

SUPREME COURT OF NOVA SCOTIA

P.M.8

Practice Memorandum No. 8

Model CCAA and Receivership Orders

Led by Justice Peter Glennie of the Court of Queen's Bench of New Brunswick and Mr. Josh McElman of the New Brunswick Bar, the superior courts of the Atlantic Provinces developed a model receivership order, CCAA initial order, and CCAA charging order. To some extent, these follow precedents of the Toronto Commercial List.

Of course, each province had to adapt the model orders to accord with differing rules of court, substantive law, and practice. However, there remains a high degree of consistency among the four jurisdictions.

The orders attached to this memorandum may be used to the extent a receivership or a reorganization is suited to them. Counsel must advise the court of deviations and the reasons for them. The orders follow the format in the Civil Procedure Forms, including the use of brackets for suggestions or options and italics for possible wording.

Be sure to omit provisions not required for a reorganization or receivership. For example, many receiverships will not require borrowing power for the receiver or protections against critical suppliers.

Receivership orders under the *Bankruptcy and Insolvency Act* are restricted by s. 243(1) to applications by a secured creditor. So, the model order is of limited use for other kinds of receivership.

The Nova Scotia receivership order is premised on foreclosure rather than direct vesting because we have no statutory authority for general vesting orders. Title at the time of the security instrument, or acquired afterward, is conveyed by a receiver's deed that forecloses the equity, including subsequent encumbrances and other interests in the equity.

Subsequent encumbrancers may be bound as named respondents, parties joined without being named in the style, or under Rule 35.12. Provision may be made in the receivership order, in an eventual order approving a sale, or at any point in between for binding a subsequent encumbrancer. The attached receivership order refers to these possibilities, but it does not provide for any of them.

With the exception of the provisions in the *Bankruptcy and Insolvency Act* about receivership and the few provisions of the *Bankruptcy and Insolvency General Rules* that apply to receiverships, the *Civil Procedure Rules*, including Rule 73 - Receiver, are a source for procedure for the hybrid proceeding. See, General Rule 3. Note, however, that documents must be filed with the Registrar. See, General Rule 9(5).

Another Nova Scotia peculiarity is the distaste our Rules have for headings with "In the matter of". The *Bankruptcy and Insolvency General Rules* mandate this for a BIA receivership, and the Civil Procedure Rules have recently been changed to provide for a CCAA heading.

The model orders contemplate starting with an application in chambers, with further relief under notices of motion. An effort will be made to assign the Registrar, or the same judge, for all, or most, hearings. Motions would be made by appointment.

Adopted by the Court on June 26, 2015.

Joseph P. Kennedy
Chief Justice of the Supreme Court
of Nova Scotia

20

No.

Supreme Court of Nova Scotia
In Bankruptcy and Insolvency

In the Matter of the Receivership of

Between: [copy standard heading from Notice of Application]

[name]

[title in proceeding]

and

[name]

[title in proceeding]

Receivership Order

Before the Honourable Justice [name or blank] in chambers

The Applicant¹ started this proceeding for an order, under both subsection 243(1) of the *Bankruptcy and Insolvency Act* (the “BIA”) and the equitable jurisdiction of this Court as partially codified by s. 43(9) of the *Judicature Act*, to appoint _____ as receiver (in such capacities, the “Receiver”) without security, of all² of the assets, undertakings and properties of the Respondent acquired for, or used in relation to a business carried on by the Respondent.

The Receiver satisfies the requirement for appointment without security in Rule 73.07(a).

On motion of the Applicant the following is ordered:

¹ Subsection 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

² If this is not a receivership of all of the assets of the Respondent, remove the reference to “all assets” and define or describe the specific assets under mandate, perhaps by including a schedule.

Service

1. The time for service of the notice of application and the supporting materials is hereby [abridged/abridged and validated]³ so that the application is properly returnable today and further service thereof is hereby dispensed with.

Appointment

2. Pursuant to the equitable jurisdiction, subsection 43(9) of the *Judicature Act*, Rule 73 – Receiver, and subsection 243(1) of the BIA, the Receiver is hereby appointed [receiver/receiver manager] , without security, of all of the assets, undertakings, and properties of the Respondent acquired for, or used in relation to a business carried on by the Respondent, including all proceeds thereof (the "Property").

Receiver's Powers

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without limiting the generality of the foregoing, the Receiver is hereby empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - a. to take possession and control of the Property and any proceeds or receipts arising from the Property but, while the Receiver is in possession of any of the Property, the Receiver must preserve and protect it;
 - b. to change locks and security codes, relocate the Property to safeguard it, engage independent security personnel, take physical inventories, and place insurance coverage;
 - c. [to manage, operate, and carry on the business of the Respondent, including the powers to enter into any agreements, incur and pay any obligations in the ordinary

³ If service is effected in a manner other than as authorized by the *Civil Procedure Rules* or the *Bankruptcy and Insolvency General Rules*, use in appropriate circumstances.

*course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondent;]*⁴

- d. to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel, and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- e. to purchase or lease such machinery, equipment, inventories, supplies, premises, or other assets to continue the business of the Respondent, or any part or parts thereof;
- f. to receive and collect all monies and accounts now owed or hereafter owing to the Respondent and to exercise all remedies of the Respondent in collecting such monies, including, without limitation, to enforce any security held by the Respondent;
- g. to settle, extend, or compromise any indebtedness owing to the Respondent;
- h. to execute, assign, issue, and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondent, for any purpose pursuant to this Order;
- i. to undertake environmental or workers' health and safety assessments of the Property and operations of the Respondent;
- j. to initiate, prosecute, and continue the prosecution of any proceedings and to defend proceedings now pending or hereafter instituted with respect to the Property or the Receiver, and to settle or compromise any such proceedings, which authority extends to appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

⁴ Use only if a receiver manager is appointed. Re-letter the rest of the paragraphs otherwise.

- k. to make payment of any and all costs, expenses, and other amounts that the Receiver determines, in its sole discretion, are necessary or advisable to preserve, protect, or maintain the Property, including, without limitation taxes, municipal taxes, insurance premiums, repair and maintenance costs, costs or charges related to security, management fees, and any costs and disbursements incurred by any manager appointed by the Receiver;
 - l. to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
 - m. to sell, convey, transfer, lease, or assign the Property or any part or parts thereof out of the ordinary course of business,
 - i. without the approval of this Court in respect of any transaction not exceeding \$ _____, provided that the aggregate consideration for all such transactions does not exceed \$ _____; and
 - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under section 60 of the *Personal Property Security Act* shall not be required.
- n. to sell the right, title, interest, property, and demand of the Respondent in and to the Property at the time the Respondent granted a security interest or at any time since, free of all claims including the claims of subsequent encumbrancers bound as named respondents, bound as parties joined as unnamed respondents, or bound under Rule 35.12;
 - o. to report to, meet with, and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the

receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- p. to register a copy of this Order and any other orders in respect of the Property against title to any of the Property;
- q. to apply for any permits, licences, approvals, or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondent;
- r. to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondent including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondent;
- s. to exercise any shareholder, partnership, joint venture, or other rights which the Respondent may have; and
- t. to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps it shall be authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Respondent, and without interference from any other Person.

Duty to Provide Access and Co-Operation to the Receiver

- 4. The Respondent, all of its current and former directors, officers, employees, agents, accountants, legal counsel, and shareholders, and all other persons acting on its instructions or behalf, and all other individuals, firms, corporations, governmental bodies, or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, and information of any kind related to the business or affairs of the Respondent, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall, subject to their right to seek a variation of this Order, provide to the Receiver or permit the Receiver to make, retain, and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall, subject to their right to seek a variation of this Order, forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper, making copies of computer disks, or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase, or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

No Proceedings Against the Receiver

7. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

No Proceedings Against the Respondent or the Property

8. No Proceeding against or in respect of the Respondent or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Respondent or the Property are hereby stayed and suspended pending further order of this Court.

No Exercise of Rights or Remedies

9. All rights and remedies of any individual, firm, corporation, governmental body or agency or any other entities against the Respondent, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Respondent to carry on any business which the Respondent is not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondent from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder, provided that the Applicant shall not be required to file a defence to same as the further prosecution of any such claim is stayed except with the written consent of the Applicant or the Receiver, or leave of this Court.

Personal Property Lessors

10. All rights and remedies of any Person pursuant to any arrangement or agreement to which any of the Respondent is a party for the lease or other rental of personal property of any nature or kind are hereby restrained except with consent of the Receiver in writing or leave

of this Court. The Receiver is authorized to return any Property which is subject to a lease from a third party to such Person on such terms and conditions as the Receiver, acting reasonably, considers appropriate and upon the Receiver being satisfied as to the registered interest of such Person in the applicable Property. The return of any item by the Receiver to a Person is without prejudice to the rights or claims of any other Person to the property returned or an interest therein.

No Interference with the Receiver

11. Subject to paragraph 16 of this Order related to the Respondent's employees, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by the Respondent, without written consent of the Receiver or leave of this Court.

Continuation of Services

12. All Persons having oral or written agreements with the Respondent or statutory or regulatory mandates for the supply of goods or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Respondent are hereby restrained until further order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Respondent's current telephone numbers, facsimile numbers, internet addresses, and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Respondent or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.
13. The Receiver, in its sole discretion, may, but shall not be obligated to, establish accounts or payment on delivery arrangements with suppliers in its name on behalf of the Respondent for the supply of goods or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll

services, insurance, transportation services, utility, or other services to the Respondent, or any of them, if the Receiver determines that the opening of such accounts is appropriate.

14. No creditor of the Respondent shall be under any obligation as a result this Order to advance or re-advance any monies or otherwise extend any credit to the Respondent.

Receiver to Hold Funds

15. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

Employees

16. All employees of the Respondent shall remain the employees of the Respondent until such time as the Receiver, on the Respondent's behalf, may terminate the employment of such employees or they resign in accordance with their employment contract. The Receiver shall not be liable as a result of this Order for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, such amounts as may be determined by a court or tribunal of competent jurisdiction.
17. Pursuant to paragraph 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but

only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale") as permitted at law. Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. A prospective purchaser or bidder requesting the disclosure of personal information shall execute such documents to confirm the agreement of such Person to maintain the confidentiality of such information on terms acceptable to the Receiver. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Respondent, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

Limitation on Environmental Liabilities

18. Nothing herein contained shall require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession, or management (separately or collectively, "Possession") of any of the Property that might, or any part thereof, which may be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial, or other legislation, statute, regulation or, rule of law or equity respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, *Canadian Environmental Protection Act, 1999* or the *Nova Scotia Environment Act* (collectively, the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

Limitation on Liability

19. [Full name of Receiver] and, without limitation, a director, officer, or employee of the Receiver, shall incur no liability or obligation as a result of its appointment as the Receiver

or the carrying out the provisions of this Order, or in the case of any party acting as a director, officer, or employee of the Receiver so long as acting in such capacity, save and except for any negligence, breach of contract, or actionable misconduct on the part of such party, or in respect of the Receiver's obligations under subsections 81.4(5) and 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

Receiver's Accounts

20. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge to a maximum of \$ _____ (the "Administrative Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and the Administrative Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁵
21. The Receiver and its legal counsel shall pass its accounts from time to time before a judge of this Court or a referee appointed by a judge.
22. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees, expenses and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

⁵ Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".

Receiver's Indemnity Charge

23. The Receiver shall be entitled to and is hereby granted a charge (the "Receiver's Indemnity Charge") upon all of the Property as security for all of the obligations incurred by the Receiver including obligations arising from or incident to the performance of its duties and functions under this Order [*including the management, operation, and carrying on of all or part of the business of a Respondent*], under the *Bankruptcy and Insolvency Act*, or otherwise, saving only liability arising from negligence or actionable misconduct of the Receiver.
24. The Receiver's Indemnity Charge shall form a second charge on the Property in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA and subordinate in priority to the Administrative Charge.

Allocation of Costs

25. The Receiver shall file with the Court for its approval a report setting out the costs, fees, expenses, and liabilities of the Receiver giving rise to the Administrative Charge, the Receiver's Indemnity Charge, and the Receiver's Borrowings Charge, as defined below, and, unless the Court orders otherwise, all such costs, fees, expenses, and liabilities shall be paid in the following manner:
 - a. Firstly, applying the costs incurred in the receivership proceedings specifically attributable to an individual asset or group of assets against the realizations from such asset or group of assets;
 - b. Secondly, applying the costs *pro rata* against all of the assets based on the net realization from such asset or group of assets; and
 - c. Thirdly, applying non-specific costs incurred in the receivership proceedings *pro rata* against the assets based on the net realization from such asset or group of assets.

Funding of the Receivership

26. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$ _____, or such greater amount as this Court may by further order authorize, at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of making payments, including interim payments, required or permitted to be made by this Order, including, without limitation, payments of amounts secured by the Administrative Charge and the Receiver's Indemnity Charge. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Indemnity Charge, the Administrative Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
27. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court on seven days' notice to the Receiver and the Applicant.
28. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
29. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

General

30. The Receiver may from time to time make a motion for advice and directions in the discharge of its powers and duties hereunder.
31. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondent.
32. The aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction outside Nova Scotia is hereby requested to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, and regulatory or administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
33. The Receiver is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
34. The Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Respondent's estate with such priority and at such time as this Court may determine.
35. Any interested party may make a motion to vary or amend this Order upon such notice required by the *Civil Procedure Rules* or on such notice as this Court may order.

36. Any Person affected by this Order which did not receive notice in advance of the hearing may make a motion to vary or amend this Order within five days of such Person being served with a copy of this Order.
37. In addition to the reports to be filed by the Receiver under legislation, the Receiver shall file a report of its activities with the Court when the Receiver determines that a report should be made, when the Court orders the filing of a report on the motion of an interested party or on the Court's own motion, and at the conclusion of the receivership.
38. The Receiver shall not be discharged without notice to such secured creditors and other parties as the Court directs.

Issued _____, 20

Prothonotary

Schedule "A"

Receiver Certificate

Certificate No.

Amount \$

This is to certify that _____, the receiver (the "Receiver") of the assets, undertakings, and properties of _____ (the "Debtor") acquired for, or used in relation to, a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by order of the Supreme Court of Nova Scotia (the "Court") dated the _____ day of _____, 20____ (the "Order") made in an action having court file number _____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____, which the Receiver is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [monthly/semi-annually/annually/other] not in advance on the _____ day of each month after the date hereof at a rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of _____ from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at _____.

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

Dated the day of , 20 .

[Receiver's name] , solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

20

No.

Supreme Court of Nova Scotia

Application by _____ (the “Applicant”)
for relief under the *Companies’ Creditors Arrangement Act*

Initial Order

Before the Honourable Justice [name or blank] in chambers

The Applicant proposes to make a compromise or arrangement under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the “CCAA”) and it applied for an initial order and, now or in the future, other relief under the CCAA as may be sought on notice of motion.

The following parties received notice of this application:

The following parties, represented by the following counsel, made submissions:

Party	Counsel
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Applicant	
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On motion of the Applicant the following is ordered and declared:

Service

1. The service of the notice of application in chambers, and the supporting documents, as set out in the affidavit of service is hereby deemed adequate notice¹ so that the motion is properly returnable today [*and further service thereof is hereby dispensed with*]² .

Application

2. The Applicant is a company to which the CCAA applies³.

Plan of Arrangement

3. The Applicant, in consultation with the Monitor, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the "Plan").

Possession of Property and Operations

4. The Applicant shall remain in possession and control of its current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ consultants, agents, experts, accountants, counsel, and such other persons (collectively "Assistants") and the employees currently retained or employed by it, with liberty to retain such

¹ The Applicant should seek to have service deemed adequate if it was done in a manner other than as authorized by the Rules of Court.

² This provision should only be used when all parties entitled to notice have been served with notice of the application. If all parties entitled to notice have not been served then the section should be deleted and the Initial Order should provide for a motion hearing.

³ If there are multiple applicants, the Order should confirm that the applicants are "affiliated debtor companies" within the meaning of the CCAA.

further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. ⁴The Applicant may pay the following expenses whether incurred prior to or after this Order:

- a. all outstanding and future wages, salaries, employee and pension benefits, vacation pay, and expenses payable to employees who continue to provide service on or after the date of this Order (“Active Employees”), in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- b. all existing and future employee health, dental, life insurance, short and long term disability and related benefits (collectively, the “Group Benefits”) payable on or after the date of this Order to Active Employees, in each case incurred in the ordinary course of business and consistent with existing policies and arrangements or such amended policies and arrangements as are necessary or desirable to deliver the existing Group Benefits;

⁴ If the Applicant has a central cash management system, the provision below may be inserted in advance of paragraph 5 above. This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of Applicant. Specific attention should be paid to cross-border and inter-company transfers of cash. If there are multiple Applicant companies, it may be appropriate to create an inter-company charge that provides a charge against the assets of one applicant company for any amount advanced from another applicant company.

“5. The Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the Affidavit of _____ or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.”

- c. with prior written approval of the Monitor, the fees and disbursements for any Assistants retained or employed by the Applicant in respect of these proceedings, at their reasonable standard rates and charges.

6. Except as otherwise provided to the contrary herein, the Applicant may pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a. all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance including directors and officers insurance, maintenance, and security services; and
- b. payment for goods or services actually supplied to the Applicant following the date of this Order.

7. The Applicant shall remit or pay, in accordance with legal requirements or on terms as may be agreed to between the Applicant and the applicable authority:

- a. any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of: i) employment insurance, ii) Canada Pension Plan, iii) Quebec Pension Plan, and iv) income taxes;
- b. all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- c. any amount payable to the Crown in right of Canada or of any Province or any regulatory or administrative body or any other authority, in all cases in respect of municipal realty, municipal business, or other taxes, assessments or levies of any nature or kind which are: i) entitled at law to be paid in priority to claims of secured creditors; ii) attributable to or in respect of the ongoing Business carried on by the Applicant; and iii) payable in respect of the period commencing on or after the date of this Order.

8. Until such time as the Applicant [*disclaims/disclaims or resiliates*]⁵ a real property lease in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases, including, for greater certainty, common area maintenance charges, utilities and realty taxes, and any other amounts payable to the landlord under the lease, or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, in accordance with its existing lease agreements. On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid.

9. Except as specifically permitted herein or by further order of this Court⁶, the Applicant is hereby directed, until further order of this Court: i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date without prior written consent of the Monitor; ii) to grant no security interests, trusts, liens, charges, or encumbrances upon or in respect of any of its Property; and iii) to not grant credit or incur liabilities except in the ordinary course of the Business or with the prior written approval of the Monitor.

⁵ The term "resiliate" should be included if there are leased premises in the Province of Quebec, but can otherwise be removed.

⁶ This language is inserted to clearly allow for payments which may be authorized by the Court under a companion charging order or otherwise.

Restructuring

10. The Applicant shall, subject to such requirements as are imposed by the Monitor and under any agreements for debtor in possession financing which may be granted, have the right to:

- a. permanently or temporarily cease, downsize or shut down any of its business or operations,
- b. *[terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate and, as applicable, in accordance with the terms of any collective agreement];*⁷
- c. pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any refinancing; and
- d. in accordance with its ordinary course of business, dispose of redundant or non-material assets not exceeding \$ _____ in value.

No Proceedings Against the Applicant or the Property

11. Until and including the _____ day of _____, 20____ [no more than 30 days] _____, or such later date as this Court may order (the "Stay Period"), no claim, grievance, application, action, suit, right or remedy, or proceeding or enforcement process in any court, tribunal, or arbitration association (each, a "Proceeding") shall be commenced, continued, or enforced against or in respect of any of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

No Exercise of Rights or Remedies

12. During the Stay Period, all rights and remedies of any individual, firm, corporation,

⁷ Reference should be made to section 33 of the CCAA.

governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on; ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA; iii) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety, or the environment; iv) prevent the filing of any registration to preserve or perfect a security interest; or v) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder, provided that the Applicant shall not be required to file a defence during the stay period.

No Interference with Rights

13. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by the Applicant, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Applicant and the Monitor, or leave of this Court.

Continuation of Services

14. During the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Business or the Applicant, are hereby restrained until further order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Applicant, and the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or

such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

Non-Derogation of Rights

15. Notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property, or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant.⁸

Proceedings Against Directors and Officers

16. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current, or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court, these proceedings are dismissed by final order of this Court, or with leave of this Court.

Appointment of Monitor

17. _____ is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Applicant, the Property, and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and the Applicant and its shareholders, officers, directors, employees and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, co-

⁸ The Order must conform with the provisions of the CCAA. Particular attention should be paid when drafting the Order as a number of actions or steps cannot be stayed and the stay is subject to certain limits and restrictions under the CCAA. See, for example, CCAA sections 11.01, 11.04, 11.06, 11.07, and 11.08, and subsections 11.1(2) and 11.5(1).

operate fully with the Monitor in the exercise of its powers and discharge of its obligations, and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

18. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- a. monitor the Applicant's receipts and disbursements;
- b. report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the activities of the Applicant, and such other matters as may be relevant to the proceedings herein;
- c. advise the Applicant in its development of the Plan and any amendments to the Plan, and, to the extent deemed appropriate by the Monitor, assist in its negotiations with creditors, customers, vendors, and other interested Persons;
- d. assist the Applicant, to the extent deemed appropriate by the Monitor, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- e. have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents and to the Business of the Applicant, to the extent that is necessary to adequately assess the Applicant's Business and financial affairs or to perform its duties arising under this Order;
- f. be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including any affiliate of, or person related to the Monitor;
- g. develop a claims process to ascertain the quantum of the claims of all creditors; and

- h. be at liberty to perform such other duties as are required by this Order or by this Court from time to time.
19. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.
20. Nothing herein contained shall limit the protections afforded the Monitor at law including those protections set out in the CCAA.
21. The Monitor shall provide any creditor of the Applicant or a potential Debtor In Possession lender (“DIP Lender”) with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor or a DIP Lender addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors or a DIP Lender unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.
22. The Monitor, counsel to the Monitor, and all counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case not to exceed their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a [monthly/semi-annual/other] basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amounts of \$ _____, \$ _____, and \$ _____ respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
23. The Monitor and its legal counsel shall pass their accounts from time to time before a judge of this court or a referee appointed by a judge.

[Administrative Charge⁹

24. *The Monitor, the Monitor's counsel, and the Applicant's counsel (collectively, the "Chargees") shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$ _____, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings.*

25. *The filing, registration or perfection of the Administration Charge shall not be required and the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.*

26. *The Administration Charge shall constitute a charge on the Property and shall rank in priority to claims of the following secured creditors: [name secured creditors who have received notice as required by CCAA section 11.52 and over whom priority is sought] and in priority to any other interests, trusts, liens, charges, and encumbrances and claims, statutory or otherwise, in favour of any Person.*

27. *The Applicant and the Chargees shall be entitled, upon giving notice to parties likely affected, to seek an order changing the amount of the Administration Charge or providing that the Administrative Charge shall rank in priority to secured creditors not named in paragraph 26.*

28. *Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any encumbrance over any Property that ranks in priority to, or pari passu with the Administration Charge unless the Applicant also obtains the prior written consent of the Chargees, or further order of this Court.*

⁹ If a companion CCAA Charging Order is not granted, these provisions may be used to provide for an interim Administrative Charge.

29. *The Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application for a bankruptcy order issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) any negative covenants, prohibitions, or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:*

- a. the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;*
- b. none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant seeking the creation of the Administration Charge; and*
- c. the payments made by the Applicant pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.]*

Service and Notice

30. The Monitor shall: i) without delay, publish in _____ a notice containing the information prescribed under the CCAA, ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

31. The Applicant and the Monitor may give notice of this Order, any other materials and orders in these proceedings, and any notices, and provide correspondence, by forwarding originals or true copies by prepaid ordinary mail, courier, personal delivery, or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and any such notice by courier, personal delivery, or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

32. The Applicant and the Monitor, and any party who has filed a demand of notice may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsel's e-mail addresses as recorded on the service list from time to time, and the Monitor may post a copy of any or all such materials on its website at _____ .com.

General

33. The Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

34. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, construction lien trustee, or a trustee in bankruptcy of the Applicant, the Business or the Property.

35. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction outside Nova Scotia, is requested to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

36. Each of the Applicant and the Monitor may apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Monitor may act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

37. Any interested party, including the Applicant and the Monitor, may apply to this Court to vary or amend this Order on such notice required under the *Civil Procedure Rules* or as this Court may order.

38. This Order and all of its provisions are effective as of [a.m./p.m.]
[Atlantic Standard/Atlantic Daylight Saving] Time on the day of , 20

Issued , 20

Prothonotary

20

No.

Supreme Court of Nova Scotia

Application by _____ (the “Applicant”)
for relief under the *Companies’ Creditors Arrangement Act*

Charging Order

Before the Honourable Justice [name or blank] in chambers

The Applicant applied for relief under the *Companies’ Creditors Arrangement Act* including an initial order, which has been granted, and further orders on further motion;

The initial order was granted on the _____ day of _____, 20____ (the “Initial Order”) and the Applicant now moves for an order providing certain Charges in priority to existing security;

The Applicant [*applied/moved*] for a charging order along with supporting documents including the affidavit of service of _____ (the “Affidavit of Service”), the affidavit of _____, and [*the affidavit of _____ on behalf of the proposed Monitor./a report of the Monitor.*]¹

The following parties appeared and made submissions on the motion: _____,
and no one appeared on behalf of _____.

¹ A charging order may be sought as part of the relief claimed in the notice of chambers application, it may be sought by notice of motion returnable at the same time as the chambers application, or it may be sought later by notice of motion. In the first and second situations, an affidavit of the proposed Monitor is appropriate. Otherwise, the Monitor would have been appointed and a report is appropriate.

On motion of the applicant the following is ordered and declared:

Service

1. The service of the [*notice of application/notice of motion*] and the supporting documents as set out in the Affidavit of Service is deemed adequate² so that the [*application/motion*] is properly returnable today and further service thereof is hereby dispensed with.

Interpretation

2. All capitalized words used in this Order that are not otherwise defined in this Order have the meanings ascribed to them in the Initial Order.

Restructuring

3. The Applicant may, subject to compliance with section 36 of the CCAA, and in addition to the powers granted in the Initial Order, dispose of redundant or non-material assets not exceeding \$ _____ in any one transaction or \$ _____ in the aggregate.

Directors' and Officers' Indemnification and Charge

4. The Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within

² The Applicant should seek to have service validated if it was done in a manner other than as authorized by the *Civil Procedure Rules*.

proceedings,³ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's negligence or actionable misconduct.

5. The directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")⁴ on the Property, which charge shall not exceed an aggregate amount of \$ _____, as security for the indemnity provided in this Order. The Directors' Charge shall have the priority set out herein.

6. Notwithstanding any language in any applicable insurance policy to the contrary, (a) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with this Order, and (b) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge.

Administrative Charge

7. The Monitor, counsel to the Monitor and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$ _____, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out herein.

³ The broad indemnity language from section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.

⁴ Subsection 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

DIP Financing and Charge

8. The Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from _____ (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$ _____ (the "DIP Facility") unless permitted by further order of this Court.

9. The DIP Facility shall be substantially on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated _____ (the "DIP Term Sheet") annexed hereto as Schedule "A", as same may be amended from time to time with the Monitor's written consent provided any amendment may not affect a secured creditor's rights without further order of this Court.

10. The Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and other security documents, guarantees, and other definitive documents (collectively, the "DIP Documents"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities, and obligations to the DIP Lender under the DIP Term Sheet as and when the same become due and are to be performed, notwithstanding any other provision of this Order or the Initial Order.

11. The DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property as security for any and all obligations of the Applicant under or pursuant to the DIP Facility and the DIP Term Sheet, which charge shall not exceed the aggregate amount owed to the DIP Lender under the DIP Facility and the DIP Term Sheet. The DIP Lender's Charge shall have the priority set out herein.

12. Notwithstanding any other provision of this Order or the Initial Order:

- a. the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or the DIP Term Sheet or any of the DIP Documents;
- b. upon the occurrence of an event of default under the DIP Term Sheet or DIP Documents or the DIP Lender's Charge, the DIP Lender, upon _____ days' notice to the Applicant and the Monitor, may with leave of the Court exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Term Sheet, DIP Documents and the DIP Lender's Charge; and
- c. the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

13. The Applicant is enjoined from making a proposal under the *Bankruptcy and Insolvency Act* by which any advance made under the DIP Term Sheet or the DIP Documents could be repaid at less than one hundred cents on the dollar, or by which any claims or other rights of the DIP Lender under any agreement related to the DIP Facility could be compromised, unless the DIP Lender agrees otherwise in writing.

Critical Suppliers and Charge

14. Each of the entities listed in Schedule "B" hereto is a critical supplier of the Applicant as contemplated by section 11.4 of the CCAA (each, a "Critical Supplier"), provided that such designation shall not constitute a finding or determination that such entities are critical suppliers to any affiliate of the Applicant.

15. Each Critical Supplier shall continue to supply the Applicant with goods or services on terms and conditions that are consistent with existing arrangements and past practices.

16. The Applicant shall make prompt payment for goods or services supplied to them by a Critical Supplier. For greater clarity, an Applicant who receives goods or services from a Critical Supplier on and after the date of this Order shall make payment to such Critical Supplier for such goods or services on the next date on which such Applicant ordinarily issues cheques, provided that such date is at least two days, and no more than seven days, after the date on which such Applicant receives from such Critical Supplier an invoice for the purchase price of the goods or services supplied.

17. No Critical Supplier may require the payment of a deposit or the posting of any security in connection with the supply of goods or services to the Applicant after the date of this Order.

18. Each Critical Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the "Critical Supplier Charge") on the Property in an amount equal to the purchase price of the goods and services supplied by such Critical Supplier and received by the Applicant after the date of this Order less all amounts paid to such Critical Supplier in respect of such goods and services. The Critical Supplier Charge shall have the priority set out herein.

Validity and Priority of Charges Created by this Order

19. The priorities of the Directors' Charge, the Administration Charge, the Critical Supplier Charge and the DIP Lender's Charge as among them, and as against the existing security held by any secured creditor prior to the issuance of this Order (the "Existing Security"), shall be as follows:

- a. First – Administration Charge ;
- b. Second – DIP Lender's Charge;
- c. Third – Directors' Charge ;
- d. Fourth – Critical Supplier Charge; and

e. Fifth – Existing Security in such priority as they currently have.⁵

20. The filing, registration, or perfection of the Directors' Charge, the Administration Charge, the Critical Supplier Charge and the DIP Lender's Charge (collectively, the "Charges") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title, or interest filed, registered, recorded, or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record, or perfect.

21. Each of the Charges, all as constituted and defined herein, shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

22. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Existing Security or any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, its existing secured creditors, and the beneficiaries of the Charges (the "Chargees"), or further order of this Court.

23. The Charges, the DIP Term Sheet, and the DIP Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by i) the pendency of these proceedings and the declarations of insolvency made herein; ii) any application for a bankruptcy order issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or iv) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt, or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, or other agreement (collectively, an

⁵ The wording about ranking of Charges is for illustration purposes only. This ranking may be subject to determination and negotiation, and should be tailored to the circumstances of the case before the Court.

"Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- a. neither the creation of the Charges nor the execution, delivery, perfection, registration, or performance of the DIP Term Sheet or the DIP Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- b. none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the DIP Documents; and
- c. the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the DIP Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements, or other challengeable, voidable, or reviewable transactions under any applicable law.

24. Any Charge created by this Order over leases of real property in Canada shall only be a Charge on the Applicant's interest in such real property leases.

25. The Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to:

- a. assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a [weekly/monthly/other] basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender; and

- b. advise or assist the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [weekly/monthly/other] , or as otherwise agreed to by the DIP Lender.

26. Any amounts actually advanced or expended pursuant to any of the Charges shall have the priority as provided for herein regardless of the time of advance or the use to which funds were actually put.

Service and Notice

27. The Applicant and the Monitor shall serve a copy of this Order on all secured creditors of the Applicant and shall be at liberty to serve this Order on such other Persons as it determines is appropriate. All such service shall be made in accordance with the provisions of the Initial Order.

General

28. The aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction outside Nova Scotia is hereby requested to give effect to this Order and to assist the Applicant, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, or regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

29. Each of the Applicant 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.

30. Any interested party, including the Applicant and the Monitor, may apply to this Court to vary or amend this Order on such notice provided for under the *Civil Procedure Rules* or on such notice as this Court may order.

31. This Order and all of its provisions are effective as of [a.m./p.m.] [Atlantic Standard/Atlantic Daylight Saving] Time on the day of , 20 .

Issued , 20

Prothonotary

Schedule "A"

DIP Term Sheet
To be attached.

Schedule “B”

List of Critical Suppliers