

No. \_\_\_\_\_  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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 AND ARRANGEMENT OF TEBO MILL  
INSTALLATIONS INC., TEBO MILL CONSTRUCTION INC., ALGON HOLDINGS INC.,  
FRASERVIEW FABRICATION AND MACHINING INC., PTOLEMYTECH  
CONSULTANTS INC.

**PETITIONERS**

**PETITION TO THE COURT**

**This proceeding is brought by the Petitioners for the relief set out in Part 1 below.**

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the Petitioners
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**TIME FOR RESPONSE TO PETITION**

A response to petition must be filed and served on the Petitioners,

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or

(d) if the time for response has been set by order of the court, within that time.

(1)	<p>The address of the registry is:</p> <p>The Law Courts 800 Smithe Street Vancouver, British Columbia, V6Z 2E1</p>
(2)	<p>The ADDRESS FOR SERVICE of the petitioners is:</p> <p>Bennett Jones LLP 2500 Park Place, 666 Burrard Street, Vancouver, B.C. V6C 2X8</p> <p><b>Attention: David E. Gruber Mia Laity Andrew Froh</b></p> <p>Fax number address for service of the petitioner: 604-891-5100</p> <p>E-mail address for service of the petitioner: <a href="mailto:gruberd@bennettjones.com">gruberd@bennettjones.com</a></p>
(3)	<p>The name and office address of the petitioner's lawyer is:</p> <p>Bennett Jones LLP 2500 Park Place, 666 Burrard Street, Vancouver, B.C. V6C 2X8</p> <p><b>Attention: David E. Gruber Mia Laity Andrew Froh</b></p>

## CLAIM OF THE PETITIONERS

### Part 1: ORDER SOUGHT

- The Petitioners seek an order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), substantially in the form attached hereto as Schedule "A" (the "**Initial Order**"), granting the following relief, including:

- (a) abridging the time for service of this Petition and the Petition Record and dispensing with further service thereof other than in accordance with the Initial Order;
- (b) a declaration that the CCAA applies to the Petitioners;
- (c) a stay, for an initial period of not more than ten (10) days (the “**Stay of Proceedings**”) of all proceedings and remedies taken or that might be taken in respect of the Petitioners or any of their property, except with the written consent of the Petitioners and the Monitor, or with leave of the Court;
- (d) authorizing the Petitioners to carry on business in a manner consistent with the preservation of their property and business and to make certain payments in connection with their business during the proposed CCAA proceedings (the “**CCAA Proceedings**”);
- (e) appointing Crowe MacKay LLP as an officer of the Court to monitor the assets, business and affairs of the Petitioners in these proceedings (once appointed in such capacity, the “**Monitor**”);
- (f) granting the following priority charges (collectively, the “**Charges**”) over the Petitioners’ current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively, the “**Property**”)
  - (i) the Administration Charge (as defined below) in favour of the Monitor, counsel to the Monitor and counsel to the Petitioners;
  - (ii) Directors’ Charge (as defined below) in favour of the Petitioners’ directors and officers;
- (g) authorizing the Petitioners to file with the Court a plan or plans of compromise and arrangement; and

(h) such further and other relief as this Honourable Court may deem just.

## **Part 2: FACTUAL BASIS**

1. Unless otherwise provided, all amounts set out in this Petition are provided in Canadian currency.

### **THE PETITIONERS**

2. The Petitioners, TEBO Mill Installation Inc., TEBO Mill Construction Inc., Fraserview Fabrication and Machining Inc, and Algon Holdings Ltd., collectively do business as the “TEBO Group of Industries” (all together, the “**TEBO Group**” or “**TEBO**”).

3. Ptolemytech Consultants Inc. (“**Ptolemytech**”) is a related company which is owned and operated by another member of TEBO's ownership group.

4. Algon Holdings Ltd. (“**Algon**”) is primarily a financial vehicle for the TEBO Group.

5. TEBO is a leading industrial component developer, with four decades of experience on all seven continents. It has completed various industrial and commercial construction projects both as an EPC (engineering-procurement-construction) contractor and as a prime contractor.

6. The TEBO Group consists of three main business segments: (i) installation, (ii) construction, and (iii) fabrication. These business segments are conducted through three corporations. They are, respectively:

- (i) TEBO Mill Installations Inc. (“**TMI**”), a leading industrial plant installer globally. It provides industrial installation services to clients, and to the TEBO Group for its engineering, procurement, and construction projects. It is one of the largest and oldest industrial installation companies in Western Canada, and has completed several industrial installations at the Vancouver port terminal and Vancouver International Airport;
- (ii) TEBO Mill Construction Inc. (“**TMC**”), an industrial and commercial construction company completing projects both as a general contractor and

as a subcontractor. TMC has managed projects with an average project budget of \$50 million; and

- (iii) Fraserview Fabrication and Machining Inc. ("**FFM**"), a major manufacturer of steel structures used in industrial and commercial construction. It is the largest custom steel fabrication manufacturer in the Lower Mainland, and has developed structured steel parts for the Port Mann Bridge and BC Ferries' docking stations, among other projects.

7. TEBO established its installation and construction businesses in 1986, and the fabrication business was established in 1993. Collectively, the three business segments of the TEBO Group comprise a vertically integrated business enterprise, capable of fabricating, constructing and installing industrial plants and infrastructure on a global basis in a sustainable way.

8. The Petitioners are each corporations incorporated under the *Business Corporations Act (British Columbia)*, and, except for Ptolemytech, have a registered and records office at #300-15127 100<sup>th</sup> Avenue, Surrey, BC, V3R 0N9, a head office at 3230 Baird Street, North Vancouver, BC, V7K 2G7, and an operating facility at 8056 and 8086 Alexander Road, Delta, BC, V4G 1G7. Ptolemytech has a registered and records office of 638 Derwent Way, Delta, BC, V3M 5P8.

9. The TEBO Group operates as a functionally integrated group. The managerial decision-making is centralized out of its head office and many of its operational functions are consolidated.

## **OVERVIEW AND NEED FOR CCAA PROTECTION**

### ***Fibreco Silo Collapse***

10. In or around 2020 and 2021, TEBO completed two major projects at Fibreco Export Inc.'s ("**Fibreco**") export terminal in North Vancouver ("**Terminal Projects**") for Fibreco and Ag

Growth International Engineering (“**AGI**”). Specifically, they fabricated the steel for the Fibreco export chip loading facility and the Silos reconstruction project.

11. On September 11, 2020, one of Fibreco’s silos collapsed (the “**Silo Collapse**”). This impacted TEBO’s financial position through delayed payment of Accounts Receivable (“**AR**”) on the projects and unanticipated rental costs, as is explained in more detail below.

### ***New Ownership and RBC Financing***

12. In 2021, the current ownership group acquired TEBO. At that time, they still expected to recover the Terminal Projects’ AR, and they anticipated a pipeline of work in the sawmill, pulp and paper industries.

13. To address its working capital constraints, TEBO entered into credit agreements with the Royal Bank of Canada (“**RBC**”) on November 10, 2021. Amended and restated credit agreements were entered into on July 20, 2022 (collectively, the “**RBC Credit Agreements**”).

### ***Consequences of Silo Collapse***

14. Fibreco’s Silo Collapse caused TEBO’s equipment to be damaged, including a leased crane which was trapped in the collapsed silo. TEBO incurred unexpected rental costs as a result of the trapped equipment.

15. Even more significantly, TEBO’s Accounts Receivable (“**AR**”) on the Terminal Projects remained outstanding after the Silo Collapse. Despite consistent efforts to have that AR paid, it took over a year for AGI and Fibreco to complete payment of the remaining \$1.6 million, which finally occurred in October 2022.

16. Fibreco and AGI’s delay in paying the AR materially affected liquidity for the entire TEBO Group in 2021 and 2022.

### ***Downturn in pulp and paper and sawmills industries***

17. TEBO was initially set up to service pulp and paper mills and sawmills. It is in fact one of the oldest extant forestry construction and maintenance services providers in Western Canada.

Since TEBO's establishment in 1986, it has served the needs of local mills including providing overload services, millwrights, welders, carpenters, pipe fitters, maintenance supervisors, and installation project managers.

18. However, in recent years, there has been a downturn in the sawmill, pulp and paper industries due to, among other things (a) a shortage in the supply of wood fibre and other supply shortages; (b) regulatory changes in respect of fibre quotas and stumpage rates; and (c) ongoing trade tensions regarding fibre exports to the United States and resulting antidumping and countervailing duties. As a result, this source of business has decreased greatly.

***Diversification and expansion in response to market conditions***

19. In response to these industry conditions, TEBO diversified into other industries and jurisdictions. However, there have been challenges on these fronts as well, as described in the paragraphs below.

20. First, TEBO tried to build on its previous work in other jurisdictions, namely in Europe and across North America, with limited success. Then, TEBO also expanded its international scope and successfully secured project work in Africa. However, this project work has proven difficult to finance. Locally, TEBO also diversified into other industries, such as road maintenance, and has been successful in doing so. Though it has faced payment timing issues with these, as elaborated upon below.

***RBC facilities unsuited to new circumstances***

21. The RBC Facilities were not suited to TEBO's new project financing requirements. As TEBO's diversified projects proceeded, and the revenue and financing associated with them stalled, TEBO could not service its debts while maintaining operations. Consequently, TEBO found itself in default on its RBC Credit Agreements.

22. In March, 2023, RBC locked TEBO out of its operating line of credit. RBC ceased margining TEBO's AR as well. From this point, and until it could secure more credit, TEBO had to operate on a cash basis.

## ***Project payment delays***

### *(a) African Projects*

23. In response to domestic circumstances described above, TEBO expanded into new markets internationally. TEBO had international experience prior to this in the United States and Europe, however it had not operated previously in Africa.

24. In May and June, 2023, TEBO was successful in its bids on two projects in Africa, specifically, the design-build construction of (a) the YKN Pan African Library and William Ruto Leadership Centre in Uganda, and (b) a large housing relocation and construction project which will create over five thousand affordable and mixed residential units in Rwanda over five years, worth a combined value of €36 million (“**African Projects**”).

25. In furtherance of the African Projects, TEBO entered agreements with the Rwanda Housing Authority on May 24, 2023 and with the East Africa Strategic Investment Forum and the Government of Uganda on June 6, 2023 (together, the “**African Contracts**”).

26. The African Projects are of a much larger scope than TEBO’s previous projects, and project financing has correspondingly taken longer to secure as well. This is further complicated by new jurisdictional challenges.

#### (i) African Project Financing Challenges

27. Project financing for the African Projects has proven difficult. TEBO sought project financing with RBC for the African Projects. RBC referred TEBO to Export Development Canada, which was able to provide a bonding facility for approximately \$2 million. After further back and forth with RBC's Trade Finance Department, TEBO developed a strategy to seek financing based on the security of a private equity funded standby letter of credit. This necessary strategy has significantly extended the process timeline for obtaining project financing, as described further below.



*(b) Local Projects*

28. Locally, TEBO diversified into other types of construction as well as roadwork. It had done so previously in its history to address market changes as well. For example, TEBO undertook projects for green energy developments in 2008, which saved it from the 2008 industrial crunch. Motivated this time by the sawmill and pulp and paper downturn, TEBO bid on, and was successfully awarded, two projects from the BC Ministry of Transportation and Infrastructure (“**MOTI**”) recently:

*(a)* \$2,575,000 contract awarded to TMI for maintenance and repairs to the Summit Lake Overhead on Trans-Canada Highway No. 1 near Revelstoke; and

*(b)* \$5,895,000 contract awarded to TMC for constructing a wildlife overpass on Highway Nos. 93/95 near Radium Hotsprings.

(together, the “**MOTI Projects**”)

29. However, a significant amount of time can elapse between beginning the bidding process and receiving payment on such projects. For example, TEBO worked for over a month on its bids, including completing a question-and-answer period, in June and July 2023 for the MOTI projects, and then submitted its bid in July 2023. It was not informed that it was successful until August 29, 2023 on one project, and September 13, 2023 on the other, and the project did not begin until October 2023.

30. Moreover, compensation occurs through end-of-the-month invoicing with payment made within a month after the invoice is issued. Thus, TEBO issued its first invoice on the project on October 31, 2023, and anticipates being paid soon, before November 30, 2023 on its first invoice which was in the amount of approximately \$400,000. This creates another temporal liquidity constraint within TEBO, with significant costs paid up-front and corresponding accounts receivable paid months thereafter.

*(Re)financing efforts*

31. To address its working capital deficiency and repayment to RBC, TEBO made efforts to refinance. These efforts are ongoing, progress is being made, and certain financings are at an advanced stage.

32. On the one hand, TEBO has made efforts to obtain an asset-based lending facility by margining its AR on the MOTI Projects. These efforts have advanced with BDC for a \$2-3 million credit facility and are now just subject to underwriting. They informed us on November 6, 2023, that the underwriting process will take a further two to three weeks. Two bridge lenders, Pillar Capital, and United Trust Bank, have also expressed interest in providing such asset-based lending facility as well and TEBO is pursuing negotiations with those bridge lenders concurrently.

33. On the other hand, TEBO made efforts to finance its African Projects which are elaborated upon below. As discussed above, a standby letter of credit was required to secure this. TEBO negotiated the standby letter of credit with private parties.

34. Due diligence on the standby letter of credit began in April, 2023. The standby letter of credit was approved in early May, 2023.

*Original Forbearance Agreement*

35. On or around May 26, 2023, TEBO entered into a forbearance agreement with RBC, pursuant to which RBC agreed to forbear from demanding repayment of the RBC indebtedness or enforcing on its security until June 30, 2023 (the “**Original Forbearance Agreement**”).

36. As referenced above, TEBO genuinely expected that approval of the standby letter of credit meant that it could meet its June 30, 2023 deadline with RBC.

37. However, although it was approved in May, 2023, the standby letter of credit was not ultimately issued until August, 2023.

### *Investment agreement*

38. On July 17, 2023, TEBO executed a confidential investment agreement with a UK real estate investment company (“**UK Investor**”) whereby the UK Investor agreed to invest USD\$50 million to partner with TEBO on certain assets. TEBO took further steps to finalize this Investment Agreement but encountered delays in this process. Specifically, given the UK Investor would be providing funds by raising capital from using cash collateral banking instruments, the banks determined they needed to proceed by way of syndication with other banks in order to contain the risk exposure. TEBO is still working to obtain these funds, and is optimistic this can be completed in the near future.

### *Amending Forbearance Agreement*

39. On August 18, 2023, in light of the delayed but progressing financing efforts, the Original Forbearance Agreement was amended and extended on certain terms to September 15, 2023 (the “**Amending Forbearance Agreement**”, and together with the Original Forbearance Agreement, the “**Forbearance Agreements**”).

### *(Re)financing efforts advanced, yet to be finalized*

#### *(a) Citibank syndicated project finance*

40. TEBO has secured a commitment from Citibank NA (“**Citibank**”) to lead a USD\$50 million syndicated credit facility for project financing based on the security of the standby letter of credit, which would be led by Citibank as administrative agent.

41. TEBO erroneously believed that financing would be completed rather quickly after the standby letter of credit was issued. However, that process is not yet complete despite TEBO’s best efforts. Initially, syndication was explored with a different consortium of banks, and this evolved into Citibank taking the lead and with a different group. TEBO had communicated the earlier iteration of the plan to RBC. TEBO understands from Citibank that the process of syndication and funding may be completed in the very near future.

42. In the event this financing concludes, TEBO's management intends to use USD \$40 million for operations in Africa and utilize the remaining USD \$10 million in Canada as working capital and to repay the RBC Indebtedness.

(i) Alternate financing of the African Projects

43. TEBO is also in discussions with a lender in the United Arab Emirates ("**UAE Bank**") for a credit facility to finance the African Projects. This involves the UAE Bank lending against the African Projects based on certain potential government guarantees. TEBO is in the process of seeking out this additional pre-requisite in order to potentially secure this line of financing for its African Projects. The intention would be again to repatriate a portion of it to repay TEBO's Canadian debts, and address its Canadian operating needs.

*(b) Other funding prospects*

44. TEBO has also been seeking AR margining on its BC projects, particularly the MOTI Projects, in order to address the payment timing lag on those projects. These efforts have been mainly with BDC. TEBO paid \$230,000 and \$62,000.00 from its AR recovery against the RBC loan during this time in good faith effort to repay its indebtedness.

***Receivership Application***

45. As described above, TEBO has ongoing operational projects, and has secured further projects in its future pipeline, yet it has also faced challenges with refinancing, and in obtaining adequate project financing for its African Projects. As a result, TEBO was unable to meet the September 15, 2023, payment deadline. TEBO remained in communication with RBC and urged RBC to communicate directly with the bankers in New York involved in establishing the syndicated loan facility.

46. On October 30, 2023, RBC filed a Notice of Application seeking to assign a receiver over all of the assets, undertakings, and property of the TEBO Group (the "**Receivership Application**").

47. According to RBC, as of October 16, 2023, the balance on the RBC Credit Agreements was over \$5,541,000, plus interest. The Petitioner, Ptolemytech is also indebted to RBC for a small amount in connection with a corporate credit card (the “**RBC Indebtedness**”).

48. TEBO remains committed to paying all outstanding amounts RBC at the earliest opportunity.

### **CURRENT OPERATIONS AND ASSETS**

49. As discussed above, TEBO is currently contracted to complete projects in the following locations:

- (a) road maintenance and repairs to the Summit Lake Overhead on Trans-Canada Highway No. 1 near Revelstoke, BC, valued at \$2,575,000;
- (b) construction of a wildlife overpass near Radium Hot Springs, BC, valued at \$5,895,000 (*i.e.*, together with the above, the MOTI Projects);
- (c) warehouse extension project for Richmond Plywood in Richmond, BC valued at \$1.5 million;
- (d) fabrication on a gassification plant by Nexterra Systems at the University of British Columbia Point Grey campus in Vancouver, BC, valued at \$2 million;
- (e) fabrication and construction on a proposed biogas facility in South Surrey, BC with Andion Global, funded by the Government of Canada in partnership with Semiahmoo First Nations, valued at \$35 million;
- (f) various smaller (\$100,000 to \$500,000 in value) custom steel fabrication projects, mainly for other clean energy plants across various jurisdictions;
- (g) construction of government housing project to build over five thousand affordable and mixed housing over five years in Kigali for the Rwanda Housing Authority in Rwanda;

- (h) design-build construction of the YKN Pan African Library and William Ruto Leadership Centre in Uganda commissioned by the East African Investment Initiative, and the Ugandan government, in collaboration with the Kenyan government, with a budget of USD\$250,000,000 (*i.e.*, together with the above, the African Projects); and
- (i) construction on a 32-storey residential development (City Center 100) in Surrey, BC (awaiting permitting).

### ***Employees***

50. The TEBO Group currently employs approximately 132 individuals (the “**Employees**”). Of this number, eight are salaried while the rest are paid hourly. The number of Employees, and the specific Petitioner who employs them is further detailed in the chart below.

<b>Entity</b>	<b>Total</b>
<b>TMI</b>	88
<b>TMC</b>	13
<b>FFM</b>	31
<b>Total</b>	<b>132</b>

51. TMI’s employees are unionized (the “**Unionized Employees**”). The Unionized Employees and their employment relationships are governed by a Collective Agreement (the “**Collective Agreement**”) by and between TMI and the United Steelworkers Union.

52. TEBO has mainly long-term employees, many working for the TEBO Group for years and even decades. Approximately 60% of the workforce has been with TEBO for over ten years.

### *Leased Assets*

53. The TEBO Group operates from leased premises. TMI entered into its current lease agreement on August 17, 2023 to operate out of the leased premises located at 8056 and 8086 Alexander Road, Delta, BC for a period between May 1, 2014 until April 30, 2029.

54. TEBO also leases a premises in Calgary, Alberta ("**Calgary Office**").

55. TEBO also leases various motor vehicles: two 2020 Ford F150 motor vehicles bearing serial numbers 1FTEW1E41LFA52485 and 1FTEW1E41LFB16962, a 2020 Ford F150 motor vehicle bearing serial number 1FTFW1E40LKF42895, a 2023 Ford F150 motor vehicle bearing serial number 1FTFW1E87PFA25997.

### *Suppliers*

56. The TEBO Group relies on a number of vendors, suppliers, and third-party service providers to operate its business (collectively, the "**Third-Party Suppliers**"). The Third-Party Suppliers are essential to the operations of the TEBO Group.

57. Since operating on a cash-basis, TEBO has been negotiating invoices and utilizing credits with Third-Party Suppliers to avoid being in arrears with these Third-Party Suppliers.

### *Cash Management and Credit*

58. TEBO banks mainly with RBC. TEBO holds six accounts at RBC. It also holds one bank account with TD Canada Trust and four with Bank of Montreal. All its credit cards are also with RBC and no other bank.

59. In connection with the CCAA Proceedings and the proposed Initial Order, the TEBO Group are seeking the authority to continue to operate the Cash Management System to maintain the funding and banking arrangements already in place.

### *Insurance*

60. The TEBO Group maintains director's and officer's liability insurance (the "**D&O Insurance**"). The D&O Insurance covers the directors of the corporations making up the TEBO

Group and their present and former officers who are or were employed by those corporations within the TEBO Group. The D&O Insurance has various exceptions, exclusions and carve-outs. The D&O Insurance may not provide sufficient coverage against the potential liability that the current and future directors and officers of the TEBO Group (the "**Directors and Officers**") could incur in connection with the CCAA Proceedings.

## **FINANCIAL STATEMENTS**

61. The following TEBO entities have consolidated financials: TMI, TMC, FFM, and Algon:
- (a) TMI has financial statements for the period from March 1, 2022 to February 28, 2023 and for the period from March 1, 2023 to August 31, 2023 (the "**TMI Financial Statements**").
  - (b) TMC has financial statements for the period from March 1, 2022 to February 28, 2023, and for the period from March 1, 2023 to August 31, 2023 (the "**TMC Financial Statements**").
  - (c) FFM has financial statements for the period from March 1, 2022 to February 28, 2023 for the period from March 1, 2023 to August 31, 2023 (the "**FFM Financial Statements**").
  - (d) Algon has financial statements for the period from October 25, 2021 to February 28, 2022 (the "**Algon Financial Statements**").
62. As set out in their respective Financial Statements, the TEBO Group has \$16,747,530 in total assets and total liabilities of \$13,810,838. The TMI, TMC, and FFM Financial Statements are for the 12-month period ending of February 28, 2023 and the Algon Financial Statements are for the year ending February 28, 2022 for Algon. Since Algon is primarily a financial vehicle, and not involved in performance of TEBO services, the Algon Financial Statements are also illustrative of its financial position for 2023.



***Secured Indebtedness***

***(a) RBC***

63. As mentioned above, on November 10, 2021, Algon and TMI (“**RBC Borrowers**”) entered into credit agreements with RBC. Pursuant to TMI’s credit agreement with RBC, RBC provided a non-revolving credit facility in the amount of \$5,000,000 (“**TMI/RBC Credit Facility**”). The TMI/RBC Credit Facility bears an interest rate at the Royal Bank Prime Rate (“**RBP**”) per annum.

64. Algon and RBC entered into a credit agreement whereby RBC established a revolving line in the amount of \$1,500,000 in favour of Algon (the “**Algon/RBC Credit Agreement**”, and together with the “**TMI/RBC Credit Facility**”, the “**RBC credit facilities**”). The TMI/RBC Credit Facility is guaranteed by TMC, Algon, FFM, and Ptolemytech.

65. The following general security agreements (“**GSA**”)s were granted in favour of RBC:

- (i) a GSA, dated November 19, 2021, granted by Algon;
- (ii) a GSA dated November 19, 2021 granted by Ptolemytech;
- (iii) a GSA dated January 21, 2022 granted by FFM;
- (iv) a GSA, dated July 20, 2022, granted by TMI; and
- (v) a GSA, dated July 28, 2022, granted by TMC.

***(b) Other secured obligations***

66. In addition to the registrations in favour of RBC, the following additional registrations, among others, have been filed against the various TEBO Group entities:

- (i) WS Leasing Ltd. registered motor vehicle collateral against Tebo Mill Installations Ltd. and Tebo Mill Installations Inc. for two 2020 Ford F150 motor vehicles bearing serial numbers 1FTEW1E41LFA52485 and 1FTEW1E41LFB16962;

- (ii) Travelers Leasing Ltd. registered motor vehicle collateral against Tebo Mill Installations Ltd. for a 2020 Ford F150 motor vehicle bearing serial number 1FTFW1E40LKF42895;
- (iii) William Mullins, William Nay and Garth Bryers registered a general collateral against Tebo Mill Installations Inc. for all presently owned and after acquired personal property. This was in relation with the transaction for transfer of ownership, and is expressly subordinate to bank debt per the Share Purchase Agreement; and
- (iv) Jim Peplinski Leasing Inc. registered motor vehicle collateral against Tebo Mill Construction Inc. for a 2023 Ford F150 motor vehicle bearing serial number 1FTFW1E87PFA25997 and a general collateral against all of the debtor's right, title and interest in any equipment purchased by the debtor and financed by the secured party.

(a) **Unsecured indebtedness**

67. Gross payroll for the TEBO Group is approximately \$60,000 biweekly. While the TEBO Group is current with respect to the payment of payroll and the remittance of employee source deductions, its ability to meet future payroll obligations, including the next funding due date, is dependent on the granting of the relief sought in the Initial Order.

**CASH-FLOW STATEMENT**

68. TEBO has prepared, with the assistance of the proposed Monitor, cash flow forecasts for the 13-week period from the week ending February 17, 2024 (the "**Cash-Flow Statement**"). The Cash-Flow Statement demonstrates that additional financing is urgently required to provide the TEBO Group with the required liquidity for continued business operations in the ordinary course. In light of the foregoing, the TEBO Group is seeking creditor protection so it can have the time

necessary to secure urgently needed liquidity and otherwise support the TEBO Group's restructuring efforts.

69. Regarding the Cash-Flow Statement, the proposed Monitor has confirmed:

- (a) The hypothetical assumptions are reasonable and consistent with the purpose of the projections described in the notes to the Cash-Flow Statement, and the probable assumptions are suitably supported and consistent with the plans of the TEBO Group and provide a reasonable basis for the projections. All such assumptions are disclosed in the notes to the Cash-Flow Statement.
- (b) Since the projections are based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material; and
- (c) The projections have been prepared solely for the purpose described in the notes to the Cash-Flow Statement, using the probable and hypothetical assumptions set out in the notes. The proposed Monitor has cautioned readers that it may not be appropriate for other purposes.

### **ANTICIPATED RESTRUCTURING**

70. Should the Initial Order be granted, TEBO intends to address its insolvency through a number of steps including (i) finalizing interim financing arrangements in order to obtain short-term liquidity, and (ii) pursuing potential financing options in order to address operational funding shortages, and to repay its RBC Indebtedness, all under the supervision of the Court and with the assistance of the proposed Monitor.

71. The proposed Initial Order contemplates that Crowe MacKay LLP will act as the Monitor in the CCAA Proceedings. Crowe MacKay LLP is qualified and competent to act as Monitor under the CCAA for the TEBO Group in the CCAA Proceedings if the proposed Initial Order is granted.

### **Part 3: LEGAL BASIS**

1. The TEBO Group rely on:

- (a) the CCAA;

(b) *Supreme Court Civil Rules*, B.C. Reg. 241/2010, as amended; and

(c) the inherent and equitable jurisdiction of this Honourable Court.

2. The Court has jurisdiction to grant protection under the CCAA to a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies is more than \$5,000,000 (s.3 of the CCAA).

3. Courts have held that an Initial Order should be granted where it accords with the purposes of the CCAA which include rehabilitation, avoiding social and economic loss, and building consensus amongst interested stakeholders.

*Re Ted Leroy Trucking [Century Services] Ltd.*, 2010 SCC 60 ("*Century Services*") at  
paras. 15, 59, 70

4. An initial Order may include any relief that is reasonably necessary for the continued operations of the debtor companies in the ordinary course during the restructuring period (s. 11.001 of the CCAA).

*Century Services*, supra, at paras. 60-62

### **Stay of Proceedings**

5. TEBO urgently requires a stay of proceedings to prevent action by creditors and to provide it breathing room while it finds financiers to provide new capital and/or refinance its debt. The Stay of Proceedings will also protect and preserve the value of the TEBO Group's businesses for their benefit and for the benefit of their creditors and stakeholders.

6. TEBO is concerned about the disruption to its business operations and its ability to continue as a going concern if Receivership proceedings were allowed to continue, or rights or remedies were executed against TEBO. Absent a Stay of Proceedings, TEBO's ability to operate its business and fulfill its ongoing projects will be jeopardized.

7. In light of the foregoing, the Stay of Proceedings is in the best interests of TEBO and its stakeholders. The proposed Monitor agrees that the Stay of Proceedings is appropriate in the circumstances.

**Administration Charge**

8. On notice to those secured creditors likely to be affected by the charge, the court may grant priority charges in respect of professional fees and disbursements (s. 11.52 of the CCAA).

9. The factors to consider in determining whether to approve an administration charge include:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.

*Re Canwest Publishing Inc./Publications Canwest Inc.*, 2010 ONSC 222 ("*Canwest*") at  
para. 54

10. The Initial Order provides for a Court-ordered charge in favour of the proposed Monitor, as well as counsel to the proposed Monitor and TEBO over the Property, to secure payment of their respective fees and disbursements incurred in connection with services rendered in respect of the TEBO Group up to a maximum amount of \$200,000 (the "**Administration Charge**").

11. TEBO require the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during the CCAA Proceedings in order to complete a successful restructuring and there will be no duplication of roles.

12. TEBO has worked with the Proposed Monitor to estimate the proposed quantum of the Administration Charge and the Proposed Monitor has indicated that the quantum is reasonable.

13. The primary secured creditors were given notice in advance of filing this Petition and the Administration Charge is reasonable in the circumstances for the period of the initial stay.

### **Directors Charge**

14. On notice to those secured creditors likely to be affected by the charge, the Court may grant a charge in favour of directors and officers in an amount that the Court considers appropriate (s. 11.51 of the CCAA).

15. The Directors and Officers have indicated their continued involvement, including in the CCAA Proceedings, is conditional upon the granting of a priority charge in favour of the Directors and Officers in the amount of \$65,000 (the "**Directors' Charge**").

16. The Directors' Charge would serve as security for the indemnification obligations and potential liabilities the Directors and Officers may face during the initial 10-day period of the CCAA Proceedings. The Directors' Charge is proposed to rank subordinate to the Administration Charge, and second in priority provided that it be subordinated to any perfected pre-filing secured debt. The TEBO Group believes that the Directors' Charge is reasonable in the circumstances.

17. The purpose of the Directors Charge is to keep directors and officers in place to assist with the restructuring and avoid destabilization.

18. The primary secured creditors were given notice in advance of filing this Petition and the Directors Charge is reasonable in the circumstances and necessary for the continued participation of the Directors and Officers.

**The CCAA Proceedings are Preferred to the Receivership Application**

19. If the Receivership Application is granted, this will disrupt and potentially jeopardize TEBO's ongoing projects, and will erode upside enterprise value for three principal reasons:

- (a) first, the appointment of a receiver would be considered an “Event of Default” under the MOTI Projects' agreements, and TEBO is concerned that counterparties such as MOTI in particular would be reticent to continue project work with TEBO if it was under receivership;
- (b) second, TEBO’s Directors and Officers are committed, and better positioned, to oversee its ongoing projects, and thereby preserve enterprise value. TEBO's management and employees have longstanding project experience; and
- (c) third, going into a receivership could lead to a liquidation which would be especially harmful to TEBO's stakeholders, especially employees, subcontractors, and project partners and counterparties.

20. TEBO needs to be able to maintain access to their Cash Management System, and to retain the ability to transfer funds among the various bank accounts held by its related companies and subsidiaries, throughout its restructuring proceedings. TEBO’s continued access to its Cash Management System is critical to its ongoing business and its restructuring efforts.

21. The requested Initial Order, and the Stay of Proceedings provided for thereunder, is urgently required to provide much needed breathing space for TEBO to address its solvency issues and avoid potential unilateral action by its creditors that may result in the liquidation of the TEBO and their assets, which would be a suboptimal outcome for nearly all stakeholders.

22. In addition to addressing balance sheet issues, the CCAA Proceedings are also intended to benefit all of TEBO’s stakeholders, including, among others, TEBO's employees, customers, suppliers and other contracting parties.

**Part 4: MATERIAL TO BE RELIED ON**

1. At the hearing of this Petition, the Petitioners will rely on:

- (a) affidavit #1 of Alankar Khara, made November 20, 2023 and filed herein;
- (b) affidavit #1 of Victor Fong, made November 20, 2023 and filed herein; and
- (c) such further and other materials as counsel may advise and this Honourable Court may allow.

The petitioners estimate that the hearing of the petition will take a half day.

Date: November 20, 2023



David E. Gruber  
Lawyer for the Petitioners

THIS PETITION is prepared and delivered by David E. Gruber of Bennett Jones LLP, whose place of business and address for service is 2500-666 Burrard St, Vancouver, British Columbia, V6C 2X8 Phone: (604) 891-5150; Fax: (604) 891-5100 [gruberd@bennettjones.com]

**To be completed by the court only:**

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this petition

with the following variations and additional terms:

Date: November \_\_, 2023

Signature of  Judge  Master



Schedule "A"

No. \_\_\_\_\_  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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 AND ARRANGEMENT OF TEBO MILL  
INSTALLATIONS INC., TEBO MILL CONSTRUCTION INC., ALGON HOLDINGS INC.,  
FRASERVIEW FABRICATION AND MACHINING INC., PTOLEMYTECH  
CONSULTANTS INC.

PETITIONERS

**ORDER MADE AFTER APPLICATION**

**(Initial Order)**

BEFORE THE HONOURABLE

)  
)  
)

23/11/2023

THE APPLICATION of the Petitioners, TEBO Mill Installations Inc., TEBO Mill Construction Inc., Algon Holdings Inc., Frasersview Fabrication and Machining Inc., Ptolemytech Consultants Inc. (together, the "**Petitioners**") coming on for hearing at Vancouver, British Columbia, on the 23<sup>rd</sup> day of November, 2023 (the "**Order Date**"); AND ON HEARING David E. Gruber, and Mia Laity, counsel for the Petitioners and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including Affidavit No. 1 of Alankar Khara sworn November 20, 2023, Affidavit No. 1 of Victor Fong sworn November 20, 2023; AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

### **JURISDICTION**

1. The Petitioners are companies to which the CCAA applies. For greater certainty, the Petitioners shall enjoy the benefits of the protections provided herein, and shall be subject to the same restrictions hereunder.

### **SUBSEQUENT HEARING DATE**

2. The hearing of the Petitioners' application for an extension of the Stay Period (as defined in paragraph **16** of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at **10:00 a.m.** on **Friday**, the **1st** day of **December**, **2023** or such other date as this Court may order.

### **PLAN OF ARRANGEMENT**

3. The Petitioners 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 (hereinafter referred to as the "**Plan**").

### **POSSESSION OF PROPERTY AND OPERATIONS**

4. Subject to this Order and any further Order of this Court, the Petitioners 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**"), and continue to carry on its business (the "**Business**") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems

reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

### **CASH MANAGEMENT SYSTEM**

5. THIS COURT ORDERS that the Petitioners shall be entitled to continue to utilize the cash management system currently in place as described in the First Affidavit of Alankar Khara or replace it with another substantially similar 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 Petitioners 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 Petitioners, 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.

6. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**"); and
- (b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal

counsel retained by the Petitioners, whenever and wherever incurred, in respect of:

- (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;
- (ii) any litigation in which the Petitioners are named as a party or is otherwise involved, whether commenced before or after the Order Date; and
- (iii) any related corporate matters.

7. Except as otherwise provided herein, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are 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, provided that any capital expenditure exceeding \$50,000 shall be approved by the Monitor;
- (b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners' obligations incurred prior to the Order Date); and
- (c) fees and disbursements of the kind referred to in paragraph **6(b)** which may be incurred after the Order Date.

8. The Petitioners are authorized to remit, in accordance with legal requirements, or pay:

- (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 Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

9. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioners 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 as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioners and the landlord from time to time (“**Rent**”), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

10. Except as specifically permitted herein, the Petitioners are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of its creditors as of the Order Date except as authorized by the Monitor and this Order;
  - (i) for greater certainty, the Petitioners, with permission of the Monitor, may make payments on account of work and supplies pertaining to ongoing construction, installation, or fabrication projects for pre-filing amounts;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

## **RESTRUCTURING**

11. Subject to such requirements as are imposed by the CCAA, the Petitioners shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of its Business or operations and commence marketing efforts in respect of any of its redundant or non-material assets;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

- (c) pursue all avenues of refinancing for its Business or Property, in whole or part;

all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioners, or by further Order of this Court upon application by the Petitioners, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioners disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioners' claim to the fixtures in dispute.

13. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioners and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioners, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioners of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the “**Relevant Enactment**”), the Petitioners, in the course of these proceedings, is permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or control to stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, “**Third Parties**”), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

#### **STAY OF PROCEEDINGS, RIGHTS AND REMEDIES**

15. Until and including December 1, 2023, or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.



16. During the Stay Period, all rights and remedies of any individual, firm, corporation, 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 Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

17. Nothing in this Order, including paragraphs **15** and **16**, shall: (i) empower the Petitioners to carry on any business which the Petitioners are 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) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioners.

#### **NO INTERFERENCE WITH RIGHTS**

18. 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 Petitioners, except with the written consent of the Petitioners and the Monitor or leave of this Court.

#### **CONTINUATION OF SERVICES**

19. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment for the supply of goods and/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 Petitioners, 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 Petitioners, and that the Petitioners 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 Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

20. Notwithstanding any provision in this Order, 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 Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners 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 Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioners that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

## **DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE**

22. The Petitioners shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioners after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. The directors and officers of the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$65,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 34 and 36 herein provided that it be subordinated to any perfected pre-filing secured debt.

24. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioners' 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 paragraph 22 of this Order.

## **APPOINTMENT OF MONITOR**

25. Crowe MacKay LLP is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall co-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.

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

- (a) monitor the Petitioners' 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, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Petitioners in its development of the Plan and any amendments to the Plan;
- (d) assist the Petitioners, to the extent required by the Petitioners, 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 of the Petitioners, to the extent that is necessary to adequately assess the Petitioners' 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; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

27. 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, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be

construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

28. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might 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 law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. The Monitor shall provide any creditor of the Petitioners with information provided by the Petitioners in response to reasonable requests for information made in writing by such creditor 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 Petitioners is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioners may agree.

30. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

## **ADMINISTRATION CHARGE**

31. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the Petitioners are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioners, retainers in the amount of \$200,000 to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

33. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners 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 \$200,000, as security for their respective 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 which are related to the Petitioners’ restructuring. The Administration Charge shall have the priority set out in paragraphs 34 and 36 hereof.

## **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

34. The priorities of the Administration Charge and the Directors’ Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$200,000); and

Second – Directors’ Charge (to the maximum amount of \$65,000, provided that it be subordinated to any perfected pre-filing secured debt).

35. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge and the Directors’ Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

36. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

37. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtains the prior written consent of the Monitor and the beneficiaries of the Administration Charge and the Director’s Charge.

38. The Administration Charge and the Director’s Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and 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(s) for bankruptcy order(s) 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; (d) the provisions of any federal or provincial statutes; or (e) 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, mortgage, security agreement, debenture, sublease, offer to lease or other agreement

(collectively, an “**Agreement**”) which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges shall create or be deemed to constitute a breach by the Petitioners 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 creation of the Charges; and
- (c) the payments made by the Petitioners pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

39. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioners’s interest in such real property leases.

#### **SERVICE AND NOTICE**

40. The Monitor shall (i) without delay, publish in the Vancouver Sun a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (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 Petitioners of more than \$1000, 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.

41. The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the



Petitioners's creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or 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.

42. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the “**Service List**”) to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: <https://www.crowe.com/ca/crowesoberman/insolvency-engagements>.

43. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: <https://www.crowe.com/ca/crowesoberman/insolvency-engagements>.

44. Notwithstanding paragraphs 41 and 43 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

#### **GENERAL**

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

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

47. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners 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 Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

48. Each of the Petitioners 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 and the Monitor 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, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

49. The Petitioners may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioners determines that such a filing is appropriate.

50. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

51. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

52. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

53. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

54. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of David E. Gruber

Party  Lawyer for the Petitioners

BY THE COURT

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REGISTRAR

**SCHEDULE "A"**

**LIST OF COUNSEL**