



Crowe Soberman Inc.

# Invitation for Offers to Purchase: Business and Assets of Canadian Union Promotions Inc.



## **BUSINESS AND ASSETS FOR SALE**

### **DEADLINE FOR SUBMITTING BIDS: NOVEMBER 23, 2020**

#### **General Business Information**

- Business Names:** Canadian Union Promotions Inc. (“CUP” or the “Company”)
- Business Type:** The Company is in the business of providing customized software solutions, various marketing services, and print and promotional products to union associations.
- Location:** The Company’s head office and operations are located at 17 Belfield Road, Etobicoke, Ontario.
- Year Established:** 2007
- Sale Type:** Purchase of CUP’s business and assets. The assets consist of, among other things, accounts receivable, office furniture, office equipment, computer equipment, promotional products inventory supplies, rights to ongoing contracts, intellectual property and all intangible personal property of the Company (collectively the “Assets”).

#### **Overview of Sales Process**

An opportunity exists to acquire the Assets and ongoing operations of CUP.

In August 2020, CUP filed a Notice of Intention to make a proposal under the *Bankruptcy and Insolvency Act*. Crowe Soberman Inc. was appointed as proposal trustee (the “Proposal Trustee”).

The Proposal Trustee is conducting a marketing and sale process for CUP’s Assets on an “as-is”, “where-is” basis (“Sale Process”), which was approved by the Court on October 22, 2020 (“Sale Process Order”). The Sale Process terms and conditions, including bid deadlines and minimum requirements, is attached hereto as Schedule “A”.

As approved by the Sale Process Order, the Company has entered into a Stalking Horse Asset Purchase Agreement with a company of similar ownership (the “Stalking Horse Purchaser”), dated October 16, 2020, pursuant to which the Stalking Horse Purchaser has agreed to acquire substantially all of the Assets and to assume certain liabilities of the Company (the “Stalking Horse Agreement”).

The objective of the Sale Process is to obtain offers to effect a sale of the Company’s business and the Assets on a going concern basis for an amount and/or on terms which are superior to the transaction contemplated by the Stalking Horse Agreement.

#### **Sale Process Next Steps**

If you are interested in pursuing this opportunity, please contact the Proposal Trustee at the coordinates below to obtain a non-disclosure agreement (“NDA”). Parties who execute the NDA will be given access to a virtual portal providing confidential information and documents regarding the Assets and liabilities of the Company. Only a bid that meets certain criteria as set out in Schedule “A” (“Qualified Bid”) will be considered by the Proposal Trustee.

**The deadline for submission of a Qualified bid is November 23, 2020 at 5:00 pm (EST).**

**If the Proposal Trustee receives more than one Qualified Bid, the Proposal Trustee shall extend invitations by phone, fax and/or email by 10:00 a.m. (Toronto time) on the third (3rd) Business Day after the Bid Deadline to all bidders who submitted Qualified Bids to attend an auction.**

The Proposal Trustee will also make available a form of asset purchase agreement to prospective purchasers who execute the NDA and Bidders are required to submit their offers in the form (or substantially in the form) of such agreement.

**Proposal Trustee's name:** Crowe Soberman Inc.

**Phone number:** 416-644-8447

**Email:** [daniel.posner@crowesoberman.com](mailto:daniel.posner@crowesoberman.com)



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### Schedule “A” – Sale Process

1. Definitions. All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Stalking Horse APA.
2. Advertisement. Not later than five (5) Business Days after the Sale Process Order is granted, the Trustee shall advertise for sale the Purchased Assets in The **National Post (National Edition)** and distribute a teaser document to potential interested parties.
3. Due Diligence. Not later than five (5) Business Days after the Sale Process Order is granted, the Trustee shall make available to prospective purchasers (collectively, the “**Prospective Purchasers**”), upon receipt of an executed confidentiality agreement from a Prospective Purchaser, access to a data room containing information reasonably required by Prospective Purchasers to consider submitting an offer for the Purchased Assets and facilitate the conduct of due diligence by the Prospective Purchasers. The Purchaser may have access to the data room.
4. Bid Deadline. Any offers to purchase the Purchased Assets must be submitted in writing to and received by the Proposal Trustee at Crowe Soberman Inc., 2 St. Clair Ave. East, Suite 1100 Toronto, ON M4T 2T5, attention: Hans Rizarri, or by email at [hans.rizarri@crowesoberman.com](mailto:hans.rizarri@crowesoberman.com), by 5:00pm (Toronto time) on November 23, 2020 (the “**Bid Deadline**”).
5. Qualified Bid. The Trustee in its sole discretion shall determine whether any offers are “**Qualified Bids**”. A Qualified Bid shall mean an offer to purchase substantially all of the Purchased Assets which is substantially the same or better than the Agreement, provided that no offer shall qualify as a Qualified Bid unless it meets, among other things, the following minimum criteria:
  - i. the Prospective Purchaser and the representatives thereof who are authorized to appear and act on its behalf must be sufficiently identified and written evidence of the offeror’s chief officer or other appropriate senior executive’s approval of the contemplated transaction must be submitted with the offer;
  - ii. the offer must be submitted in writing and include a blackline of the offer to the Agreement, reflecting the Prospective Purchaser’s proposed changes and a written commitment to close on the terms and conditions set forth therein;
  - iii. the offer must be accompanied by a deposit in the form of certified cheque payable to the Proposal Trustee which is equal to at least 10% of the aggregate purchase price payable under the offer;
  - iv. the offer must be open for acceptance by the Vendor until five (5) Business Days after the Auction (as hereinafter defined) or later;

- v. the offer must be on terms no less favourable and no more burdensome or conditional than the Agreement and shall not contain any provisions for a break fee or expense reimbursement;
  - vi. the offer must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the offeror's obligation to complete the transaction that are not otherwise contained in the Agreement;
  - vii. the offer must contain written evidence of a commitment for financing or other evidence of the ability to consummate the sale with appropriate contact information for such financing sources; and
  - viii. the offer must be for a price equal to or greater than the sum of the Purchase Price, the Break Fee and **\$5,000**.
6. Auction. Only if the Trustee receives one or more Qualified Bids by the Bid Deadline, the Trustee shall extend invitations by phone, fax and/or email by 10:00 a.m. (Toronto time) on the third (3<sup>rd</sup>) Business Day after the Bid Deadline to all bidders who submitted Qualified Bids and to the Purchaser to attend an auction (the "**Auction**"). The Auction shall be held at 10:00 a.m. on the fifth (5<sup>th</sup>) Business Day after the Bid Deadline (or such other date and time as the Proposal Trustee may in its sole discretion designate) at the offices of the Trustee or virtually by videoconference facility established by the Trustee.
7. Conduct of the Auction. The Trustee shall conduct the Auction. At the Auction, the bidding shall begin initially with the highest Qualified Bid and subsequently continue in multiples of \$10,000, or such other amount as the Trustee determines to facilitate the Auction (the "**Incremental Amount**"). Additional consideration in excess of the amount set forth in the highest Qualified Bid must be comprised only of cash consideration. The format and procedure for the Auction shall be determined by the Trustee in its sole discretion.
8. Winning Bid. In its sole discretion and based, *inter alia*, on the conduct of the Auction, the total financial and contractual terms of the Qualified Bids and various factors relevant to the speed and certainty of completing the sale of the Purchased Assets, the Trustee shall determine and accept the highest and/or best bid with respect to the Purchased Assets (the "**Winning Bid**"), subject to Court approval.
9. Court Approval of the Winning Bid. The Vendor shall make a motion to the Court to obtain approval of the Winning Bid and the Approval and Vesting Order as expeditiously as possible after the Auction, but in no event longer than ten (10) Business Days following the Auction.
10. Court Approval of Agreement if no Qualified Bid. If no Qualified Bid is received by the Bid Deadline (other than the Agreement), the Auction will not be held. Accordingly, the Agreement will be the Winning Bid and the Vendor shall seek, as expeditiously as possible, approval of the Court to consummate the Transaction contemplated by the Agreement, but in no event longer than ten (10) Business Days following the expiry of the Bid Deadline.

11. Return of Deposits. The deposits submitted with all Qualified Bids (except the Winning Bid), shall be held in escrow by the Trustee until five (5) Business Days after the date of the completion of the Auction and returned to those Prospective Purchasers thereafter. If the Winning Bid terminates pursuant to its terms or fails to close because of the Vendor's breach or failure to perform under the terms of the Winning Bid, the Trustee shall return the deposit submitted with such bid to the bidder that submitted the Winning Bid (the "**Winning Bidder**") forthwith. If the Winning Bidder fails to complete the approved sale because of its breach or failure to perform under the terms of the Winning Bid, the Trustee shall not have any obligation to return the deposit submitted with the Winning Bid and such deposit shall be retained by the Trustee as liquidated damages and the Purchaser shall be entitled to submit a new bid for the Purchased Assets, which the Trustee shall be at liberty to but not obligated to, accept on terms to be agreed upon between the Parties.
  
12. Modifications. Subject to the Sale Process Order, the Trustee shall have the right to adopt such other rules for the Sale Process, that, in its sole discretion, will better promote the goals of the Sale Process.