute the transaction contemplated by the Bidder Purchase Agreement or the Plan Sponsorship Agreement;
- (h) a disclosure of the identity of each entity (including its ultimate shareholders) that will be bidding for the Purchased Assets or otherwise participating in such bid and the complete terms of any such participation or, in the case of a plan, a description of all parties who will directly or indirectly hold securities of the Vendor upon approval of a plan (other than the current creditors);

3. The Monitor will determine in its sole discretion if a bid meets the above requirements. A bid received from a Bidder that meets the above requirements will be considered a "Qualified Bid" and each Bidder that submits a Qualified Bid will be considered a "Qualified Bidder".
4. Without limiting the Monitor's discretion to determine if a bid is a Qualified Bid, the Monitor reserves the right to reject any bid as a Qualified Bid if such bid:
  - a) is on terms that are more burdensome or conditional than the terms of the APA;
  - b) requires any indemnification of such Bidder or a hold back of the purchase price;
  - c) is not received by the Bid Deadline;
  - d) if the proposal is to sponsor a plan of arrangement, the Monitor's determination that the proposal is unlikely to receive the required vote of any proposed class of creditors or if the Monitor is of the view that the plan does not meet the requirements for approval under the CCAA;
  - e) if the proposal is to sponsor a plan of arrangement, the Monitor's determination that the Vendor does not have available to it adequate financing or cash flows to allow the Vendor sufficient time to obtain approval of the plan and to implement the plan; or
  - f) is subject to any confirmatory due diligence requirements, financing condition or other contingencies (including representations, warranties, covenants, and timing requirements) of any kind or any other conditions precedent on such party's obligation to acquire the Purchased Assets or to implement the plan of arrangement other than as may be included in the APA.
5. The APA is a Qualified Bid and the Stalking Horse Bidder is a Qualified Bidder, for all purposes and requirements pursuant to the bid procedures.
6. If the Monitor determines that it has received more than one Qualified Bid, it will invite Qualified Bidders to participate in an auction to either purchase the Purchased Assets or sponsor a plan of arrangement (the "Auction"). The Monitor will advise Bidders whether or not they are a Qualified Bidder not later than eight days after the Bid Deadline or such further period of time as the Monitor may determine in its sole discretion and not less than 48 hours before the start of the Auction. If the Monitor does not receive any Qualified Bids other than the APA, or if none of the Qualified Bidders other than the Stalking Horse Bidder indicate that they intend to participate in the Auction, it will not hold the Auction, the APA will be the Accepted Bid (as defined below) and the Stalking Horse Bidder will be named the Successful Bidder.

## AUCTION PROCEDURES

1. At least one business day prior to the Auction, each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction.
2. The Monitor will promptly thereafter inform, in writing, each Qualified Bidder who has expressed its intention to participate in the Auction of the identity of all other Qualified Bidders that may participate in the Auction.
3. Unless otherwise ordered by the Court, only the authorized representatives, professional advisors or agents of the Stalking Horse Bidder and each Qualified Bidder shall be eligible to attend at the Auction. Representatives of the Lenders (counsel for Toronto Dominion Bank, Roynat Capital Inc. and Noteholders), the Monitor and the Vendor may also attend the Auction.
4. The Auction, if any, shall be conducted by the Monitor, commencing on January 25, 2010 at 10:00 a.m. (Eastern Time) at the Toronto offices of Davies Ward Phillips & Vineberg LLP, 44<sup>th</sup> Floor, 1 First Canadian Place, Toronto, Ontario.
5. The Monitor shall conduct the Auction and establish the rules and procedures for the Auction.
6. At the Auction, the bidding will start at the aggregate consideration for the Purchased Assets and terms proposed in the Qualified Bid that the Monitor selects as the highest and best offer prior to the Auction.
7. The Monitor, in its sole discretion, may adjourn the Auction at any time to permit the Qualified Bidders the opportunity to consider improved bids.
8. During the Auction, each Qualified Bidder may submit a revised bid which is higher or better than the current leading bid (a "Revised Bid"). The Monitor shall determine in its sole discretion if any bid constitutes a Revised Bid.
9. The Monitor shall have the sole right to value any non-cash consideration, including the assumption of liabilities, offered in any bid or proposal to determine whether it represents the best or highest bid at any time. If a proposal to sponsor a plan of arrangement is to be compared to a bid for assets, the Monitor shall consider which will result in the maximum consideration to the Vendor's creditors, the closing risk and conditions and such other factors as the Monitor considers appropriate, including the costs associated with the approval of a plan of arrangement and the potential risks to the operations of the Vendor's business. The Monitor need not select the highest bid for a purchase of assets if it is of the view that a plan sponsorship proposal is more favourable to the creditors of the Vendor.
10. If no Qualified Bidder submits a Revised Bid (as determined by the Monitor in its sole discretion) after a period of 15 minutes following the Monitor's acceptance of a Revised

Bid and the Monitor in its sole discretion chooses not to adjourn the Auction further, the Vendor shall enter into a binding agreement of purchase and sale or plan sponsorship on substantially the same terms as the Bidder Purchase Agreement or Plan Sponsorship Agreement, as amended by any Revised Bid, with the Qualified Bidder (the "Successful Bidder") that submitted the highest and best bid as determined by the Monitor in its sole discretion (the "Accepted Bid"), whereupon the Auction will be concluded.

11. The Monitor shall give written notice to all Qualified Bidders who participated in the Auction of the identity of the Successful Bidder and next highest or next best bid (the "Back-Up Bid")
12. The Successful Bidder agrees to do all such things as may be reasonably required by the Vendor and the Monitor to obtain Court approval of the Accepted Bid, or shall submit a proposal to call a meeting to approve the proposed plan of arrangement, within 14 days of the conclusion of the Auction.
13. If the Successful Bidder fails to close a purchase transaction within 14 days after Court approval (or such date that may otherwise be mutually agreed upon between the Vendor and the Successful Bidder), the Monitor shall be authorized but not required to deem that (a) the Successful Bidder has breached its obligations pursuant to the Accepted Bid, (b) has forfeited its deposit to the Vendor, and (c) the Vendor will be authorized to enter into a transaction with the party who has submitted the Back-Up Bid (the "Back-Up Bidder").
14. If the Successful Bidder has proposed a plan of arrangement and fails to complete the closing of the transactions necessary to complete the plan within 14 days of the date on which the Court has sanctioned the plan or fails to pay to the Company the additional \$700,000 within one business day of acceptance of the proposal as the Accepted Bid, the Monitor shall be authorized but not required to deem that (a) the Successful Bidder has breached its obligations pursuant to the Accepted Bid, (b) has forfeited its deposit to the Vendor, and (c) the Vendor will be authorized to enter into a transaction with the party who has submitted the Back-Up Bid (the "Back-Up Bidder").
15. The Vendor shall be authorized, but not required, to consummate the sale with the Back-up Bidder without a further court order.
16. Except for the Stalking Horse Bidder, Interested Parties or Qualified Bidders shall not be allowed any break, termination or similar fee. For greater certainty, Interested Parties and Qualified Bidders shall be responsible for their own fees and costs relating to their investigation or closing of any transaction in this regard.

### SUMMARY TIMELINE OF IMPORTANT DATES

<b>Sales Procedure</b>	<b>Date</b>
<b>Court approval of Sales Process and Stalking Horse Bid</b>	December 8, 2009
<b>Potential bidders notified; release of Globe and Mail advertisement</b>	December 8, 2009
<b>Data room access granted to parties who execute NDA</b>	December 8, 2009
<b>Period for Due Diligence</b>	December 8, 2009 – January 13, 2010
<b>Bids due</b>	January 13, 2010
<b>Qualification of Bidders</b>	January 13, 2010 – January 20, 2010
<b>Notification sent to Qualified Bidders</b>	January 21, 2010
<b>Indication of intent to participate in the Auction by Qualified Bidders</b>	January 22, 2010
<b>Auction</b>	January 25, 2010
<b>Court motion to approval Successful Bid/call a meeting</b>	January 29, 2010
<b>Transaction close if sale</b>	February 5, 2010
<b>Transaction close if plan of arrangement</b>	March 20, 2010

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 BRAINHUNTER INC., et al.

Court File No: 09-8482-00CL

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SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER**

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