



**Second Report to Court of  
KSV Restructuring Inc. as Proposal  
Trustee of 2806401 Ontario Inc. o/a Allied  
Track Services Inc.**

September 16, 2022

and

**First Report to Court of  
KSV Restructuring Inc. as Interim  
Receiver of 2806401 Ontario Inc. o/a  
Allied Track Services Inc.**

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COURT FILE NO.: 32-2859284 AND CV-22-00686556-00-CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC.,  
A CORPORATION INCORPORATED UNDER THE LAWS  
OF ONTARIO

KSV RESTRUCTURING INC., IN ITS CAPACITY AS PROPOSAL TRUSTEE OF  
2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC. v 2806401 ONTARIO INC.  
O/A ALLIED TRACK SERVICES INC.

SECOND REPORT OF KSV RESTRUCTURING INC. AS PROPOSAL TRUSTEE OF  
2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC.

FIRST REPORT OF KSV RESTRUCTURING INC. AS INTERIM RECEIVER OF  
2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC

SEPTEMBER 16, 2022

## 1.0 Introduction

1. This report (the “Report”) is filed by KSV Restructuring Inc. (“KSV”) in its capacity as:
  - a) proposal trustee (the “Proposal Trustee”) in connection with a Notice of Intention to Make a Proposal (“NOI”) filed by 2806401 Ontario Inc. o/a Allied Track Services Inc. (the “Company”) on August 25, 2022 (the “Filing Date”) pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act* (the “BIA”); and
  - b) interim receiver (the “Interim Receiver” and jointly with the Proposal Trustee, the “Court Officer”) of the Company’s assets, undertakings and properties (collectively, the “Property”) appointed under section 47.1 of the BIA pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated September 6, 2022 (the “Interim Receivership Order”).
2. Copies of the Certificate of Filing the NOI and the Interim Receivership Order are attached as Appendices “A” and “B”, respectively.
3. The principal purpose of the Company’s restructuring proceeding is to wind-down its operations and liquidate its assets for the benefit of its creditors and other stakeholders.

## 1.1 Purposes of this Report

1. This Report is being filed in connection with:
  - a) an application by Bridging (defined below), in the proceedings styled as PricewaterhouseCoopers Inc. in its capacity as Court-appointed receiver and manager of Bridging Finance Inc. v. 2806401 Ontario Inc. o/a Allied Track Services Inc. (the “Receivership Proceedings”) for the appointment of KSV as receiver of the Company pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (the “CJA”); and
  - b) a motion by the Interim Receiver in the proceedings styled as KSV Restructuring Inc., in its capacity as proposal trustee of 2806401 Ontario Inc. o/a Allied Track Services Inc. v. 2806401 Ontario Inc. o/a Allied Track Services Inc. (the “Interim Receivership Proceedings”) for the approval of its activities; and
  - c) a motion by the Company, acting by the Interim Receiver, in the proceedings styled as In the Matter of the Notice of Intention to Make a Proposal of 2806401 Ontario Inc. o/a Allied Track Services Inc., a Corporation incorporated under the laws of Ontario (the “Proposal Proceedings”) for an order extending the Company’s deadline to file a proposal, pursuant to section 50.4(9) of the BIA.
2. The purposes of this Report are to:
  - a) provide background information about the Company;
  - b) provide an update on the agreement (the “Close Out Agreement”) between the Company and Canadian Pacific Railway Company (“CP”), one of the Company’s customers, to provide for an orderly transition of the Company’s services to another vendor;
  - c) discuss the status of the Company’s machinery and equipment leases and the results of a preliminary review performed by Blake, Cassels & Graydon LLP (“Blakes”), the Court Officer’s counsel;
  - d) summarize the Interim Receiver’s activities related to the Company’s machinery and equipment (the “Equipment”);
  - e) summarize the Proposal Trustee’s and the Interim Receiver’s principal activities;
  - f) discuss the rationale for the Interim Receivership Order to be terminated and replaced by a receivership order substantially in the form of the Ontario model receivership order (“Receivership Order”);
  - g) report on the Company’s weekly cash flow projections for the period September 19, 2022 to November 8, 2022 (the “Cash Flow Forecast”);
  - h) discuss the Company’s request for an extension of the deadline to file a Proposal from September 24, 2022 to November 8, 2022; and

- i) recommend that this Court issue Orders:
- appointing KSV as receiver under section 243 of the BIA and section 101 of the CJA, pursuant to the application brought by Bridging Finance Inc. (“Bridging”), operating by its Court-appointed receiver PricewaterhouseCoopers Inc. (the “Bridging Receiver”);
  - extending the Company’s deadline to file a proposal under section 50.4(9) of the BIA; and
  - approving the Interim Receiver’s activities as set out in this Report.

## 1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

## 1.3 Restrictions

1. In preparing this Report, the Court Officer has relied upon unaudited financial information prepared by the Company’s representatives, the books and records of the Company and discussions with representatives of the Company and with its sole shareholder, Bridging. The Court Officer has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Court Officer expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. The Court Officer accepts no responsibility for any reliance placed by any third party on the Company’s financial information presented herein.
3. An examination of the Cash Flow Forecast as outlined in the Chartered Professional Accountants Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon the Company’s assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

## 1.4 Court Materials

1. Court materials filed in these proceedings are available on the Court Officer’s website at: <https://www.ksvadvisory.com/experience/case/2806401-ontario-inc>.

## 2.0 Background

1. The Company is a railroad maintenance service provider, offering track maintenance and repair, construction, bridging, civil engineering, flagging, signalling and related services. The Company leases its head office in Grimsby, Ontario, and operates in Ontario, Alberta, Manitoba and British Columbia.
2. The Company employed approximately 160 individuals as of the Filing Date, including members of the Labourers' International Union of North America. Since the Filing Date, the Company terminated 19 non-union and 41 union employees as the Company discontinued all of its projects other than the Service Contracts (as defined below).
3. The Company was incorporated on January 8, 2021 by Bridging for the purposes of acting as a stalking horse bidder in the proposal proceedings of a company formerly known as Allied Track Services Inc. ("Old Allied"). Bridging was Old Allied's largest secured creditor.
4. After a sale process in the Old Allied proposal proceedings, the Company's stalking horse bid was determined to be the superior bid, and the Company bought substantially all tangible assets, intellectual property and undertakings of Old Allied in a Court-approved transaction that closed on April 30, 2021. This transaction permitted the Company to continue the operations of Old Allied as a going concern and to continue to provide services to its customers, uninterrupted.
5. Also on April 30, 2021, in proceedings unrelated to the Old Allied proposal proceedings, the Court appointed the Bridging Receiver of Bridging and certain related entities and investment funds pursuant to section 129 of the *Securities Act* (Ontario), upon application by the Ontario Securities Commission. Bridging is presently the Company's largest secured creditor and a related party is its sole shareholder.
6. Despite the successful implementation of the transaction resulting from Old Allied's proposal proceeding, the Company continued to generate losses, resulting in the commencement of the within Proposal Proceedings on August 25, 2022.
7. As a result of personnel departures and stakeholder uncertainty triggered by the Proposal Proceedings, the Proposal Trustee brought an application under section 47.1 of the BIA seeking the appointment of KSV as Interim Receiver. This was done in order to bring stability to the Company's operations and wind-down, and in order to facilitate the Company completing the Service Contracts (defined below). As a result of this application, the Interim Receivership Order was granted on September 6, 2022.
8. Additional information about the Company is provided in the Proposal Trustee's First Report to Court dated September 4, 2022 (the "First Report"), a copy of which is provided in Appendix "C", without appendices.

### 3.0 Secured Creditors and Lessors

1. Bridging is the Company's principal secured creditor. As of the Filing Date, Bridging was owed approximately \$60 million. Blakes will shortly be performing a review of Bridging's security and the results of that review will be included in a subsequent report to Court; however as discussed in Part 7.0 below, a security review of Bridging's security conducted in 2021 did not identify any material problems.
2. As previously reported, the Company leases numerous vehicles, equipment and machinery to conduct its business. Five parties, in addition to Bridging, have registered financing statements against the Company in connection with vehicles, equipment, machinery and financial instruments. Several other lessors have not registered financing statements. Blakes has commenced a preliminary review of the leases, the results of which are summarized below.
3. The Court Officer is aware of nine lessors to the Company. Seven of the lessors are party to lease agreements that were assigned to the Company from Old Allied as part of the sale transaction in 2021. Two of the lessors are party to leases entered into after the Company acquired the Old Allied Assets. Of the nine lessors, only four have registered against the Company under the *Personal Property Security Acts* in Ontario or British Columbia.
4. Based on Blakes' preliminary review, the lessors may be summarized as follows:

Lessor	Secured Party	Collateral	Registered against Old Allied	Registered against the Company
Calmont Leasing Ltd.	Calmont Leasing Ltd.	2 GMC Sierras	No	No
Caterpillar Financial Services Limited	Caterpillar Financial Services Limited	1 Caterpillar 420-07XE backhoe loader	N/A	Yes
Daniella Rental Systems Inc.	Daniella Rental Systems Inc.	1 2013 Ford F750 1 2014 Volvo VHD64B200 1 2016 Volvo VHD64B200	No	No
Falcon Equipment Ltd.	Valiant Financial Services Inc.	Miscellaneous vehicles and equipment, including 1 2021 Freightliner 114SD	Yes	No
LMS Rail Services Limited	LMS Rail Services Limited	Approximately 29 Ford F-250s and F-350s	No	No
Meridian OneCap Credit Corp.	Meridian OneCap Credit Corp.	1 Landoll 454B-53 Trailer	Yes	Yes
Queenston Chevrolet Buick GMC	Setay Motors Inc.	Approximately 17 Chevrolet Silverados	Yes	No
Quip Finance	Vault Credit Corporation	1 2018 Vermeer Navigator Drill	N/A	Yes
Wheaton Chevrolet Buick Cadillac GMC Ltd.	Wheaton Chevrolet Buick Cadillac GMC Ltd.	1 2021 GMC Sierra	Yes	Yes

5. The Court Officer understands that the personal property security acts in the applicable provinces provide that a lessor under a lease of a term of more than one year is deemed to have a security interest in the leased collateral, and that this deemed security interest is subordinate to the interest of other secured creditors if it is not perfected. While a formal security review has not yet been completed, it appears that a number of the Company's lessors may be subordinate to Bridging's security.
6. The Interim Receiver has been in contact with a number of lessors to communicate the apparent priority issues and will consider if a resolution satisfactory to all parties can be achieved. If a consensual resolution is not possible, the Interim Receiver anticipates that it (or a receiver, if appointed) may be required to return to the Court for advice and directions on the relative priority to leased equipment.
7. In order to maintain the status quo, the Interim Receiver (or the receiver, if appointed) will secure and store all leased equipment not presently being used to perform the Service Contracts (as defined below) pending a resolution to any priority dispute. The Interim Receiver (or the receiver, if appointed) will not sell the leased equipment without the consent of the lessor and Bridging, or further order of the Court sought on notice to affected lessors and Bridging.
8. All lessors known to the Court Officer, and all registered secured parties, will be served with this Report.
9. In addition to the above, the Court Officer understands that Canada Revenue Agency has asserted claims against the Company for unremitted source deductions of approximately \$800,000 and sales taxes of approximately \$2.5 million. The Court Officer has not received the details of such claims.

#### **4.0 The Close Out Agreement**

1. As set out in the First Report, a substantial portion of the Company's revenue is derived from contracts with CP (the "Service Contracts"). The Company, the Proposal Trustee and CP entered into the Close Out Agreement on September 3, 2022, which became effective following issuance of the Interim Receivership Order. A copy of the Close Out Agreement, redacted to protect commercially sensitive pricing terms, was attached to the First Report and is included in this Report as Appendix "D".
2. The Close Out Agreement is structured to allow for the Company to: a) recover the outstanding accounts receivable and work-in-process owing by CP, which the Company estimates to be approximately \$2 million as of the Filing Date; and b) continue the work remaining under the Service Contracts so that CP can transition it on an orderly basis, without disruption to its business.



3. Pursuant to the Close Out Agreement, the Company has been issuing invoices to CP for work performed to the date of the Close Out Agreement and reconciling with CP the invoices that had remained outstanding. As of September 15, 2022, the Company has collected approximately \$616,000 in respect of this work. In addition, the Company's railway specialists have continued the projects with CP and the Interim Receiver has provided weekly estimates of the costs to do so, which have been paid by CP, subject to reconciliation when invoices for actual amounts incurred are issued. The Interim Receiver has been dealing extensively with CP in this regard.
4. The Interim Receiver understands from CP that the work to be performed under the Service Contracts is expected to continue until approximately the end of October 2022; however, the final date cannot be determined with certainty.

## 5.0 Equipment

1. The Company owns a wide assortment of Equipment which is located at its head office in Grimsby, Ontario, its storage facility in North Bay, Ontario and at various job sites across Canada.
2. The Interim Receiver and representatives of the Company prepared a detailed list of the Equipment, including descriptions of the year, make, model, location and vehicle identification number (VIN), where applicable.
3. The Interim Receiver has approached several liquidators that have experience with assets similar to the Equipment and invited them to submit liquidation proposals by 5 p.m. (EST) on September 23, 2022. The liquidators have been requested to submit net minimum guarantees as part of their proposals and have been advised, among other things, that any transaction will be subject to Court approval.
4. The Interim Receiver (or the receiver, if the Receivership Order is issued), will summarize the liquidation proposals and any recommended transaction in a subsequent report. Any transaction with a liquidator will be subject to Court approval, which the Interim Receiver (or the receiver) would seek on notice to affected parties.

## 6.0 Overview of the Proposal Trustee's and Interim Receiver's Activities

1. The Proposal Trustee's activities since the Filing Date and the Interim Receiver's activities since the date of the Interim Receivership Order have included, among other things, the following:

### *Proposal Trustee*

- monitoring the Company's receipts and disbursements and corresponding with the Company regarding same;
- assisting the Company to prepare a communication plan for its employees, customers and vendors;
- attending at the Company's head office in Grimsby and its equipment storage facility in North Bay;

- corresponding with the Company regarding supplier issues, including critical vendors;
- corresponding with Bank of Montreal regarding the Company's operating accounts;
- corresponding with the Bridging Receiver and its legal counsel regarding all aspects of the Company's restructuring;
- reviewing the Company's equipment lists and historical appraisals;
- reviewing the Company's accounts receivable balances with its largest customers and discussing a plan with the Company to maximize recoveries;
- dealing with CP regarding the Close Out Agreement;
- dealing with another of the Company's large customers regarding the continuity of services;
- dealing with funding matters, including for payroll, fuel cards and other critical expenses;
- considering the terms of a retention plan for certain employees;
- corresponding and attending a call with the Company's insurance agent;
- dealing with security matters at the Company's North Bay location;
- responding to calls and inquiries from creditors;
- drafting this Report; and
- dealing with all other matters in this proceeding not specifically addressed above;

#### *Interim Receiver*

- continuing to deal with CP regarding the Close Out Agreement;
- arranging to pay for post-filing goods and services, including payroll, insurance, rent and utilities;
- issuing letters, on behalf of the Company, terminating certain employees and offering retention bonuses to those continuing to be employed;
- corresponding with liquidators regarding the Equipment and coordinating their site visits;
- corresponding with certain of the Company's lessors, including LMS, regarding the review of the Company's leases;

- arranging to back-up the Company's servers;
- arranging for records of employment to be issued to the terminated employees;
- continuing to deal with the Bridging Receiver and its legal counsel regarding all aspects of the Company's restructuring;
- dealing with Blakes regarding the matters summarized in this Report;
- drafting this Report; and
- dealing with all other matters in this proceeding not specifically addressed above.

## 7.0 Receivership

1. The Proposal Trustee recommended that the Interim Receivership Order be made in order to protect the interest of the Company's stakeholders by, among other things:
  - a) allowing the Company's operations to continue while the terms of the Close Out Agreement and a liquidation are completed;
  - b) dealing with employee-related issues and any required terminations; and
  - c) assisting CP to avoid a disruption to its business while at the same time generating recoveries to the estate from the proceeds of the Close Out Agreement.
2. The Proposal Trustee advised the Court that, if appointed, the Interim Receiver would return to Court in due course to seek to either have itself discharged, or have itself appointed as a full receiver, depending on the circumstances at the time. In the Court Officer's view, the circumstances require the appointment of a receiver under section 243 of the BIA to finish the work that the Interim Receiver has started.
3. As referenced above, the Interim Receiver has been involved in all aspects of the Company's business and operations, including those related to the Service Contracts and planning for a liquidation of the Equipment.
4. The Bridging Receiver has advised the Interim Receiver that, in its view, it would be appropriate for the Interim Receivership Order to terminate and for a Receivership Order to be issued. The Interim Receiver shares this view as:
  - a) the interim receivership appointment was intended to be temporary;
  - b) a receivership is more appropriate than an interim receivership in the context of an asset liquidation as is contemplated with the Equipment, and provides for higher thresholds for the sale of assets out of the ordinary course;
  - c) a receivership would trigger the provisions of the Wage Earner Protection Program ("WEPP") and therefore allow for terminated employees to make claims and receive payments under WEPP on an expedited basis;

- d) a receiver will be best suited to resolve priority disputes with lessors, should such disputes arise; and
  - e) the charges for the receiver and its counsel would rank in priority to all registered security interests, which is appropriate in this case as the parties with such charges will benefit from the receiver's activities.
5. Blakes has not undertaken a new security review of Bridging's security at this time as a security review was conducted in connection with the Old Allied proposal and the sale of Old Allied's assets to the Company (the "Original Security Review"). Subject to customary assumptions and qualifications, the Original Security Review concluded that the debt and security owing by Old Allied to Bridging was valid and enforceable. Pursuant to that transaction, the Company assumed all of the Bridging indebtedness owing by Old Allied, and Bridging registered a security interest against the Company on April 29, 2021.
  6. Copies of Bridging's debt and security agreements are attached as Exhibits "E" through "G" of the Affidavit of Andrew Stuart Jones, sworn January 21, 2021 in the proposal proceedings of Old Allied. A copy of the credit agreement among Bridging and Old Allied, dated March 8, 2017, is attached hereto as Appendix "E" (the "Bridging Credit Agreement"), and a copy of the general security agreement dated March 8, 2017 granted by Old Allied to Bridging is attached hereto as Appendix "F" (the "Bridging GSA"). A copy of the Original Security Review is attached as Appendix "C" to the Second Report to Court of KSV Restructuring Inc. as Proposal Trustee of Allied Track Services Inc., dated March 9, 2021. Both documents can be found on the Old Allied's Proposal Trustee's website: <https://www.ksvadvisory.com/experience/case/allied-track-services-inc->
  7. The Court Officer understands that the Company is in default of the Bridging Credit Agreement and the Bridging GSA, including as a result of the Company's failure to make payments to Bridging and the windup of the Company's business. Pursuant to section 8.4 of the Bridging GSA, in the case of a default, Bridging is entitled to "institute proceedings in any court of competent jurisdiction for the appointment of... a Receiver". Accordingly, in the Court Officer's view, Bridging has a right to seek the appointment of a receiver under the circumstances.
  8. The Interim Receiver consents to the lifting of the stay of proceedings imposed by the Interim Receivership Order for the purposes of the Court appointing a receiver under section 243 of the BIA. While the Proposal Trustee does not have an ability under the BIA to consent to the lifting of the stay of proceedings in the Proposal Proceedings, it does not object, and it supports the appointment of a receiver under section 243 of the BIA. In the Court Officer's view, it is just and appropriate for the Court to exercise its discretion under section 69.4 of the BIA to lift the applicable stays of proceedings, to the extent necessary.
  9. The Court Officer understands that the Company does not oppose the appointment of a receiver under section 243 of the BIA. The Company did not oppose the appointment of the Interim Receiver, and the Company's management has been actively engaged with the Interim Receiver in the conduct of its duties.

10. In the Court Officer's view, the charges sought in the Receivership Proceedings are reasonable. A receiver's charge is a common feature in receivership proceedings, including interim receivership proceedings - it is required by certain of the professionals engaged to assist a debtor company and to protect them in the event that the debtor is unable to pay professional fees and costs during the proceedings. Further, the proposed Receiver's Borrowings Charge is necessary to secure any funding that the receiver may require to administer the Allied proceedings. The Bridging Receiver has advised that it is willing to provide funding for necessary expenses in the process, but that it requires a priority charge to secure all funding provided.
11. The Court Officer understands that the registered secured parties who may be affected by the charges sought are being served with the application record in the Receivership Proceedings.
12. Finally, the Court Officer supports the aggregate threshold for the sale of assets without Court approval of \$500,000 that is being sought in the Receivership Proceedings. As discussed above, the Interim Receiver has been working to secure and store the Company's equipment and to solicit liquidation proposals from liquidators. Any material sales of assets will be subject to further Court approval. If appointed receiver, KSV may need to sell smaller pieces of equipment on an urgent basis, and believes that the \$500,000 aggregate threshold is appropriate, and will not prejudice parties. As stated above, no leased equipment will be sold without the consent of the applicable lessor and Bridging, or further order of the Court.
13. For the reasons set out above, the Interim Receiver supports the application by the Bridging Receiver to terminate the Interim Receivership Order and for a Receivership Order to be issued.

## **8.0 Termination of Interim Receivership**

1. The Interim Receiver understands that pursuant to section 47.1(1.1) of the BIA, its appointment will expire upon the appointment of a receiver pursuant to section 243 of the BIA, as is being sought in the Bridging application.
2. The Interim Receiver is seeking the approval by the Court of its activities as described in this Report, which occurred from September 6, 2022, until the date hereof.
3. Should the receiver be appointed under section 243 and the Interim Receiver's appointment automatically terminate, KSV intends to bring a motion that would coincide with the next motion to be brought in the resulting receivership seeking approval of the Interim Receiver's activities from the date of this Report until the date of the termination of its appointment, as well as approval of its fees and those of its counsel. Given the short tenure of the Interim Receiver's appointment to date, and the fact that it would have to estimate fees for the period beginning on the date of this Report and ending on the date of its automatic discharge (which would be nearly a third of its whole tenure), the Interim Receiver believes that it is premature at this time to seek fee approval.

## 9.0 Cash Flow

1. Pursuant to the BIA, the Company is required to prepare a cash flow forecast for the stay extension period. The Cash Flow Forecast for the period ending November 8, 2022 (the “Period”), together with Management’s Report on the Cash-Flow Statement as required by subsection 50.4(2)(c) of the BIA, is provided in Appendix “G”.
2. The Cash Flow Forecast was prepared by the Company with the assistance of the Court Officer. As the Company’s activities are largely being performed by the Interim Receiver, the Cash Flow Forecast reflects minimal receipts and disbursements.
3. Based on the Proposal Trustee’s review of the Cash Flow Forecast, there are no material assumptions which seem unreasonable. The Proposal Trustee’s Report on the Company’s Cash Flow Forecast as required by subsection 50.4(2)(b) of the BIA is attached as Appendix “H”.

## 10.0 Company’s Request for an Extension

1. The Interim Receiver, on the Company’s behalf, is seeking a 45-day extension of the time required to file a proposal from September 24, 2022 to November 8, 2022, pursuant to section 50.4(9) of the BIA.
2. The rationale for this request is to allow the Company’s operations to continue without potential disruptions that could result from an extension not being granted and a deemed assignment in bankruptcy occurring. The disruptions could include: a) issues associated with a termination of the Company’s remaining employees by operation of law and the uncertainty of their employment status in a receivership; b) other contract terminations, such as with customers and vendors; and c) the need, at this stage, to convene a meeting of creditors and appoint inspectors.
3. The Interim Receiver is further concerned that the statutory notices that would be required to be sent to creditors could create confusion. The Interim Receiver has only just established a degree of certainty and continuity with the notices sent upon its appointment, and is concerned that a new round of communications advising of a bankruptcy will threaten that certainty and continuity at a time when the Interim Receiver (or the receiver, if appointed) is focussed on finishing the work under the Service Contracts and coordinating the recovery of the Company’s equipment.
4. The Proposal Trustee supports the extension request for the following reasons:
  - the Company is acting in good faith and with due diligence;
  - while remote, there is a prospect that the Company would be able to make a viable proposal to its creditors if the extension is granted;<sup>1</sup>

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<sup>1</sup> It is anticipated that, if appointed, the receiver would proceed to liquidate the assets of the Company as described in this Report, however if a going concern option emerges in the process of the wind-down, this could be facilitated through a proposal. In the Court Officer’s view, this eventuality is unlikely, but it is theoretically possible. An automatic bankruptcy triggered by the Company’s failure to file a proposal by the September 24, 2022 deadline would eliminate it as an option.

- the extension should not adversely affect or prejudice any group of creditors as the Interim Receiver, or the receiver, if appointed, is projected to have funding to pay post-filing services and supplies; and
- it would provide the Company the additional time it requires to further advance its restructuring, which is in the interest of all stakeholders.

## 11.0 Conclusion and Recommendation

1. Based on the foregoing, the Court Officer respectfully recommend that this Court make an order granting the relief set out in Section 1.1 (2)(i) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
SOLELY IN ITS CAPACITY AS PROPOSAL TRUSTEE UNDER THE  
NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC. AND AS  
INTERIM RECEIVER OF 2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **APPENDIX “A”**





Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 07 - Hamilton  
Court No. 32-2859284  
Estate No. 32-2859284

In the Matter of the Notice of Intention to make a proposal of:

**2806401 Ontario Inc.**

Insolvent Person

**KSV RESTRUCTURING INC.**

Licensed Insolvency Trustee

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Date of the Notice of Intention:

August 25, 2022

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CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: August 25, 2022, 14:21

E-File/Dépôt Electronique

Official Receiver

Federal Building - Hamilton, 55 Bay Street N, 9th Floor, Hamilton, Ontario, Canada, L8R3P7, (877)376-9902

**Canada**

## **APPENDIX “B”**



Court File No.

CV-22-00686556-00CL

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

THE HONOURABLE MR.

)

TUESDAY, THE 6<sup>th</sup>

JUSTICE McEWEN

)

DAY OF SEPTEMBER, 2022

)

**KSV RESTRUCTURING INC., IN ITS CAPACITY AS PROPOSAL TRUSTEE OF  
2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.**

Applicant

- and -

**2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.**

Respondent

**ORDER  
(appointing Interim Receiver)**

THIS APPLICATION made by KSV Restructuring Inc., ("KSV") in its capacity as proposal trustee (in such capacity, the "**Proposal Trustee**") of 2806401 Ontario Inc. o/a Allied Track Services Inc. (the "**Debtor**") for an Order pursuant to section 47.1 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing KSV as interim receiver (in such capacity, the "**Interim Receiver**") without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, was heard this via videoconference.

ON READING the First Report of the Proposal Trustee dated September 4, 2022 and on hearing the submissions of counsel for the Proposal Trustee and Bridging Finance Inc., no one else appearing although duly served as appears from the affidavit of service of Caitlin McIntyre sworn September 5, 2022 and on reading the consent of KSV to act as the Interim Receiver,

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 47.1 of the BIA, KSV is hereby appointed Interim Receiver, without security, of all 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 (the "**Property**").

## **INTERIM RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (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 Interim 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 Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Interim Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) 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 Interim Receiver in its discretion may deem appropriate;

(k) 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 \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; 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 subsection 63(4) of the Ontario *Personal Property Security Act* or its equivalent in any other relevant province shall not be required.

(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;

(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(o) 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 Interim Receiver, in the name of the Debtor;

(p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the

foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) 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 Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) 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 (iii) 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 Interim 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 Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Interim 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 Debtor, 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 provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim 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 Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that 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 forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Interim Receiver shall provide each of the relevant landlords with notice of the Interim Receiver's 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 Interim Receiver's 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, such landlord and the Interim Receiver, or by further Order of this Court upon application by the Interim Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE INTERIM RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.



### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim 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 Interim Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtor 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.

### **NO INTERFERENCE WITH THE INTERIM RECEIVER**

11. THIS COURT ORDERS that 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 Debtor, without written consent of the Interim Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates 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 Debtor 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 Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtor'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 Interim Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

### **INTERIM RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim 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 Interim 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 Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Interim Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Interim Receiver shall 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"). 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 Interim Receiver, or in the alternative destroy all such information. 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 Debtor, and shall return all other personal information to the Interim Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Interim Receiver 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 *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver'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.

### **LIMITATION ON THE INTERIM RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 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 Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **INTERIM RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "**Interim Receiver's 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 that the Interim Receiver's Charge shall form a charge on the Property in priority to the security interest of Bridging Finance Inc., but subordinate to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Interim Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## FUNDING OF THE INTERIM RECEIVERSHIP

21. THIS COURT ORDERS that the Interim 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 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 funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Interim Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to the security interest of Bridging Finance Inc., but subordinate to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, and subordinate in priority to the Interim Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Interim Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

## SERVICE AND NOTICE

24. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/experience/case/2806401-ontario-inc>.

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute 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 facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile 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.

#### **GENERAL**

26. THIS COURT ORDERS that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtor.

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Interim Receiver 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 that the Interim 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.

30. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



A handwritten signature in black ink, appearing to read 'McIntosh', is written above a horizontal line.

SCHEDULE "A"

INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the interim receiver (the "**Interim Receiver**") of the assets, undertakings and properties 2806401 Ontario Inc. o/a Allied Track Services Inc. (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 Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 6<sup>th</sup> day of September, 2022 (the "**Order**") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Interim Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Interim Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. 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 Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, 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 Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. 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 Interim



Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

7. The Interim 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\_\_.

KSV Restructuring Inc., solely in its capacity  
as Interim Receiver of the Property, and not in  
its personal capacity

Per: \_\_\_\_\_

Name:

Title:

Court File No.: CV-22-00686556-00CL

KSV RESTRUCTURING INC., IN ITS CAPACITY AS  
PROPOSAL TRUSTEE OF 2806401 ONTARIO INC. o/a  
ALLIED TRACK SERVICES INC.

2806401 ONTARIO INC. o/a  
ALLIED TRACK SERVICES INC.

- and -

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**ORDER  
(appointing Interim Receiver)**

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Chris Burr**, LSO #55172H  
Tel: 416-863-3261  
Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

**Caitlin McIntyre**, LSO #72306R  
Tel: 416-863-4174  
Email: [caitlin.mcintyre@blakes.com](mailto:caitlin.mcintyre@blakes.com)

Lawyers for the Applicant

## **APPENDIX “C”**



**First Report to Court of  
KSV Restructuring Inc. as Proposal  
Trustee of 2806401 Ontario Inc. o/a Allied  
Track Services Inc.**

**September 4, 2022**

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COURT FILE NO.: 32-2859284

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC.,  
A CORPORATION INCORPORATED UNDER THE LAWS  
OF ONTARIO**

**FIRST REPORT OF KSV RESTRUCTURING INC. AS PROPOSAL TRUSTEE OF  
2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC.**

**SEPTEMBER 4, 2022**

## **1.0 Introduction**

1. This report (the “Report”) is filed by KSV Restructuring Inc. (“KSV”) in its capacity as proposal trustee (the “Proposal Trustee”) in connection with a Notice of Intention to Make a Proposal (“NOI”) filed by 2806401 Ontario Inc. o/a Allied Track Services Inc. (“Allied”) on August 25, 2022 (the “Filing Date”) pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act* (the “BIA”). A copy of the Certificate of Filing for Allied is attached as Appendix “A”.
2. The principal purpose of Allied’s restructuring proceeding is to wind-down its operations and liquidate its assets for the benefit of its creditors and other stakeholders.
3. In connection with the NOI filing, Allied has entered into an agreement (the “Close Out Agreement”) with one of its key customers, Canadian Pacific Railway Company (“CP”), to provide for an orderly transition of Allied’s services to another vendor. Fulfilment of the terms of the Close Out Agreement will generate additional proceeds for Allied’s creditors and is in the best interest of Allied’s creditors generally.
4. The purpose of this report is to provide the rationale for an application that the Proposal Trustee intends to bring on September 6, 2022 for the appointment by the Ontario Superior Court of Justice (Commercial List) (the “Court”) of KSV as interim receiver (in such capacity, the “Proposed Interim Receiver”) of all of Allied’s property, assets and undertakings, which would provide KSV with the necessary powers and protections to:
  - a) facilitate completion of Allied’s obligations under the Close Out Agreement;
  - b) coordinate the efficient wind-down of Allied’s business; and

- c) protect Allied's remaining assets.
5. The application is supported by Allied's sole shareholder and senior secured creditor and also by CP.

## 1.1 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by Allied, Allied's books and records and discussions with Allied's management and with its sole shareholder, Bridging Income Fund LP (via the Bridging Receiver, as defined below). The Proposal Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.
2. The Proposal Trustee expresses no opinion or other level of assurance with respect to the financial information presented in this Report or relied upon by the Proposal Trustee in preparing this Report. Any party wishing to place reliance on Allied's financial information should perform its own diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.

## 2.0 Background

1. Allied is a railroad maintenance service provider, offering various services including track maintenance and repair, construction, bridging, civil engineering, flagging, signalling and related services. Allied leases its head office in Grimsby, Ontario, and operates in Ontario, Alberta, Manitoba and British Columbia.
2. Allied employed approximately 160 individuals as of the Filing Date, including members of the Labourers' International Union of North America.
3. Allied was incorporated on January 8, 2021 by Bridging Finance Inc. ("Bridging") for the purposes of acting as a stalking horse bidder in the proposal proceedings of a company formerly known as Allied Track Services Inc. ("Old Allied"). Bridging was Old Allied's largest secured creditor.
4. After a sale process in the Old Allied proposal proceedings, Allied's stalking horse bid was determined to be the superior bid, and Allied bought substantially all tangible assets, intellectual property and undertakings of Old Allied in a Court-approved transaction that closed on April 30, 2021. This transaction permitted Allied to continue the operations of Old Allied as a going concern and to continue to provide services to its customers, uninterrupted.
5. Also on April 30, 2021, in proceedings unrelated to the Old Allied proposal proceedings, the Court appointed PricewaterhouseCoopers Inc. as receiver and manager (in such capacity, the "Bridging Receiver") of Bridging and certain related entities and investment funds pursuant to section 129 of the *Securities Act* (Ontario) upon application by the Ontario Securities Commission. Bridging is presently Allied's largest secured creditor and its sole shareholder.

6. Despite the successful implementation of the transaction resulting from Old Allied's proposal proceeding, Allied has continued to generate losses. Allied is insolvent and does not have the liquidity to continue to carry on its business. Accordingly, on August 25, 2022, Allied filed an NOI.

### 3.0 Secured Creditors & Financial Position

1. Allied's principal secured creditor is Bridging. As of the Filing Date, Bridging was owed approximately \$60 million.
2. Allied also leases numerous vehicles, equipment and machinery to conduct its business. Five parties, in addition to Bridging, have registered financing statements against Allied in connection with vehicles, equipment, machinery and financial instruments. The Proposal Trustee's counsel has not yet undertaken a security review of Bridging's security or any other party's interest.
3. All of Allied's secured creditors, together with Allied's unsecured creditors known to the Proposal Trustee, have been notified of the NOI proceedings. Given the urgency of the application, no secured or unsecured creditors (other than Bridging) are being given notice of the Proposal Trustee's application for the appointment of an interim receiver. If appointed, the interim receiver will notify all registered secured creditors and known unsecured creditors of its appointment.
4. Attached as Appendix "B" are *Personal Property Security Act* registry searches in respect of Allied in Ontario, Manitoba, British Columbia and Alberta.
5. Allied's creditor list, which reflects all known secured and unsecured claims, is attached as Appendix "C".

### 4.0 The Close Out Agreement

1. A substantial portion of Allied's revenue is derived from track and signals contracts entered into between Allied and CP (the "Service Contracts"). The Proposal Trustee has been in daily contact with CP since the Filing Date in order to determine if there was a path to: (a) recover the outstanding accounts receivable and work-in-process owing by CP which Allied estimates to be approximately \$2 million; and (b) continue the work remaining under the Service Contracts so that CP can transition it on an orderly basis, without disruption to its business.
2. Allied has insufficient liquidity to complete the Service Contracts; however, it understands that it may be difficult for CP to re-source the work in the short term as several of the projects are located in remote locations, the tasks are specialized and the rail service period is seasonal.



3. On September 3, 2022, Allied, the Proposal Trustee and CP entered into the Close Out Agreement, which provides for CP to fund the outstanding accounts receivable and work-in-process owing to Allied in exchange for Allied agreeing to continue the Service Contracts provided that CP pre-pays for such work. The Close Out Agreement is conditional on the Proposal Trustee being appointed Interim Receiver, which condition was included at CP's request. A copy of the Close Out Agreement, with certain commercially sensitive pricing terms redacted, is attached as Appendix "D". An unredacted copy of the Close Out Agreement can be provided to the Court on a confidential basis, upon request by the Court.
4. If the terms of the Close Out Agreement are fulfilled, the Close Out Agreement will result in additional proceeds for Allied's estate, for the benefit of Allied's creditors.

## 5.0 Need for Interim Receiver

1. The appointment of the Proposed Interim Receiver is necessary in order to facilitate completion of the Close Out Agreement and the wind-up of Allied's business. The appointment is being sought on an urgent basis, and if appointed, the interim receiver will return to Court in due course to seek to either have itself discharged, or have itself appointed as a full receiver, depending on the circumstances at the time. The interim receivership appointment is, therefore, intended to be temporary.
2. The Bridging Receiver, which is the *de facto* sole shareholder and senior secured creditor of Allied, supports the appointment of the interim receiver. The Bridging Receiver has furthermore advised the Proposal Trustee that it will not provide any further liquidity to Allied unless it is in either a bankruptcy or an interim receivership proceeding.
3. Allied's wind-down and discontinuance of several of its customer projects has resulted in numerous employee resignations at both the management level and field services. These departures are continuing and threaten the ability of Allied to fulfill the terms of the Close Out Agreement. The Proposal Trustee believes that the order and certainty imposed by its appointment as interim receiver will allow it to provide some comfort to the Allied employees that are required to undertake the Close Out Agreement.
4. Employees not involved in the Service Contracts or needed for the wind-down will have to be terminated and the Proposed Interim Receiver can work to facilitate an orderly transition for them and assist with applications under the Wage Earner Protection Program. A proposal trustee does not have the ability to terminate employees, and Allied's existing management has expressed concerns about doing so in the proposal proceedings.

5. The appointment of an interim receiver will generally benefit all of Allied's stakeholders by:
  - a) allowing continuity of Allied's operations while the terms of the Close Out Agreement and a liquidation are completed with a view to:
    - i. continuing the employment of some of the current employees in the short term;
    - ii. maintaining transparent and coordinated communications with Allied's employees; and
    - iii. managing receipts and disbursements;
  - b) protecting the interest of Allied's stakeholders generally, given the Court-supervised process, which need is particularly acute when personnel are leaving and resigning on a daily basis; and
  - c) assisting CP to avoid a disruption to its business while at the same time generating recoveries to the estate from the proceeds of the Close Out Agreement.
  
6. In the Proposal Trustee's view, an interim receivership is superior to a bankruptcy in this situation for several reasons, including because:
  - a) the interim receivership will enable the interim receiver to direct Allied's employees with the benefit of Allied's existing workers compensation coverage, which would not be possible for a bankruptcy trustee;
  - b) Allied's existing insurance coverage will be unaffected by an interim receivership, while the effect on insurance is not clear in a bankruptcy;
  - c) an interim receivership does not require the commencement of creditor meetings or other administrative steps required in a bankruptcy, which would be time consuming and divert resources needed to focus on completing the Close Out Agreement and locating and securing assets;
  - d) Allied's wind-down will need funding, and the structure for the Bridging Receiver to fund an interim receivership process is clear, while funding a bankruptcy trustee requires money to be paid into the estate on a non-priority basis, absent a Court-ordered charge; and
  - e) the protections and limitations of liability afforded to an interim receiver are clear and comprehensive, while the protections for a bankruptcy trustee are limited, and thus no indemnity is required to be provided in an interim receivership.

## 6.0 Court Ordered Charges

### 6.1 Interim Receiver's Charge & Borrowings Charge

1. The Proposal Trustee is seeking a charge securing the fees and disbursements of the Proposed Interim Receiver and its counsel (the "Interim Receiver's Charge").
2. A receiver's charge is a common feature in receivership proceedings, including interim receivership proceedings - it is required by certain of the professionals engaged to assist a debtor company and to protect them in the event that the debtor is unable to pay professional fees and costs during the proceedings.
3. The Proposal Trustee believes that the Interim Receiver's Charge is reasonable and appropriate in the circumstances given the complexities of Allied's proceedings, Allied's lack of liquidity and the services to be provided by the professionals involved in these proceedings. These professionals will serve distinct and key roles in these proceedings.
4. The Proposal Trustee is also seeking a borrowing charge to secure any funding it requires to administer the Allied proceedings (the "Interim Receiver's Borrowings Charge"). The Bridging Receiver has advised that it is willing to provide funding for necessary expenses in the proposed interim receivership process, but that it requires a priority charge to secure all funding provided.
5. As the Proposal Trustee's application for the appointment of the interim receiver is not being made on notice to Allied's secured creditors (other than Bridging), the draft order sought by the Proposal Trustee provides that the Interim Receiver's Charge and Interim Receiver's Borrowings Charge will be in priority to Bridging, but subordinate to all other registered encumbrances on Allied's assets. If such an order is granted, the interim receiver may return to Court, on notice to affected parties, seeking an order elevating the priority of the Interim Receiver's Charge and Interim Receiver's Borrowings Charge.

## 7.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Court make an order granting the relief requested by the Proposal Trustee.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
SOLELY IN ITS CAPACITY AS PROPOSAL TRUSTEE UNDER THE  
NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **APPENDIX “D”**

## CLOSE OUT AGREEMENT

This Close Out Agreement (the “**Agreement**”) is made as of this 3rd day of September, 2022 (the “**Effective Date**”) between 2806401 ONTARIO INC. o/a Allied Track Services Inc. (“**Allied**”), Canadian Pacific Railway Company (the “**Owner**”) and **KSV RESTRUCTURING INC.**, in its capacity as proposal trustee of Allied and not in its personal or corporate capacity (the “**Trustee**”, together with Allied and the Owner, the “**Parties**” and each individually a “**Party**”).

### RECITALS

1. Allied and the Owner are party to a number of track and signals service contracts, being: S&C (Signal & Communication) Construction Staff to Support CP S&C (Signal & Communication) Construction Crews , S&C(Signal & Communication) Staff to Support CP Maintainers Crews, S&C (Signal & Communication) Maintainers Support Staff 2022-2024 dated January 1<sup>st</sup>, 2022 (Agreement #CW59273) (collectively, the “**Service Contract**”).
2. Pursuant to the Service Contract, Allied is required to provide all labour, material and equipment necessary for the signal service and repair work contemplated by the Service Contract (the “**Work**”).
3. Schedule A sets out the portion of the Work contemplated in the Service Contract which has not been performed as of the date of this Agreement (the “**Remaining Work**”).
4. In respect of payments pursuant to the Service Contract, as of the Effective Date, Allied has advised the Owner that:
  - (a) Allied has invoiced, or will invoice in due course, the aggregate amount of CDN\$1,015,194.19 Canadian Dollars (the “**A/R Amount**”); and
  - (b) In addition to the A/R Amount, Allied has incurred or earned an estimated CDN\$453,117 (Track) and CDN\$501,000 (Signals) in accrued but not-yet-billed work in process amounts, which will be invoiced by Allied in due course (the “**WIP Amount**”).

The Owner has not agreed that the A/R Amount or the WIP Amount are properly due and owing, and has reserved its right to review and approve such amounts pursuant to Section 1.3(1) hereof, upon its receipt of the corresponding invoices.
5. On Thursday, August 25, 2022, Allied filed a notice of intention to file a proposal under the *Bankruptcy and Insolvency Act* (Canada) (the “**NOI Filing**”), the Trustee was appointed as proposal trustee, and began monitoring and supervising the activities, assets and receivables of Allied in accordance with its statutory powers.
6. As evidenced by the NOI Filing, Allied is insolvent, and does not have the liquidity to complete the Remaining Work without the prior payment of the A/R Amount and WIP Amount and pre-payment for the Remaining Work. Provided such amounts are paid, Allied is ready, willing and able to complete the Remaining Work, under the supervision of the Trustee.
7. The Parties have agreed on terms for payment to the Trustee, on behalf of Allied, of the A/R Amount and the WIP Amount (subject to the Owner’s review and approval of corresponding invoices), plus payment for the Remaining Work.

8. The Trustee has scheduled an application returnable at 8:30am (Toronto Time) on September 6, 2022, where it will seek an order appointing KSV Restructuring Inc. as interim receiver of Allied.
9. The Owner wishes to have Allied complete the Remaining Work on a time and materials basis and Allied agrees to perform such Remaining Work in accordance with this Agreement, under the supervision of the Trustee.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, for the consideration described in the recitals above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties hereby covenant and agree as follows:

### 1.1 Defined Terms

Capitalized terms shall have the meaning ascribed in this Agreement. Capitalized terms used herein which are not otherwise defined herein shall have their respective meanings as set forth in the Service Contract.

### 1.2 The Remaining Work

- (1) Allied shall use commercially reasonable best efforts to perform all Remaining Work set out in Schedule A on a time and material basis in accordance with the rates set out in Schedule B. Other than the variation in the timing of, and payment for, the Remaining Work as set out in this Agreement, Allied shall perform the Remaining Work in accordance with the terms of the Service Contract and shall use commercially reasonable best efforts to maintain the Insurance Coverage (as defined in the Service Contract) that was in place immediately prior to the NOI Filing for as long as this Agreement shall remain in force. Allied shall provide the Owner with a current certificate of insurance, evidencing that the insurance that was in place upon entering into the Service Contract continues to be valid as of the Effective Date.
- (2) The Owner shall prefund consecutive 7 day periods of Remaining Work to be performed by Allied (each, a “**Service Period**”). The estimate for the first Service Period is attached hereto as Schedule C and shall be paid by the Owner to the Trustee forthwith upon execution of this Agreement, prior to Allied commencing the Remaining Work in accordance with this Agreement. Estimates for subsequent Service Periods shall be provided in accordance with subparagraph (3) below.
- (3) Allied, in consultation with the Trustee, shall deliver an estimate for each subsequent Service Period (the “**Subsequent Estimate**”) no later than six (6) Business Days prior to the start of such Service Period, which Subsequent Estimate shall reflect: (a) the actual cost of Remaining Work to be performed in accordance with this Agreement; and (b) any Remaining Work that was included in a prior Subsequent Estimate for Remaining Work not completed by Allied in that Service Period.
- (4) Allied shall have no obligation to perform the Remaining Work in any subsequent Service Period if pre-funding from the Owner has not been received in the amount of the applicable Subsequent Estimate.
- (5) As soon as reasonably practicable following each Service Period, Allied shall issue an invoice to the Owner, reflecting the actual costs incurred during such Service Period (each a “**Service Period Invoice**”). The Owner shall advise the Trustee of the approved and

unapproved amounts in any Service Period Invoice as soon as reasonably practicable upon receipt of such Service Period Invoice, and in any event within five (5) Business Days.

- (6) Within 10 days of the completion of all Remaining Work, a final reconciliation will be prepared by Allied, in consultation with the Trustee, and a final payment will be made by the Owner to the Trustee if the pre-payments made by the Owner, in aggregate, were less than the value of the Remaining Work performed in accordance with this Agreement and by the Trustee to the Owner if the pre-payments made by the Owner, in aggregate, were greater than the value of the Remaining Work performed in accordance with this Agreement.
- (7) Allied shall notify the Owner within one business day of: (a) becoming aware of any fact or circumstance that would delay or prevent it from completing the Remaining Work scheduled for any Service Period, and (b) becoming aware of any personnel employed by Allied to complete the Remaining Work terminating or otherwise ending their contract with Allied, and Allied shall use commercially reasonable best efforts to promptly engage replacement personnel.

### 1.3 Payments

- (1) Allied shall provide invoices representing the WIP Amount and the A/R Amount to the Owner as soon as reasonably practicable following execution of the Agreement. The Owner, acting reasonably, shall review the invoices in accordance with its ordinary processes and, if approved, deliver such approved amount of the WIP Amount and the A/R Amount to the Trustee within five (5) Business Days receipt of the applicable invoice.
- (2) The Owner shall deliver an amount equal to the amount set out in each Subsequent Estimate (for each Service Period, a “**Prepayment**”) not later than the first day of the subsequent Service Period to which the Subsequent Estimate applies.
- (3) The Trustee shall hold the Prepayment in trust, to be distributed by the Trustee according to the following parameters:
  - (a) up to \$100,000 of the Prepayment for any given Service Period may be distributed by the Trustee to fund the operating costs incurred by Allied directly or indirectly related to the Remaining Work incurred during the applicable Service Period, at the Trustee’s discretion;
  - (b) Prepayment amounts in excess of \$100,000 in any given Service Period shall be applied by the Trustee against the amount of the applicable Service Period Invoice that has been approved by the Owner;
  - (c) notwithstanding anything above to the contrary, the Trustee may distribute any Prepayment amounts with the prior written consent of the Owner; and
  - (d) in the event any amount of the Prepayment is not approved to be otherwise distributed by the Trustee in accordance with the terms hereof, and the Parties acting in good faith cannot resolve the dispute, the Trustee shall bring a motion for advice and directions before the Ontario Superior Court of Justice, on not less than ten (10) Business Days notice to the Owner.

- (4) The Owner shall advise Allied and the Trustee of any amounts included in the invoices described in section 1.3(1), or any amount in any Service Period Invoice, that it disputes, and the Parties shall work together in good faith to resolve the dispute.
- (5) All payments required to be made hereunder by the Owner to the Trustee shall be paid by the Owner in full, without defence, deduction, counterclaim or set-off, and shall be paid to, and received by, the Trustee on behalf of Allied.

#### **1.4 Termination**

- (1) This Agreement shall automatically terminate if KSV Restructuring Inc. is not appointed as interim receiver of Allied on or before September 9, 2022.
- (2) The Owner may terminate this Agreement without cause, by giving one Business Days written notice to Allied and the Trustee.

#### **1.5 Notices**

All notices required or desired to be provided under this Agreement shall be given in accordance with the notice provisions in Section 25 of Schedule A to the Service Contract, in all cases with a copy to the Trustee, by email only, at the following coordinates:

**KSV Restructuring Inc, in its capacity as Trustee of 2806401 Ontario Inc.**

Attention: Noah Goldstein & Mitch Vininsky

Email: [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com) & [mvininsky@ksvadvisory.com](mailto:mvininsky@ksvadvisory.com)

#### **1.6 Capacity**

The Owner acknowledges that the Trustee is entering into this Agreement solely in its capacity as proposal trustee of Allied, and not in its personal or corporate capacity. Accordingly, the Owner agrees and acknowledges that KSV Restructuring Inc. shall have no personal or corporate liability under this Agreement or the Service Contract, for any reason whatsoever, and the Owners recourse against the Trustee for any breach of this Agreement shall be limited to the assets of the Allied estate.

#### **1.7 Assignment and Enurement**

This Agreement shall enure to the benefit of and bind the Parties and their respective successors and assigns. This Agreement shall be assignable by any Party only with the written consent of the other Parties, which consent shall not be unreasonably withheld, provided however that in the event that KSV Restructuring Inc. is appointed by a Court of competent jurisdiction as receiver or interim receiver of Allied (in such capacity, a “**Receiver**”) or becomes a trustee in bankruptcy of Allied (in such capacity, a “**Bankruptcy Trustee**”), all rights and obligations of the Trustee under this Agreement shall be assignable by the Trustee to the Receiver or the Bankruptcy Trustee, as applicable, with notice to, but not consent from, the Owner or Allied.

#### **1.8 Entire Agreement**

This Agreement and the Service Contract (as augmented and amended by this Agreement) contains the entire agreement between the Parties relating to its subject matter and supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, relating to the subject matter hereof.



**1.9 Governing Law**

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario.

**1.10 Dispute Resolution**

The Parties hereby submit to the exclusive jurisdiction of the Ontario Superior Court of Justice (Commercial List) to resolve any dispute with respect to or arising from this Agreement.


**1.11 Counterparts**

This Agreement may be signed, including by facsimile signature, in two or more counterparts and each such counterpart will constitute an original document and such counterparts, taken together, will constitute the same instrument.


*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.


**2806401 ONTARIO INC.**

by:   
Name: Andrew Jones  
Title: CEO

**KSV RESTRUCTURING INC.**, in its capacity as proposal trustee of 2806401 Ontario Inc., and not in its personal or corporate capacity

by:   
Name: Mitch Vininsky  
Title: Managing Director

**CANADIAN PACIFIC RAILWAY COMPANY**

by:   
Name: MARK WOLYNIK  
Title: MANAGING DIRECTOR Sourcing  
Sept 3/22

## SCHEDULE A

### REMAINING WORK

#### **Maintainer Support:**

General Requirements for Signal Maintainers:

Allied shall provide Signal Maintainer qualified to restore, install, test and maintain all assigned S&C assets. Quality of work must meet or exceed industry standards as well as Transport Canada regulations and CP requirements.

#### **TR&E (Track, Repair and Equipment) Support:**

Allied Scope of Work

Allied shall be required to perform the work describe here in. All work performed by the Allied shall comply with CP Engineering Services Red Book of Signals & Communications Requirements Section 17.

#### **CWS Deactivations/Activations**

Allied shall be responsible for all CWS deactivations/activations. . This includes:

- Preparation and Allied's manager review of CWS deactivation plans
- Obtaining necessary approvals for CWS deactivations
- Deactivation communication and protocol
- Applying and removing deactivation jumpers
- Testing CWS on activation and returning crossing into service

Allied shall provide its own Deactivation plan/procedures of Highway Grade Crossing Warning Systems in Canada. CP will review and suggest changes if required.

#### **RailDocs**

Allied shall have access and shall be responsible for keeping RailDocs updated with the S&C work performed. Allied to update RailDocs within 48hrs.

#### **Test & Commissioning**

Allied staff shall assist CP in S&C testing and commissioning activities as well as cut over support including:

- Pre-wire circuits as per circuit drawings provided by CP in existing live bungalows for preparation for cutover

- Install/mount S&C equipment in bungalows and trackside as per plans provided by CP
- Pre-test as per S&C procedures provided
- Removal of S&C equipment in bungalows and trackside as per plans provided by CP

**Allied shall:**

- Repair and/or replace signal track connections and bonds associated with TR&E work as well as any previously existing damaged connections
- Repair and/or replace damaged track cables between junction boxes and track
- Removal of existing plug bonds and cadwelds and dressing of any removed track connections
- Perform light maintenance such as painting signal housings, graffiti removal, tidy up track connections, lubricate switches, snow removal, brush clearing
- Repair and/or replace S&C track components such as defective insulation in gauge plates and switch rods
- Clean signal lenses and CWS flashing light units
- Repair and secure S&C equipment and housing cable entrances from water and rodent infiltration
- Adjust switch machines
- Test switch/turnout insulation and insulated joints
- Provide cable locates where it may be required such as ballast programs. CP may supply the locator if required
- The Contractor shall not refuse any work assigned by CP.

**Material Management**

CP shall supply Allied with quantities of materials for Allied to perform the work. Allied shall be responsible for:

- Storage and safe keeping of all CP supplied material
- Keeping a detailed inventory of all CP supplied material
- Keeping a detailed record of where CP supplied material was used

- Notify CP (minimum 48 hrs. notice) when CP supplied materials need to be resupplied

### **Allied Supplied Equipment & Tools Equipment**

Allied shall supply sufficient equipment for Allied's staff to:

- Perform the work described without the need of CP equipment including any hi-rail vehicles or service vehicles
- Provide sufficient transportation to and from work locations

Allied shall provide maintenance records of all equipment used on CP property. Allied shall provide operators qualifications for equipment used on CP property.

### **Tools**

Allied shall supply all necessary tools and test equipment to perform the described work and shall include:

- CP approved crimping tools
- Stanley Pin Brazing Unit, Model EPX10, for all bonding and track connections. No other method of bonding and track connections is permitted.
- Grinders, Rail Drills, hand tools, lockout/tagout equipment
- Maintenance & testing tools which will include GRS switch wrenches, TS111 meter, insulated joint checker, short finders, meggers and any other tools required to complete the work.
- Temporary jumper kits shall be colour coded red or yellow and shall be labeled with the Contractors company name, shall have a unique identifier for each employee and shall have the employees contact number. The list of assigned jumper numbers to each employee shall be sent to CP prior to employee starting work.
- Allied shall account for all jumpers prior to leaving a site through the use of S&C Distribution Company, Model 500 Jumper Keeper Alarm System hard wired into the vehicles ignition system.
- Allied shall have these tools available at all times while supporting the CP TR&E crews. Contractor shall provide maintenance/inspection records of all tools used on CP property including calibration certificates.

### TR&E/Maintainer Forecast

Crew/Gang Name	Shift Cycle	Approx. Start Date	Approx. Shutdown	Total Cycles	Total Hours Per Cycle
<b>SO/SA</b>					
SO Rail 7/7 Cycle D	7/7	6/6/2022	11/23/2022	12	80
SO Utility 6 Cycle D J/E, Destress/Projects/Rail)	7/7	3/15/2022	10/13/2022	17	80
<b>NO/SA</b>					
NO Utility 1 Cycle D	7/7	4/5/2022	11/21/2022	17	80
Crew/Gang Name	Shift Cycle	Approx. Start Date	Approx. Shutdown	Total Cycles	Total Hours Per Cycle
<b>MB</b>					
MB Utility 3	4&3	26-Apr-2022	19-Oct-2022	18	40
MB Joint Elimination East	4&3	15-Mar-2022	23-Sep-2022	13	40
<b>SK</b>					
SK Steel Cycle C	7/7	22-Mar-2022	19-Oct-2022	8	80
SK Tie Cycle C	7/7	5-May-2022	25-Sep-2022	7	80
Crew/Gang Name	Shift Cycle	Approx. Start Date	Approx. Shutdown	Total Cycles	Total Hours Per Cycle
<b>Alberta</b>					
Utility 4R Cycle C	7/7	3/22/2022	11/7/2022	15	80
Utility 4T Cycle C&D Additional Support	7/7	5/1/2022	9/19/2022	21	80
<b>BC</b>					
Rail 1C	7/7	3/1/2022	10/2/2022	15	80
Rail 1D	7/7	3/8/2022	10/2/2022	14	80
Rail 1 (additional Maintainer)	7/7	2/23/2022	9/28/2022	3	80
Rail 2C	7/7	1/25/2022	9/24/2022	19	80
Rail 2D	7/7	2/1/2022	9/24/2022	18	80
Tie 1C	7/7	2/15/2022	9/27/2022	17	80
Tie 1D	7/7	2/22/2022	9/27/2022	16	80
Utility 9 C (swt and spot ties)	7/7	1/25/2022	10/16/2022	21	80
Utility 9 D (swt and spot ties)	7/7	2/1/2022	10/16/2022	20	80

### Broken Rail Forecast

Month	Subdivision	Work	Resources	Crew
September	Taber	Installations - Pin brazing & Crossing Testing	1 Maintainer, 2 labourers, 2 hi-rails	crew 1
	Montana	Installations - Pin brazing & Crossing Testing	1 Maintainer, 2 labourers, 2 hi-rails	crew 1
	Cranbrook	Detector installs - Flagging & Crossing Testing	1 Flagman	crew 2
	Crowsnest	Detector installs - Flagging & Crossing Testing	1 Flagman	crew 2
	Aldersyde	Detector Upgrades	1 Maintainer, 1 labourer, 1 hi-rail	crew 3
	Wetaskiwin	Detector Upgrades	1 Maintainer, 1 labourer, 1 hi-rail	crew 4
	Hardisty	Detector Upgrades	1 Maintainer, 1 labourer, 1 hi-rail	crew 3
October	Taber	Detector installs - Flagging & Crossing Testing	1 Flagman	crew 2
	Montana	Detector installs - Flagging & Crossing Testing	1 Flagman	crew 2
	Wilkie	Detector Upgrades	1 Maintainer, 1 labourer, 1 hi-rail	crew 4
	Sutherland	Detector Upgrades	1 Maintainer, 1 labourer, 1 hi-rail	crew 3
November	Wynyard	Detector Upgrades	1 Maintainer, 1 labourer, 1 hi-rail	crew 4
	Weyburn	Installations - Pin brazing & Crossing Testing	1 Maintainer, 2 labourers, 2 hi-rails	crew 1
	Weyburn	Detector installs - Flagging & Crossing Testing	1 Flagman	crew 2
	Bredenbury	Detector Upgrades	1 Maintainer, 1 labourer, 1 hi-rail	crew 3
	Minnedosa	Detector Upgrades	1 Maintainer, 1 labourer, 1 hi-rail	crew 4
	Emerson	Detector Upgrades	1 Maintainer, 1 labourer, 1 hi-rail	crew 3

**SCHEDULE B**

**RATES**

Description Resource/Equipment/Expense	Fully Burdened Rate Contractor provides lodging & meals.		Travel Rate for Mobilization & Demobilization & Travel between cycles
	Regular CAD per hour 2022 Rates	Overtime CAD per hour 2022 Rates	Regular CAD per hour 2022 Rates
Qualified Signal Maintainer			
Apprentice Signal Maintainer			
Signal Helper			
Pick Up Truck			
Pick Up Truck - Hi Rail			

\*Please note: Rates subject to a 2% increase in January 2023 and January 2024

Description Resource/Equipment/Expense	Fully Burdened Rate Contractor provides lodging & meals.	
	Regular CAD per hour 2022 Rates	Overtime CAD per hour 2022 Rates
Laborer		
Apprentice/Lead Hand		
Foreman/Flagman		
Superintendent/Supervisor		
Signalman		
Equipment Operator		
Signal Operator		
Pick Up Truck		
Hi Rail Crew Truck c/w Tools		
Hi Rail Crew Boom Truck c/w Tools		
Hi Rail Crew Boom Truck & Trailer c/w Tools		
Mini Excavator		
Backhoe		
Per Diem Rate - Lodging PLUS MEALS - (Daily Rate)		
Per Diem - Meals ONLY - (Daily Rate)		

\*Please note: Rates subject to a 2% increase in January 2023 and January 2024

SCHEDULE C

ESTIMATE FOR THE FIRST SERVICE PERIOD

Title	Job	Location	Vehicle/ Equipment			Work Hours	OT	Fuel Costs	LOA/Hotels	Flights			Labour	Total			
Supervisor		Kamloops	Unit 186			40											
Supervisor		Grimmsby	Unit 191			40											
Supervisor	22-507	Kamloops	Unit 177			40											
Supervisor		Winnipeg	Unit 180			40											
GM		Sooke	Unit 192			40											
Mgr		Okotoks	Unit 174			40											
Title	Job	Location	Vehicle/ Equipment	Shift Start	Shift Type	Days from Sep 4th to Sep 10th	Est. Work Hours	OT	Flights	Travel Time	Stat Hours	Avg. Hr. Wage	Equip. Rate	Total Labour	Total Equipment	Total	Total (Less 10% Profit)
Maintainer	CP AB Tie	Red Deer, AB	R103	30-Aug	7-7	2	23	2		2	10						
Helper	CP AB Tie	"		30-Aug	7-7	2	23	2		2	10						
Maintainer	CP BC Rail 2C	Banff, AB	R201	7-Sep	7-7	4	48	3		5	10						
Helper	CP BC Rail 2C	"		7-Sep	7-7	4	48	3		12	10						
Maintainer	CP BC Rail 2D	Banff, AB	R105	30-Aug	7-7	2	23	2		8	10						
Helper	CP BC Rail 2D	"		30-Aug	7-7	2	23	2		8	10						
Maintainer	CP BC Rail 1C	Cranbrook, BC	R181	7-Sep	7-7	4	48	3		14	10						
Maintainer	CP BC Rail 1D	Cranbrook, BC	R104	30-Aug	7-7	2	23	2		12	10						
Maintainer	CP BC Utility 7D	Kamloops, BC	R112	30-Aug	7-7	2	23	2		3	10						
Maintainer	CP BC Utility 7C	Kamloops, BC	R79	7-Sep	7-7	4	48	3		16	10						
Maintainer	CP BC Utility Tie 9D	Kamloops, BC	R190	30-Aug	7-7	2	23	2		6	10						
Helper	CP BC Utility Tie 9D	"		30-Aug	7-7	2	23	2		4	10						
Maintainer	CP BC Utility Tie 9C	Kamloops, BC	R200	7-Sep	7-7	4	48	3		3	10						
Helper	CP BC Utility Tie 9C	"		7-Sep	7-7	4	48	3		3	10						
Maintainer	CP BC Tie 2C	Revelstoke, BC	R182	30-Aug	7-7	2	23	2		6	10						
Helper	CP BC Tie 2C	"		30-Aug	7-7	2	23	2		1	10						
Maintainer	CP BC Tie 2D	Revelstoke, BC	R179	7-Sep	7-7	4	48	3		1	10						
Helper	CP BC Tie 2D	"		7-Sep	7-7	4	48	3		4	10						
Title	Job	Location	Vehicle/ Equipment	Shift Start	Shift Type	Days from Sep 4th to Sep 10th	Est. Work Hours	OT	Flights	Travel Time	Stat Hours	Avg. Hr. Wage	Equip. Rate	Total Labour	Total Equipment	Total	Total (Less 10% Profit)
Maintainer	Galt Surf & Lining	London, ON	985/R110 LMS	6-Sep	4-3	3	30	3		10							
Maintainer	Util 3 & 6	Vaughan, ON	986/R111 LMS	30-Aug	7-7	2	20	3		6							
Maintainer	North Util 1	Chapleau, ON	977/R99 LMS	6-Sep	7-7	4	40	8		10							
Maintainer	South Ont Rail	Bolton, ON	R154	30-Aug	7-7	2	20	4		5							
Helper	South Ont Rail	Bolton, ON		30-Aug	7-7	2	20	4		5							
Foreman	CP BRD Installations	Lethbridge, AB	R171	31-Aug	8-6	3	30			4	10						
Maintainer	CP BRD Installations	Lethbridge, AB	R102	31-Aug	8-6	3	30			4	10						
Helper	CP BRD Installations	Lethbridge, AB		31-Aug	8-6	3	30			4	10						
Maintainer	CP BRD Installations	Cranbrook, BC	R106	6-Sep	Start Sept 6th to Sept 11th	6	60			6	10						
Maintainer	CP BRD Upgrades	Calgary, AB	R135	7-Sep	8-6	5	50			8	10						
Helper	CP BRD Upgrades	Calgary, AB		7-Sep	8-6	5	50			9	10						
Maintainer	Sask. Tie Gang	Moose Jaw, SK	965/R75 LMS	30-Aug	7-7	1	12	1		8	10						
Maintainer	Mb. Mini Tie Gang	Winnipeg, MB	966/R76 LMS	6-Sep	4-3	3	30	2		2	10						
Maintainer	Sask. Tie Gang	Moose Jaw, SK	967/R77 LMS	30-Aug	7-7	1	12	1		8	10						
Maintainer	MB. Joint Elimination	Winnipeg, MB	968/R78 LMS	6-Sep	4-3	3	30	2		2	10						
Maintainer	Sask. RFD	Moose Jaw, SK	975/R97 LMS	6-Sep	7-7	4	45	6		8	10						
Maintainer	Sask. Tie Gang	Moose Jaw, SK	467/22972 Cal	30-Aug	7-7	1	12	1		8	10						
Helper	Sask. Tie Gang	Moose Jaw, SK		30-Aug	7-7	1	12	1		8	10						
														LABOUR			
														EQUIPMENT			
														FLIGHTS			
														CONTINGENCY (NOT SUBJECT TO RECONCILIATION) @10%			
														TOTAL FUNDING ESTIMATE - W/E SEPT 11, 2022			



## **APPENDIX “E”**



March 8, 2017

**Allied Track Services Inc.**  
 169A South Service Road  
 Grimsby, Ontario L3M 4H6

**Attention: Michael Kenefick, David Malay and Nick Kuneman**

Dear Sirs:

**Re: Credit Facilities provided by Bridging Finance Inc. as agent (the "Agent") for certain lenders from time to time (collectively, the "Lenders"), in Favour of Allied Track Services Inc. (the "Borrower")**

The Agent, on behalf of the Lenders, is pleased to offer the credit facilities (collectively, the "**Facilities**") described in this letter credit agreement (as may be amended, restated, supplemented, extended or replaced from time to time, the "**Agreement**") subject to the terms and conditions set forth herein including, without limitation, the satisfactory completion of due diligence. Unless otherwise indicated, all amounts are expressed in Canadian currency. All capitalized terms not otherwise defined in the body of this Agreement shall have the meanings ascribed thereto in **Schedule "A"**.

**Borrower:** Allied Track Services Inc.

**Guarantors:** 2409889 Ontario Inc. ("**240**")  
 Swift Railroad Holdings U.S. LLC ("**Swift**")  
 (individually, a "**Guarantor**", and collectively, the "**Guarantors**")

**Agent:** Bridging Finance Inc., as agent for the Lenders

**Facilities:**

- (i) Demand non-revolving loan of up to \$8,000,000 based on the Facility A Loan Availability, as defined below (the "**Facility A Loan**").
- (ii) Demand revolving loan of up to \$7,000,000 based on the Facility B Loan Availability, as defined below (the "**Facility B Loan**").
- (iii) Demand revolving accordion loan of up to \$5,000,000 based on the Facility C Loan Availability, as defined below (the "**Facility C Loan**")

**Purpose:** To refinance existing indebtedness owed to CIBC and to support the working capital needs of the Borrower.

**Term:** The earlier of demand and a term ending March 9, 2018 (the "**Term**").

**Facility A Loan**

**Availability:**

The amount available under the Facility A Loan at any time and from time to time (the "**Facility A Loan Availability**") shall be subject to a maximum equal to the then applicable Facility A Loan Cap, and will be determined by the Agent once each week (or more frequently as determined by the Agent), in accordance with the following calculation:

- (i) the amount determined pursuant to the Loan Availability Formula;  
**LESS**
- (ii) the aggregate amount of the Facility A Loan outstanding (including principal, interest, costs, fees and expenses).

If the Facility A Loan Availability determined using the above calculation is \$0 or greater, the full amount of the Facility A Loan Cap shall remain available to the Borrower. If the Facility A Loan Availability determined using the above calculation is less than \$0, the Borrower shall forthwith pay to the Agent an amount equal to the amount by which the aggregate amount of the Facility A Loan outstanding exceeds the Facility A Loan Cap.

**Facility B Loan Availability:**

The amount available under the Facility B Loan at any time and from time to time (the "**Facility B Loan Availability**") shall be subject to a maximum of \$7,000,000, and will be determined by the Agent once each week (or more frequently as determined by the Agent), in accordance with the following calculation:

- (i) the amount determined pursuant to the Loan Availability Formula;  
**LESS**
- (ii) an amount equal to the Facility A Loan Cap; **LESS**
- (iii) the amount of the Facility B Loan then outstanding, together with all amounts owing by the Borrower to the Agent under this Agreement (including principal, interest, costs, fees and expenses owing in respect of any Facility) or under any other agreement or instrument, without duplication of any amount already accounted for in subsection (ii) above.

**Facility C Loan Availability:**

The Facility C Loan shall be an accordion facility and be available if the Loan Availability Formula demonstrates, in the opinion of the Agent, availability after the full amounts of the Facility A Loan and the Facility B Loan have been advanced to the Borrower. The amount available under the Facility C Loan at any time and from time to time (the "**Facility C Loan Availability**") shall be subject to a maximum of \$5,000,000, and will be determined by the Agent once each week (or more frequently as determined by the Agent), in accordance with the following calculation:

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- (i) the amount determined pursuant to the Loan Availability Formula; **LESS**
- (ii) an amount equal to the Facility A Loan Cap; **LESS**
- (iii) an amount equal to the Facility B Loan Cap; **LESS**
- (iii) the amount of the Facility C Loan then outstanding, together with all amounts owing by the Borrower to the Agent under this Agreement (including principal, interest, costs, fees and expenses owing in respect of any Facility) or under any other agreement or instrument, without duplication of any amount already accounted for in subsections (ii) and (iii) above.

**Determination of  
Loan Availability:**

On a Business Day in each week as determined by the Agent (the "**Report Day**"), prior to 1:00 p.m. ET, the Borrower will provide a report (a "**Weekly Borrowing Base Report**") to the Agent (in such form and together with any back-up materials as the Agent shall reasonably require) providing, as at the end of the preceding week, a listing of all of the accounts receivable, accounts payable, work in progress, details regarding purchase orders and contracts, inventory, equipment, fixed assets, details of any then existing or potential Priority Claims, the amount of the requested Facility B Loan advance to be made hereunder during such week, and any other information that may be reasonably required by the Agent. The Agent shall, upon receipt of such report, calculate the then existing Facility A Loan Availability and Facility B Loan Availability and advise the Borrower accordingly.

**Facility A Loan  
Advance:**

Provided that the Weekly Borrowing Base Report prepared by the Borrower to the Agent for the Initial Advance Date demonstrates sufficient Facility A Loan Availability to advance the entire Facility A Loan, no Event of Default has occurred which has not been waived in writing by the Agent, demand has not been made by the Agent, and all other conditions precedent hereunder have been met, the entire amount of the Facility A Loan shall be advanced to or on behalf of the Borrower on the Initial Advance Date. The Borrower and the Agent acknowledge and agree that, unless any Weekly Borrowing Base Report demonstrates that the aggregate amount of the Loan Availability is less than \$8,000,000, or the Agent has otherwise made demand for repayment of the Facilities hereunder, the Facility A Loan shall not revolve during the Term and remain outstanding.

**Facility B Loan  
Advances:**

Advances under the Facility B Loan to be made hereunder shall be the lesser of the Borrower's requested advance in its Weekly Borrowing Base Report and an amount equal to the Facility B Loan Availability and will, less any amounts to be deducted therefrom as provided for hereunder, be deposited into the Borrower's Disbursement Accounts.

Provided that no Event of Default has occurred which has not been waived in writing by the Agent, demand has not been made by Agent, the Agent has received the portion of its Work Fee due as of the date of such advance and all other fees payable at such time hereunder, and that at the time the advance is to be made the conditions contained in this Agreement have been satisfied, Facility B Loan advances to be made hereunder shall, provided that the request is contained in a Weekly Borrowing Base Report and that such Weekly Borrowing Base Report is received by the Agent prior to 1:00 p.m. on the Report Day, be made no later than the close of business on the second Business Day following the Agent's receipt of such request.

**Facility C Loan  
Advances:**

Advances under the Facility C Loan to be made hereunder shall be the lesser of the Borrower's requested advance in its Weekly Borrowing Base Report and an amount equal to the Facility C Loan Availability and will, less any amounts to be deducted therefrom as provided for hereunder, be deposited into the Borrower's Disbursement Accounts.

Provided that no Event of Default has occurred which has not been waived in writing by the Agent, demand has not been made by Agent, the Agent has received its Work Fee due as of the date of such advance and all other fees payable at such time hereunder, the Agent has received not less than 30 days' written notice that the Facility C Loan is to be accessed by the Borrower, and that at the time the advance is to be made the conditions contained in this Agreement have been satisfied, Facility C Loan advances to be made hereunder shall, provided that the request is contained in a Weekly Borrowing Base Report and that such Weekly Borrowing Base Report is received by the Agent prior to 1:00 p.m. on the Report Day, be made no later than the close of business on the second Business Day following the Agent's receipt of such request.

**Interest Rate  
and Fees:**

Interest: Prime plus 11% per annum calculated on the daily outstanding balance of the Facilities and compounded monthly, not in advance and with no deemed reinvestment of monthly payments. On the occurrence of an Event of Default or demand by Agent, interest shall be calculated at an annual rate of 21% per annum calculated and compounded as aforesaid.

Work Fee: A work fee of \$300,000, plus applicable taxes (the "Work Fee") in respect of the Facilities, which fee will be deemed to be fully earned upon the execution and delivery of this Agreement, and which fee shall be paid as follows: (i) \$150,000, plus applicable taxes, shall be payable to the Agent and shall be deducted from the initial advance of the Facilities; and (ii) the remaining \$150,000, plus applicable taxes, shall be due and payable on the earlier of: (A) the date the Agent makes demand for immediate repayment of the Facilities and all other amounts owing hereunder; and (B) July 31, 2017.

**Deposit:** The Agent acknowledges that it has been paid a deposit of \$50,000 by the Borrower (the "**Deposit**"). The Deposit shall be retained by the Agent to settle its due diligence and review costs, with any remaining amount, after all such costs have been settled, being applied against the then outstanding balance of the Facilities.

Monitoring Fee: A monitoring fee of \$2,000, plus applicable taxes, will be due and payable to the Agent on the last Business Day of each month.

Administration Fee: If the Borrower fails to pay any amounts on the day such amounts are due or if the Borrower fails to deliver the required reports set out herein, the Borrower shall pay to the Agent a late administration fee of \$100, plus applicable taxes, per day until such date that such payment has been made or the Borrower has delivered such report, as the case may be.

Expenses: The Borrower shall pay all fees and expenses (including, but not limited to, all due diligence, consultant, field examination and appraisal costs, all fees and expenses for outside legal counsel and other outside professional advisors and the time spent by the Agent and its representatives in retaking, holding, repairing, processing and preparing for disposition and disposing of the Security calculated at the Agent's standard per diem rate in effect at such applicable time and established by the Agent in its sole discretion for internal personnel of the Agent) incurred by the Agent in connection with the preparation, registration and ongoing administration of this Agreement and the Security and with the enforcement of the Agent's rights and remedies under this Agreement or the Security, whether or not any amounts are advanced under this Agreement. If the Agent has paid any expense for which the Agent is entitled to reimbursement from the Borrower and such expense has not been deducted from the advance of any Facility, such expense shall be payable by the Borrower within fifteen (15) days following demand for payment and in the event that the Borrower does not pay such amount to the Agent within the fifteen (15) day period, interest shall accrue on such expense at the highest rate payable by the Borrower under this Agreement. All such fees and expenses and interest thereon shall be secured by the Security whether or not any funds under the Facilities are advanced.

**Payments:** Without limiting the right of the Agent to at any time demand repayment and subject to and in addition to the requirement for indefeasible repayment in full pursuant to this Agreement, interest only at the aforesaid rate, calculated daily and compounded and payable monthly, not in advance on the outstanding amount of the Facility, shall be due and payable on the last Business Day of each and every month during the Term.

**Prepayment:** The Facilities can be repaid in full or in part at any time without any fee or penalty upon 90 days prior written notice to the Agent.

**Cash Management  
Systems:**

- (i) The Borrower shall establish and shall continue to maintain, at their expense, blocked deposit accounts (collectively, the "**Blocked Account**") at BMO into which they shall promptly deposit all funds received from all sources including, without limitation, all account receivable payments, cash sales receipts, credit card payments, any and all refunds received from any source whatsoever and any proceeds of any advances or other loans made to it and shall direct its account debtors that remit payments by electronic funds transfers to directly remit all payments into the Blocked Account.
- (ii) BMO, the Agent and the Borrower shall enter into an agreement (the "**Blocked Account Agreement**"), in form and substance satisfactory to the Agent, acting reasonably, providing that all funds received or deposited in the Blocked Account are the property of the Agent, that BMO has no Lien upon, or right to set off against, the Blocked Account, the items received for deposit therein, or the funds from time to time on deposit therein and that BMO will wire, or otherwise transfer, in immediately available funds, on a daily basis, all funds received or deposited into the Blocked Account to the Agent's account, as the Agent may from time to time designate for such purpose. The Borrower agrees that all payments made to the Blocked Account or other funds received and collected by the Agent, shall be property of the Agent. The Borrower and each of the Guarantors hereby acknowledge, confirm and agree that the Agent shall have the contractual right to continue to apply the contemplated cash management arrangements contemplated herein notwithstanding any default, termination or non-renewal of this Agreement or any of the Facilities contemplated herein or any stay of proceedings or filing under any applicable insolvency statute and/or Applicable Law as a matter of, and shall be considered and deemed to be a matter of, replacing and monitoring the Agent's Collateral and not as an enforcement of any of their Security or Liens.

Blocked Account Agreements with BMO shall be required for closing purposes. The Borrower and the Guarantors shall cause the CIBC accounts to be closed within 30 days of the initial advance hereunder.

- (iii) The Borrower and 240 and all of their affiliates, subsidiaries, officers, employees, agents, directors, shareholders or other persons (a "**related person**") shall, acting as trustee for the Agent, receive, as the property of the Agent, any monies, cheques, notes, drafts or any other payment which comes into the possession or under their control or, in the case of any related person, comes into its possession or under its control and is rightfully that of the Borrower or 240, and immediately upon receipt thereof where

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received by any of them or upon becoming aware of the receipt thereof where received by a related person, the Borrower and 240 shall deposit or shall cause the same to be deposited in the Blocked Account, or remit the same or cause the same to be remitted, in kind, to the Agent. In no event shall the same be commingled with any of the Borrower's or 240's own funds. Each of the Borrower and 240 agrees to reimburse the Agent on demand for any amounts owed or paid to BMO regarding the Blocked Account or any other bank or person involved in the transfer of funds to or from such Blocked Account arising out of the Agent's payments to or indemnification of such bank or person.

- (iv) The Agent shall apply amounts received from the Blocked Account to the Facilities as it sees fit in its reasonable credit discretion.
- (v) The Borrower shall make all of its payments and disbursements only from its Disbursement Accounts.
- (vi) The Borrower and BMO shall make the necessary arrangements to provide view only electronic access to the Disbursement Accounts to the Agent.

**Conditions  
Precedent:**

The availability of the Facilities is subject to and conditional upon the following conditions:

- (i) satisfactory completion of due diligence and continual due diligence, including the Agent's review of the operations of the Borrower and the Guarantors and the Borrower's Guarantors' business and financial plans;
- (ii) satisfactory completion of the Agent's legal due diligence;
- (iii) receipt of a duly executed copy of this Agreement and the Security, in form and substance satisfactory to the Agent and its legal counsel, registered as required to perfect and maintain the security created thereby and such certificates, acknowledgements, consents, estoppels, postponements, intercreditor or priority agreements, waivers, landlord agreements, directions, stock transfers, statutory declarations, undertakings, negative pledges, authorizations, resolutions and legal opinions as the Agent may reasonably require including opinions from the Borrower's and Guarantors' counsel with respect status and the due authorization, execution, delivery, validity and enforceability of this Agreement and the Security;
- (iv) the discharge or subordination or assignment, as applicable, of any and all existing security against the Borrower and the



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Guarantors as may be required by the Agent, including without limitation, all security granted in favour of CIBC;

- (v) payment of all fees owing to the Agent hereunder;
- (vi) the Borrower shall have opened the Blocked Account at BMO and shall have entered into the Blocked Account Agreement;
- (vii) delivery of appraisals relating to the Borrower's real property and equipment prepared by appraisers satisfactory to the Agent;
- (viii) delivery of such financial and other information or documents relating to the Borrower and the Guarantors as the Agent may require;
- (ix) the Agent being satisfied that there has been no material deterioration in the financial condition of the Borrower or the Guarantors;
- (x) no event shall have occurred and no circumstance shall exist which has not been waived, which constitutes an Event of Default in respect of any material commitment, agreement or any other instrument to which the Borrower or any Guarantor is a party or is otherwise bound, entitling any other party thereto to accelerate the maturity of amounts of principal owing thereunder or terminate any such material commitment, agreement or instrument which would have a material adverse effect upon the financial condition, property, assets, operation or business of the Borrower or any Guarantor; and
- (xi) no event that constitutes, or with notice or loss of time or both, would constitute an Event of Default shall have occurred.

Each of the following is a condition precedent to any subsequent advance to be made hereunder:

- (i) all of the conditions contained in this Agreement shall have been satisfied and shall as at the time of the making of the subsequent advance in question continue to be satisfied;
- (ii) all of the representations and warranties herein are true and correct on and as of such date as though made on and as of such date other than those representations and warranties which relate to a specific date which shall continue to be true as of such date;
- (iii) no event or condition has occurred, or would result from such advance, which constitutes or which, with notice, lapse of time, or both, would constitute, a breach of any covenant or other term or condition of this Agreement or of the Security;

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- (iv) such borrowing will not violate any Applicable Law (which for the purposes of this Agreement means, with respect to any person, property, transaction or event, all present or future statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction, in each case, having the force of law in any applicable jurisdiction then in effect) and there shall have been no investigation, notice or recall from any governmental agency or body;
- (v) no Event of Default shall have occurred which has not been waived in writing by Agent;
- (vi) no other event shall have occurred that, in the Agent's reasonable credit discretion, materially adversely affects or could materially adversely affect either: (i) the business, assets, liabilities, prospects, financial condition or operations of the Borrower or any Guarantor, or (ii) the value of the Collateral; or (iii) the ability of the Agent to receive indefeasible repayment in full; and
- (vii) CIBC shall have agreed in writing to set-off the \$1,000,000 in cash collateral pledged by the Borrower against the indebtedness owing by the Borrower to CIBC, in form and substance satisfactory to the Agent.

The making of an advance hereunder without the fulfillment of one or more conditions set forth in this Agreement shall not constitute a waiver of any such condition, and the Agent reserves the right to require fulfillment of such condition in connection with any subsequent advance.

Nothing in this Agreement creates a legally binding obligation on the Agent to advance any amount under any Facility at any time unless the Agent is completely satisfied in its sole discretion that the Borrower and the Guarantors are in compliance with every provision of this Agreement and that no fact exists or event has occurred which changes the manner in which the Agent previously evaluated the risks inherent in advancing amounts to the Borrower under any Facility, whether or not the Agent was or should have been aware of such facts or events differently at any time.

All amounts under the Facilities are repayable immediately on demand by Agent whether or not there is an Event of Default, and the Facilities may be terminated in whole or in part by Agent at any time.

**Covenants:**

Each of the Borrower and the Guarantors covenant and agree with the Agent and the Lenders, while this Agreement is in effect to:

- (i) pay all sums of money and all Priority Claims when due or arising therefrom;

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- (ii) provide the Agent with prompt written notice of any event which constitutes, or which, with notice, lapse of time, or both, would constitute an Event of Default, a breach of any covenant or other term or condition of this Agreement or of any of the Security given in connection therewith;
- (iii) use the proceeds of the Facilities for the purposes provided for herein;
- (iv) continue to carry on business in the nature of or related to the business transacted by the Borrower prior to the date hereof in the name and for the account of the Borrower;
- (v) keep and maintain books of account and other accounting records in accordance with generally accepted accounting principles;
- (vi) ensure all assets secured by the Security are in existence and in the possession and control of the Borrower or the Guarantors, as applicable;
- (vii) not sell, transfer, convey, lease or otherwise dispose of or further encumber any of its properties or assets other than Permitted Encumbrances or permit any reorganization or change of control of the Borrower, other than the sale of inventory in the ordinary course of business;
- (viii) not sell, transfer, convey, encumber or otherwise dispose of any of its capital stock or permit any reorganization or change of control of the Borrower or the Guarantors;
- (ix) not purchase or redeem its shares or otherwise reduce its capital;
- (x) without the prior written consent of the Agent, not declare or pay any dividends or repay any shareholders' loans, interest thereon or share capital or make any other gift or other form of distribution whatsoever (including the payment of any management fees) to any person, including, without limitation, any shareholder of the Borrower or any Guarantor and Kenex Holdings LLC or its affiliates;
- (xi) not make loans or advances (excluding for greater certainty, salaries and bonuses payable in the ordinary course of business and consistent with past practice) to, or enter into any related party sales or other transactions which are not on arms' length terms with, or make any investments in any, shareholders, directors, officers, subsidiaries, affiliated companies or any other related or associated party of the Borrower or the Guarantors, or assume or permit to exist any further indebtedness not existing on the date hereof other than in respect of Permitted Encumbrances;

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- (xii) permit the Agent or its representatives, at any time and from time to time with such frequency as the Agent, in its sole discretion, may require, to visit and inspect any premises, properties and assets and to examine and obtain copies of the records or other information and discuss business affairs with Canada Revenue Agency, the auditors, counsel and other professional advisors of the Borrower and the Guarantors all at the reasonable expense of the Borrower;
- (xiii) forthwith notify the Agent of the particulars of any occurrence which constitutes an Event of Default hereunder or of any action, suit or proceeding, pending or to the Borrower's or any Guarantors' knowledge threatened against them;
- (xiv) in a form and manner prescribed by the Agent (which may include by fax and/or e-mail), deliver to the Agent the following, signed by a senior officer of the Borrower:
  - (a) weekly by Friday of each week, a list of total invoiced sales completed during the preceding week and a list of credit notes and cash receipts received from customers during the preceding week (Saturday to Friday inclusive);
  - (b) weekly by Friday of each week, the daily invoice register, credit note register and cash receipts register in respect of the preceding week (Saturday to Friday inclusive);
  - (c) weekly, by Friday of each week in respect of the preceding week (Saturday to Friday inclusive), an aged accounts receivable schedule, aged accounts payable schedule (including work in progress and related written approvals), inventory schedule and summary trial balance;
  - (d) monthly, by the end of each calendar month, a compliance certificate in form satisfactory to the Agent;
  - (e) monthly, by the end of each calendar month in respect of the preceding month, internally prepared financial statements for the preceding month and internally prepared financial statements for the year to date;
  - (f) monthly bank statements for all bank accounts of the Borrower within 15 days of its month-end;
  - (g) monthly, by the 10<sup>th</sup> of each calendar month in respect of the preceding month proof of payments, in a form satisfactory to the Agent, of Priority Claims;

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- (h) annually, no later than 30 days following the end of the Borrower's financial year, financial and business projections for the following financial year;
- (i) annually, within 120 days of the Borrower's financial year end in respect of the preceding financial year, audited financial statements for the Borrower that were prepared by external auditors; and
- (j) such additional financial information with respect to Borrower and the Guarantors as and when requested by the Agent;
- (xv) file all tax returns which the Borrower and the Guarantors must file from time to time, to pay or make provision for payment of all taxes (including interest and penalties) and other potential preferred claims which are or will become due and payable and to provide adequate reserves for the payment of any tax, the payment of which is being contested;
- (xvi) not make capital expenditures in any financial year of the Borrower in excess of \$500,000 without the written consent of the Agent, with any capital expenditures to be reported monthly;
- (xvii) not grant, create, assume or suffer to exist any mortgage, charge, Lien, pledge, security interest, including a purchase money security interest, or other encumbrance affecting any of the Borrower's or the Guarantors' properties, assets or other rights except for Permitted Encumbrances in existence, known to and approved by the Agent as the date hereof or from time to time;
- (xviii) not grant a loan or make an investment in or provide financial assistance to a third party (including the Guarantors or any related party) by way of a suretyship, guarantee or otherwise;
- (xix) not change its name, merge, amalgamate or otherwise enter into any other form of business combination with any other entity without the prior written consent of the Agent;
- (xx) keep the Collateral fully insured against such perils and in such manner as would be customarily insured by companies carrying on a similar business or owning similar assets naming the Agent as first loss payee and first mortgagee with respect to the personal property Collateral and second loss payee and mortgagee with respect to the real property Collateral with a standard mortgage clause in favour of Agent and with the Agent added as an additional insured and to ensure all assets secured by the Security are in existence and in the possession and control of the Borrower;

- (xxi) comply with all the Applicable Laws including without limitation, regarding food safety and food production, health, environmental and other laws and regulations; to advise the Agent promptly of any actions, investigations, audits, requests or violation notices or orders received from any government or regulatory authority concerning the Borrower's operations including without limitation any product recalls; and to indemnify and hold the Agent harmless from all liability of loss as a result of any non-compliance with such Applicable Laws.

**Security and other Requirements:**

As general and continuing collateral security for the performance by the Borrower of all of its obligations, present and future, to the Agent, including, without limitation, the repayment of advances granted hereunder and the payment of interest, fees and any other amounts provided for hereunder and under the security documents, the Borrower and the Guarantors undertake to grant to the Agent and to maintain at all times the following security in form satisfactory to the Agent (the "**Security**"), in accordance with the forms in use by the Agent or as prepared by its solicitors:

- (i) general security agreement, on the Agent's form constituting a first (subject to Permitted Encumbrances) ranking security interest in all personal property of the Borrower and 240;
- (ii) an assignment of adequate all risk, business interruption, commercial general liability and property insurance of the Borrower and 240 (including the equipment which forms part of the Collateral in an amount not less than its appraised value) naming the Agent as first loss payee and first mortgagee;
- (iii) a postponement and subordination of all directors, officers, shareholders, non-arms' length creditors and other related party loans, to include a postponement of the right to receive any payments of both principal and interest under such loans;
- (iv) unlimited guarantee by 240;
- (v) share pledge security agreement by 240 relating to the shares of the Borrower;
- (vi) a guarantee by Swift, limited in recourse to the shares of 240
- (vii) share pledge security agreement by Swift relating to the shares of 240; and
- (viii) such other security as may be required by the Agent.

The Borrower and the Guarantors acknowledge and agree that all of the Security is being granted to and in favour of the Agent for and on behalf

of the Agent and the Lenders, to secure all of the indebtedness, liabilities and obligations owing hereunder, under the Security and the other Credit Documents.

**Events  
of Default:**

Without limiting any other rights of the Agent under this Agreement, including the right to demand repayment of the Facilities at any time and for whatever reason, which Facilities are made available at the sole discretion of the Agent, if any one or more of the following events (an "Event of Default") has occurred which have not been waived in writing by the Agent:

- (i) the Borrower or any Guarantor fails to pay when due any principal, interest, fees or other amounts due under this Agreement or under any of the Security;
- (ii) the Borrower or any Guarantor breaches any provision of this Agreement or any of the Security or other agreement with the Agent;
- (iii) the Borrower or any Guarantor is in default under the terms of any other contracts, agreements or otherwise with any other creditor;
- (iv) the Agent receives from any present or future guarantor a notice proposing to terminate, limit or otherwise modify such guarantor's liability under its guarantee of the Borrower's indebtedness to the Agent under the Facilities or under a security document or under any other document in favour of the Agent;
- (v) the Borrower or any Guarantor ceases or threatens to cease to carry on business in the ordinary course;
- (vi) any default or failure by the Borrower or any Guarantor to make any payment of, wages or other monetary remuneration payable to its employees under the terms of any contract of employment, oral or written, express or implied;
- (vii) any default or failure by the Borrower or any Guarantor to keep current all amounts owing to parties other than the Agent who, in the Agent's sole opinion, have or could have a Lien in the Collateral which, in the Agent's sole opinion would or could constitute a Priority Claim;
- (viii) any breach by a Guarantor of the provisions of any guarantee or other security, undertaking or covenant given to the Agent to secure any guarantee;
- (ix) if any representation or warranty made or deemed to have been made herein or in any certificate or the Security provided for herein shall be false or inaccurate;

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- (x) if, in the reasonable opinion of the Agent, there is a Material Adverse Change including, without limitation, any investigation, audit, recall, notice or order of any applicable government agency or body;
- (xi) the Borrower or any Guarantor is unable to pay its debts as such debts become due, or is adjudged or declared to be or admit to being bankrupt or insolvent;
- (xii) any judgment or award is made against the Borrower or any Guarantor which may have a Material Adverse Effect in respect of which there is not an appeal or proceeding for review being diligently pursued in good faith and in respect of which adequate provision has been made on the books of the Borrower or the Guarantor, as applicable; or
- (xiii) any notice of intention is filed or any voluntary or involuntary case or proceeding filed or commenced for:
  - (a) the bankruptcy, liquidation, winding-up, dissolution or suspension of general operations of the Borrower or any Guarantor;
  - (b) the composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts of the Borrower or any Guarantor;
  - (c) the appointment of a trustee, receiver, receiver and manager, liquidator, administrator, custodian or other official for, all or any significant part of the assets of the Borrower or any Guarantor;
  - (d) the possession, foreclosure, retention, sale or other disposition of, or other proceedings to enforce security over, all or any significant part of the Collateral; or
  - (e) any secured creditor, encumbrancer or lienor, or any trustee, receiver, receiver and manager, agent, bailiff or other similar official appointed by or acting for any secured creditor, encumbrancer or lienor, takes possession of or forecloses or retains, or sells or otherwise disposes of, or otherwise proceeds to enforce security over all or any significant part of the Collateral or gives notice of its intention to do any of the foregoing;

then, in such event, the Agent may, by written notice to the Borrower declare all monies outstanding under the Facilities to be immediately due and payable. Upon receipt of such written notice, the Borrower shall



immediately pay to the Agent all monies outstanding under the Facilities and all other obligations of the Borrower to the Agent in connection with the Facilities under this Agreement. The Agent may enforce its rights to realize upon its security and retain an amount sufficient to secure the Agent for the Borrower's Obligations to the Agent.

Nothing contained in this section shall limit any right of the Agent under this Agreement to demand payment of the Facilities at any time.

**Evidence of  
Indebtedness:**

The Agent shall maintain records evidencing the Facilities. The Agent shall record the principal amount of the Facilities, the payment of principal and interest on account of the Facilities, and all other amounts becoming due to the Agent under this Agreement.

The Agent's accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Agent pursuant to this Agreement.

**Representations  
and Warranties:**

The Borrower represents and warrants to the Agent and the Lenders that:

- (i) the Borrower and each Guarantor is a corporation or other entity duly incorporated or formed, validly existing and duly registered or qualified to carry on business in the Province of Ontario (in the case of the Borrower and 240) or the State of Delaware (in the case of Swift) or any other jurisdiction where they may carry on business;
- (ii) the execution, delivery and performance by the Borrower and the Guarantors of this Agreement has been duly authorized by all necessary actions and do not violate the constating documents or any Applicable Laws or agreements to which the Borrower and the Guarantors is subject or by which they are bound;
- (iii) the financial statements of the Borrower and the Guarantors most recently provided to the Agent fairly present their financial positions as of the date thereof and its results of operations and cash flows for the fiscal period covered thereby, and since the date of such financial statements, there has occurred no Material Adverse Change in the business or financial condition of the Borrower and the Guarantors;
- (iv) there is no claim, action, prosecution or other proceeding of any kind pending or threatened against the Borrower or any or any Guarantor or any of their respective assets or properties before any court or administrative agency which relates to any non-compliance with any environmental law which, if adversely determined, might have a Material Adverse Effect upon its financial condition or operations or its ability to perform its

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obligations under this Agreement or any of the Security, and there are no circumstances of which any of them is aware which might give rise to any such proceeding which has not been fully disclosed to the Agent;

- (v) the Borrower and the Guarantors have good and marketable title to all of their properties and assets, free and clear of any Encumbrances, other than Permitted Encumbrances herein;
- (vi) no event has occurred which constitutes, or which, with notice, lapse of time, or both, would constitute, an Event of Default, a breach of any covenant or other term or condition of this Agreement or any of the Security given in connection therewith;
- (vii) the Borrower and the Guarantors have filed all tax returns which were required to be filed by them, if any, paid or made provision for payment of all taxes and other potential Priority Claims (including interest and penalties) which are due and payable, if any and provided adequate reserves for payment of any tax, the payment of which is being contested, if any; and
- (viii) the Borrower's and each Guarantor's obligation to complete this transaction is not dependent upon any condition whatsoever, and that the Agent assumes no obligation to assist them to complete the transaction in any way, except to make available the Facilities as contemplated herein.

**Field Examinations /  
Appraisals:**

- (i) In addition to reporting hereunder, the Borrower and the Guarantors acknowledge that the Agent and its examiners shall be permitted to conduct periodic field examinations of the Collateral and operations, such examinations not to exceed four (4) in any calendar year prior to an Event of Default and more frequently as the Agent may determine in its sole discretion thereafter.
- (ii) The Borrower and the Guarantors further acknowledge that the Agent shall be permitted to obtain two (2) fixed asset valuations/appraisals and two (2) inventory valuations/appraisals in any calendar year prior to an Event of Default which is continuing and more frequently as the Agent may determine in its sole discretion thereafter.

**Environmental:**

In relation to the business, assets and projects of the Borrower and the Guarantors: they are operating and will continue to operate in conformity with all environmental laws; there are no contaminants, pollutants or other hazardous substances (including, without limitation, asbestos, products containing urea formaldehyde or polychlorinated biphenyl or any radioactive substances) have been or are now stored or located at any property from which they operate their business (collectively, the

**"Properties"**) and no order, approval, direction or other governmental or regulatory notice relating to the environment has been threatened against, is pending or has been issued with respect to the Properties or the operations of the business being conducted at the Properties; they are not aware of any pending or threatened action, suit or proceedings relating to any actual or alleged environmental violation from or at the Properties, nor have any proceedings been or are being instituted to make them or any other owner of the subject property comply with environmental laws and regulations; they will ensure that all of its property and assets comply with existing legislation and will remain free of any environmental problem; they will inform the Agent immediately upon becoming aware of any environmental problem or issue and will provide the Agent with copies of all communications with environmental authorities and all studies or assessments prepared on their behalf, all as soon as received by them; they also agree to pay the cost of any external environmental consultant engaged by the Agent to effect an environmental audit and the cost of any environmental rehabilitation, removal or repair necessary to protect, preserve or remediate the assets, including any fine or penalty the Agent is obligated to incur by reason of any statute, order or directive by a competent authority. The Borrower and the Guarantors agree to indemnify the Agent for any liability arising from an environmental problem including, without limitation, for all decontamination and decommissioning costs or for damages incurred by the Agent or its agents as a result of such contamination. For the purposes of this Agreement, an **"environmental problem"** means an act of non-compliance to a law, regulation, etc. or soil and/or underground water that contains one or many pollutants (contaminants) in levels of concentration that exceed parameters or norms applicable for the present use and intended use of any of their personal or real property including leased property.

In the event any environmental report shows that decontamination is required the Borrower undertakes to forthwith carry out decontamination at its own expense should this be required or requested.

**Confidentiality:**

The Borrower and the Guarantors agree to keep all of the information and terms related to this Agreement confidential. In particular, the existence of this Agreement or the discussions surrounding this Agreement cannot be disclosed to any party, including other creditors, without the Agent's prior written consent.

**General:**

Credit: The Borrower and the Guarantors authorize the Agent, hereinafter, to obtain such factual and investigative information regarding the Borrower or the Guarantors from others as permitted by law, to furnish other consumer credit grantors and credit bureaus such information. The Agent, after completing credit investigations, which it will make from time to time concerning the Borrower and the Guarantors, must in its absolute discretion be satisfied with all information obtained, prior to any advance being made under any Facility.

The Borrower and the Guarantors further authorize any financial institution, creditor, tax authority, employer or any other person, including any public entity, holding information concerning them or their assets, including any financial information or information with respect to any undertaking or suretyship given by them, to supply such information to the Agent in order to verify the accuracy of all information furnished or to be furnished from time to time to the Agent and to ensure their solvency at all times.

Non-Merger: The provisions of this Agreement shall not merge with any of the Security, but shall continue in full force and effect for the benefit of the parties hereto. In the event of an inconsistency between this Agreement and any of the other Credit Documents, including the Security, the provisions of this Agreement shall prevail.

Further Assurances and Documentation: The Borrower and the Guarantors shall do all things and execute all documents deemed necessary or appropriate by the Agent for the purposes of giving full force and effect to the terms, conditions, undertakings hereof and the Security granted or to be granted hereunder.

Severability: If any provisions of this Agreement is or becomes prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor shall it invalidate, affect or impair any of the remaining provisions of this Agreement.

Marketing: The Agent shall be permitted to use the name of the Borrower and the amount of the Facilities for advertising purposes.

Governing Law: This Agreement and all agreements arising hereinafter shall be deemed to have been made and accepted in the City of Toronto, Ontario and shall be construed exclusively (without regard to any rules or principles relating to conflicts of laws) in accordance with and be governed by the laws of the Province of Ontario and of Canada applicable therein.

Counterparts: This Agreement, the Security and all agreements arising hereinafter may be executed in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterpart.

Assignment and Syndication: This Agreement when accepted and any commitment to advance, if issued, and the Security in furtherance thereof or any warrant or right may be assigned by the Agent, or monies required to be advanced may be syndicated by the Agent from time to time. For greater certainty, the Agent may assign or grant participation in all or part

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of this Agreement or in the Facilities made hereunder without notice to and without the Borrower's or any Guarantor's consent. The Borrower and the Guarantors may not assign or transfer all or any part of its rights or obligations under this Agreement, any such transfer or assignment being null and void insofar as the Agent is concerned and rendering any balance then outstanding under the Facilities immediately due and payable at the option of the Agent.

Agency: Each Lender designates Agent to act as its administrative and collateral agent for it under this Agreement and the Security. Each Lender hereby irrevocably authorizes Agent to take such action on its behalf under the provisions of this Agreement and the Security and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto and Agent shall hold all Collateral, payments of principal and interest, fees, charges and collections received pursuant to this Agreement, for the benefit of each Lender. Agent may perform any of its duties hereunder by or through its agents or employees. As to any matters not expressly provided for by this Agreement, Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Lenders, and such instructions shall be binding; provided, however, that Agent shall not be required to take any action which, in Agent's discretion, exposes Agent to liability or which is contrary to this Agreement or the Security or Applicable Laws.

Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and the Security. Neither Agent nor any of its officers, directors, employees or agents shall be (i) liable for any action taken or omitted by them as such hereunder or in connection herewith, unless caused by their gross (not mere) negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), or (ii) responsible in any manner for any recitals, statements, representations or warranties made by Borrower or any Guarantor, or any officer thereof contained in this Agreement, or in any of the Security or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any of the Security or for the value, validity, effectiveness, genuineness, due execution, enforceability or sufficiency of this Agreement, or any of the Security or for any failure of Borrower or any Guarantor to perform its obligations hereunder. The duties of Agent as respects the advances to Borrower shall be mechanical and administrative in nature only and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon Agent any obligations in respect of this Agreement or the transactions described herein except as expressly set forth herein.

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Agent may employ agents and attorneys-in-fact and shall not be liable for the default or misconduct of any such agents or attorneys-in-fact selected by Agent with reasonable care.

Without prejudice to its obligations to Agent under the other provisions of this Agreement, Borrower hereby undertakes with Agent to pay to Agent from time to time on demand all amounts from time to time due and payable by it for the account of Lenders or any of them pursuant to this Agreement to the extent not already paid.

Joint and Several: Where more than one person is liable as a guarantor for any obligation under this Agreement, then the liability of each such person for such obligation is joint and several with each other such person.

Time: Time shall be of the essence in all provisions of this Agreement.

Whole Agreement, Amendments and Waiver: This Agreement, the Security and any other written agreement delivered pursuant to or referred to in this Agreement constitute the whole and entire agreement between the parties in respect of the Facilities. There are no verbal agreements, undertakings or representations in connection with the Facilities. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing signed by the Borrower, the Guarantors and the Agent. No failure or delay on the part of the Agent in exercising any right or power hereunder or under any of the Security shall operate as a waiver thereon. No course of conduct by the Agent will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Agreement and the Security or the Agent's rights thereunder.

Replacements: This Agreement supersedes and replaces all prior discussions, discussion papers, letters and agreements (if any) describing the terms and conditions of any credit facility established in favour of the Borrower.

Reserve Indemnity. If subsequent to the date of this Agreement any change in or introduction of any Applicable Law, or compliance by Agent with any request or directive by any central bank, superintendent of financial institutions or other comparable authority, shall subject Agent to any tax with respect to the Facilities or change the basis of taxation of payments to Agent of any amount payable under the Facilities (except for changes in the rate of tax on the overall net income of Agent), or impose any capital maintenance or capital adequacy requirement, reserve requirement or similar requirement with respect to the Facilities, or impose on Agent), any other condition or restriction, and the result of any of the foregoing is to increase the cost to Agent of making or maintaining the Facilities or any amount thereunder or to reduce any amount otherwise received by Agent under the Facilities, Agent will promptly notify the Borrower of such event and the Borrower will pay to Agent such

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additional amount calculated by Agent as is necessary to compensate Agent for such additional cost or reduced amount received. A certificate of Agent as to any such additional amount payable to it and containing reasonable details of the calculation thereof shall be conclusive evidence thereof.

Currency Indemnity. Interest and fees hereunder shall be payable in the same currency as the principal to which they relate. Any payment on account of an amount payable in a particular currency (the "**proper currency**") made to or for the account of Agent in a currency (the "**other currency**") other than the proper currency, whether pursuant to a judgment or order of any court or tribunal or otherwise and whether arising from the conversion of any amount denominated in one currency into another currency for any purpose, shall constitute a discharge of the Borrower's obligation only to the extent of the amount of the proper currency which Agent is able, in the normal course of its business within one Business Day after receipt by it of such payment, to purchase with the amount of the other currency so received. If the amount of the proper currency which Agent is able to purchase is less than the amount of the proper currency due to Agent, the Borrower and the Guarantors shall indemnify and save Agent harmless from and against any loss or damage arising as a result of such deficiency.

Notices. (d) All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another shall be given in writing by personal delivery or by facsimile transmission addressed to such other party or delivered to such other party as follows:

(i) to the Borrower and Guarantors at:

169A South Service Road  
Grimsby, Ontario  
L3M 4H6

Attention: Michael Kenefick, Dave Malay and Nick Kuneman  
Email: [mpk@kenexholdings.com](mailto:mpk@kenexholdings.com); [njc@kenexholdings.com](mailto:njk@kenexholdings.com); and  
[dave.malay@alliedtrack.ca](mailto:dave.malay@alliedtrack.ca);  
Facsimile: 905 769 1317

(ii) to the Agent at:  
77 King Street West, Suite 2925  
Toronto, Ontario M5K 1K7

Attention: Graham Marr  
Emails: [gmarr@bridgingfinance.ca](mailto:gmarr@bridgingfinance.ca)  
Facsimile: 416.777.1794

or at such other address or facsimile number as may be given by any of them to the others in writing from time to time and such notices, requests, demands or other communications shall be deemed to have been received when delivered, or, if sent by facsimile transmission, on the date

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of transmission unless sent on a day which is not a Business Day or after 5:00 p.m. (local time of the recipient) on a Business Day, in which case it shall be deemed to have been received on the next Business Day following the day of such transmission.

Anti-Money Laundering Legislation: Each Borrower and each Guarantor acknowledges that, pursuant to the Proceeds of *Crime Money Laundering and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and “*know your client*” laws, under the laws of Canada (collectively, including any guidelines or orders thereunder, “**AML Legislation**”), Agent may be required to obtain, verify and record information regarding each of them, its respective directors, authorized signing officers, direct or indirect shareholders or other persons in control of any of them, and the transactions contemplated hereby. Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by Agent, or any prospective assign or participant of Agent, necessary in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

Deemed Re Investment Principle. For the purpose of the *Interest Act* (Canada) and any other purpose, the principle of deemed re-investment of interest is not applicable to any calculation under this Agreement, and the rates of interest and fees specified in this Agreement are intended to be nominal rates and not effective rates or yields.

**LIMITATION OF LIABILITY.** NO CLAIM MAY BE MADE BY ANY PARTY HERETO AGAINST THE LENDER, OR THE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS OF LENDER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH PARTY HERETO HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOUR.

[SIGNATURE PAGES FOLLOW]



If the terms and conditions of this Agreement are acceptable to you, please sign in the space indicated below and return the signed copy of this Agreement to us. Acceptance may also be effected by facsimile or scanned transmission and in counterpart.

We thank you for allowing us the opportunity to provide you with this Agreement.

Yours truly,

**BRIDGING FINANCE INC.**, as Agent

Per:  \_\_\_\_\_

Name: Natasha Sharpe

Title: Chief Investment Officer


I have authority to bind the Corporation.

**ACCEPTANCE**

Each of the undersigned hereby executes and delivers this Agreement under their respective seals by their duly authorized signing officers with effect as of the date first written above.

Borrower:

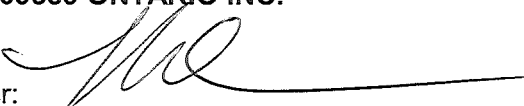
**ALLIED TRACK SERVICES INC.**

Per:   
Name: *MICHAEL BENEFIC*  
Title: *PARTNER*

I have authority to bind the Corporation.


Guarantors:

**2409889 ONTARIO INC.**

Per:   
Name: *MICHAEL BENEFIC*  
Title: *PARTNER*

I have authority to bind the Corporation.

**SWIFT RAILROAD HOLDINGS U.S. LLC**

Per:   
Name: *MICHAEL BENEFIC*  
Title: *PARTNER*

I have authority to bind the Corporation.

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**SCHEDULE "A"**  
**DEFINITIONS**

In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

**"Applicable Laws"** means, with respect to any person, property, transaction or event, all present or future statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction, in each case, having the force of law in any applicable jurisdiction, including without limitation the Canadian Food Inspection Agency, the *Consumer Packaging and Labelling Act* (Canada), the *Canada Agricultural Products Act* (Canada) and the *Competition Act* (Canada).

**"BMO"** means Bank of Montreal.

**"Business Day"** means any day other than a Saturday or a Sunday or any other day on which Canadian chartered banks are closed for business in Toronto, Ontario.

**"CIBC"** means Canadian Imperial Bank of Commerce.

**"Collateral"** means all of the Borrower's and 240's property, assets and undertakings and any shares held by Swift in the capital of 240.

**"Credit Documents"** collectively means this Agreement, the Security and any and all other documents, instruments and agreements contemplated herein and/or ancillary thereto.

**"Disbursement Accounts"** means specifically the following transit/account numbers at BMO from which the Borrower shall make all of its payments and disbursements:

Borrower (Cdn\$) - BMO:	0002 / 1815049
Borrower (US\$) - BMO:	0002 / 4639817

**"Encumbrances"** means any mortgage, Lien, pledge, assignment, charge, security interest, title retention agreement, hypothec, levy, execution, seizure, attachment, garnishment, right of distress or other claim in respect of property of any nature or kind whatsoever howsoever arising (whether consensual, statutory or arising by operation of law or otherwise) and includes arrangements known as sale and lease-back, sale and buy-back and sale with option to buy-back or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the PPSA or Uniform Commercial Code (or equivalent statutes) of any jurisdiction. The inclusion of Permitted Encumbrances in this Agreement is not intended to subordinate and shall not subordinate any Lien created by any of the Security contemplated by this Agreement and the other Credit Documents to any Permitted Encumbrances.

**"Facility A Loan Cap"** means: (a) for the period from the date hereof until July 31, 2017 (inclusive), \$8,000,000; (b) for the period from August 1, 2017 until August 31, 2017 (inclusive), \$7,750,000; (c) for the period from September 1, 2017 until September 30, 2017 (inclusive), \$7,500,000; (d) for the period from October 1, 2017 until October 31, 2017 (inclusive), \$7,250,000; (e) for the period beginning November 1, 2017 and at all times thereafter, \$7,000,000.

**"GAAP"** means those accounting principles which are recognized as being generally accepted in Canada from time to time as set out in the handbook published by the Canadian institute of chartered accountants.

**"Initial Advance Date"** means the date that the Agent, in its discretion, causes the initial advances under the Facilities to be made to or on behalf of the Borrower.

**"Lien"** means any mortgage, charge, pledge, hypothecation, security interest, assignment, encumbrance, lien or adverse right or claim or deemed trust (statutory or otherwise), charge, title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature or any other arrangement or condition that in substance secures payment or performance of an obligation.

**"Loan Availability Formula"** means the aggregate of:

- (a) Accounts Receivable: Up to 85% of the net eligible accounts receivable of the Borrower (including unbilled accounts receivable for work which has been completed by the Borrower) owing by account debtors located in Canada and up to 80% of the eligible accounts receivable of the Borrower (including unbilled accounts receivable for work which has been completed by the Borrower) owing by account debtors located in the United States of America. The Agent will determine eligibility in its reasonable credit discretion. General eligibility criteria will include the requirement that eligible accounts receivable be less than 90 days past the original invoice date but no more than 60 days past due date, and in the case of unbilled accounts receivable for work which has been completed by the Borrower, that such amounts are to be invoiced to account debtors within a reasonable timeframe, in the opinion of the Agent. In addition, eligible accounts and eligible unbilled accounts receivable will exclude (among other things as determined by the Agent in its reasonable credit discretion) accounts of an account debtor if 50% or more of the accounts owing from such account debtor are outstanding for more than 90 days from the original invoice date, any account that is an obligation for which the total unpaid accounts of the specific account debtor exceed 15% of the aggregate of all gross accounts as related to eligible accounts receivable, except those accounts approved in advance or of investment quality, to the extent of such excess, foreign accounts not backed by letters of credit or acceptable credit insurance, bill and hold, the amount of any contra, inter-company receivables and amounts due from affiliated or associated companies, government receivables which are not fully assignable to the Agent and enforceable against such government entity or body, disputed and doubtful accounts, progress billings (except where the receivables are in respect of billings approved by the account debtor in writing or are insured satisfactory to the Agent), pre-billed accounts, accounts receivable and unbilled accounts receivable which have not been credit approved by the Agent, and

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other accounts receivable or unbilled accounts receivable at the Agent's discretion. Any exceptions to the foregoing will be considered by the Agent in its sole discretion as and when required. The advance rates are subject to a dilution test as determined by the Agent; **PLUS**

- (b) Inventory: Up to 65% of the net orderly liquidation value of eligible inventory (as determined by an appraiser satisfactory to the Agent in its reasonable credit discretion). The Agent will determine eligibility in its reasonable credit discretion. General eligibility criteria will exclude pallets, dividers, packaging, supplies, containers and canning inventory, aged inventory, work-in-process inventory and other inventory deemed not saleable by the Agent; **PLUS**
- (c) Fixed Assets: Up to 85% of the net orderly liquidation value of eligible equipment and other fixed assets of the Borrower located in Canada. The Agent will determine eligibility in its reasonable credit discretion. General eligibility criteria will include the nature of the equipment or fixed asset, the equipment or fixed asset being subject to the Agent's first priority Encumbrance and not otherwise leased from or subject to any other Encumbrance in favour of a lessor or vendor, the equipment or fixed asset being in good working order and readily saleable; **LESS**
- (c) reserves, determined by the Agent in its reasonable credit discretion, in respect of actual and/or potential Priority Claims and/or Statutory Encumbrances, liquidation expenses and any other reserves, determined from time to time by the Agent in its reasonable credit discretion.

**"Material Adverse Change"** means any change, condition or event which, when considered individually or together with other changes, conditions, events or occurrences could reasonably be expected to have a Material Adverse Effect.

**"Material Adverse Effect"** means, in the determination of the Agent, a material adverse effect on (i) the business, revenues, operations, assets, liabilities (contingent or otherwise), financial condition or prospects of the Borrower or any of the Guarantors; (ii) on the rights and remedies of the Agent under this Agreement and the security; (iii) on the ability of the Borrower or any of the Guarantors to perform its obligations under the Credit Documents; or (iv) on the Liens created by the security.

**"Permitted Encumbrances"** means, at any time, the following:

- (a) Liens for taxes not overdue, or which are being contested if adequate reserves with respect thereto are maintained in accordance with GAAP and the enforcement of any related Lien is stayed;
- (b) undetermined or inchoate Liens arising in the ordinary course of business which relate to obligations not overdue or a claim for which has not been filed or registered pursuant to Applicable Law;

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- (c) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business which relate to obligations not overdue;
- (d) easements, rights of way, restrictions and other similar encumbrances incurred in the ordinary course of business which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of business;
- (e) zoning and building by-laws and ordinances and municipal by laws and regulations so long as the same are complied with;
- (f) statutory Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation;
- (g) the reservations and exceptions contained in, or implied by statute in, the original disposition from the Crown and grants made by the Crown of interests so reserved or excepted;
- (h) equipment and/or vehicle leases in effect as of the date hereof;
- (i) Liens granted by the Borrower in favour of Trisura Guarantee Insurance Company, provided that such Liens are subordinated to the Liens granted to the Agent, subject to a subordination and postponement agreement in form and substance satisfactory to the Agent; and
- (j) Liens created by the Security.

"**person**" includes a natural person, a partnership, a joint venture, a trust, a fund, an unincorporated organization, a company, a corporation, an association, a government or any department or agency thereof, and any other incorporated or unincorporated entity.

"**PPSA**" means the *Personal Property Security Act* (Ontario) or any other similar applicable personal property security statute in any other applicable jurisdiction, as the same may be amended, supplemented or replaced from time to time.

"**Prime**" means the rate of interest announced from time to time by Bank of Montreal as its reference rate then in effect for determining rates of interest on Canadian dollar loans to its customers in Canada and designated as its prime rate.

"**Priority Claims**" means the aggregate of any amounts accrued or payable which under any law may rank prior to or *pari passu* with any of the Security or otherwise in priority to any claim by the Agent for payment or repayment of any amounts owing under this Agreement, including: (i) wages, salaries, commissions or other remuneration; (ii) vacation pay; (iii) pension plan contributions; (iv) amounts required to be withheld from payments to employees or other persons for federal and provincial income taxes, employee Canadian pension plan contributions and employee employment insurance premiums, additional amounts payable on account of employer Canada pension plan contributions and employer employment Insurance premiums; (v) harmonized sales tax; (vi) provincial sales or other consumption taxes; (vii) Workers'

Compensation Board and Workplace Safety and Insurance Board premiums or similar premiums; (viii) real property taxes; (ix) rent and other amounts payable in respect of the use of real property; provided that a rent reserve of three months will be taken for each leased or rented location where a landlord/warehouse waiver satisfactory to the Agent has not been obtained; (x) amounts payable for repair, storage, transportation or construction or other services which may give rise to a possessory or registerable Lien; (xi) claims which suppliers could assert pursuant to Section 81.1 or Section 81.2 of the *Bankruptcy and Insolvency Act* (Canada); (xii) WEPPA Claims; and (xiii) farmers' rights under the *Farm Debt Mediation Act* or any other Applicable Laws.

**"Statutory Encumbrances"** means any Encumbrances arising by operation of Applicable Laws, including, without limitation, for carriers, warehousemen, repairers', taxes, assessments, statutory obligations and government charges and levies for amounts not yet due and payable or which may be past due but which are being contested in good faith by appropriate proceedings (and as to which the Agent has established a reserve as to which there are no other enforcement proceedings being taken and no Liens being registered and they shall have been effectively and immediately stayed).

**"WEPPA Claims"** means any claims made pursuant to the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s.1, as the same may be amended, restated or replaced from time to time.

Words importing the singular include the plural thereof and vice versa and words importing gender include the masculine, feminine and neuter genders.



November 15, 2017

**Allied Track Services Inc.**

169A South Service Road  
Grimsby, Ontario L3M 4H6

**Attention: Michael Kenefick, David Malay and Nick Kuneman**

Dear Sirs:

**Re: Amended and Restated Credit Facilities provided by Bridging Finance Inc. as agent (the "Agent") for certain lenders from time to time (collectively, the "Lenders"), in favour of Allied Track Services Inc. (the "Borrower") and certain of its affiliates as guarantors**

The Agent, on behalf of the Lenders, is pleased to offer the following amended and restated credit facilities (collectively, the "**Facilities**") described in this amended and restated letter credit agreement (as may be amended, restated, supplemented, extended or replaced from time to time, the "**Agreement**") subject to the terms and conditions set forth herein, including without limitation, the satisfactory completion of due diligence and the conditions precedent set out herein. Unless otherwise indicated, all amounts are expressed in Canadian currency. All capitalized terms not otherwise defined in the body of this Agreement shall have the meanings ascribed thereto in **Schedule "A"**.

**Borrower:** Allied Track Services Inc.

**Guarantors:** 2409889 Ontario Inc. ("**240**")  
Swift Railroad Holdings U.S. LLC ("**Swift**")  
Pittsburg Bottom Line, L.L.C. ("**Bottom Line**") upon and subject to the completion of the purchase of the shares of Bottom Line by Swift after the date hereof (the "**Acquisition**")  
(individually, a "**Guarantor**", and collectively, the "**Guarantors**")

**Agent:** Bridging Finance Inc., as agent for the Lenders

**Facilities:** (i) Demand revolving loan of up to \$22,000,000, with a sublimit in US dollars for advances to Bottom Line via the Borrower upon and subject to the completion of the Acquisition up to the lesser of (a) \$2,000,000, (b) the value of Bottom Line's eligible assets included in the Loan Availability Formula, and (c) the amount of intercompany indebtedness owing by Bottom Line to the Borrower from time to time (the "**US \$ Sublimit**"), all based on the Facility A Loan Availability as defined below, plus until the advance of the full amount of the Facility B Loan, the outstanding amount of the existing overadvance together with any and all existing and future



capitalized interest thereon (the “**Overadvance**”) (the “**Facility A Loan**”).

- (ii) Term non-revolving subordinated debt facility of up to \$18,500,000, \$5,000,000 of which will be advanced on the date hereof, with the remainder to be advanced upon and subject to the completion of the Acquisition and the satisfaction of the other conditions precedent set out herein, which shall be repayable on the Term (the “**Facility B Loan**”).

**Purpose:** To restructure existing indebtedness owed to the Agent and Lenders, to partially finance the acquisition of Bottom Line by Swift and to support the working capital needs of the Borrower.

**Term:** The earlier of demand and an Event of Default and a term ending on the first anniversary date of the date hereof in respect of the Facility B Loan (the “**Term**”).

**Facility A Loan Availability:**

The amount available under the Facility A Loan at any time and from time to time (the “**Facility A Loan Availability**”) shall be determined by the Agent once each week (or more frequently as determined by the Agent), in accordance with the following calculation:

- (i) the amount determined pursuant to the Loan Availability Formula;  
**LESS**
- (ii) the aggregate amount of the Facility A Loan outstanding (including principal, interest, costs, fees and expenses).

If at any time the Facility A Loan Availability, determined using the above calculation is less than \$0 or the US\$ Sublimit has been exceeded, the Borrower shall forthwith, and in any event within one Business Day, repay any such overadvance amount to the Agent upon the Agent’s written demand for such repayment. For greater certainty, the value of Bottom Line’s eligible assets included in the Loan Availability Formula shall at all times be limited by, and subject to, the amount of intercompany indebtedness owing by Bottom Line to the Borrower.

**Determination of Loan Availability:**

On a Business Day in each week as determined by the Agent (the “**Report Day**”), prior to 1:00 p.m. ET, the Borrower will provide a report (a “**Weekly Borrowing Base Report**”) to the Agent (in such form and together with any back-up materials as the Agent shall reasonably require) providing, as at the end of the preceding week, a listing of all of the accounts receivable, accounts payable, work in progress, details regarding purchase orders and contracts, inventory, equipment, fixed assets, details of any then existing or potential Priority Claims, the amount of the requested Facility A Loan and any US \$ Sublimit advance to be made hereunder during such week, and any other information that

may be reasonably required by the Agent. The Agent shall, upon receipt of such report, calculate the then existing Facility A Loan Availability and US\$ Sublimit and advise the Borrower accordingly. For greater certainty, the Agent is hereby irrevocably authorized and directed by the Borrower to advance any and all US \$ Sublimit loans made hereunder directly to Bottom Line to its applicable Disbursement Account and any such advances shall be recorded as a loan to the Borrower hereunder and an intercompany loan and advance by the Borrower to Bottom Line.

**Facility A Loan  
Advance:**

Provided that the Weekly Borrowing Base Report prepared by the Borrower to the Agent for the Initial Advance Date demonstrates sufficient Facility A Loan Availability and/or the US\$ Sublimit, as applicable, together with the Overadvance to advance the entire Facility A Loan, no Event of Default has occurred which has not been waived in writing by the Agent, demand has not been made by the Agent, and all other conditions precedent for the initial advance hereunder under the Facility B Loan have been met, such amounts shall be advanced to or on behalf of the Borrower on the Initial Advance Date.

**Interest Rate  
and Fees:**

Interest:

- (i) **Facility A Loan:** Applicable Prime plus 11% per annum calculated and payable on the daily outstanding balance of Facility A Loan and compounded monthly, not in advance and with no deemed reinvestment of monthly payments. On the occurrence of an Event of Default or demand by Agent, interest shall be calculated at an annual rate of 21% per annum calculated and compounded as aforesaid.
- (ii) **Facility B Loan:** Subject to the PIK Payments provision herein, 16% per annum calculated and payable on the daily outstanding balance of Facility B Loan and compounded monthly, not in advance and with no deemed reinvestment of monthly payments. Upon the occurrence of an Event of Default or the expiry of the Term, interest shall be calculated at an annual rate of 21% per annum calculated and compounded as aforesaid.
- (iii) **Both Facilities:** The first payment will be on the last Business Day of the month in which the initial advance occurs and shall include any and all interest accrued from the date of such advance to the last Business Day of such month, calculated on the basis of the number of days elapsed in such month divided by 365 days or 366 days in a leap year for Canadian dollar loans and 360 days for US dollar loans.
- (iv) **PIK Payments:** If, and only if the Borrower and Bottom Line (upon and subject to the completion of the Acquisition), on a combined basis have not achieved an FCCR (tested on a

quarterly basis) of at least 1.1:1, the Borrower may defer payment of that amount of the principal and/or interest payment due in respect of Facility B Loan which would result in an FCCR of less than 1.1:1 taking any such payments into account, in which case the Facility B Loan (or the portion thereof on which payment of principal and/or interest has been deferred, together with any accrued but unpaid interest) will accrue interest at the same rate per annum as above, calculated and compounded monthly, in arrears, payable (along with any deferred principal payments) at the earlier of: (a) the end of the Term; (b) repayment of Facility B Loan in full (including pursuant to a Mandatory Repayment below); (c) acceleration of Facility B Loan upon the occurrence of an Event of Default; and (d) when the Borrower and Bottom Line (upon and subject to the completion of the Acquisition) have achieved an FCCR (tested on a quarterly basis) on a combined basis of at least 1.1:1 (which for greater certainty, shall only include that amount (including any catch up payments) which does not result in a breach of such FCCR taking any such payments into account).

Work Fee: A non-refundable Work Fee equal to 2% of each advance under Facility B Loan plus applicable taxes (the “**Arrangement Fee**”) shall be deemed to be fully earned upon the execution and delivery of this Agreement and shall be payable upon each such advance.

Monitoring Fee: A monitoring fee of \$2,000, plus applicable taxes, will be due and payable to the Agent on the last Business Day of each month.

Administration Fee: If the Borrower fails to pay any amounts on the day such amounts are due or if the Borrower fails to deliver the required reports set out herein, the Borrower shall pay to the Agent a late administration fee of \$100, plus applicable taxes, per day until such date that such payment has been made or the Borrower has delivered such report, as the case may be.

Expenses: The Borrower shall pay all fees and expenses (including, but not limited to, all due diligence, consultant, field examination and appraisal costs, all fees and expenses for outside legal counsel and other outside professional advisors and the time spent by the Agent and its representatives in retaking, holding, repairing, processing and preparing for disposition and disposing of any assets or collateral calculated at the Agent’s standard per diem rate in effect at such applicable time and established by the Agent in its sole discretion for internal personnel of the Agent) incurred by the Agent in connection with the preparation, registration and ongoing administration of this Agreement and the Security and with the enforcement of the Agent’s rights and remedies under this Agreement or the Security, whether or not any amounts are advanced or any amounts are owing under this Agreement. If the Agent has paid any expense for which the Agent is entitled to reimbursement from the Borrower and such expense has not been deducted from any

advance of Facility A Loan, such expense shall be payable by the Borrower within fifteen (15) days following demand for payment and in the event that the Borrower does not pay such amount to the Agent within the fifteen (15) day period, interest shall accrue on such expense at the highest rate payable by the Borrower under this Agreement. All such fees and expenses and interest thereon shall be secured by the Security whether or not any funds under the Facilities are advanced.

**Repayments:**

- (i) Facility A Loan: Without limiting the right of the Agent to at any time demand repayment and subject to and in addition to the requirement for indefeasible repayment in full pursuant to this Agreement, interest only at the aforesaid rate, calculated daily and compounded and payable monthly, not in advance on the outstanding amount of Facility A Loan, shall be due and payable on the last Business Day of each and every month.
- (ii) Facility B Loan: Subject to the provisions above regarding PIK Payments, the Company shall repay principal amounts owing hereunder in equal monthly payments based on a ten (10) year amortization from the date of each advance.

The Facilities and any and all accrued and unpaid interest is repayable, in full, at the earlier of: (a) the end of the Term; (b) the sale of the business of the Borrower or any of the Guarantors; (c) the sale of all or substantially all of the assets of the Borrower or any of the Guarantors; (d) a "liquidity event" with respect to the Borrower or any of the Guarantors, including without limitation, a refinancing of indebtedness owing to the Agent and Lenders, a new debt issuance, and/or an equity offering of the Borrower and/or any of the Guarantors; and (e) the acceleration of the repayment of any of the Facilities upon the occurrence of an Event of Default.

**Prepayment:**

Prepayment of any amount advanced under Facility B Loan will be permitted only until November 30, 2018 or such later date as may be agreed to by the Agent in its sole and absolute discretion provided the Borrower advises the Agent in writing on or before the date hereof that it wishes to have such a right of repayment and the Borrower pays to the Agent a fee on the date hereof in the amount of 3% of Facility Loan B plus applicable taxes and any such prepayment shall include a payment of any and all outstanding obligations under all Facilities owing to the Agent and Lenders under the Facilities including any and all interest due to the date of such prepayment.

The Borrower will also have the right prior to the end of the Term to repurchase up to 60% of the total shares and/or Warrants in the capital of the Borrower, 240 and Bottom Line, on a fully diluted basis, such that the Agent will be left holding not less than 20% of all such capital, on a fully diluted basis, which if held by the Agent by way of the Warrants, such

Warrants shall be exercisable for a period of at least 5 years after the end of the Term and will continue to be separable from the Facilities subject to and provided that with any such repurchase, the Agent is repaid all the Facilities in full, including without limitation, any and all accrued and unpaid principal and interest (including any PIK Payments) together with a purchase price in respect of such repurchase of capital in the amount of CDN\$1,000,000 if such repayment and repurchase is made within the first six months of closing and CDN\$1,500,000 thereafter but prior to the end of the Term.

**Mandatory  
Repayments:**

Repayment shall take effect with all proceeds received by the Borrower or any of the Guarantors, from: (a) any issuance of debt (other than the Facilities on closing), shares or any other form of equity; (b) any sale of shares or other assets owned by the Borrower or any of the Guarantors.

**Warrants:**

At closing, for nominal consideration, the Agent will be issued warrants to acquire 80% of the common voting shares/membership interests/equity interests ("**shares**") of the Borrower, 240, and Bottom Line upon and subject to the completion of the Acquisition, calculated on a fully-diluted basis at an exercise price of \$1.00 which may be satisfied on a "cashless" basis (the "**Warrants**"). The Warrants will be exercisable, in whole or in part, subject to the Repayment provisions herein, for a period of at least one year after the end of the Term, and will be separable from the Facilities. At any time after (a) the end of the Term; (b) the sale of the Borrower or any of the Guarantors; (c) the sale of all or substantially all of the assets of the Borrower or any of the Guarantors; (d) a "liquidity event" (as referred to above) of the Borrower or any of the Guarantors (including, without limitation, an initial public offering); (e) full voluntary prepayment of any of the Facilities (if permitted); (f) a Change of Control; and/or (g) an Event of Default; the Agent in its sole and absolute discretion will have the right to sell the Warrants to the Borrower for a purchase price as determined pursuant to the unanimous shareholders' agreement contemplated herein. Payment of the purchase price will be secured by the security documents. The rights of the holder of the Warrants will be protected by provisions in the Warrants customary for a financing of this nature, including without limitation, anti-dilution provisions, Change of Control, liquidity rights, information rights, pre-emptive rights registration rights, and tag along rights relating to a sale of the business.

**Cash Management  
Systems:**

- (i) The Borrower and Bottom Line upon and subject to the completion of the Acquisition shall establish and shall continue to maintain, at their expense, blocked/control deposit accounts (collectively, the "**Blocked Accounts**") at BMO and such other financial institution in respect of Bottom Line into which they shall promptly deposit all funds received from all sources, including without limitation, all account receivable payments, cash sales receipts, credit card payments, any and all refunds received from any source

whatsoever and any proceeds of any advances or other loans made to it and shall direct its account debtors that remit payments by electronic funds transfers to directly remit all payments into the Blocked Account.

- (ii) BMO, the Agent, the Borrower and Bottom Line upon and subject to the completion of the Acquisition shall enter into agreements (the “**Blocked Account Agreement**”), in form and substance satisfactory to the Agent, acting reasonably, providing that all funds received or deposited in the Blocked Accounts are the property of the Agent, that BMO and such other financial institution in respect of Bottom Line has no Lien upon, or right to set off against, the Blocked Accounts, the items received for deposit therein, or the funds from time to time on deposit therein and that BMO and such other financial institution in respect of Bottom Line will wire, or otherwise transfer, in immediately available funds, on a daily basis, all funds received or deposited into the Blocked Accounts to the Agent’s account, as the Agent may from time to time designate for such purpose. The Borrower and Bottom Line agree that all payments made to the Blocked Accounts or other funds received and collected by the Agent, shall be property of the Agent. The Borrower, Bottom Line and each of the other Guarantors hereby acknowledge, confirm and agree that the Agent shall have the contractual right to continue to apply the contemplated cash management arrangements contemplated herein notwithstanding any default, termination or non-renewal of this Agreement or any of the Facilities contemplated herein or any stay of proceedings or filing under any applicable insolvency statute and/or Applicable Law as a matter of, and shall be considered and deemed to be a matter of, replacing and monitoring the Agent’s Collateral and not as an enforcement of any of their Security or Liens.

Blocked Account Agreements with BMO shall be required for closing purposes. Bottom Line shall enter into a Blocked Account Agreement upon and subject to the closing of the Acquisition.

- (iii) The Borrower, Bottom Line upon and subject to the closing of the Acquisition and 240 and all of their affiliates, subsidiaries, officers, employees, agents, directors, shareholders or other persons (a “**related person**”) shall, acting as trustee for the Agent, receive, as the property of the Agent, any monies, cheques, notes, drafts or any other payment which comes into the possession or under their control or, in the case of any related person, comes into its possession or under its control and is rightfully that of the Borrower, Bottom Line or 240, and immediately upon receipt thereof where received by any of them or upon becoming aware of the receipt thereof where received by a related person, the Borrower, Bottom Line and 240 shall deposit or shall cause the same to be deposited in the Blocked Accounts, or remit the same

or cause the same to be remitted, in kind, to the Agent. In no event shall the same be commingled with any of the Borrower's, Bottom Line's or 240's own funds. Each of the Borrower, Bottom Line and 240 agree to reimburse the Agent on demand for any amounts owed or paid to BMO regarding the Blocked Accounts or any other bank or person involved in the transfer of funds to or from such Blocked Accounts arising out of the Agent's payments to or indemnification of such bank or person.

- (iv) The Agent shall apply amounts received from the Blocked Accounts firstly to Facility A Loan, then to Facility B Loan and then as it sees fit in its reasonable credit discretion.
- (v) The Borrower and Bottom Line shall make all of its payments and disbursements only from its applicable Disbursement Accounts.
- (vi) The Borrower, Bottom Line and its applicable deposit taking institution and BMO shall make the necessary arrangements to provide view only electronic access to the Disbursement Accounts to the Agent.

**Conditions  
Precedent:**

The availability of the respective advances under the Facilities is subject to and conditional upon the following conditions:

- (i) satisfactory completion of due diligence and continual due diligence, including the Agent's review of the operations of the Borrower and the Guarantors and the Borrower's and Guarantors' business and financial plans;
- (ii) satisfactory completion of the Agent's legal due diligence;
- (iii) receipt of a duly executed copy of this Agreement and the Security, in form and substance satisfactory to the Agent and its legal counsel, registered as required to perfect and maintain the security created thereby and such certificates, acknowledgements (including a satisfactory acknowledgement and buyback agreement from ATEC regarding its rights in respect of an equipment lease with Progress as required by the Agent), consents, estoppels, postponements and/or standstill agreements (including with the vendors of Bottom Line upon and subject to the closing of the Acquisition), intercreditor or priority agreements, waivers, landlord agreements (including with the vendors of Bottom Line upon and subject to the closing of the Acquisition), directions, stock transfers, statutory declarations, undertakings, negative pledges, authorizations, resolutions and legal opinions as the Agent may reasonably require including opinions from the Borrower's and Guarantors' counsel with respect status and the due authorization, execution, delivery, validity and enforceability of

this Agreement, the Warrants, the unanimous shareholders agreement and the Security;

- (iv) the discharge or subordination or assignment, as applicable, of any and all existing security against the Borrower and the Guarantors as may be required by the Agent;
- (v) payment of all fees owing to the Agent hereunder;
- (vi) the Borrower shall have opened the Blocked Accounts and shall have entered into each of the applicable Blocked Accounts Agreement in accordance herewith;
- (vii) delivery of appraisals relating to the Borrower's real property and equipment prepared by appraisers satisfactory to the Agent;
- (viii) delivery of such financial and other information or documents relating to the Borrower and the Guarantors as the Agent may require;
- (ix) the Agent being satisfied that there has been no material deterioration in the financial condition of the Borrower or the Guarantors;
- (x) no event shall have occurred and no circumstance shall exist which has not been waived, which constitutes an Event of Default in respect of any material commitment, agreement or any other instrument to which the Borrower or any Guarantor is a party or is otherwise bound, entitling any other party thereto to accelerate the maturity of amounts of principal owing thereunder or terminate any such material commitment, agreement or instrument which would have a material adverse effect upon the financial condition, property, assets, operation or business of the Borrower or any Guarantor;
- (xi) no event that constitutes, or with notice or loss of time or both, would constitute an Event of Default shall have occurred;
- (xii) the execution and delivery of the Warrants, in form and substance satisfactory to Agent and its legal counsel, acting reasonably;
- (xiii) the conduct of all searches reasonably required by Agent and its legal counsel and the completion of any and all registrations reasonably required by Agent and its legal counsel to ensure that Agent obtains its desired security and equity position;
- (xiv) the receipt of all necessary authorizations and approvals as may be reasonably required by Agent and its legal counsel;



- (xv) for any subsequent advance under the Facility B Loan after the initial advance thereunder, the successful completion of the aforesaid acquisition of Bottom Line by Swift on terms and conditions and pursuant to documentation satisfactory to Agent;
- (xvi) the receipt by Agent of certified board resolutions of the Borrower and all Guarantors and a certified unanimous consent of all existing, proposed and potential future shareholders of Swift;
- (xvii) the appointment of officers and directors of the Borrower and the Guarantors and the entering into of a unanimous shareholders' agreement regarding same including buyout and other provisions customary for financing transactions of this nature, all acceptable to Agent; and
- (xviii) the delivery of all other closing documentation as may be reasonably required by Agent and its legal counsel, including without limitation, an irrevocable direction to pay all fees of Agent and its counsel out of the advance on closing.

Each of the following is a condition precedent to any subsequent advance to be made hereunder:

- (i) all of the conditions (including the above conditions precedent) contained in this Agreement shall have been satisfied and shall as at the time of the making of the subsequent advance in question continue to be satisfied;
- (ii) all of the representations and warranties herein are true and correct on and as of such date as though made on and as of such date other than those representations and warranties which relate to a specific date which shall continue to be true as of such date;
- (iii) no event or condition has occurred, or would result from such advance, which constitutes or which, with notice, lapse of time, or both, would constitute, a breach of any covenant or other term or condition of this Agreement or of the Security;
- (iv) such borrowing will not violate any Applicable Law (which for the purposes of this Agreement means, with respect to any person, property, transaction or event, all present or future statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction, in each case, having the force of law in any applicable jurisdiction then in effect) and there shall have been no investigation, notice or recall from any governmental agency or body;

- (v) no Event of Default shall have occurred which has not been waived in writing by Agent; and
- (vi) no other event shall have occurred that, in the Agent's reasonable credit discretion, materially adversely affects or could materially adversely affect either: (i) the business, assets, liabilities, prospects, financial condition or operations of the Borrower or any Guarantor, or (ii) the value of the Collateral; or (iii) the ability of the Agent to receive indefeasible repayment in full.

The making of an advance hereunder without the fulfillment of one or more conditions set forth in this Agreement shall not constitute a waiver of any such condition, and the Agent reserves the right to require fulfillment of such condition in connection with any subsequent advance.

Nothing in this Agreement creates a legally binding obligation on the Agent to advance any amount under any Facility at any time unless the Agent is completely satisfied in its sole discretion that the Borrower and the Guarantors are in compliance with every provision of this Agreement and that no fact exists or event has occurred which changes the manner in which the Agent previously evaluated the risks inherent in advancing amounts to the Borrower under any Facility, whether or not the Agent was or should have been aware of such facts or events differently at any time.

All amounts under Facility A Loan are repayable immediately on demand by Agent whether or not there is an Event of Default, and the Facilities are cross-defaulted and may be terminated in whole or in part by Agent at any time.

**Covenants:**

Each of the Borrower and the Guarantors covenant and agree with the Agent and the Lenders, while this Agreement is in effect to:

- (i) pay all sums of money and all Priority Claims when due or arising therefrom;
- (ii) provide the Agent with prompt written notice of any event which constitutes, or which, with notice, lapse of time, or both, would constitute an Event of Default, a breach of any covenant or other term or condition of this Agreement or of any of the Security given in connection therewith;
- (iii) use the proceeds of the Facilities for the purposes provided for herein;
- (iv) continue to carry on business in the nature of or related to the business transacted by the Borrower and the Guarantors prior to the date hereof in the name and for the account of the Borrower and the Guarantors;

- (v) keep and maintain books of account and other accounting records in accordance with generally accepted accounting principles;
- (vi) ensure all assets secured by the Security are in existence and in the possession and control of the Borrower or the Guarantors, as applicable;
- (vii) not sell, transfer, convey, encumber or otherwise dispose of any of its capital stock or permit any reorganization or Change of Control of the Borrower or any of the Guarantors other than as a result of an exercise of the Warrants;
- (viii) not purchase or redeem its shares or otherwise reduce its capital;
- (ix) without the prior written consent of the Agent, not declare or pay any dividends or repay any shareholders' loans, interest thereon or share capital or make any other gift or other form of distribution whatsoever (including the payment of any management fees) to any person, including without limitation, any shareholder of the Borrower or any Guarantor and Kenex Holdings LLC or its affiliates, other than the payment of a monthly management fee by the Borrower to Kenex pursuant to the Professional Services Agreement, in an amount not to exceed Ten Thousand U.S. Dollars (\$10,000) per month with Agent's prior written consent provided that there is then no Event of Default and no Event of Default will result from any such payment, the Overadvance has been paid in full, PIK payments are being made, there is availability under Facility A Loan Availability and the Borrower and Bottom Line (upon and subject to the completion of the Acquisition) have achieved an FCCR of not less than 1.1:1 taking any such payment into account;
- (x) not make loans or advances (excluding for greater certainty, salaries and bonuses payable in the ordinary course of business and consistent with past practice and upon and subject to the closing of the Acquisition, intercompany loans made by the Borrower to Bottom Line as contemplated herein) to, or enter into any related party sales or other transactions which are not on arms' length terms with, or make any investments in any, shareholders, directors, officers, subsidiaries, affiliated companies or any other related or associated party of the Borrower or the Guarantors, or assume or permit to exist any further indebtedness not existing on the date hereof other than in respect of Permitted Encumbrances;
- (xi) permit the Agent or its representatives, at any time and from time to time with such frequency as the Agent, in its sole discretion, may require, to visit and inspect any premises, properties and assets and to examine and obtain copies of the records or other information and discuss business affairs with Canada Revenue

Agency or the Internal Revenue Service, the auditors, counsel and other professional advisors of the Borrower and the Guarantors all at the reasonable expense of the Borrower;

- (xii) forthwith notify the Agent of the particulars of any occurrence which constitutes an Event of Default hereunder or of any action, suit or proceeding, pending or to the Borrower's or any Guarantors' knowledge threatened against them;
- (xiii) in a form and manner prescribed by the Agent (which may include by fax and/or e-mail), deliver to the Agent the following, signed by a senior officer of the Borrower in respect of the Borrower and Bottom Line upon and subject to the closing of the Acquisition:
  - (a) weekly by Friday of each week, a list of total invoiced sales completed during the preceding week, a list of credit notes and cash receipts received from customers during the preceding week (Saturday to Friday inclusive) and a list of all contemplated payments to be made in the upcoming week;
  - (b) weekly by Friday of each week, the daily invoice register, credit note register and cash receipts register in respect of the preceding week (Saturday to Friday inclusive);
  - (c) weekly, by Friday of each week in respect of the preceding week (Saturday to Friday inclusive), an aged accounts receivable schedule, aged accounts payable schedule (including work in progress and related written approvals), inventory schedule and summary trial balance;
  - (d) monthly, by the end of each calendar month, a compliance certificate in form satisfactory to the Agent;
  - (e) monthly, by the end of each calendar month in respect of the preceding month, internally prepared financial statements for the preceding month and internally prepared financial statements for the year to date;
  - (f) monthly bank statements for all bank accounts within 15 days of its month-end;
  - (g) monthly, by the 10<sup>th</sup> of each calendar month in respect of the preceding month proof of payments, in a form satisfactory to the Agent, of Priority Claims;
  - (h) annually, no later than 30 days following the end of the financial year, financial and business projections for the following financial year;

- (i) annually, within 120 days of the financial year end in respect of the preceding financial year, audited financial statements that were prepared by external auditors; and
- (j) such additional financial information with respect to Borrower and the Guarantors as and when requested by the Agent;
- (k) monthly status reports regarding any and all refinancing and/or sale efforts/proceedings and any and all other reports reasonably required by the Agent in connection with same;
- (xiv) file all tax returns which the Borrower and the Guarantors must file from time to time, to pay or make provision for payment of all taxes (including interest and penalties) and other potential preferred claims which are or will become due and payable and to provide adequate reserves for the payment of any tax, the payment of which is being contested;
- (xv) not make capital expenditures in any financial year in excess of \$500,000 without the written consent of the Agent, with any capital expenditures to be reported monthly;
- (xvi) not grant, create, assume or suffer to exist any mortgage, charge, Lien, pledge, security interest, including a purchase money security interest, or other encumbrance affecting any of the Borrower's or the Guarantors' properties, assets or other rights except for Permitted Encumbrances in existence, known to and approved by the Agent as the date hereof or from time to time;
- (xvii) not grant a loan or make an investment in or provide financial assistance to a third party (including the Guarantors or any related party) by way of a suretyship, guarantee or otherwise other than as contemplated herein;
- (xviii) not change its name, merge, amalgamate or otherwise enter into any other form of business combination with any other entity without the prior written consent of the Agent;
- (xix) keep the Collateral fully insured against such perils and in such manner as would be customarily insured by companies carrying on a similar business or owning similar assets naming the Agent as first loss payee and first mortgagee with respect to the personal property Collateral and second loss payee and mortgagee with respect to the real property Collateral with a standard mortgage clause in favour of Agent and with the Agent added as an additional insured and to ensure all assets secured by the Security are in existence and in the possession and control of the Borrower and the Guarantors, as applicable;

- (xx) comply with all the Applicable Laws including without limitation, regarding health and safety, securities, environmental and other laws and regulations; to advise the Agent promptly of any actions, investigations, audits, requests or violation notices or orders received from any government or regulatory authority concerning the Borrower's and Guarantors' operations; and to indemnify and hold the Agent harmless from all liability of loss as a result of any non-compliance with such Applicable Laws;
- (xxi) not change its senior management or its objectives, purposes, operations or standard procedures in any material way, to be determined by Agent in its absolute and sole discretion; or issue any other securities or any warrants or options, including without limitation, any that are convertible into or exercisable which gives rise to a right to receive any shares in the capital of the Borrower or any of the Guarantors;
- (xxii) not repay any shareholder or other related party loans, or pay any bonuses, dividends, management fees or other similar forms of remuneration to any existing shareholder or other person related to the Borrower or any of the Guarantors or repay any subordinated or postponed debt to any person whatsoever except scheduled repayments to Agent contemplated herein, without Agent's prior written consent;
- (xxiii) not sell, transfer, assign, lease or otherwise dispose of all or a substantial portion of its assets, other than the sale of inventory and disposal of obsolete equipment in the ordinary course of business, provided that the proceeds of sale of such obsolete equipment are reinvested in productive assets within a reasonable period of time or used to repay the obligations to Agent, at Agent's option;
- (xxiv) not establish any profit sharing plans or other arrangements or agreements with shareholders, directors, officers or employees other than those which are currently in place and expressly approved by Agent in writing;
- (xxv) not engage directly or indirectly in any other business activity or acquire any assets unrelated or unnecessary to the Borrower's present business;
- (xxvi) not conduct business with any non-arms-length persons other than as may be expressly approved by Agent in writing; and
- (xxvii) not issue or redeem or otherwise give effect to any transfer, assignment, disposition or change of ownership of any shares or in the capital structure of the Borrower or any of the Guarantors.

**Security and other Requirements:**

As general and continuing collateral security for the performance by the Borrower of all of its obligations, present and future, to the Agent, including, without limitation, the repayment of advances granted hereunder and the payment of interest, fees and any other amounts provided for hereunder and under the security documents, the Borrower and the Guarantors undertake to grant to the Agent and to maintain at all times the following security in form satisfactory to the Agent (the “**Security**”), in accordance with the forms in use by the Agent or as prepared by its solicitors:

- (i) general security agreement, on the Agent’s form constituting a first (subject to Permitted Encumbrances) ranking security interest in all personal property of the Borrower, Bottom Line upon and subject to the closing of the Acquisition, and 240;
- (ii) an assignment of adequate all risk, business interruption, commercial general liability and property insurance of the Borrower, Bottom Line upon and subject to the closing of the Acquisition, and 240 (including the equipment which forms part of the Collateral in an amount not less than its appraised value) naming the Agent as first loss payee and first mortgagee;
- (iii) a postponement and subordination of all directors, officers, shareholders, bonding companies, non-arms’ length creditors and other related party loans, including without limitation, the vendors of Bottom Line upon and subject to the closing of the Acquisition to include a postponement of the right to receive any payments of both principal and interest under such loans;
- (iv) unlimited guarantee by 240 and Bottom Line upon and subject to the closing of the Acquisition;
- (v) share pledge security agreement by 240 relating to the shares of the Borrower;
- (vi) a guarantee by Swift, limited in recourse to the shares of 240 and Bottom Line upon and subject to the closing of the Acquisition;
- (vii) share pledge security agreement by Swift relating to the shares of 240 and Bottom Line upon and subject to the closing of the Acquisition;
- (viii) upon and subject to the closing of the Acquisition intercompany security from Bottom Line to the Borrower assigned to the Agent;
- (ix) an acknowledgement and confirmation regarding existing security; and
- (x) such other security as may be required by the Agent.

The Borrower and the Guarantors acknowledge and agree that all of the Security is being granted to and in favour of the Agent for and on behalf of the Agent and the Lenders, to secure all of the indebtedness, liabilities and obligations owing hereunder, under the Security and the other Credit Documents.

**Events  
of Default:**

Without limiting any other rights of the Agent under this Agreement, including the right to demand repayment of the Facilities at any time and for whatever reason, which Facility A Loan is made available at the sole discretion of the Agent, if any one or more of the following events (an "**Event of Default**") has occurred which have not been waived in writing by the Agent:

- (i) the Borrower or any Guarantor fails to pay when due any principal, interest, fees or other amounts due under this Agreement or under any of the Security;
- (ii) the Borrower or any Guarantor breaches any provision of this Agreement or any of the Security or other agreement with the Agent;
- (iii) the Borrower or any Guarantor is in default under the terms of any other contracts, bonds, agreements or otherwise with any other creditor including the vendors of Bottom Line and any other subordinated creditor;
- (iv) the Agent receives from any present or future guarantor a notice proposing to terminate, limit or otherwise modify such guarantor's liability under its guarantee of the Borrower's indebtedness to the Agent under the Facilities or under a security document or under any other document in favour of the Agent;
- (v) the Borrower or any Guarantor ceases or threatens to cease to carry on business in the ordinary course;
- (vi) any default or failure by the Borrower or any Guarantor to make any payment of, wages or other monetary remuneration payable to its employees under the terms of any contract of employment, oral or written, express or implied;
- (vii) any default or failure by the Borrower or any Guarantor to keep current all amounts owing to parties other than the Agent who, in the Agent's sole opinion, have or could have a Lien in the Collateral which, in the Agent's sole opinion would or could constitute a Priority Claim;



- (viii) any breach by a Guarantor of the provisions of any guarantee or other security, undertaking or covenant given to the Agent to secure any guarantee;
- (ix) if any representation or warranty made or deemed to have been made herein or in any certificate or the Security provided for herein shall be false or inaccurate;
- (x) if, in the reasonable opinion of the Agent, there is a Material Adverse Change, including without limitation, any investigation, audit, notice or order of any applicable government agency or body;
- (xi) the Borrower or any Guarantor is unable to pay its debts as such debts become due, or is adjudged or declared to be or admit to being bankrupt or insolvent;
- (xii) any judgment or award is made against the Borrower or any Guarantor which may have a Material Adverse Effect in respect of which there is not an appeal or proceeding for review being diligently pursued in good faith and in respect of which adequate provision has been made on the books of the Borrower or the Guarantor, as applicable;
- (xiii) any notice of intention is filed or any voluntary or involuntary case or proceeding or petition is filed or commenced for:
  - (a) the bankruptcy, liquidation, winding-up, dissolution or suspension of the operations of the Borrower or any Guarantor;
  - (b) the composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts of the Borrower or any Guarantor;
  - (c) the appointment of a trustee, receiver, receiver and manager, liquidator, administrator, monitor, custodian or other official for, all or any part of the assets of the Borrower or any Guarantor;
  - (d) the possession, foreclosure, retention, sale or other disposition of, or other proceedings to enforce security over, all or any part of the Collateral; or
  - (e) any secured creditor, encumbrancer or lienor, or any trustee, receiver, receiver and manager, agent, bailiff or other similar official appointed by or acting for any secured creditor, encumbrancer or lienor, takes possession of or forecloses or retains, or sells or otherwise disposes of, or

otherwise proceeds to enforce security over all or any part of the Collateral or gives notice of its intention to do any of the foregoing;

- (xiv) any Change of Control;
- (xv) if any of Dave Malay or Andy Jones ceases to be actively engaged in the full time management and operations of the Borrower and/or Bottom Line;

then, in such event, the Agent may, by written notice to the Borrower declare all monies outstanding under the Facilities to be immediately due and payable. Upon receipt of such written notice, the Borrower shall immediately pay to the Agent all monies outstanding under the Facilities and all other obligations of the Borrower to the Agent in connection with the Facilities under this Agreement. The Agent may enforce its rights to realize upon its security and retain an amount sufficient to secure the Agent for the Borrower's obligations to the Agent.

Nothing contained in this section shall limit any right of the Agent under this Agreement to demand payment of Facility A Loan at any time and for greater certainty, the issuance of a demand for payment or an Event of Default under Facility A Loan shall also be an Event of Default under Facility B Loan.

**Evidence of  
Indebtedness:**

The Agent shall maintain records evidencing the Facilities. The Agent shall record the principal amount of the Facilities, the payment of principal and interest on account of the Facilities, and all other amounts becoming due to the Agent under this Agreement.

The Agent's accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Agent pursuant to this Agreement.

**Representations  
and Warranties:**

The Borrower represents and warrants to the Agent and the Lenders that:

- (i) the Borrower and each Guarantor is a corporation or other entity duly incorporated or formed, validly existing and duly registered or qualified to carry on business in the Province of Ontario (in the case of the Borrower and 240) or the State of Delaware (in the case of Swift) or upon the completion of the Acquisition the State of Texas (in the case of the Bottom Line) or any other jurisdiction where they may carry on business;
- (ii) the execution, delivery and performance by the Borrower and the Guarantors of this Agreement, the Warrants and the Security has been duly authorized by all necessary actions and do not violate the constating documents or any Applicable Laws or agreements

to which the Borrower and the Guarantors is subject or by which they are bound;

- (iii) the financial statements of the Borrower and the Guarantors most recently provided to the Agent fairly present their financial positions as of the date thereof and its results of operations and cash flows for the fiscal period covered thereby, and since the date of such financial statements, there has occurred no Material Adverse Change in the business or financial condition of the Borrower and the Guarantors;
- (iv) there is no claim, action, prosecution or other proceeding of any kind pending or threatened against the Borrower or any or any Guarantor or any of their respective assets or properties before any court or administrative agency which relates to any non-compliance with any environmental law which, if adversely determined, might have a Material Adverse Effect upon its financial condition or operations or its ability to perform its obligations under this Agreement or any of the Security, and there are no circumstances of which any of them is aware which might give rise to any such proceeding which has not been fully disclosed to the Agent;
- (v) the Borrower and the Guarantors have good and marketable title to all of their properties and assets, free and clear of any Encumbrances, other than Permitted Encumbrances herein;
- (vi) no event has occurred which constitutes, or which, with notice, lapse of time, or both, would constitute, an Event of Default, a breach of any covenant or other term or condition of this Agreement or any of the Security given in connection therewith;
- (vii) the Borrower and the Guarantors have filed all tax returns which were required to be filed by them, if any, paid or made provision for payment of all taxes and other potential Priority Claims (including interest and penalties) which are due and payable, if any and provided adequate reserves for payment of any tax, the payment of which is being contested, if any;
- (viii) the Borrower's and each Guarantor's obligation to complete this transaction is not dependent upon any condition whatsoever, and that the Agent assumes no obligation to assist them to complete the transaction in any way, except to make available the Facilities as contemplated herein;
- (ix) there is no Pension Plan owned, contributed to, or in any way related to (including any collective bargaining agreement), the Borrower or any of the Guarantors;

- (x) upon and subject to the completion of the Acquisition the Borrower and Bottom Line operate as one combined business enterprise and Bottom Line is wholly dependent on the Borrower for its working capital needs and back office support;
- (xi) None of the Borrower or any Guarantor is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of “purchasing” or “carrying” any “margin stock” within the respective meanings of each of the quoted terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect. No part of the proceeds of any advance hereunder will be used for “purchasing” or “carrying” “margin stock” as defined in Regulation U of such Board of Governors;
- (xii) None of the Borrower or any Guarantor is an “investment company” registered or required to be registered under the *US Investment Company Act* of 1940, as amended, nor is it controlled by such a company;
- (xiii) None of the Borrower or any Guarantor shall, until satisfaction in full of the obligations and termination of this Agreement, nor shall it permit any affiliate or agent to:
  - (a) conduct any business or engage in any transaction or dealing with any “Blocked Person” (within the meaning of the applicable Anti-Terrorism Laws), including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person;
  - (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the US Executive Order No. 13224;
  - (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the US Executive Order No. 13224, the *USA PATRIOT Act* or any other Anti-Terrorism Laws. Borrower shall deliver to the Agent any certification or other evidence reasonably requested from time to time by the Agent, confirming their compliance herewith;
  - (d) none of the Borrower or any of the Guarantors, any of their subsidiaries, any director or officer, or any employee, agent, or affiliate of any of them or any of its subsidiaries is an individual or entity (“**Person**”) that is, or is owned or controlled by Persons that are, (i) the subject of any sanctions administered or enforced by the US Department of the Treasury’s Office of Foreign Assets Control

(“**OFAC**”), the US Department of State, the United Nations Security Council (collectively, “**Sanctions**”), or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions, including, without limitation, currently, Cuba, the Crimea region of Ukraine, Iran, North Korea, Sudan and Syria;

- (e) none of the Borrower or any of the Guarantors, nor to their knowledge, any director, officer, agent employee, affiliate or other person acting on behalf of any of them or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation of such persons of any applicable anti-bribery law, including but not limited to, the *U.S. Foreign Corrupt Practices Act* of 1977 (the “**FCPA**”). Furthermore, the Borrower and the Guarantors and, to their knowledge, their affiliates have conducted their businesses in compliance with the FCPA and similar laws, rules or regulations and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith;
- (f) the Borrower and the Guarantors will not, directly or indirectly, use the proceeds of the Facilities, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Facilities, whether as underwriter, advisor, investor or otherwise);
- (g) no part of the proceeds of the Facilities will be used, directly or indirectly, for any payments that could constitute a violation of any applicable anti-bribery law.

**Field Examinations /  
Appraisals:**

- (i) In addition to reporting hereunder, the Borrower and the Guarantors acknowledge that the Agent and its examiners shall be permitted to conduct periodic field examinations of the Collateral and operations, such examinations not to exceed four (4) in any calendar year prior to an Event of Default and more frequently as the Agent may determine in its sole discretion thereafter.
- (ii) The Borrower and the Guarantors further acknowledge that the Agent shall be permitted to obtain two (2) fixed asset valuations/appraisals and two (2) inventory valuations/appraisals

in any calendar year prior to an Event of Default which is continuing and more frequently as the Agent may determine in its sole discretion thereafter.

**Environmental:** In relation to the business, assets and projects of the Borrower and the Guarantors: they are operating and will continue to operate in conformity with all environmental laws; there are no contaminants, pollutants or other hazardous substances (including, without limitation, asbestos, products containing urea formaldehyde or polychlorinated biphenyl or any radioactive substances) have been or are now stored or located at any property from which they operate their business (collectively, the "**Properties**") and no order, approval, direction or other governmental or regulatory notice relating to the environment has been threatened against, is pending or has been issued with respect to the Properties or the operations of the business being conducted at the Properties; they are not aware of any pending or threatened action, suit or proceedings relating to any actual or alleged environmental violation from or at the Properties, nor have any proceedings been or are being instituted to make them or any other owner of the subject property comply with environmental laws and regulations; they will ensure that all of its property and assets comply with existing legislation and will remain free of any environmental problem; they will inform the Agent immediately upon becoming aware of any environmental problem or issue and will provide the Agent with copies of all communications with environmental authorities and all studies or assessments prepared on their behalf, all as soon as received by them; they also agree to pay the cost of any external environmental consultant engaged by the Agent to effect an environmental audit and the cost of any environmental rehabilitation, removal or repair necessary to protect, preserve or remediate the assets, including any fine or penalty the Agent is obligated to incur by reason of any statute, order or directive by a competent authority. The Borrower and the Guarantors agree to indemnify the Agent for any liability arising from an environmental problem including, without limitation, for all decontamination and decommissioning costs or for damages incurred by the Agent or its agents as a result of such contamination. For the purposes of this Agreement, an "**environmental problem**" means an act of non-compliance to a law, regulation, etc. or soil and/or underground water that contains one or many pollutants (contaminants) in levels of concentration that exceed parameters or norms applicable for the present use and intended use of any of their personal or real property including leased property.

In the event any environmental report shows that decontamination is required, the Borrower covenants and undertakes to forthwith carry out decontamination at its own expense should this be required or requested.

**Confidentiality:** The Borrower and the Guarantors agree to keep all of the information and terms related to this Agreement confidential. In particular, the existence of this Agreement or the discussions surrounding this Agreement cannot

be disclosed to any party, including other creditors, without the Agent's prior written consent.

**General:**

Credit: The Borrower and the Guarantors authorize the Agent, hereinafter, to obtain such factual and investigative information regarding the Borrower or the Guarantors from others as permitted by law, to furnish other consumer credit grantors and credit bureaus such information. The Agent, after completing credit investigations, which it will make from time to time concerning the Borrower and the Guarantors, must in its absolute discretion be satisfied with all information obtained, prior to any advance being made under any of the Facilities.

Supply of Information: The Borrower and the Guarantors further authorize any financial institution, creditor, tax authority, employer or any other person, including any public entity, holding information concerning them or their assets, including any financial information or information with respect to any undertaking or suretyship given by them, to supply such information to the Agent in order to verify the accuracy of all information furnished or to be furnished from time to time to the Agent and to ensure their solvency at all times.

Observation Rights: Agent shall have, at all times, board observation rights and may have one observer attend meetings of all boards of directors. The reasonable out of pocket travel and other incidental expenses of such observer shall be for the account of the Borrower. In addition, Agent shall receive, on a timely basis, all reports and other documents provided to the boards of directors.

Indemnification: The Borrower and the Guarantors hereby indemnify Agent and the Lenders and each of its officers, directors, employees, advisors and agents (each an "**indemnified person**"), and holds each of them harmless from and against, all losses, costs, expenses (including, without limitation, reasonable legal fees on a solicitor and client basis) damages, obligations and liabilities, including without limitation, those arising from any litigation or other proceedings, relating to or arising out of, the proposed transactions contemplated herein; provided that no indemnified person will be indemnified for its own gross negligence or willful misconduct.

Taxation and Duties: All payments by the Company shall be made free and clear of any and all present and future taxes, withholdings or deductions of any nature or kind whatsoever.

Non-Merger: The provisions of this Agreement shall not merge with any of the Security, but shall continue in full force and effect for the benefit of the parties hereto. In the event of an inconsistency between this Agreement and any of the other Credit Documents, including the Security, the provisions of this Agreement shall prevail.

Further Assurances and Documentation: The Borrower and the Guarantors shall do all things and execute all documents deemed necessary or appropriate by the Agent for the purposes of giving full force and effect to the terms, conditions, undertakings hereof and the Security granted or to be granted hereunder.

Severability: If any provisions of this Agreement is or becomes prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor shall it invalidate, affect or impair any of the remaining provisions of this Agreement.

Marketing: The Agent shall be permitted to use the name of the Borrower and the Guarantors and the amount of the Facilities for advertising purposes.

Governing Law: This Agreement and all agreements arising hereinafter shall be deemed to have been made and accepted in the City of Toronto, Ontario and shall be construed exclusively (without regard to any rules or principles relating to conflicts of laws) in accordance with and be governed by the laws of the Province of Ontario and of Canada applicable therein.

Counterparts: This Agreement, the Security and all agreements arising hereinafter may be executed in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterpart.

Assignment and Syndication: This Agreement when accepted and any commitment to advance, if issued, and the Security in furtherance thereof or any warrant or right may be assigned by the Agent, or monies required to be advanced may be syndicated by the Agent from time to time. For greater certainty, the Agent may assign or grant a participation in all or part of this Agreement or in the Facilities made hereunder without notice to and without the Borrower's or any Guarantor's consent. The Borrower and the Guarantors may not assign or transfer any part of its rights or obligations under this Agreement, any such transfer or assignment being null and void insofar as the Agent is concerned and rendering any balance then outstanding under the Facilities immediately due and payable at the option of the Agent.

Agency: Each Lender designates Agent to act as its administrative and collateral agent for it under this Agreement and the Security. Each Lender hereby irrevocably authorizes Agent to take such action on its behalf under the provisions of this Agreement and the Security and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of Agent by the



terms hereof and thereof and such other powers as are reasonably incidental thereto and Agent shall hold all Collateral, payments of principal and interest, fees, charges and collections received pursuant to this Agreement, for the benefit of each Lender. Agent may perform any of its duties hereunder by or through its agents or employees. As to any matters not expressly provided for by this Agreement, Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Lenders, and such instructions shall be binding; provided, however, that Agent shall not be required to take any action which, in Agent's discretion, exposes Agent to liability or which is contrary to this Agreement or the Security or Applicable Laws.

Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and the Security. Neither Agent nor any of its officers, directors, employees or agents shall be (i) liable for any action taken or omitted by them as such hereunder or in connection herewith, unless caused by their gross (not mere) negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), or (ii) responsible in any manner for any recitals, statements, representations or warranties made by Borrower or any Guarantor, or any officer thereof contained in this Agreement, or in any of the Security or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any of the Security or for the value, validity, effectiveness, genuineness, due execution, enforceability or sufficiency of this Agreement, or any of the Security or for any failure of Borrower or any Guarantor to perform its obligations hereunder. The duties of Agent as respects the advances to Borrower shall be mechanical and administrative in nature only and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon Agent any obligations in respect of this Agreement or the transactions described herein except as expressly set forth herein.

Agent may employ agents and attorneys-in-fact and shall not be liable for the default or misconduct of any such agents or attorneys-in-fact selected by Agent with reasonable care.

Without prejudice to its obligations to Agent under the other provisions of this Agreement, Borrower hereby undertakes with Agent to pay to Agent from time to time on demand all amounts from time to time due and payable by it for the account of Lenders or any of them pursuant to this Agreement to the extent not already paid.

Joint and Several: Where more than one person is liable as a guarantor for any obligation under this Agreement, then the liability of each such person for such obligation is joint and several with each other such person.

Time: Time shall be of the essence in all provisions of this Agreement.

Whole Agreement, Amendments and Waiver: This Agreement, the Security and any other written agreement delivered pursuant to or referred to in this Agreement constitute the whole and entire agreement between the parties in respect of the Facilities. There are no verbal agreements, undertakings or representations in connection with the Facilities. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing signed by the Borrower, the Guarantors and the Agent. No failure or delay on the part of the Agent in exercising any right or power hereunder or under any of the Security shall operate as a waiver thereon. No course of conduct by the Agent will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Agreement and the Security or the Agent's rights thereunder. This Agreement shall amend and restate the letter credit agreement dated March 8, 2017, with the parties hereby agreeing that there is no novation thereof. On the date hereof, the rights and obligations of the parties under such letter credit agreement shall be subsumed within and be governed by this Agreement; provided, however, that each of the "Facilities" (as such term is defined in such letter credit agreement) outstanding under thereunder on the date hereof shall, for purposes of this Agreement, be included as loans and advances hereunder.

Replacements: This Agreement supersedes and replaces all prior discussions, discussion papers (including the discussion paper dated October 25, 2017), letters and agreements (including the letter credit agreement dated March 8, 2017 but does not constitute any novation thereof) describing the terms and conditions of any credit facility established in favour of the Borrower.

Reserve Indemnity: If subsequent to the date of this Agreement any change in or introduction of any Applicable Law, or compliance by Agent with any request or directive by any central bank, superintendent of financial institutions or other comparable authority, shall subject Agent to any tax with respect to the Facilities or change the basis of taxation of payments to Agent of any amount payable under the Facilities (except for changes in the rate of tax on the overall net income of Agent), or impose any capital maintenance or capital adequacy requirement, reserve requirement or similar requirement with respect to the Facilities, or impose on Agent), any other condition or restriction, and the result of any of the foregoing is to increase the cost to Agent of making or maintaining the Facilities or any amount thereunder or to reduce any amount otherwise received by Agent under the Facilities, Agent will promptly notify the Borrower of such event and the Borrower will pay to Agent such additional amount calculated by Agent as is necessary to compensate Agent for such additional cost or reduced amount received. A certificate of Agent as to any such additional amount payable to it and containing reasonable details of the calculation thereof shall be conclusive evidence thereof.

**Currency Indemnity and Conversion:** Interest and fees hereunder shall be payable in the same currency as the principal to which they relate. Any payment on account of an amount payable in a particular currency (the “**proper currency**”) made to or for the account of Agent in a currency (the “**other currency**”) other than the proper currency, whether pursuant to a judgment or order of any court or tribunal or otherwise and whether arising from the conversion of any amount denominated in one currency into another currency for any purpose, shall constitute a discharge of the Borrower’s obligation only to the extent of the amount of the proper currency which Agent is able, in the normal course of its business within one Business Day after receipt by it of such payment, to purchase with the amount of the other currency so received. If the amount of the proper currency which Agent is able to purchase is less than the amount of the proper currency due to Agent, the Borrower and the Guarantors shall indemnify and save Agent harmless from and against any loss or damage arising as a result of such deficiency. Furthermore, any and all values of eligible collateral in US dollars needed to determine the Loan Availability Formula shall be converted by the Agent into Canadian dollars as it deems necessary in accordance with its customary practices and procedures.

**Notices.** All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another shall be given in writing by personal delivery or by facsimile transmission addressed to such other party or delivered to such other party as follows:

**(i) to the Borrower and Guarantors at:**

169A South Service Road  
Grimsby, Ontario L3M 4H6

Attention: Michael Kenefick ([mpk@kenexholdings.com](mailto:mpk@kenexholdings.com))  
Dave Malay ([dave.malay@alliedtrack.ca](mailto:dave.malay@alliedtrack.ca))  
Nick Kuneman ([njk@kenexholdings.com](mailto:njk@kenexholdings.com))

Facsimile: 905-769-1317

**(ii) to the Agent at:**

77 King Street West, Suite 2925  
Toronto, Ontario M5K 1K7

Attention: Graham Marr ([gmarr@bridgingfinance.ca](mailto:gmarr@bridgingfinance.ca))  
Facsimile: 416-777-1794

or at such other address or facsimile number as may be given by any of them to the others in writing from time to time and such notices, requests, demands or other communications shall be deemed to have been

received when delivered, or, if sent by facsimile transmission, on the date of transmission unless sent on a day which is not a Business Day or after 5:00 p.m. (local time of the recipient) on a Business Day, in which case it shall be deemed to have been received on the next Business Day following the day of such transmission.

Anti-Money Laundering Legislation: Each Borrower and each Guarantor acknowledges that, pursuant to applicable Anti-Terrorism Laws and other applicable anti-money laundering, anti-terrorist financing, government sanction and “*know your client*” laws, under the laws of Canada or the US (collectively, including any guidelines or orders thereunder, “**AML Legislation**”), Agent may be required to obtain, verify and record information regarding each of them, its respective directors, authorized signing officers, direct or indirect shareholders or other persons in control of any of them, and the transactions contemplated hereby. Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by Agent, or any prospective assign or participant of Agent, necessary in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

Deemed Re Investment Principle. For the purpose of the *Interest Act* (Canada) and any other purpose, the principle of deemed re-investment of interest is not applicable to any calculation under this Agreement, and the rates of interest and fees specified in this Agreement are intended to be nominal rates and not effective rates or yields.

**Usury and  
Interest Act:**

If any provision of this Agreement would oblige the Borrower or any Guarantor to make any payment of interest or other amount payable to Agent or any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by that Lender of “interest” at a “criminal rate” (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by that Lender of “interest” at a “criminal rate”, such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows: first, by reducing the amount or rate of interest, and, thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the affected Lender which would constitute interest for purposes of section 347 of the Criminal Code (Canada).

For the purpose of the *Interest Act* (Canada) and any other purpose, the principle of deemed re-investment of interest is not applicable to any calculation under this Agreement, and the rates of interest and fees specified in this Agreement are intended to be nominal rates and not effective rates or yields.

**Tax Indemnity:**

All payments by the Borrower or any Guarantor under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of any taxes other than (a) taxes imposed on or measured by net income (however denominated) of any Lender or franchise taxes, taxes on doing business, branch profits (or similar) taxes, or taxes measured by the capital or net worth of any Lender, in each case imposed by the jurisdiction (or any political subdivision thereof) under the laws of which such Lender is organized or conducts business or in which its principal or applicable lending office is located; (b) taxes imposed as a result of a present or former connection between any Lender and the jurisdiction imposing the tax; (c) withholding taxes on amounts payable to or for the account of any Lender pursuant to a law in effect at the time such Lender acquires such interest in the Facilities (or designates a new lending office) (other than pursuant to an assignment at such time that an Event of Default has occurred), except to the extent such taxes were payable to such Lender's assignor immediately before such Lender acquired such interest in the Facilities; or (d) U.S. withholding taxes imposed under FATCA (all taxes described in subsections (a) through (d), collectively "**Excluded Taxes**"; provided, however, that if any taxes other than Excluded Taxes are required by Applicable Law to be deducted or withheld from any interest or other amount payable hereunder, the amount so payable shall be increased to the extent necessary to yield, on a net basis after payment of all taxes other than Excluded Taxes imposed by any relevant jurisdiction on any additional amounts payable under this Section, interest or any such other amount payable hereunder at the rate or in the amount specified in this Agreement, Whenever any taxes are payable by the Borrower or any Guarantor under this Section, as promptly as possible thereafter it shall send to the Agent, a certified copy of an original official receipt showing payment thereof, a copy of a relevant tax return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent. If the Borrower or any Guarantor fails to pay any deducted or withheld taxes when due or fails to remit to the Agent as aforesaid the required documentary evidence thereof, the Borrower and the Guarantors shall indemnify and save harmless the Agent and the Lenders from any incremental taxes, interest, penalties or other liabilities that may become payable by any of them or to which any of them may be subjected as a result of any such failure. A certificate of the Agent as to the amount of any such taxes, interest or penalties and containing reasonable details of the calculation thereof and delivered to the Borrower or Guarantors shall be prima facie evidence thereof absent manifest error.

**Tax  
Documentation:**

Any Lender entitled to an exemption from, or reduction in the rate of, the imposition, deduction or withholding of any tax other than Excluded Taxes with respect to any payment hereunder shall deliver to the Borrower, at the time or times reasonably requested by the Borrower, such properly completed and duly executed documentation as will permit such payments to be made without imposition, deduction or withholding of such taxes or at a reduced rate. If a payment made to a Lender hereunder

would be subject to US federal withholding tax imposed under FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA, such Lender shall deliver to the Borrower at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by Applicable Law and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with its obligations under FATCA and to determine the amount, if any, to deduct and withhold from such payment.

**Tax Refunds:**

If any Lender determines that it has received a refund of any taxes as to which it has been indemnified by the Borrower or Guarantors or with respect to which the Borrower or Guarantors have paid additional amounts pursuant to this Agreement above such Lender shall pay over such refund (or the amount of any credit in lieu of refund) to the applicable Borrower or Guarantor (but only to the extent of indemnity payments made, or additional amounts paid, by the applicable Borrower or Guarantor with respect to the taxes giving rise to such refund or credit in lieu of refund), net of all out-of-pocket expenses of such Lender, and without interest (other than any interest paid by the relevant governmental authority with respect to such refund or credit in lieu of refund), provided such Borrower or Guarantor, upon the request of such Lender, agrees to repay the amount paid over to such Borrower or Guarantor to such Lender in the event such Lender is required to repay such refund or credit in lieu of refund to such governmental authority.

**Subordination  
of Subrogation,  
Etc.:**

Notwithstanding anything to the contrary in this Agreement or in any other document, agreement or instrument, each Borrower and Guarantor hereby expressly and irrevocably subordinates to payment of the obligations owing hereunder, any and all rights at law or in equity to subrogation, reimbursement, exoneration, contributions, indemnification or set off and any and all defenses available to a surety, guarantor or accommodation co-obligor until all such obligations are paid in full in cash. Each Borrower and Guarantor acknowledges and agrees that this subordination is intended to benefit the Agent and the Lenders and shall not limit or otherwise affect such person's liability hereunder or the enforceability of this Section, and the Agent and the Lenders and their respective successors and assigns and participants are intended third party beneficiaries of the waivers and agreements set forth in this Section.

**LIMITATION OF LIABILITY. NO CLAIM MAY BE MADE BY ANY PARTY HERETO AGAINST THE LENDER, OR THE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS OF LENDER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH**

**PARTY HERETO HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOUR.**

[2 SIGNATURE PAGES FOLLOW]

If the terms and conditions of this Agreement are acceptable to you, please sign in the space indicated below and return the signed copy of this Agreement to us. Acceptance may also be effected by facsimile or scanned transmission and in counterpart.

We thank you for allowing us the opportunity to provide you with this Agreement.

Yours truly,

**BRIDGING FINANCE INC.**, as Agent

Per:   
Name: Natasha Sharpe  
Title: Chief Investment Officer  
I have authority to bind the Corporation.




**ACCEPTANCE**

Each of the undersigned hereby executes and delivers this Agreement under their respective seals by their duly authorized signing officers with effect as of the date first written above.


Borrower:

**ALLIED TRACK SERVICES INC.**


Per:   
 Name: Nicholas J. Kuneman  
 Title: Secretary  
 I have authority to bind the Corporation.

Guarantors:

**2409889 ONTARIO INC.**

Per:   
 Name: Nicholas J. Kuneman  
 Title: Secretary  
 I have authority to bind the Corporation.

**SWIFT RAILROAD HOLDINGS U.S. LLC**

Per:   
 Name: Nicholas J. Kuneman  
 Title: Secretary  
 I have authority to bind the Corporation.

**SCHEDULE "A"**  
**DEFINITIONS**

In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

**"Anti-Terrorism Laws"** or **"AML"** means any Applicable Laws relating to terrorism, money laundering, government sanctions and know your client requirements including Executive Order No. 13224, the *USA PATRIOT Act*, the Applicable Laws comprising or implementing bank secrecy legislation, and the applicable laws administered by the United States Treasury Department's Office of Foreign Asset Control and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)* and the regulations promulgated thereunder (as any of the foregoing Applicable Laws may from time to time be amended, renewed, extended, or replaced).

**"Applicable Laws"** means, with respect to any person, property, transaction or event, all present or future statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction, in each case, having the force of law in any applicable jurisdiction, including without limitation, any and all applicable securities, environmental and health and safety laws.

**"BMO"** means Bank of Montreal and its applicable affiliations including BMO Harris Bank.

**"Business Day"** means any day other than a Saturday or a Sunday or any other day on which Canadian chartered banks are closed for business in Toronto, Ontario or Pittsburg, Texas in respect of Bottom Line.

**"Canadian Pension Plan"** shall mean any plan, program, arrangement or understanding that is a pension plan for the purpose of and required to be registered under any applicable pension benefits laws of Canada or a province or territory thereof (whether or not registered under any such laws) which is maintained, administered or contributed to by (in virtue of a legal obligation to maintain, administer or contribute to such a plan, program, arrangement or understanding) a Borrower or a Guarantor, in respect of any person's employment in Canada or a province or territory thereof with such Borrower or a Guarantor.

**"Change of Control"** means shall mean any reorganization or change in ownership or corporate structure of any of the Borrower or any of the Guarantors other than in connection with an exercise of the Warrants where the current shareholders, including any of its beneficial owners, beneficiaries or their estates collectively cease to hold voting shares, directly or indirectly, constituting more than 51% of any of the Borrower or any of the Guarantors, as applicable, and/or control the respective boards of directors.

**"Collateral"** means all of the Borrower's, Bottom Line's upon and subject to the closing of the Acquisition, and 240's property, assets and undertakings and any shares held by Swift in the capital of 240 and Bottom Line.

**"Controlled Group"** shall mean, at any time, each Borrower, Guarantor and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with any Borrower or Guarantor, are treated as a single employer under Section 414 of the US Code;

“**Credit Documents**” collectively means this Agreement, the Security, the Warrants and any and all other documents, instruments and agreements contemplated herein and/or ancillary thereto.

“**Disbursement Accounts**” means specifically the following transit/account numbers from which the Borrower shall make all of its payments and disbursements:

Borrower (Cdn\$) - BMO:	0002 / 1815049
Borrower (US\$) - BMO:	0002 / 4639817
Bottom Line (US\$) upon and subject to the closing of the Acquisition - <*> <b>[NTD: Borrower to advise]</b>	<*>

“**Encumbrances**” means any mortgage, Lien, pledge, assignment, charge, security interest, title retention agreement, hypothec, levy, execution, seizure, attachment, garnishment, right of distress or other claim in respect of property of any nature or kind whatsoever howsoever arising (whether consensual, statutory or arising by operation of law or otherwise) and includes arrangements known as sale and lease-back, sale and buy-back and sale with option to buy-back or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the PPSA or Uniform Commercial Code of the State of New York (or equivalent statutes) of any jurisdiction. The inclusion of Permitted Encumbrances in this Agreement is not intended to subordinate and shall not subordinate any Lien created by any of the Security contemplated by this Agreement and the other Credit Documents to any Permitted Encumbrances.

“**ERISA**” shall mean the *Employee Retirement Income Security Act* of 1974, as amended from time to time and the rules and regulations promulgated thereunder.

“**FATCA**” shall mean (i) Sections 1471 through 1474 of the US Code, (ii) any regulations promulgated thereunder, official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the US Code, and (iii) any intergovernmental agreements (or related legislation or official administrative rules or practices) implementing the foregoing, or any amended or successor version thereof.

“**FCCR**” means earnings before interest, tax, depreciation and amortization and any other non-cash expenses acceptable the Agent in its sole and absolute discretion less unfinanced capital expenditures, deferred charges, dividends, distributions and cash taxes, divided by the total of scheduled and unscheduled principal (including leases), interest and any payments in respect of any related party or postponed debt.

“**GAAP**” means any reference thereto or application thereof by implication means those accounting principles which are recognized as being generally accepted in Canada with respect to each Canadian entity, and generally accepted in the United States with respect to each US entity, from time to time as set out in the handbook published by the applicable institute of chartered accountants or, as applicable, the international financial reporting standards developed by the international accounting standards board.

**“Initial Advance Date”** means the date that the Agent, in its discretion, causes the initial advances under the Facilities to be made to or on behalf of the Borrower.

**“Lien”** means any mortgage, charge, pledge, hypothecation, security interest, assignment, encumbrance, lien or adverse right or claim or deemed trust (statutory or otherwise), charge, title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature or any other arrangement or condition that in substance secures payment or performance of an obligation.

**“Loan Availability Formula”** means the aggregate of:

- (a) Accounts Receivable: Up to 85% of the net eligible accounts receivable of the Borrower and Bottom Line upon and subject to the closing of the Acquisition (including unbilled accounts receivable for work which has been completed) owing by account debtors located in Canada and up to 80% of the eligible accounts receivable of the Borrower and Bottom Line upon and subject to the closing of the Acquisition (including unbilled accounts receivable for work which has been completed) owing by account debtors located in the United States of America. The Agent will determine eligibility in its reasonable credit discretion. General eligibility criteria will include the requirement that eligible accounts receivable be less than 90 days past the original invoice date but no more than 60 days past due date, and in the case of unbilled accounts receivable for work which has been completed by the Borrower or Bottom Line upon and subject to the closing of the Acquisition, that such amounts are to be invoiced to account debtors within a reasonable timeframe, in the opinion of the Agent. In addition, eligible accounts and eligible unbilled accounts receivable will exclude (among other things as determined by the Agent in its reasonable credit discretion) accounts of an account debtor if 50% or more of the accounts owing from such account debtor are outstanding for more than 90 days from the original invoice date, any account that is an obligation for which the total unpaid accounts of the specific account debtor exceed 15% of the aggregate of all gross accounts as related to eligible accounts receivable, except those accounts approved in advance or of investment quality, to the extent of such excess, foreign accounts not backed by letters of credit or acceptable credit insurance, bill and hold, the amount of any contras, inter-company receivables and amounts due from affiliated or associated companies, federal, state or provincial government receivables which are not fully assignable to the Agent and enforceable against such government entity or body, disputed and doubtful accounts, progress billings (except where the receivables are in respect of billings approved by the account debtor in writing or are insured satisfactory to the Agent), pre-billed accounts, accounts receivable and unbilled accounts receivable which have not been credit approved by the Agent, and other accounts receivable or unbilled accounts receivable at the Agent’s discretion. Any exceptions to the foregoing will be considered by the Agent in its sole discretion as and when required. The advance rates are subject to a dilution test as determined by the Agent; **PLUS**
- (b) Inventory: Up to 65% of the net orderly liquidation value of eligible inventory of the Borrower and upon and subject to the closing of the Acquisition Bottom Line (as determined by an appraiser satisfactory to the Agent in its reasonable credit discretion) located in Canada with respect to the Borrower and upon and subject to the closing of the Acquisition in the US in respect of Bottom Line. The Agent

will determine eligibility in its reasonable credit discretion. General eligibility criteria will exclude pallets, dividers, packaging, supplies, containers, inventory, aged inventory, work-in-process inventory and other inventory deemed not saleable by the Agent; **PLUS**

- (c) **Fixed Assets:** Up to 85% of the net orderly liquidation value of eligible equipment and other fixed assets of the Borrower and Bottom Line upon and subject to the closing of the Acquisition located in Canada with respect to the Borrower and upon and subject to the closing of the Acquisition in the US in respect of Bottom Line. The Agent will determine eligibility in its reasonable credit discretion. General eligibility criteria will include the nature of the equipment or fixed asset, the equipment or fixed asset being subject to the Agent's first priority Lien and not otherwise leased from or subject to any other Lien in favour of a lessor or vendor or repairer or storer, the equipment or fixed asset being in good working order and readily saleable; **LESS**
- (d) reserves, determined by the Agent in its reasonable credit discretion, in respect of actual and/or potential Priority Claims and/or Statutory Encumbrances, liquidation expenses and any other reserves, determined from time to time by the Agent in its reasonable credit discretion.

**"Material Adverse Change"** means any change, condition or event which, when considered individually or together with other changes, conditions, events or occurrences could reasonably be expected to have a Material Adverse Effect.

**"Material Adverse Effect"** means, in the determination of the Agent, a material adverse effect on (i) the business, revenues, operations, assets, liabilities (contingent or otherwise), financial condition or prospects of the Borrower or any of the Guarantors; (ii) on the rights and remedies of the Agent under this Agreement and the security; (iii) on the ability of the Borrower or any of the Guarantors to perform its obligations under the Credit Documents; or (iv) on the Liens created by the security.

**"Multiemployer Plan"** means a multiemployer plan as defined in Section 3(37) of ERISA) to which any member of the Controlled Group may have any liability.

**"Pension Benefit Plan"** shall mean at any time any employee pension benefit plan within the meaning of Section 3(2) of ERISA (other than a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the US Code and either (i) is maintained or to which contributions are required by any member of the Controlled Group for employees of any member of the Controlled Group; or (ii) has at any time within the preceding five years been maintained or to which contributions have been required by any entity which was at such time a member of the Controlled Group for employees of any entity which was at such time a member of the Controlled Group.

**"Pension Plan"** means any Canadian Pension Plan or any Plan.

**"Permitted Encumbrances"** means, at any time, the following:

- (a) Liens for taxes not overdue, or which are being contested if adequate reserves with respect thereto are maintained in accordance with GAAP and from the Loan Availability Formula and the enforcement of any related Lien is stayed;

- (b) undetermined or inchoate Liens arising in the ordinary course of business which relate to obligations not overdue or a claim for which has not been filed or registered pursuant to Applicable Law;
- (c) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business which relate to obligations not overdue;
- (d) easements, rights of way, restrictions and other similar encumbrances incurred in the ordinary course of business which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of business;
- (e) zoning and building by-laws and ordinances and municipal by laws and regulations so long as the same are complied with;
- (f) statutory Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation;
- (g) the reservations and exceptions contained in, or implied by statute in, the original disposition from the Crown and grants made by the Crown of interests so reserved or excepted;
- (h) equipment and/or vehicle leases in effect as of the date hereof;
- (i) upon and subject to the closing of the Acquisition Liens granted by Bottom Line to the Borrower, and by the Borrower in favour of Trisura Guarantee Insurance Company provided that such Liens are subordinated to the Liens granted to the Agent and subject to a subordination and postponement agreement in form and substance satisfactory to the Agent; and
- (j) Liens created by the Security.

**"person"** includes a natural person, a partnership, a joint venture, a trust, a fund, an unincorporated organization, a company, a corporation, an association, a government or any department or agency thereof, and any other incorporated or unincorporated entity.

**"Plan"** shall mean any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Benefit Plan and a Multiemployer Plan), maintained for employees of any Borrower or Guarantor or any such Plan to which any Borrower or Guarantor is required to contribute provided always that the term Plan does not include a Canadian Pension Plan.

**"PPSA"** means the *Personal Property Security Act* (Ontario) or any other similar applicable personal property security statute in any other applicable jurisdiction, including without limitation, the Uniform Commercial Code of the State of New York, as the same may be amended, supplemented or replaced from time to time.

**"Prime"** or **"US Prime"** means the applicable rate of interest announced from time to time by BMO, as its reference rate then in effect for determining rates of interest on Canadian dollar

loans or US dollar loans, as applicable, to its customers in Canada or the US, as applicable, and designated as its prime rate.

**“Priority Claims”** means the aggregate of any amounts accrued or payable which under any law may rank prior to or *pari passu* with any of the Security or otherwise in priority to any claim by the Agent for payment or repayment of any amounts owing under this Agreement, including: (i) wages, salaries, commissions or other remuneration; (ii) vacation pay; (iii) Pension Plan contributions; (iv) amounts required to be withheld from payments to employees or other persons for federal and provincial income taxes, employee Pension Plan contributions and employee employment insurance premiums, additional amounts payable on account of employer Pension Plan contributions and employer employment Insurance premiums; (v) harmonized sales tax; (vi) provincial sales or other consumption taxes; (vii) Workers’ Compensation Board and Workplace Safety and Insurance Board premiums or similar premiums; (viii) real property taxes; (ix) rent and other amounts payable in respect of the use of real property; provided that a rent reserve of three months will be taken for each leased or rented location where a landlord/warehouse waiver satisfactory to the Agent has not been obtained); (x) amounts payable for repair, storage, transportation or construction or other services which may give rise to a possessory or registerable Lien; (xi) claims which suppliers could assert pursuant to Section 81.1 or Section 81.2 of the *Bankruptcy and Insolvency Act* (Canada); (xii) WEPPA Claims; and (xiii) any other Applicable Laws.

**“Professional Services Agreement”** means that certain Amended and Restated Professional Services Agreement, dated as of March 30, 2016, by and between Kenex Holdings, LLC and the Borrower.

**“Statutory Encumbrances”** means any Encumbrances arising by operation of Applicable Laws, including without limitation, for carriers, warehousemen, repairers’, taxes, assessments, statutory obligations and government charges and levies for amounts not yet due and payable or which may be past due but which are being contested in good faith by appropriate proceedings (and as to which the Agent has established a reserve as to which there are no other enforcement proceedings being taken and no Liens being registered and they shall have been effectively and immediately stayed).

**“US”** means the United States of America.

**“US Code”** means the US Internal Revenue Code of 1986 (as amended, replaced, supplemented or restated).

**“WEPPA Claims”** means any claims made pursuant to the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s.1, as the same may be amended, restated or replaced from time to time.

Words importing the singular include the plural thereof and vice versa and words importing gender include the masculine, feminine and neuter genders.

## **APPENDIX “F”**



## GENERAL SECURITY AGREEMENT

**THIS GENERAL SECURITY AGREEMENT** (as the same may be amended, restated, supplemented or replaced, from time to time, this “**Agreement**”) is dated with effect as of this 8<sup>th</sup> day of March, 2017 and executed and delivered by **ALLIED TRACK SERVICES INC.** (the “**Debtor**”) to and in favour of **BRIDGING FINANCING INC.** as agent (the “**Agent**”) for the lenders from time to time under the Loan Agreement (as defined below) (collectively, the “**Lenders**”).

### RECITALS:

- A. The Debtor is or is about to become indebted to the Agent and the Lenders pursuant to a letter credit agreement among, *inter alios*, the Debtor and the Agent dated with effect as of the date hereof (as further amended, supplemented, replaced or restated from time to time, the “**Loan Agreement**”); and
- B. As security for the obligations of the Debtor under the Loan Agreement, the Agent has required the Debtor to grant to the Agent and to create a security interest in all personal property of the Debtor, as hereinafter provided as security for the payment and performance of the obligations and liabilities of the Debtor to the Agent and the Lenders.

**NOW THEREFORE**, in consideration of the extension of credit by the Agent and the Lenders to the Debtor, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtor, the Debtor covenants and agrees to and in favour of the Agent and the Lenders as follows:

## ARTICLE 1 - DEFINITIONS; INTERPRETATION

### 1.1 Defined Terms

Except as otherwise expressly provided herein, capitalized terms used in this Agreement but not defined herein shall have the meanings assigned to such terms in the Loan Agreement. In this Agreement, unless the context expressly or by necessary implication otherwise requires, the following terms shall have the meanings set forth below:

“**Event of Default**” shall mean: (a) the occurrence of any Event of Default (as such term is defined in the Loan Agreement); or (b) the issuance of a demand for repayment by the Agent.

“**Person**” means a “person” as defined in the Loan Agreement.

### 1.2 Terms Defined in Ontario *Personal Property Security Act*

Where applicable and except as defined herein, terms used herein shall have the meanings assigned to them in the *Personal Property Security Act* as the same may, from time to time, be in effect in the Province of Ontario (the “**PPSA**”). Such terms include: “**accounts**”, “**chattel paper**”, “**documents of title**”, “**equipment**”, “**intangibles**”,

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“instruments”, “inventory”, “investment property”, “money”, “proceeds” and “security”.

### 1.3 Agent as agent of the Lenders

The Debtor acknowledges and agrees that the Agent is taking the security interest granted hereunder on behalf of itself and the Lenders and that this Agreement secures all of the Secured Obligations owing to the Agent and each of the Lenders.

## ARTICLE 2 - GRANT OF SECURITY INTEREST; COLLATERAL

### 2.1 Grant of Security Interest

As security for the payment and performance of the Secured Obligations (as defined in Section 3), the Debtor hereby grants to the Agent, for and on behalf of itself and the Lenders, a security interest in, to and under all of its personal property, wherever located and whether now existing or hereafter acquired or arising, including, without limitation, the following property (collectively and severally, the “**Collateral**”):

- (a) all present and future investment property held by the Debtor, including securities, security entitlements, securities accounts, future contracts, future accounts, shares, options, rights, warrants, joint venture interests, interests in limited partnerships, trust units, bonds, debentures and all other documents which constitute evidence of a share, participation or interest of the Debtor in property or in an enterprise or which constitute evidence of an obligation of the issuer; and all substitutions therefore, and subject to Section 6.3, dividends and income derived therefrom, all of which are herein called the “**Pledged Collateral**”;
- (b) all accounts and book debts of the Debtor, chattel paper, documents of title, instruments, and intangibles of the Debtor, including all debts, dues, claims choses in action and demands of every nature and kind, howsoever arising or secured, including letters of credit, guarantees and advices of credit that are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services, and all supporting obligations of any or all of the forgoing (“**Accounts**”);
- (c) all inventory of the Debtor, including all merchandise, goods and other personal property that are held for sale or lease or that have been leased by the Debtor or that are to be furnished under a contract of service, all raw materials, work in process, materials used or consumed in the Debtor’s business and finished goods, all goods in which the Debtor has an interest in mass or a joint or other interest or gifts of any kind (including goods in which the Debtor has an interest or right as consignee), and all goods which are returned to or repossessed by the Debtor, together with all additions and accessions thereto and replacements therefor and products thereof and documents therefor (“**Inventory**”);

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- (d) all equipment of the Debtor and all parts thereof and all accessions, additions, attachments, improvements, substitutions and replacements thereto and therefor, including, all machinery, tools, dies, blueprints, catalogues, computer hardware and software, furniture, furnishings, vehicles and fixtures (“**Equipment**”);
- (e) all Intellectual Property Collateral (as defined in Section 7.3);
- (f) all money maintained in a deposit or other account in the Debtor’s name with any financial institution, and all certificates, instruments and other writings, if any, from time to time representing, evidencing or deposited into such accounts, and all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing;
- (g) all now existing and hereafter arising contracts and agreements to which the Debtor is party (each, an “**Assigned Agreement**”), including, without limitation, all rights of the Debtor to receive moneys due and to become due under or pursuant to the Assigned Agreements, all rights of the Debtor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Assigned Agreements, all claims of the Debtor for damages arising out of or for breach of or default under the Assigned Agreements, and all rights of the Debtor to terminate, amend, supplement or modify the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder; *provided, however,* that with respect to any such contract or agreement where the grant of a security interest in the Debtor’s right, title and interest therein is prohibited by the terms thereof, or would give any other party the right to terminate its obligations thereunder, or is not permitted because any necessary consent to such grant has not been obtained, the Collateral shall include only the rights of the Debtor to receive moneys due and to become due, if any, under or pursuant to such contract or agreement;
- (h) all books, records, writings, databases, information and other property relating to, used or useful in connection with, embodying, incorporating or referring to, any of the foregoing Collateral;
- (i) all cash and cash equivalents held by the Debtor not otherwise included in the foregoing Collateral; and
- (j) all products and proceeds of the foregoing Collateral (with the term “**proceeds**” having the meaning provided in the PPSA and also including any voluntary or involuntary disposition, and all rights to payment, including return premiums, with respect to any insurance).

## 2.2 Excluded Collateral

Notwithstanding Section 2.1, the Collateral shall not include: (a) any property held in trust by the Debtor and lawfully belonging to others, (b) the last day of the term of any lease of real property, provided that the Debtor shall stand possessed of such last day and

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shall assign and transfer such interest as instructed by the Agent; (c) the interests described in the proviso to Section 2.1(g); or with respect to Section 2.1(c), any consumer goods used as such by the Debtor.

### **2.3 Debtor Remains Liable**

Anything herein to the contrary notwithstanding, (a) the Debtor shall remain liable under all Assigned Agreements, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Agent of any of the rights hereunder shall not release the Debtor from any of its duties or obligations under such Assigned Agreements, and (c) the Agent and the Lenders shall not have any obligation or liability under any Assigned Agreements by reason of this Agreement, nor shall the Agent or the Lenders be obligated to perform any of the obligations or duties of the Debtor thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Collateral hereunder.

### **2.4 Continuing Security Interest**

The Debtor agrees that this Agreement shall create a general collateral continuing security interest in the Collateral which shall remain in effect until terminated in accordance with Section 10.14.

### **2.5 Attachment**

The Debtor and the Agent intend that the security interest created hereby attaches to existing Collateral upon the execution of this Agreement and that the security interest will attach to Collateral acquired after the date of execution of this Agreement at the time that the Debtor acquires rights in that Collateral. The Debtor and the Agent agree that value has been given. The Debtor represents and warrants that it has rights in the existing Collateral.

## **ARTICLE 3 - SECURED OBLIGATIONS**

### **3.1 Secured Obligations**

The obligations secured by this Agreement shall consist of all indebtedness, obligations and liabilities of the Debtor to the Agent and the Lenders, including, without limitation, those arising under, in connection with, and relating to the Credit Documents, whether now existing or hereafter arising, as principal or surety, voluntary or involuntary, whether or not jointly owed with others, direct or indirect, absolute or contingent, liquidated or unliquidated, and whether or not from time to time decreased or extinguished and later increased, created or incurred, together with all expenses (including reasonable legal fees on a solicitor and client basis) incurred by the Agent and the Lenders, any receiver, receiver-manager or agent in the preparation, perfection and enforcement of security and other agreements held by the Agent and the Lenders in respect of such obligations and liabilities and interest thereon (all of which obligations, liabilities, expenses and interest are referred to collectively as the "Secured Obligations").

## ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

In addition to all representations and warranties of the Debtor set forth in the Credit Documents, which are incorporated herein by this reference, the Debtor hereby represents and warrants that:

### 4.1 Sole Owner

The Debtor is the sole owner of and has good and marketable title to the Collateral (or will be the sole owner of and will have good and marketable title to, in the case of after-acquired Collateral).

### 4.2 No Adverse Claim

No Person has (or, in the case of after-acquired Collateral, at the time the Debtor acquires rights therein, will have) any right, title, claim or interest (by way of security interest or other Encumbrance, adverse rights or claims or other encumbrances) in, against or to the Collateral other than Permitted Encumbrances.

### 4.3 Full Disclosure

All information herein supplied to the Agent by or on behalf of the Debtor with respect to the Collateral is accurate and complete in all material respects as of the date hereof.

### 4.4 Delivery of Collateral

The Debtor has delivered to the Agent all instruments and chattel paper and other items of Collateral in which a security interest is or may be perfected by possession, together with such additional writings, including assignments, with respect thereto as the Agent shall request.

### 4.5 Intellectual Property

All of the patents, trade-marks, and copyrights of the Debtor have been registered or applied to be registered with the United States Patent and Trademark Office, the United States Copyright Office or the Canadian Intellectual Property Office, as appropriate.

### 4.6 Chief Executive Office; Trade Names; Collateral Location; Records Location

The Debtor's chief executive office is in the Province of Ontario; the only trade name(s) or style(s) used by the Debtor are listed on **Schedule "A"**; and, the Debtor's records concerning the Collateral are located at its chief executive office. The Debtor has not, except as disclosed on **Schedule "A"** hereto, at any time in the past: (a) been known as or used any other corporate, trade or fictitious name; (b) changed its name; (c) been the surviving or resulting corporation in a merger or consolidation; or (d) acquired through asset purchase or otherwise any business of any Person.

#### 4.7 Enforceability; Priority of Security Interest

- (a) This Agreement creates a security interest which is enforceable against the Collateral in which the Debtor now has rights and will create a security interest which is enforceable against the Collateral in which the Debtor hereafter acquires rights at the time the Debtor acquires any such rights; and (b) other than Permitted Encumbrances, the Agent has a perfected and first priority security interest in the Collateral, in which the Debtor now has rights, and will have a perfected and first priority security interest in the Collateral in which the Debtor hereafter acquires rights at the time the Debtor acquires any such rights, in each case securing the payment and performance of the Secured Obligations.

#### 4.8 Rights to Payment

- (a) The Accounts and any and all of the Debtor's rights and claims to the payment or receipt of money or other forms of consideration of any kind in, to and under or with respect to its chattel paper, documents of title, intangibles, instruments, proceeds and supporting obligations (collectively, "**Rights to Payment**") represent valid, binding and enforceable obligations of the account debtors or other Persons obligated thereon, representing undisputed, *bona fide* transactions completed in accordance with the terms and provisions contained in any documents related thereto, and are genuine, free from any Lien and not subject to any adverse claims, counterclaims, setoffs, defaults, disputes, defenses, discounts, retainages, holdbacks or conditions precedent of any kind of character, except to the extent reflected by the Debtor's reserves for uncollectible Rights to Payment or to the extent, if any, that such account debtors or other Persons may be entitled to normal and ordinary course trade discounts, returns, adjustments and allowances in accordance with Section 5.13 or as otherwise disclosed to the Agent in writing;
- (b) to the best of the Debtor's knowledge, all account debtors and other obligors on the Rights to Payment are solvent and generally paying their debts as they come due;
- (c) all Rights to Payment comply with all applicable laws concerning form, content and manner of preparation and execution, including where applicable any federal or state consumer credit laws;
- (d) the Debtor has not assigned any of its rights under the Rights to Payment other than Permitted Encumbrances as provided in this Agreement or as set forth in the other Credit Documents;
- (e) all statements made, all unpaid balances and all other information in the Debtor's books and other documentation relating to the Rights to Payment are true and correct and in all respects what they purport to be; and
- (f) the Debtor has no knowledge of any fact or circumstance which would impair the validity or collectibility of any of the Rights to Payment.

**4.9 Inventory**

No inventory is stored with any bailee, warehouseman or similar Person or on any premises leased to the Debtor, nor has any inventory been consigned to the Debtor or consigned by the Debtor to any Person or is held by the Debtor for any Person under any "bill and hold" or other arrangement, except as disclosed to the Agent in writing.

**4.10 Equipment**

- (a) none of the Equipment or other Collateral is affixed to real property except Collateral with respect to which the Debtor has supplied the Agent with all information and documentation necessary to make all fixture filings required to perfect and protect the priority of the Agent's security interest in all such Collateral which may be fixtures as against all Persons having an interest in the premises to which such property may be affixed; and
- (b) none of the Equipment is leased from or to any Person, except as otherwise disclosed to the Agent.

**4.11 Valid Issuance of Pledged Collateral**

All the Pledged Collateral have been, and upon issuance any Pledged Collateral will be, duly and validly issued, and are and will be fully paid and non assessable.

**4.12 Capitalization of the Pledged Subsidiary**

The Pledged Collateral constitutes 100% of the issued and outstanding shares of capital stock and other ownership interests of the various issuers owned by the Debtor (which, as of the date hereof, constitutes 100% of the issued and outstanding shares of capital stock and other ownership interests of each issuer).

**4.13 Options, Warrants, Etc.**

Other than pursuant to the Credit Documents, no securities convertible into or exchangeable for any shares of capital stock or other ownership interests of any issuer, or any options, warrants or other commitments entitling any Person to purchase or otherwise acquire any shares of capital stock or other ownership interests of any issuer, are issued and outstanding.

**4.14 Transfer Restrictions**

Subject to Permitted Encumbrances, there are no restrictions on the transferability of the Pledged Collateral to the Agent or with respect to the foreclosure, transfer or disposition thereof by the Agent.

**4.15 Shareholders Agreements**

Subject to Permitted Encumbrances, there are no shareholders, partners or members agreements, voting trusts, proxy agreements or other agreements or understandings which affect or relate to the voting or giving of written consents with respect to any of the Pledged Collateral.

**4.16 Pledged Collateral**

The Debtor is not in default in the payment of any portion of any mandatory capital contribution, if any, required to be made under any agreement to which the Debtor is a party relating to the Pledged Collateral pledged by it, and the Debtor is not in violation of any other provisions of any such agreement to which the Debtor is a party, or otherwise in default or violation thereunder. No Pledged Collateral pledged by the Debtor is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against the Debtor by any Person with respect thereto, and as of the date hereof, there are no certificates, instruments, documents or other writings (other than the organizational documents and certificates, if any, delivered to the Agent) which evidence any Pledged Collateral of the Debtor.

**4.17 No Violation of Securities Laws**

None of the shares in the capital of the Debtor or the Pledged Collateral has been issued, converted or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which they may be subject.

**4.18 Control Agreements**

No control agreements exist with respect to any Collateral other than any control agreements in favour of the Agent.

**4.19 Leases**

The Debtor is not and will not become a lessee under any real property lease or enter into any customer agreement or other agreement governing the location of Collateral at the premises of another Person pursuant to which the lessor or such other Person may obtain any rights in any of the Collateral, and no such lease or other such agreement now prohibits, restrains, impairs or will prohibit, restrain or impair such Debtor's right to remove any Collateral from the premises at which such Collateral is situated, except for the usual and customary restrictions contained in such leases of real property.

**ARTICLE 5 - COVENANTS AND AGREEMENTS**

In addition to all covenants and agreements of the Debtor set forth in the Credit Documents, which are incorporated herein by this reference, the Debtor hereby agrees, at no cost or expense to the Agent and the Lenders:



**5.1 Preservation of Security Interest**

To do all acts (other than acts which are required to be done by the Agent) that may be necessary to maintain, preserve and protect the Collateral and the first (subject to Permitted Encumbrances) priority, perfected security interest of the Agent therein.

**5.2 Actions and Proceedings**

To appear in and defend any action or proceeding which may affect its title to or the Agent's interest in the Collateral.

**5.3 Use of Collateral**

Not to use any Collateral, or permit any Collateral to be used, unlawfully or in violation of any provision of this Agreement, any other agreement with the Agent related hereto, or any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Debtor or affecting any of the Collateral or any contractual obligation affecting any of the Collateral.

**5.4 Shareholders Agreements**

Except for the shareholders agreement existing as of the date hereof and disclosed to the Agent in writing, the Debtor has not entered and will not enter into any shareholders, partners or members agreement, voting trust, proxy agreement or other agreement or understanding which affects or relates to the voting or giving of written consents with respect to any of the shares in the capital of the Debtor or the Pledged Collateral without the prior written consent of the Agent.

**5.5 Issuance of Additional Shares**

The Debtor will not consent to or approve, or allow any subsidiary to consent to or approve, of the issuance to any person or entity of any additional shares of any class of capital stock or other ownership interests of the Debtor or any of its subsidiaries, or of any securities convertible into or exchangeable for any such shares or other ownership interests, or any warrants, options or other rights to purchase or otherwise acquire any such shares or other ownership interests, except as approved in writing by the Agent.

**5.6 Transfer of Collateral; Liens**

Not to surrender or lose possession of (other than to the Agent), sell, encumber, lease, rent, or otherwise dispose of or transfer any Collateral or right or interest therein except as expressly provided herein and in the Credit Documents, and to keep the Collateral free of all Liens except Permitted Encumbrances and as expressly permitted by the Credit Documents or otherwise approved in writing by the Agent; *provided, however*, that, unless an Event of Default shall have occurred under any of the Credit Documents, the Debtor may, in the ordinary course of business, sell or lease (provided it registers and perfects any primary lease or conditional sale agreement in accordance with applicable law) any Collateral consisting of inventory.

**5.7 Delivery of Collateral**

To account fully for and promptly deliver to the Agent, in the form received, all documents, chattel paper, all certificated securities with respect to investment property, instruments and agreements constituting Collateral hereunder, and all proceeds of the Collateral received, all endorsed to the Agent or in blank, as requested by the Agent, and accompanied by such stock powers as appropriate and until so delivered all such documents, instruments, agreements and proceeds shall be held by the Debtor in trust for the Agent, separate from all other property of the Debtor.

**5.8 Records**

To keep separate, accurate and complete records of the Collateral and to provide the Agent with such records and such other reports and information relating to the Collateral as the Agent may reasonably request from time to time. To keep the records concerning the Collateral at the location(s) referred to in Section 4.6 and not to remove such records from such location(s) without the prior written consent of the Agent.

**5.9 Chief Executive Office; Names**

To give the Agent thirty (30) days' prior written notice of any change in the Debtor's chief executive office or legal name or trade name(s) or style(s).

**5.10 Location of Collateral**

To keep the Collateral at its current location(s) and not to remove the Collateral from such locations (other than disposals of Collateral expressly permitted by the Credit Documents).

**5.11 Maintenance of Collateral**

To keep the Collateral in good condition and repair (normal wear and tear excepted) and not to cause or permit any waste or unusual or unreasonable depreciation of the Collateral.

**5.12 Leased Premises**

At the Agent's request, to use commercially reasonable efforts to obtain from each Person from whom the Debtor leases any premises or supplies any customer at which any Collateral is at any time present such collateral access, subordination, waiver, consent and estoppel agreements as the Agent may require, in form and substance satisfactory to the Agent.

### 5.13 Rights to Payment

To:

- (a) with such frequency as the Agent may reasonably require, furnish to the Agent full and complete reports, in form and substance satisfactory to the Agent, with respect to the Accounts, including information as to concentration, aging, identity of account debtors, letters of credit securing Accounts, disputed Accounts and other matters, as the Agent shall request;
- (b) give only normal discounts, allowances and credits as to Accounts and other Rights to Payment, in the ordinary course of business, according to normal trade practices utilized by the Debtor in the past, and enforce all Accounts and other Rights to Payment strictly in accordance with their terms, and take all such action to such end as may from time to time be reasonably requested by the Agent, except that the Debtor may grant any extension of the time for payment or enter into any agreement to make a rebate or otherwise to reduce the amount owing on or with respect to, or compromise or settle for less than the full amount thereof, any Account or other Right to Payment, in the ordinary course of business, according to normal trade practices utilized by the Debtor in the past;
- (c) if any discount, allowance, credit, extension of time for payment, agreement to make a rebate or otherwise to reduce the amount owing on, or compromise or settle, an Account or other Right to Payment exists or occurs, or if, to the knowledge of the Debtor, any dispute, setoff, claim, counterclaim or defense exists or has been asserted or threatened with respect to an Account or other Right to Payment, disclose such fact fully to the Agent in the books relating to such Account or other Right to Payment and in connection with any invoice or report furnished by the Debtor to the Agent relating to such Account or other Right to Payment;
- (d) if any Accounts arise from contracts with the United States or any department, agency or instrumentality thereof, or the government of Canada, immediately notify the Agent thereof and execute any documents and instruments and take any other steps requested by the Agent in order that all monies due and to become due thereunder shall be assigned to the Agent and notice thereof given to the appropriate authorities under the *Federal Assignment of Claims Act* of the United States of America or the *Financial Administration Act* of Canada;
- (e) in accordance with its sound business judgment, perform and comply in all material respects with its obligations in respect of the Accounts and other Rights to Payment;
- (f) upon the request of the Agent (i) at any time, notify all or any designated portion of the account debtors and other obligors on the Rights to Payment of the security interest hereunder, and (ii) upon the occurrence of an Event of Default, notify the account debtors and other obligors on the Rights to Payment or any designated

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portion thereof that payment shall be made directly to the Agent or to such other Person or location as the Agent shall specify; and

- (g) upon the occurrence of any Event of Default, establish such lockbox or similar arrangements for the payment of the Accounts and other Rights to Payment as the Agent shall require.

#### **5.14 Inventory**

To:

- (a) at such times as the Agent shall request or as may be required under the Credit Documents, prepare and deliver to the Agent a report of all Inventory, in form and substance satisfactory to the Agent;
- (b) upon the request of the Agent, take a physical listing of the Inventory and promptly deliver a copy of such physical listing to the Agent; and
- (c) not store any Inventory with a bailee, warehouseman or similar Person or on premises leased to the Debtor, nor dispose of any Inventory on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment or similar basis, nor acquire any Inventory from any Person on any such basis, without in each case giving the Agent prior written notice thereof.

#### **5.15 License Agreement and Other Assigned Agreements**

To:

- (a) deliver to the Agent, promptly upon request therefrom (i) copies of the Assigned Agreements and (ii) all material notices, requests and other documents received by the Agent in respect of the Assigned Agreements; *provided, however*, that the Debtor shall deliver to the Agent copies of all material notices, requests and other documents received by the Debtor in respect of the Assigned Agreements promptly upon receipt thereof and without the need for a specific request therefor from the Agent;
- (b) perform and observe, in all material respects, all terms and provisions of the Assigned Agreements to be performed or observed by it and enforce the Assigned Agreements in accordance with their terms; and
- (c) without the prior written consent of the Agent, not take any action to amend or terminate, or waive compliance with any of the terms of the Assigned Agreements.

**ARTICLE 6 - AUTHORIZED ACTION BY THE LENDER; RIGHTS TO PAYMENT****6.1 Authorized Action by the Agent**

The Debtor hereby agrees that following the occurrence of an Event of Default, without presentment, notice or demand, and without affecting or impairing in any way the rights of the Agent with respect to the Collateral, the obligations of the Debtor hereunder or the Secured Obligations, the Agent may, but shall not be obligated to and shall incur no liability to the Debtor or any third party for failure to, take any action that the Debtor is obligated by this Agreement to do and to exercise such rights and powers as the Debtor might exercise with respect to the Collateral, and the Debtor hereby irrevocably appoints the Agent as its attorney-in-fact to exercise such rights and powers, including, without limitation, the power and authority to:

- (a) collect by legal proceedings or otherwise and endorse, receive and receipt for all dividends, interest, payments, proceeds and other sums and property now or hereafter payable on or on account of the Collateral;
- (b) enter into any extension, reorganization, deposit, merger, consolidation or other agreement pertaining to, or deposit, surrender, accept, hold or apply other property in exchange for the Collateral;
- (c) insure, process and preserve the Collateral;
- (d) transfer the Collateral to its own or its nominee's name;
- (e) make any compromise or settlement, and take any action it deems advisable, with respect to the Collateral; and
- (f) notify any obligor on any Collateral to make payment directly to the Agent.

The foregoing power of attorney is coupled with an interest and irrevocable so long as the Agent has any obligation to make any credit facility available or the Secured Obligations have not been indefeasibly paid and performed in full. The Debtor hereby ratifies, to the extent permitted by law, all that the Agent shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this Section 6.1. The Debtor agrees to reimburse the Agent upon demand for any costs and expenses, including reasonable legal fees, the Agent may incur while acting as the Debtor's attorney-in-fact hereunder, all of which costs and expenses are included in the Secured Obligations.

**6.2 Collection of Rights to Payment**

Until the Agent exercises its rights hereunder to collect Rights to Payment, the Debtor shall endeavor in the first instance diligently to collect all amounts due or to become due on or with respect to the Rights to Payment. At the request of the Agent, upon and after the occurrence of any Event of Default, all remittances received by the Debtor shall be and shall be deemed to be held separate and apart and in trust exclusively for the Agent

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and, in accordance with the Agent's instructions, remitted to the Agent in the form received (with any necessary endorsements or instruments of assignment or transfer).

### 6.3 Investment Property and Instruments

Upon and after the occurrence of any Event of Default, the Agent shall be entitled to receive all distributions and payments of any nature with respect to any investment property or instruments, and all such distributions or payments received by the Debtor shall be and shall be deemed to be held separate and apart and in trust exclusively for the Agent and, in accordance with the Agent's instructions, remitted to the Agent in the form received (with any necessary endorsements or instruments of assignment or transfer). Following the occurrence of an Event of Default any such distributions and payments with respect to any investment property held in any securities account shall be held and retained in such securities account, in each case as part of the Collateral hereunder. Additionally, the Agent shall have the right, upon the occurrence of an Event of Default, following prior written notice to the Debtor, to vote and to give consents, ratifications and waivers with respect to any investment property and instruments of the Debtor, and to exercise all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining thereto, as if the Agent were the absolute owner thereof; *provided* that the Agent shall have no duty to exercise any of the foregoing rights afforded to it and shall not be responsible to the Debtor or any other Person for any failure to do so or delay in doing so.

## ARTICLE 7 - ADDITIONAL PROVISIONS REGARDING INTELLECTUAL PROPERTY

### 7.1 Additional Representations and Warranties

The Debtor represents and warrants to the Agent and the Lenders as follows:

- (a) Except as disclosed to the Agent in the Credit Documents, the Debtor (directly or through any subsidiary) does not own, possess or use under any licensing arrangement any patents, copyrights, trade-marks, service marks or trade names, nor is there currently pending before any governmental authority any application for registration of any patent, copyright, trade-mark, service mark or trade name;
- (b) all patents, copyrights, trade-marks, service marks and trade names are subsisting and have not been adjudged invalid or unenforceable in whole or in part;
- (c) all maintenance fees required to be paid on account of any patents have been timely paid for maintaining such patents in force, and, to the best of the Debtor's knowledge, each of the patents is valid and enforceable and the Debtor has notified the Agent in writing of all prior disputes, sales and licenses (including public uses and sales) of which it is aware;
- (d) to the best of the Debtor's knowledge after due inquiry, no material infringement or unauthorized use presently is being made of any Intellectual Property Collateral by any Person;

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- (e) the Debtor is the sole and exclusive owner of the Intellectual Property Collateral and the past, present and contemplated future use of such Intellectual Property Collateral by the Debtor has not, does not and will not infringe or violate any right, privilege or license agreement of or with any other Person; and
- (f) the Debtor owns, has material rights under, is a party to, or an assignee of a party to all material licenses, patents, patent applications, copyrights, service marks, trade-marks, trade-mark applications, trade names and all other Intellectual Property Collateral necessary to continue to conduct its business as heretofore conducted.

## 7.2 Additional Covenants

The Debtor will:

- (a) not allow or suffer any Intellectual Property Collateral to become abandoned, nor any registration thereof to be terminated, forfeited, expired or dedicated to the public, except as shall be reasonable and appropriate in accordance with prudent business practice;
- (b) promptly give the Agent notice of any rights the Debtor may obtain to any new patentable inventions, copyrightable works or other new Intellectual Property Collateral, prior to the filing of any application for registration thereof;
- (c) without limiting the generality of clause (b), not register with the U.S. Copyright Office or the Canadian Intellectual Property Office any unregistered copyrights (whether in existence on the date hereof or thereafter acquired, arising, or developed) unless the Debtor provides the Agent with written notice of its intent to register such copyrights not less than thirty (30) days prior to the date of the proposed registration; and
- (d) diligently prosecute all applications for patents, copyrights and trade-marks, and file and prosecute any and all continuations, continuations-in-part, applications for reissue, applications for certificate of correction and like matters as shall be reasonable and appropriate in accordance with prudent business practice, and promptly and timely pay any and all maintenance, license, registration and other fees, taxes and expenses incurred in connection with any Intellectual Property Collateral.

## 7.3 Additional Definition

As used in this Agreement, “**Intellectual Property Collateral**” means the following properties and assets owned or held by the Debtor or in which the Debtor otherwise has any interest, now existing or hereafter acquired or arising:

- (a) all patents and patent applications, domestic or foreign, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses, all rights to sue for past, present or future infringement thereof, all rights arising

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therefrom and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof;

- (b) all copyrights and applications for copyright, domestic or foreign, together with the underlying works of authorship (including titles), whether or not the underlying works of authorship have been published and whether said copyrights are statutory or arise under the common law, and all other rights and works of authorship, all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating any copyrights, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses, and all other rights, claims and demands in any way relating to any such copyrights or works, including royalties and rights to sue for past, present or future infringement, and all rights of renewal and extension of copyright;
- (c) all state and provincial (including common law), federal and foreign trade-marks, service marks and trade names, and applications for registration of such trade-marks, service marks and trade names, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses, whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;
- (d) all trade secrets, trade dress, trade styles, logos, other source of business identifiers, mask-works, mask-work registrations, mask-work applications, software, confidential information, customer lists, license rights, advertising materials, operating manuals, methods, processes, know-how, algorithms, formulae, databases, quality control procedures, product, service and technical specifications, operating, production and quality control manuals, sales literature, drawings, specifications, blue prints, descriptions, inventions, name plates and catalogs;
- (e) the entire goodwill of or associated with the businesses now or hereafter conducted by the Debtor connected with and symbolized by any of the aforementioned properties and assets; and
- (f) all accounts, all intangible intellectual or other similar property and other general intangibles associated with or arising out of any of the aforementioned properties and assets and not otherwise described above.

## **ARTICLE 8 - REMEDIES; NOTICE OF SALE; RECEIVERS**

### **8.1 Remedies**

Upon the occurrence of an Event of Default, the Agent may at its option, without notice to or demand on the Debtor and in addition to all rights and remedies available to the Agent with respect to the Secured Obligations, at law, in equity or otherwise, do any one or more of the following:



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- (a) foreclose or otherwise enforce the Agent's security interest in any manner permitted by law or provided for in this Agreement;
- (b) sell, lease or otherwise dispose of any Collateral at one or more public or private sales at the Agent's place of business or any other place or places, including any broker's board or securities exchange, whether or not such Collateral is present at the place of sale, for cash or credit or future delivery, on such terms and in such manner as the Agent may determine;
- (c) use or transfer the Debtor's rights and interests in any Intellectual Property Collateral by license, by sublicense (to the extent permitted by an applicable license), assignment or otherwise, on such conditions and in such manner as the Agent may determine;
- (d) recover from the Debtor all costs and expenses, including reasonable legal fees and disbursements, incurred or paid by the Agent in exercising any right, power or remedy provided by this Agreement;
- (e) require the Debtor to assemble the Collateral and make it available to the Agent at a place to be designated by the Agent;
- (f) enter onto property where any Collateral is located and take possession thereof with or without judicial process; and
- (g) prior to the disposition of the Collateral, store, process, repair or recondition it or otherwise prepare it for disposition in any manner and to the extent the Agent deems appropriate and in connection with such preparation and disposition, without charge, use any trade-mark, tradename, copyright, patent or technical process used by the Debtor.

## 8.2 Notice of Sale

The Debtor shall be given five (5) Business Days prior notice of the time and place of any public sale or of the time after which any private sale or other intended disposition of Collateral is to be made, which notice the Debtor hereby agrees shall be deemed reasonable notice thereof. Upon any sale or other disposition pursuant to this Agreement, the Agent shall have the right to deliver, assign and transfer to the purchaser thereof, the Collateral or portion thereof so sold or disposed of. The Agent shall have the right upon any public sale, and, to the extent permitted by law, upon any private sale, to purchase the whole or any part of the Collateral so sold. Each purchaser at any such sale or other disposition (including the Agent) shall hold the Collateral free from any claim or right of whatever kind, including any equity or right of redemption of the Debtor and the Debtor specifically waives (to the extent permitted by applicable law) all rights of redemption, stay or appraisal which it has or may have under any rule of law or statute now existing or hereafter adopted.

### **8.3 License**

For the purpose of enabling the Agent to exercise its rights and remedies under Section 8.1 or otherwise in connection with this Agreement, the Debtor hereby grants to the Agent an irrevocable, non-exclusive and assignable license (exercisable without payment or royalty or other compensation to the Debtor) or (to the extent permitted by the applicable license) sublicense to use, license or sublicense any Intellectual Property Collateral, subject with respect to trade-marks to reasonable and appropriate quality control provisions.

### **8.4 Appointment of Receiver**

The Agent may, in addition to any other rights it may have, appoint by instrument in writing a receiver, monitor, consultant, liquidator or receiver and manager (all of which are herein called a "Receiver") of all or any part of the Collateral or may institute proceedings in any court of competent jurisdiction for the appointment of such a Receiver. Any such Receiver is hereby given and shall have the same powers and rights and exclusions and limitations of liability as the Agent has under this Agreement, at law or in equity. In exercising any such powers, any such Receiver shall, to the extent permitted by applicable law, act as and for all purposes be deemed to be the agent of the Debtor, and the Agent shall not be responsible for any act or default of any such Receiver. The Agent may appoint one or more Receivers hereunder and may remove any such Receiver or Receivers and appoint another or others in his or their stead from time to time. Any Receiver so appointed may be an officer or employee of the Agent. A court need not appoint, ratify the appointment by the Agent of or otherwise supervise in any manner the actions of any Receiver. Upon the Debtor receiving notice from the Agent of the taking of possession of the Collateral or the appointment of a Receiver, all powers, functions, rights and privileges of the Debtor and, to the extent permitted by applicable law, its directors and officers with respect to the Collateral shall cease, unless specifically continued by the written consent of the Agent.

### **8.5 Carrying on Business**

The Agent may carry on, or concur in the carrying on of, all or any part of the business or undertaking of the Debtor, may, subject to the rights and liens of third parties but to the exclusion of the Debtor, enter upon, occupy and use all or any of the premises, buildings, plant and undertakings of or occupied or used by the Debtor and may use all or any of the tools, machinery, equipment and intangibles of the Debtor for such time as the Agent sees fit, free of charge, to carry on the business of the Debtor and, if applicable, to manufacture or complete the manufacture of any Inventory and to pack and ship the finished product.

### **8.6 Dealing with Collateral**

The Agent may seize, collect, realize, dispose of, enforce, release to third parties or otherwise deal with the Collateral or any part thereof in such manner, upon such terms and conditions and at such time or times as may seem to it advisable, all without notice to

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the Debtor except as otherwise required by any applicable law. The Agent may demand, sue for and receive any Accounts with or without notice to the Debtor, give such receipts, discharges and extensions of time and make such compromises in respect of any Accounts which may, in the Agent's absolute discretion, seem bad or doubtful. The Agent may charge on its own behalf and pay to others, sums for costs and expenses incurred including, without limitation, legal fees and expenses on a solicitor and his own client scale and Receivers' and accounting fees, in or in connection with seizing, collecting, realizing, disposing, enforcing or otherwise dealing with the Collateral and in connection with the protection and enforcement of the rights of the Agent hereunder including, without limitation, in connection with advice with respect to any of the foregoing. The amount of such sums shall be deemed advanced to the Debtor by the Agent, shall become part of the Secured Obligations, shall bear interest at the highest rate per annum charged by the Agent on the Secured Obligations or any part thereof and shall be secured by this Agreement.

#### **8.7 Right to Use**

The Debtor hereby grants to the Agent a license or other right to use, without charge, all of the Debtor's present and future property, whether real or personal, including, without limitation, labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trade-marks, services marks, and advertising matter, or any other property of any nature or of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling of any Collateral and the Debtor's rights under all licenses and all franchise agreements shall inure to the Agent.

#### **8.8 Retention of Collateral**

Upon notice to the Debtor and subject to any obligation to dispose of any of the Collateral, as provided in the PPSA, the Agent may elect to retain all or any part of the Collateral in satisfaction of the Secured Obligations or any of them.

#### **8.9 Pay Liens**

The Agent may pay any Liens that may exist or be threatened against the Collateral. In addition, the Agent may borrow money required for the maintenance, preservation or protection of the Collateral or for the carrying on of the business or undertaking of the Debtor and may grant further security interests in the Collateral in priority to the security interest created hereby as security for the money so borrowed. In every such case the amounts so paid or borrowed together with costs, charges and expenses incurred in connection therewith shall be deemed to have been advanced to the Debtor by the Agent, shall become part of the Secured Obligations, shall bear interest at the highest rate per annum charged by the Agent on the Secured Obligations or any part thereof and shall be secured by this Agreement.

#### **8.10 Application of Payments**

Any and all payments made in respect of the Secured Obligations from time to time and moneys realized on the Collateral may be applied to such part or parts of the Secured

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Obligations as the Agent may see fit. The Agent shall, at all times and from time to time, have the right to change any appropriation as it may see fit. Any insurance moneys received by the Agent pursuant to this Agreement may, at the option of the Agent, be applied against the Secured Obligations as the Agent thinks fit.

#### **8.11 Set-off**

The Secured Obligations will be paid by the Debtor without regard to any equities between the Debtor and the Agent or the Lenders or any right of set-off or cross-claim. If an Event of Default exists, any indebtedness owing by the Agent to the Debtor may be set-off and applied by the Agent and the Lenders against the Secured Obligations either before or after maturity, without demand upon or notice to anyone and regardless of the currency in which the indebtedness is denominated.

#### **8.12 Deficiency**

If the proceeds of the realization of the Collateral are insufficient to repay to the Agent and the Lenders all amounts owing to them, the Debtor shall forthwith pay such deficiency or cause such deficiency to be paid to the Agent.

#### **8.13 Agent Not Liable**

The Agent and the Lenders shall not be liable or accountable for any failure to seize, collect, realize, dispose of, enforce or otherwise deal with the Collateral, shall not be bound to institute proceedings for any such purposes or for the purpose of preserving any rights of the Agent, the Debtor or any other person, firm or corporation in respect of the Collateral and shall not be liable or responsible for any loss, cost or damage whatsoever which may arise in respect of any such failure including, without limitation, resulting from the negligence of the Agent, each of the Lenders or any of their respective officers, servants, agents, solicitors, attorneys, Receivers or otherwise unless arising from gross negligence or wilful misconduct. Neither the Agent, each of the Lenders, nor their respective officers, servants, agents, or Receivers shall be liable by reason of any entry into possession of the Collateral or any part thereof, to account as a mortgagee in possession, for anything except actual receipts, for any loss on realization, for any act or omission for which a mortgagee in possession might be liable, for any negligence in the carrying on or occupation of the business or undertaking of the Debtor or for any loss, cost, damage or expense whatsoever which may arise in respect of any such actions, omissions or negligence unless arising from gross negligence or wilful misconduct.

#### **8.14 Extensions of Time**

The Agent may grant renewals, extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, perfect or fail to perfect any securities, release any part of the Collateral to third parties and otherwise deal or fail to deal with the Debtor, subsidiaries of the Debtor, guarantors, sureties and others and with the Collateral and other securities as the Agent may see fit, all without prejudice to the liability of the Debtor to the Agent or the Agent's rights and powers under this Security Agreement.

### **8.15 Rights in Addition**

The rights and powers conferred by this Section are in supplement of and in addition to and not in substitution for any other rights or powers the Agent may have from time to time under this Agreement or under applicable law. The Agent may proceed by way of any action, suit, remedy or other proceeding at law or in equity and no such remedy for the enforcement of the rights of the Agent shall be exclusive of or dependent on any other such remedy. Any one or more of such remedies may from time to time be exercised separately or in combination.

## **ARTICLE 9 - PERFECTION AND PRIORITY**

### **9.1 Financing Statements, Etc.**

The Debtor hereby authorizes the Agent to file at any time and from time to time any financing statements describing the Collateral, and the Debtor shall execute and deliver to the Agent, and the Debtor hereby authorizes the Agent to file (with or without the Debtor's signature), at any time and from time to time, all amendments to financing statements, continuation financing statements, termination statements, security agreements relating to the Intellectual Property Collateral, assignments, fixture filings, affidavits, reports, notices and all other documents and instruments, in form satisfactory to the Agent, as the Agent may request, to perfect and continue perfected, maintain the priority of or provide notice of the Agent's security interest in the Collateral and to accomplish the purposes of this Agreement. Without limiting the generality of the foregoing, the Debtor ratifies and authorizes the filing by the Agent of any financing statements filed prior to the date hereof.

### **9.2 Bailees**

Any Person (other than the Agent) at any time and from time to time holding all or any portion of the Collateral shall be deemed to, and shall, hold the Collateral as the agent of, and as pledge holder for, the Agent. At any time and from time to time, the Agent may give notice to any such Person holding all or any portion of the Collateral that such Person is holding the Collateral as the agent and bailee of, and as pledge holder for, the Agent, and obtain such Person's written acknowledgment thereof. Without limiting the generality of the foregoing, the Debtor will join with the Agent in notifying any Person who has possession of any Collateral of the Agent's security interest therein and obtaining an acknowledgment from such Person that it is holding the Collateral for the benefit of the Agent.

### **9.3 Control**

If any of the Collateral consists of Investment Property, (a) the Debtor authorizes the Agent to transfer such Collateral or any part thereof into its own name or that of its nominee so that the Agent or its nominee may appear of record as the sole owner thereof; provided, that until the security hereby constituted becomes enforceable, the Agent shall deliver promptly to the Debtor all notices, statements or other communications received by it or its nominee as such registered owner, and upon demand and receipt of payment

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of necessary expenses thereof, shall give to the Debtor or its designee a proxy or proxies to vote and take all action with respect to such property; provided further that after the security hereby constituted becomes enforceable, the Debtor waives all rights to be advised of or to receive any notices, statements or communications received by the Agent or its nominee as such record owner, and agrees that no proxy or proxies given by the Agent to the Debtor or its designee as aforesaid shall thereafter be effective; and (b) the Debtor further agrees to execute such other documents and to perform such other acts, and to cause any issuer or securities intermediary to execute such other documents and to perform such other acts as may be necessary or appropriate in order to give the Agent "control" of such Investment Property, as defined in any applicable statute similar in application to the *Securities Transfer Act* (Ontario), which "control" shall be in such manner as the Agent shall designate in its sole judgement and discretion, including, without limitation, an agreement by an issuer or securities intermediary that it will comply with instructions in the case of an issuer or entitlement orders in the case of a securities intermediary, originated by the Agent, whether before or after security hereby constituted becomes enforceable, without further consent by the Debtor.

## ARTICLE 10 - MISCELLANEOUS

### 10.1 Amendments and Waivers

Except to the extent otherwise provided herein or in any other Credit Document, (a) no amendment to any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Debtor and the Agent and (b) no waiver of any provision of this Agreement, or consent to any departure by the Debtor or other party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Agent. Any such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

### 10.2 Notices

All notices required or permitted under this Agreement shall be given in the manner and to the addresses specified in the Loan Agreement.

### 10.3 No Waiver; Cumulative Remedies

No failure on the part of the Agent to exercise, and no delay in exercising, any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Agent.

### 10.4 Binding Effect

This Agreement shall be binding upon the Debtor and its successors and assigns, including any successor by reason of amalgamation, and inure to the benefit of and be

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enforceable by the Agent and its successors, endorsees, transferees, participants and assigns.

#### **10.5 Assignment**

The Debtor may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent, and any attempted assignment in violation of this provision shall be null and void. The Agent may assign this Agreement in whole or in part to any Person acquiring an interest in the Secured Obligations in accordance with the provisions of the Loan Agreement.

#### **10.6 Costs and Expenses**

The Debtor agrees to pay on demand all reasonable costs and expenses of the Agent, any Receiver, or the agents of the Agent or any Receiver, and reasonable legal fees and disbursements in connection with the perfection, enforcement, or preservation of any rights under, this Agreement and the other Credit Documents.

#### **10.7 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Agreement shall be prohibited by or invalid under any such law or regulation, it shall be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Agreement.

#### **10.8 Governing Law**

This Agreement is to be exclusively construed in accordance with and governed by the internal laws of the Province of Ontario and the federal laws of Canada applicable therein without giving effect to any choice of law rule or principle that would cause the application of the laws of any jurisdiction other than the internal laws of the Province of Ontario and the federal laws of Canada applicable therein to the rights and duties of the Debtor and the Agent.

#### **10.9 Submission to Jurisdiction**

The Debtor hereby (a) submits to the non-exclusive jurisdiction of the courts of the Province of Ontario sitting in Toronto for the purpose of any action or proceeding arising out of or relating to this Agreement and the other Credit Documents, (b) agrees that all claims in respect of any such action or proceeding may be heard and determined in such courts, (c) irrevocably waives (to the extent permitted by applicable law) any objection which it now or hereafter may have to the laying of venue of any such action or proceeding brought in any of the foregoing courts, and any objection on the ground that any such action or proceeding in any such court has been brought in an inconvenient forum and (d) agrees that a final judgment in any such action or proceeding shall be

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conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner permitted by law.

#### **10.10 Judgment Currency**

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with practices of the Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Debtor in respect of any such sum due from it to the Agent hereunder or under the other Credit Documents shall, notwithstanding any judgment in a currency (the “**Judgment Currency**”) other than that in which such sum is denominated in accordance with the applicable provisions of the Credit Documents or other relevant document (the “**Agreement Currency**”), be discharged only to the extent that on the Business Day following receipt by the Agent of any sum adjudged to be so due in the Judgment Currency, the Agent may in accordance with normal practices purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Agent from the Debtor in the Agreement Currency, the Debtor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Agent against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Agent in such currency, the Agent agrees to return the amount of any excess to the Debtor (or to any other Person who may be entitled thereto under applicable law). The agreements in this Section 10.10 shall survive the repayment of all Secured Obligations.

#### **10.11 Entire Agreement**

This Agreement and the other Credit Documents constitutes the entire agreement of the parties hereto with respect to the matters set forth herein and supersede any prior agreements, commitments, drafts, communications, discussions and understandings, oral or written, with respect thereto.

#### **10.12 Counterparts**

This Agreement may be executed in several counterparts and delivered by facsimile or other electronic transmission, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement. To evidence its execution of an original counterpart of this Agreement, a party may send a copy of its original signature on the execution page hereof to the other party by facsimile transmission or emailed PDF and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving party.

#### **10.13 Termination**

Upon indefeasible payment and performance in full of all Secured Obligations, the security interests created by this Agreement shall terminate and the Agent shall execute and deliver to the Debtor, at the Debtor’s sole cost and expense, such documents and



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instruments reasonably requested by the Debtor as shall be necessary to evidence termination of all security interests given by the Debtor to the Agent hereunder.

#### **10.14 Indemnity**

The Debtor hereby agrees to indemnify the Agent and each of the Lenders, and their respective successors, assigns, agents and employees, from and against any and all liabilities, damages, penalties, suits, costs, and expenses of any kind and nature (including, without limitation, all reasonable expenses of litigation or preparation therefor whether or not the Agent is a party thereto) imposed on, incurred by or asserted against the Agent, or its successors, assigns, agents and employees, in any way relating to or arising out of this Agreement, or the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of any Collateral (including, without limitation, latent and other defects, whether or not discoverable by the Agent or the Debtor, and any claim for patent, trademark or copyright infringement), except for the gross negligence or wilful misconduct of the Agent.

#### **10.15 Acknowledgement of Receipt**

The Debtor acknowledges receipt of a fully executed copy of this Agreement and, hereby waives the right to receive a copy of any financing statement, financing change statement or verification statement in respect of any registered financing statement or financing change statement prepared, registered or issued in connection with this Agreement.

*[Signature page follows]*

**IN WITNESS WHEREOF** the undersigned has executed and delivered this Agreement under seal with effect as of the date first written above.

**ALLIED TRACK SERVICES INC.**

By:   
Name: *MICHAEL DECKER*  
Authorized Signing Officer

**SCHEDULE "A"**  
**TRADE NAMES, AMALGAMATIONS AND PRIOR NAMES**

**Trade Names or Styles**

1. Nil.

**Amalgamations**

2. March 21, 2014 amalgamation among Swift Railroad Contractors Corporation and 2408122 Ontario Limited to form Allied Track Services Inc.
3. July 1, 2016 amalgamation among Allied Track Services Inc., AV Rail Contracting Ltd. and AV Signal Holdings Inc. to form Allied Track Services Inc.

**Other Prior Names**

4. Nil.

## **APPENDIX “G”**

2806401 Ontario Inc. dba Allied Track Services ("Allied")  
 Projected Statement of Cash Flow  
 For the period ending November 8, 2022  
 000s in \$CAD, unaudited

	Notes	Weeks Ending						TOTAL
		23-Sep-22	30-Sep-22	7-Oct-22	14-Oct-22	21-Oct-22	28-Oct-22	
<b>INFLOWS</b>	1							
Funding	2					50		50
<b>Total inflows</b>		-	-	-	-	50	-	50
<b>OUTFLOWS</b>								
Professional fees	3	-	-	-	-	50	-	50
<b>Total outflows</b>		-	-	-	-	50	-	50
<b>NET CASH FLOW</b>		-	-	-	-	-	-	-
<b>Cash Rollforward</b>								
Beginning cash		-	-	-	-	-	-	-
Cash flow		-	-	-	-	-	-	-
<b>Ending cash</b>		-	-	-	-	-	-	-

The above financial projections are based on management's assumptions detailed in Appendix "1-1".  
 The note references correspond to the assumption numbers shown in Appendix "1-1".

The statement of projected cash-flow of 2806401 Ontario Inc. has been prepared in accordance with the provisions of the *Bankruptcy and Insolvency Act* and should be read in conjunction with the Trustee's Report on Cash-flow Statement.

2806401 ONTARIO INC.  
 o/a ALLIED TRACK SERVICES

KSV RESTRUCTURING INC.  
 IN ITS CAPACITY AS TRUSTEE UNDER THE  
 NOTICE OF INTENTION TO MAKE A PROPOSAL  
 AND NOT IN ITS PERSONAL CAPACITY

 CEO  
 Per: \_\_\_\_\_

  
 Per: Mitch Vininsky  
 \_\_\_\_\_

\_\_\_\_\_  
 Date: September 16, 2022

\_\_\_\_\_  
 Date: September 16, 2022

**2806401 Ontario Inc. dba Allied Track Services ("Allied")**  
**Notes to the Projected Statement of Cash Flow**  
**For the period ending November 8, 2022**  
**000s in \$CAD, unaudited**

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**Purpose and General Assumptions**

1. The purpose of the projection is to present a forecast of the cash flow of Allied for the period ending November 8, 2022 (the "Forecast").

The Forecast has been prepared on the basis that all receipts and disbursements, other than the funding for and payment of the professional costs associated with the Proposal Trustee and its counsel, are being administered by KSV Restructuring Inc., in its capacity as Court-appointed Interim Receiver of Allied (or as Court-appointed Receiver, if appointed), and therefore do not form part of this Forecast.

**Hypothetical**

There are no hypothetical assumptions applicable to the Forecast.

**Most Probable**

2. Represents funding from the Interim Receiver to pay the professional fees.
3. Estimated professional fees for the Proposal Trustee and its legal counsel.

**Report on Cash Flow Statement by the Person Making the Proposal  
(Paragraphs 50(6)(c) and 50.4(2)(c) of the BIA**

The management of 2806401 Ontario Inc. dba Allied Track Services (the "Company") has developed the assumptions and prepared the attached statement of projected cash flow of the Company for the period ending November 8, 2022.

The hypothetical and probable assumptions are suitably supported and consistent with the purpose of the projection and the plans of the Company and provide a reasonable basis for the projection. All such assumptions are disclosed in Notes 2 to 3.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in Note 1, using a set of hypothetical and probable assumptions set out in Notes 2 to 3. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, this 16<sup>th</sup> day of September, 2022.

**2806401 ONTARIO INC. DBA ALLIED TRACK  
SERVICES**

  
Per: CEO