

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MPX INTERNATIONAL CORPORATION, BIOCANNABIS PRODUCTS LTD.,
CANVEDA INC., THE CING-X CORPORATION, SPARTAN WELLNESS
CORPORATION, MPXI ALBERTA CORPORATION, MCLN INC., AND SALUS
BIOPHARMA CORPORATION**

Applicants

**FACTUM OF THE APPLICANTS
(Stay Extension, DIP Amendment, and Fee Approval)**

October 18, 2022

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FACTUM OF THE APPLICANTS

PART I: OVERVIEW

1. MPX International Corporation (“**MPXI**”), BioCannabis Products Ltd., Canveda Inc., The CinG-X Corporation, Spartan Wellness Corporation, MPXI Alberta Corporation, MCLN Inc., and Salus BioPharma Corporation (each individually, an “**Applicant**”, and collectively, the “**Applicants**”) are seeking:

- (a) an order (the “**Stay Extension, DIP Amendment and Fee Approval Order**”), among other things,
 - (i) abridging the time for service of the motion record returnable October 21, 2022 and dispensing with service on any person other than those served;
 - (ii) extending the Stay Period (as defined below) until and including December 16, 2022 (the “**Stay Extension**”);
 - (iii) approving the Third Report of KSV Restructuring Inc. (“**KSV**”) in its capacity as the Court-appointed monitor (in such capacity, the “**Monitor**”), to be filed (the “**Third Report**”), the Prior Reports (as defined below) and the activities of the Monitor described therein;
 - (iv) approving the fees and disbursements of the Monitor and its counsel as set out in affidavits of Noah Goldstein and Tamie Dolny, respectively, each as attached to the Third Report (together, the “**Fee Affidavits**”); and
 - (v) approving the DIP Amendment (as defined below).

PART II: FACTS

2. The facts underlying this motion are more fully set out in the affidavits of Jeremy Budd sworn October 13, 2022 (the “**October 13 Affidavit**”) and October 18, 2022 (the “**October 18 Affidavit**”), and the Third Report.¹ All capitalized terms used but not defined herein have the meanings ascribed to them in the October 13 Affidavit, the October 18 Affidavit, or the Third Report, as applicable.

A. Background on the CCAA Proceedings

3. MPXI is a public company listed on the Canadian Securities Exchange. Directly or indirectly, MPXI has an interest in several other non-Applicant affiliates² in the cannabis industry (each of the Applicants and the Non-Applicant Stay Parties individually a “**MPXI Entity**” and collectively, the “**MPXI Entities**”). Through its subsidiaries, which operate domestically as well as internationally (including in Thailand, Malta, and Switzerland), its business and operations focus on cannabis production and resale, management consulting for cannabis companies, and cannabis education.³

4. As a result of a liquidity crisis, the Applicants brought an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on July 25, 2022 for relief pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”, and

¹ Affidavit of Jeremy Budd sworn October 13, 2022 [October 13 Affidavit]; Affidavit of Jeremy Budd sworn October 18, 2022 [October 18 Affidavit]; Third Report of the Monitor dated October 17, 2022 [Third Report].

² The non-Applicant affiliates are: MPX Australia Pty Ltd.; MPXI UK Limited; MPXI Lesotho (Pty) Ltd.; Highland Farms (Pty) Ltd.; MPXI Malta Operations Limited; MPXI Malta Property Limited; Alphafarma Operations Limited; MPXI Malta Holding Limited; MPXI SA Pty Ltd.; First Growth Holding Pty Ltd.; Salus Biocetical (Thailand) Co., Ltd.; Salus International Management Ltd.; Holyworld SA; and MPXI Labs SA (collectively, the “**Non-Applicant Stay Parties**”). MPXI understands that MPX Australia Pty Ltd. has since been de-registered from Australia’s corporate registry.

³ October 13 Affidavit, *supra* note 1 at para 6.

these proceedings, the “**CCAA Proceedings**”). The Court granted an order that day (the “**Initial Order**”), which, among other things:

- (a) appointed KSV as the Monitor;
- (b) approved the Applicants’ ability to borrow under a debtor-in-possession (“**DIP**”) credit facility up to a maximum principal amount of \$2.67 million (the “**DIP Loan**”);
- (c) stayed, for an initial period of not more than ten days (the “**Stay Period**”), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor or the directors and officers of the Applicants, or affecting the Applicants’ business or the Property (as defined in the Initial Order), except with the written consent of the Applicants and the Monitor, or with leave of the Court (the “**Stay of Proceedings**”);
- (d) extended the benefit of the Stay of Proceedings to the Non-Applicant Stay Parties and their respective directors and officers; and
- (e) granted the Administration Charge up to a maximum amount of \$300,000, the DIP Lenders’ Charge up to a maximum amount of \$1,200,000, and the Directors’ Charge up to a maximum amount of \$145,000 (each as defined in the Initial Order).⁴

⁴ October 13 Affidavit, *supra* note 1 at para 7.

5. On August 4, 2022, the Court granted an amended and restated Initial Order (the “**Amended and Restated Initial Order**”), which, among other things:

- (a) increased the Directors’ Charge and the DIP Lenders’ Charge to \$410,000 and \$2,670,000, respectively; and
- (b) extended the Stay Period to and including October 21, 2022.⁵

6. The Initial Order and Amended and Restated Initial Order also provided certain relief related to MPXI’s obligations to make securities filings and hold an annual meeting.⁶

7. On August 4, 2022, the Court also granted an order (the “**SISP Approval Order**”) approving a Sale and Investment Solicitation Process in respect of the MPXI Entities (the “**SISP**”).⁷

B. Update on the SISP⁸

8. The SISP commenced following the granting of the SISP Approval Order. In accordance with the SISP, efforts were made to solicit interest in the Opportunity, including the following:

- (a) the Monitor and the MPXI Entities identified a list of potential bidders to whom solicitation materials were delivered;
- (b) the Monitor arranged for notice of the SISP to be published in The Globe and Mail (National Edition) and issued a press release announcing the Opportunity; and

⁵ October 13 Affidavit, *supra* note 1 at para 8.

⁶ October 13 Affidavit, *supra* note 1 at para 9.

⁷ October 13 Affidavit, *supra* note 1 at para 10.

⁸ Capitalized terms used but not otherwise defined in this section have the meanings given to them in the SISP.

- (c) the Monitor, with the assistance of the MPXI Entities and in consultation with the DIP Lenders, prepared the Teaser Letter and NDA.⁹

9. The Monitor solicited interest in the Opportunity from 179 Known Potential Bidders. 15 parties executed a NDA to engage in additional due diligence as Qualified Bidders, and 7 parties ultimately submitted offers as of the Binding Offer Deadline of September 8.¹⁰

10. All non-duplicative offers combined were not sufficient to repay the primary secured creditors, the Debentureholders.¹¹ Therefore, in accordance with the SISP, the Applicants and the Monitor, in consultation with the DIP Lenders, determined that none of the offers should be selected as a Successful Bid. As discussed below, the Applicants are currently pursuing two potential transactions.

C. Potential Sale Transactions

11. In accordance with the flexibility afforded by the SISP, the Applicants are in advanced discussions regarding the following transactions:

- (a) *The Reverse Vesting Transaction*: The Applicants have continued good faith discussions with a Qualified Bidder that submitted an offer for the shares of Canveda Inc. and certain related assets. On October 16, 2022, MPXI and the Qualified Bidder entered into a share purchase agreement for the shares of Canveda

⁹ October 13 Affidavit, *supra* note 1 at para 13.

¹⁰ October 13 Affidavit, *supra* note 1 at paras 14-15; Third Report, *supra* note 1 at page 9.

¹¹ October 13 Affidavit, *supra* note 1 at para 15.

and certain related assets that, if approved, will be effected by way of a “reverse vesting” order (the “**Reverse Vesting Transaction**”).¹²

- (b) *The Credit Bid Transaction*: The Applicants and the Monitor are also engaged in discussions with the DIP Lenders (on behalf of themselves and the Debentureholders) regarding a transaction that contemplates the Debentureholders acquiring certain shares and related assets of the MPXI Entities by way of a credit bid (the “**Credit Bid Transaction**”, and together with the Reverse Vesting Transaction, the “**Potential Sale Transactions**”).¹³

12. The Applicants and the Monitor currently believe that they will be in a position to finalize the necessary transaction documents in respect of the Potential Sale Transactions in the very near future, and the Applicants intend on returning to Court to seek approval of both of the Potential Sale Transactions as soon as practicable.

D. Ninth Square

13. Ninth Square is the plaintiff in an action against various parties, including MPXI, Jeremy Budd (“**Budd**”), Scott Boyes (“**Boyes**”), and Michael Arnkvarn (“**Arnkvarn**”), the latter three of whom are directors and/or officers of various MPXI Entities. That action makes allegations regarding the conduct of Budd, Boyes and Arnkvarn in their capacity as directors and/or officers of MPXI.¹⁴

¹² October 18 Affidavit, *supra* note 1 at para 16.

¹³ October 13 Affidavit, *supra* note 1 at para 15; Third Report, *supra* note 1 at page 9.

¹⁴ October 13 Affidavit, *supra* note 1 at para 17.

14. Ninth Square advised the Applicants early in these CCAA Proceedings that it was taking the position that the Stay of Proceedings did not apply to its action, and that it wished to continue with discoveries previously scheduled in this action for November and December.¹⁵ The Applicants advised Ninth Square that pursuant to the plain wording of paragraph 19 of the Amended and Restated Initial Order, all “Proceedings” are stayed as against the former, current or future directors or officers (or similar position) of any MPXI Entity and, accordingly, leave of the Court was required to continue any proceedings against them.¹⁶ Counsel for Ninth Square advised that Ninth Square intended to seek a declaration that the Stay of Proceedings does not apply to Budd, Boyes or Arnkvarn in respect of the Ninth Square action in late August, 2022.¹⁷

15. The motion brought by Ninth Square seeking that relief was heard by the Court on September 29, 2022. As set out in Justice Conway’s Endorsement, the Court declined to grant the relief sought by Ninth Square, finding that the wrongful conduct alleged against Budd, Boyes and Arnkvarn in the pleadings of Ninth Square’s action is “inextricably intertwined” with their roles in the management of MPXI, and that the Stay of Proceedings therefore prevents Ninth Square from proceeding with its action against them.¹⁸

16. On October 11, counsel for Ninth Square advised counsel to the Applicants and counsel to the Monitor that Ninth Square planned to object to an extension of the Stay of Proceedings with respect to its action against Budd, Boyes, and Arnkvarn. On October 17, 2022, counsel for Ninth Square advised that Ninth Square no longer intended to oppose the proposed extension of the Stay of Proceedings.

¹⁵ October 13 Affidavit, *supra* note 1 at para 19.

¹⁶ October 13 Affidavit, *supra* note 1 at para 20.

¹⁷ October 13 Affidavit, *supra* note 1 at para 21.

¹⁸ October 13 Affidavit, *supra* note 1 at para 22.

E. DIP Amendment

17. The Monitor has prepared an updated cash flow forecast to and including December 16, 2022 (the “**Updated Cash Flow Forecast**”).¹⁹ As set out in the Updated Cash Flow Forecast, and in accordance with the original cash flow forecast filed in the CCAA Proceedings, the MPXI Entities have borrowed the full \$2.67 million available under the DIP Loan, and will require additional funding to continue operations for the pendency of the CCAA Proceedings.

18. The DIP Loan is currently set to mature on or around October 25, 2022.²⁰ In order for the Applicants to access additional funding and to prevent the expiry of the DIP Loan, the Applicants, with the assistance of the Monitor, have negotiated an amendment to the DIP Loan (the “**DIP Amendment**”). Pursuant to the DIP Amendment, the DIP Loan and the DIP Charge will be increased from \$2.67 million to \$3.12 million, and the maturity date of the DIP Loan is to be extended from October 25, 2022 to the earlier of: (i) the date on which the Credit Bid Transaction closes; and (ii) December 16, 2022.²¹ In consideration of the amendments contemplated in the DIP Amendment, the DIP Lenders are entitled to an amendment fee of \$100,000, which fee shall form part of the total amount owing under the DIP Facility and shall be secured by the DIP Lenders’ Charge.²²

19. All of the additional funding to be made available under the DIP Amendment is required to fund the MPXI Entities’ Thai operations and prevent an immediate wind-down of this business. For this reason, prior to the return of this motion, \$350,000 is expected to be advanced to

¹⁹ Third Report, *supra* note 1 at Appendix “F”.

²⁰ Third Report, *supra* note 1 at page 11.

²¹ Third Report, *supra* note 1 at page 11; October 18 Affidavit, *supra* note 1 at para 10.

²² Third Report, *supra* note 1 at page 11.

Thailand.²³ The Monitor is supportive of both the DIP Amendment and the immediate advance of funds to Thailand.²⁴

F. Stay Extension and Fee Approval

20. The Applicants are seeking an extension of the Stay Period to and including December 16, 2022. The Stay of Proceedings has allowed the MPXI Entities to maintain the status quo and has given the MPXI Entities and their directors and officers much-needed breathing space to focus on a sale of its business and assets for the benefit of the MPXI Entities' stakeholders, and an extension of the Stay Period will ensure that the MPXI Entities have continued stability.²⁵ If the DIP Amendment is approved, the MPXI Entities are forecast to have sufficient liquidity to fund their obligations and the costs of the CCAA Proceedings through the end of the extended Stay Period.²⁶

21. Although both Potential Sale Transactions are expected to close prior to December 16, 2022, the Applicants may need additional time to obtain the necessary regulatory approvals. By seeking a longer Stay Extension, the Applicants will minimize costs as they will not be required to return to Court earlier if there are delays in the closing of the Potential Sale Transactions. The Reverse Vesting Transaction contains a number of key conditions precedent to closing, including Court approval and Health Canada approval in respect of the change of control of Canveda's cannabis license.²⁷

²³ Third Report, *supra* note 1 at page 11; October 18 Affidavit, *supra* note 1 at para 9.

²⁴ Third Report, *supra* note 1 at page 11.

²⁵ October 13 Affidavit, *supra* note 1 at para 28.

²⁶ Third Report, *supra* note 1 at page 12

²⁷ October 18 Affidavit, *supra* note 1 at para 16.

22. The Stay Extension, DIP Amendment and Fee Approval Order also seeks approval of the Third Report and the fees and activities described therein and set out in the Fee Affidavits as well as the reports previously filed by KSV in the CCAA Proceedings (the “**Prior Reports**”).²⁸

PART III: ISSUES

23. The issue to be considered by the Court on this motion is whether the Stay Extension, DIP Amendment and Fee Approval Order should be granted, and specifically:

- (a) whether the Court should approve the DIP Amendment; and
- (b) whether the Court should approve the Stay Extension.

PART IV: RELIEF REQUESTED

A. The DIP Amendment Should be Approved

24. Where an increase in DIP financing is sought, the factors in section 11.2 of the CCAA are considered again.²⁹ The bases for obtaining the DIP Loan and the DIP Lenders’ Charge in the Initial Order and the Amended and Restated Initial Order are still present and support the relief sought on this motion.

25. Subsection 11.2(1) of the CCAA provides the Court with the statutory jurisdiction to grant a DIP financing charge “on notice to the secured creditors who are likely to be affected by the security or charge – in an amount that the court considers appropriate...having regard to [the

²⁸ October 13 Affidavit, *supra* note 1 at para 31; Third Report, *supra* note 1 at Appendices I and J.

²⁹ [*PCAS Patient Care Automation Services Inc. Re. 2012 ONSC 2423*](#) at para 9.

debtors'] cash-flow statement. The security or charge may not secure an obligation that exists before the order is made".³⁰

26. In accordance with this provision, notice has been provided to the secured creditors and, as with the existing DIP Lenders' Charge, the charge does not secure an obligation that exists before the order is made.

27. Subsection 11.2(4) sets out the following non-exhaustive factors to be considered by the Court in deciding whether to grant a DIP financing charge:

11.2(4) *Factors to be considered.* – In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.³¹

³⁰ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s 11.2(1) [CCAA].

³¹ *Ibid.*, s. 11.2(4).

28. In addition to the considerations relied upon by this Court in granting the DIP Loan and the DIP Lender's Charge in the Initial Order and the Amended and Restated Initial Order, the following factors support the DIP Amendment:

- (a) the increase in amount is appropriate in light of the Updated Cash Flow Forecast which reflects that the Applicants will require the \$450,000 to fund operations in Thailand through to December 16, 2022;
- (b) now that the SISP has been completed, the only stakeholders with a remaining economic interest in the MPXI Entities are the DIP Lenders and the Debentureholders, who are supportive of the DIP Amendment;
- (c) funding the Thai business, which is a critical asset for the MPXI Entities, without disruption is in the best interests of all stakeholders as it will allow the MPXI Entities to pursue the Potential Sale Transactions and work toward maximizing recoveries for their stakeholders;
- (d) the DIP Amendment fee is reasonable;
- (e) the DIP Lenders' require the additional advances be subject to the DIP Lenders' Charge;
- (f) no stakeholder is prejudiced by the DIP Amendment; and
- (g) the Monitor is supportive of the DIP Amendment.³²

³² Third Report, *supra* note 1 at page 11; October 18 Affidavit, *supra* note 1 at paras 14-15.

B. The Stay Period Should be Extended

29. As discussed above, this Court granted the initial ten-day Stay of Proceedings in favour of the Applicants, the Non-Applicant Stay Parties, and their respective directors and officers on July 25, 2022. The Stay Period was extended to October 21, 2022 pursuant to the Amended and Restated Initial Order on August 4, 2022.

30. Section 11.03(1) of the CCAA expressly permits proceedings to be stayed against directors, and it is customary in CCAA proceedings for a Stay of Proceedings to include the directors and officers of the stay parties. The model CCAA Initial Order, which has been approved by the Toronto Commercial List Users' Committee, includes a paragraph preventing proceedings from being commenced or continued against the directors and officers of the Applicants.³³ The Initial Order and Amended and Restated Initial Order granted in these proceedings tracked this language.

31. The Stay Period currently expires on October 21, 2022. Section 11.02(2) of the CCAA gives this Court the authority to grant an extension of the Stay Period for any period it “considers necessary”.³⁴ To do so, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.³⁵

32. A stay of proceedings is appropriate where it provides the debtors with breathing room whether they seek to restore their solvency and emerge from their restructuring on a going concern basis or conduct an orderly liquidation or wind-down.³⁶ Further, a stay of proceedings will be

³³ *Model Companies Creditors Arrangement Act Initial Order*, Toronto Commercial List Users' Committee (attached hereto at Schedule “C”).

³⁴ *CCAA*, *supra* note 30 at s 11.02(2).

³⁵ *Ibid.*

³⁶ *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 14 [*Century Services*]; *Target Canada Co.*, 2015 ONSC 303 at para 8.

appropriate where it advances the purposes of the CCAA – including avoiding the social and economic effects of bankruptcy.³⁷

33. As detailed in the October 13 Affidavit and the Third Report, it is necessary and in the best interests of the Applicants and their stakeholders that the Stay Period be extended unit and including December 16, 2022, as it will:

- (a) allow the MPXI Entities and the Monitor to continue to negotiate and finalize the Potential Sale Transactions and seek any necessary Court approvals;
- (b) if the Potential Sale Transactions are agreed to between the necessary parties and approved by the Court, allow the Applicants to work toward obtaining the necessary regulatory approvals to close both of the Potential Sale Transactions;
- (c) provide the necessary stability to allow the MPXI Entities to continue to operate as going concerns or to conduct an orderly wind-out of their businesses, as applicable;
- (d) allow the directors and officers of the MPXI Entities to focus their efforts on the Potential Sale Transactions; and
- (e) continue to advance matters toward a termination of these CCAA Proceedings that will allow certain restructured businesses to emerge as going concern entities.³⁸

34. Since the granting of the Amended and Restated Initial Order, the Applicants have continued to act in good faith and with due diligence to, among other things, stabilize their

³⁷ *Century Services*, *ibid* at para 70.

³⁸ October 13 Affidavit, *supra* note 1 at para 26; Third Report, *supra* note 1 at page 12.

business, communicate with Health Canada, employees, customers, suppliers and other key stakeholders, assist the Monitor with the SISP and negotiate the Potential Sale Transactions.³⁹

35. As discussed above, the Monitor supports the requested extension to the Stay Period and does not believe it will materially prejudice any stakeholder.⁴⁰ As a result of the DIP Amendment, the Applicants are forecast to have sufficient liquidity to fund their obligations and the costs of the CCAA Proceedings through the end of the extended Stay Period.⁴¹

36. For these reasons, the Applicants respectfully submit that the Court should grant the Stay Extension, DIP Amendment, and Fee Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Bennett Jones LLP

October 18, 2022

³⁹ October 13 Affidavit, *supra* note 1 at para 29.

⁴⁰ Third Report, *supra* note 1 at page 12.

⁴¹ Third Report, *supra* note 1 at page 12.

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [*Century Services Inc. v. Attorney General \(Canada\)*, 2010 SCC 60](#)
2. [*PCAS Patient Care Automation Services Inc., Re*, 2012 ONSC 2423](#)
3. [*Target Canada Co.*, 2015 ONSC 303](#)

SCHEDULE B – STATUTES RELIED ON

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Stays — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

- (4)** In deciding whether to make an order, the court is to consider, among other things,
- (a)** the period during which the company is expected to be subject to proceedings under this Act;
 - (b)** how the company's business and financial affairs are to be managed during the proceedings;
 - (c)** whether the company's management has the confidence of its major creditors;
 - (d)** whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e)** the nature and value of the company's property;
 - (f)** whether any creditor would be materially prejudiced as a result of the security or charge; and
 - (g)** the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

SCHEDULE "C" – MODEL INITIAL ORDER

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEEKDAY, THE #
)
JUSTICE) DAY OF MONTH, 20YR
)

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF [APPLICANT'S NAME] (the "Applicant")

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of [NAME] sworn [DATE] and the Exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for [NAMES], no one appearing for [NAME]¹ although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of [MONITOR'S NAME] to act as the Monitor,

¹ Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated² so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. [THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system³ currently in place as described in the Affidavit of [NAME]

² If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

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

6. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

³ This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.

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

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed **[or resiliated]**⁴ in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, **[and to dispose of redundant or non-material assets not exceeding \$● in any one transaction or \$● in the aggregate]**⁵

⁴ The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.

⁵ Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.

- (b) **[terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate];** and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

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

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant'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 Applicant'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 Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims **[or resiliates]** the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer **[or resiliation]** of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer **[or resiliation]** is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer **[or resiliation]**, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer **[or resiliation]**, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including [DATE – MAX. 30 DAYS], or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) 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 RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant 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 Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.⁶

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

⁶ This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,⁷ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")⁸ on the Property, which charge shall not exceed an aggregate amount of \$●, as security for the indemnity provided in paragraph [20] of this Order. The Directors' Charge shall have the priority set out in paragraphs [38] and [40] herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [20] of this Order.

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that [MONITOR'S NAME] is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with

⁷ The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.

⁸ Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

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

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the

Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

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

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a [TIME INTERVAL] basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$● [, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

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

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$●, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs [38] and [40] hereof.

DIP FINANCING

32. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from [DIP LENDER'S NAME] (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate

purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$● unless permitted by further Order of this Court.

33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed.

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

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs [38] and [40] hereof.

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ● days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the

Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

37. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows⁹:

First – Administration Charge (to the maximum amount of \$●);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum amount of \$●).

39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent

⁹ The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.

to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:


- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

SERVICE AND NOTICE

44. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in [newspapers specified by the Court] a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

45. 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 ‘<>’.

46. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are 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 Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant 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

47. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

49. 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 Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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

in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

52. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36*, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MPX INTERNATIONAL CORPORATION, BIOCANNABIS PRODUCTS LTD., CANVEDA INC., THE CING-X CORPORATION, SPARTAN WELLNESS CORPORATION, MPXI ALBERTA CORPORATION, MCLN INC., AND SALUS BIOPHARMA CORPORATION

Court File No.: CV-22-00684542-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings Commenced in Toronto

FACTUM OF THE APPLICANTS
(Stay Extension, Fee Approval, and DIP
Amendment)

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