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No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, RSC 1985, c C-36, as amended

and

IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC.

PETITIONERS

PETITION TO THE COURT

ON NOTICE TO: Powerscourt Investments XXV, LP, Powerscourt Investments XXV Trust,
Trinity Capital Inc., Horizon Technology Finance Corporation, Horizon
Credit II LLC, Horizon Funding I LLC and Horizon Funding Trust 2022-1

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

If you intend to respond to this Petition, you or your lawyer must:

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

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

Time for Response to Petition

A Response to Petition must be filed and served on the Petitioners,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by Order of the Court, within that time.

(1)	The address of the registry is: 800 Smith Street Vancouver, British Columbia V6Z 2E1
(2)	The ADDRESS FOR DELIVERY is: Fasken Martineau DuMoulin LLP 2900 - 550 Burrard Street Vancouver, B.C. V6C 0A3 Attention: Kibben Jackson / Lisa Hiebert / Anthony Mersich Email: kjackson@fasken.com / lhiebert@fasken.com / amersich@fasken.com
(3)	The name and office address of the Petitioner's Solicitor is: Fasken Martineau DuMoulin LLP 2900 - 550 Burrard Street Vancouver, B.C. V6C 0A3 Telephone: 604 631 3131. Attention: Kibben Jackson / Anthony Mersich Email: kjackson@fasken.com / lhiebert@fasken.com / amersich@fasken.com Reference: 320821.00009

CLAIM OF THE PETITIONERS

Part 1: ORDERS SOUGHT

1. The Petitioners, Nexii Building Solutions Inc., (“NBSI”) Nexii Construction Inc. (“NCI”), NBS IP Inc. (“NBS”), and Nexii Holdings Inc. (“Nexii US”, and collectively with NBSI, NCI and NBS, the “Petitioners” or “Nexii”) seek an Order (the “Initial Order”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36 (the “CCAA”) substantially in the form attached hereto as **Schedule “A”**, which, among other things:

- (a) abridges the time for service of this Petition and the supporting materials so that the application is returnable January 11, 2024;
- (b) appoints KSV Restructuring Inc. (“KSV”) as monitor of the Petitioners, with certain enhanced powers (the “Monitor”);

- (c) approves financing to be provided to the Petitioners, for a total facility of US\$4.3 million (with US\$750,000 being advanced prior to the Comeback Hearing, as defined below) on the terms and conditions set out in the Interim Financing Term Sheet (as defined below);
- (d) grants stays of proceedings in respect of the Petitioners and extends certain protections under the stay to non-applicant subsidiaries; and
- (e) grants certain charges over the Petitioners' property securing: (i) amounts owing to the professionals required to advance these proceedings; (ii) amounts owing under the Interim Financing Term Sheet; and (iii) amounts for which the Petitioners' directors and officers may become liable in their capacity as directors and officers during these proceedings.

2. The Petitioners may also seek such further relief as counsel may advise and this Honourable Court may permit.

Part 2:FACTUAL BASIS

3. Nexii faces significant liquidity constraints and owes more than US\$80 million to creditors, including their primary secured creditors (the Senior Secured Lenders, defined below), suppliers and landlords. Nexii requires the Initial Order in order to access critical funding, stabilize its operations, and pursue a sale process.

4. Nexii commences these proceedings with the support of the Senior Secured Lenders and their agreement to provide interim financing. Nexii's only source of funding is the Senior Secured Lenders, and the granting of the Initial Order in a form acceptable to the Senior Secured Lenders is a condition to the first advance (maximum draw US\$750,000), which will be used to fund payroll and other necessary operating expenses.

5. Nexii intends to move quickly to initiate a sale process, and to have that process approved by this Court on the next application in these proceedings (the "**Comeback Hearing**"). The sale process is intended to canvass the market for interest in Nexii's business so as to identify one or more transactions that will maximize value for stakeholders and, to the extent possible, preserve Nexii's business as a going concern to the benefit of stakeholders in Canada and the US.

Nexii's Business

6. Nexii is a green construction company that manufactures a proprietary material (Nexiite) that is an environmentally friendly and sustainable alternative to concrete. The Nexiite panels are recyclable and energy efficient, and have been used in numerous commercial and industrial structures in Canada and the US. They are manufactured in a zero-waste certified manufacturing environment (the first of its kind in North America).

7. Nexii's customers include very well established and known brands. Nexii believes its underlying business is strong, including the proprietary material and systems, particularly in the current market since there is a premium placed on sustainable and environmentally conscious building practices.

8. NSBI is the parent company of the other Petitioners, and the ultimate parent company of Omicron Canada Inc. (collectively with its subsidiaries, the "**Omicron Entities**" and together with Nexii, the "**Group**").

9. Nexii is collectively managed from British Columbia, the location of its active manufacturing facility, chief executive officer and all finance personnel. It currently employs over 140 people, all but five of which are located in Canada. Nexii US employs the US employees, but it does not have significant assets. All project contracts, including projects in the US, are with NBSI.

10. Nexii has 4 ongoing construction projects that are nearing completion, and 6 that are under contract, but in respect of which work has not yet begun (and which may be cancelled depending on the availability of bonding during these proceedings). To minimize funding requirements in these proceedings, Nexii, with the assistance of KSV, has estimated funding requirements on the assumption that the 4 ongoing projects will only continue if NBSI reaches agreements with the project owners to fund ongoing costs.

11. The Omicron Entities operate separately from Nexii, and have different creditors with the exception of the debt owing to the Senior Secured Lenders and potential liability under an agreement with a bonding company. The Omicron Entities are self-funding and profitable, and have, over the past year, advanced significant funds to address Nexii's funding shortfalls.

Liabilities

12. The Group's primary secured creditors are Powerscourt Investments XXV, LP ("**PC LP**") as lender, Powerscourt Investments XXV Trust as assignee of PC LP as lender, Trinity Capital Inc. as lender, Horizon Technology Finance Corporation ("**Horizon**") as lender, Horizon Credit II LLC as assignee of Horizon as lender, Horizon Funding I LLC as assignee of Horizon as lender and Horizon Funding Trust 2022-1 as assignee of Horizon as lender (collectively, the "**Senior Secured Lenders**").

13. The Group owes the Senior Secured Lenders approximately US\$79 million. The agreements with and security granted to the Senior Secured Lenders are described in greater detail in the Affidavit #1 of William Tucker (the "**Tucker Affidavit**").

14. Nexii also owes more than CA\$6 million, collectively, to equipment lessors, trade creditors and landlords. A number of collections actions have been commenced against Nexii, including several commenced in BC in December 2023.

Assets

15. Nexii's assets include equipment, accounts receivable, contracts and, most significantly, its intellectual property, including in respect of its proprietary product, Nexiite.

Cause of Financial Difficulties and Restructuring

16. Beginning in 2021, Nexii pursued aggressive growth, including expansion of its facilities and operations. The financing from investors and the Senior Secured Lenders funded this expansion.

17. Nexii's expansion included a Nexii Certified Manufacturing Agreement (licencing) for a manufacturing facility in Pennsylvania. The counterparty under this agreement did not pay their initial licencing fee (\$5 million) and was unable to perform due to lack of working capital. The agreement ultimately came at significant cost to Nexii as Nexii worked, with no compensation, for over a year, to assist in delivering the contracted business under the Certified Manufacturing Agreement in order to protect the Nexii brand from potential project defaults.

18. Following this expansion effort, Nexii's business grew, but not to the extent anticipated, and its costs were high relative to revenue. Beginning in 2021, Nexii preformed extensive redesign and testing necessary to reengineer the product so that it was competitive and profitable in the marketplace. Although the company was successful in the reengineering, and the product demonstrated strong profitability in late in 2023, Nexii had consumed significant capital over the prior 24 months.

19. Ultimately, Nexii was unable to service its loans from the Senior Secured Lenders, and beginning in April 2023 default in payment of interest to the Senior Secured Lenders.

20. Prior to these proceedings, Nexii took steps to reduce its costs, including staff terminations, shutting down operations at a facility in Moose Jaw and reducing its operating expenses. In these proceedings, it will consider further cost-reduction steps including, at its earliest opportunity, terminating leases for premises that are not required. It will also conduct a sale process and, as noted above, intends to seek approval of that process, and related relief, at the Comeback Hearing, in addition to the application to continue the relief under the Initial Order.

Interim Financing

21. Nexii has negotiated a term sheet for interim financing (the "**Interim Financing**") with Powerscourt Investments XXV, LP, Trinity Capital Inc. and Horizon Technology Finance Corporation (collectively, the "**Interim Lenders**") dated January 9, 2024 (the "**Interim Financing Term Sheet**").

22. The Interim Financing Term Sheet is summarized in the Tucker Affidavit, and a copy is also attached as an Exhibit. The critical terms include:

- (a) a maximum facility of US\$4.3 million, of which US\$750,000 will be available prior to the Comeback Hearing;
- (b) interest of 15.5% (equivalent to the interest under the Senior Secured Lenders' loan agreements);
- (c) a commitment fee of 2% (US\$86,000), of which US\$15,000 is payable from the first advance;

- (d) meeting certain milestones, including the Initial Order being made, an amendment and restatement of the Initial Order by January 22, 2024, approval of a sales process by January 22, 2024 and US recognition set to heard by February 2, 2024;
- (e) a maturity date of April 30, 2024, unless extended by the Interim Lenders or terminated due to various events, including an event of default under the Interim Financing Term Sheet; and
- (f) Court approval, including a charge securing the amounts owing to the Interim Lenders under the Interim Financing Term Sheet, including for the initial advance.

Stay of Proceedings

23. Nexii requires a stay of proceedings to protect against various risks, including actions steps that could result in inequity among creditors or termination of critical agreements.

24. Nexii also seeks to extend the benefits of the stay to the Omicron Entities. Although the Omicron Entities are independent, there is a risk that Nexii commencing these proceedings may expose the Omicron Entities to risk including potential termination of contracts or agreements that are critical to the Omicron Entities' operations and business. Extending the stay of proceedings to the Omicron Entities is intended to preserve the value of the Omicron Entities by preventing enforcement attempts and disruption of their business. This will benefit Nexii and its stakeholders, given Nexii's significant interest in the Omicron Entities, and benefits the Senior Secured Lenders (who are also the primary secured creditor of the Omicron Entities).

Appointment of the Monitor and Enhanced Powers

25. The Petitioners seek approval of KSV as Monitor, with enhanced powers, including the ability to exercise any powers of Nexii's board of directors. The Petitioners submit the Monitor requires enhanced powers because: (a) there have been significant management changes and the proceedings will benefit from additional involvement from the Monitor; and (b) it is a requirement to the Petitioners accessing the Interim Financing.

Charges

26. The Petitioners seek various charges:

- (a) an administration charge of \$500,000 (to be increased to \$1,500,000 on the Comeback Hearing) to secure the amounts that may become owing to the Petitioners' counsel, the Monitor or the Monitor's counsel (the "**Administration Charge**");
- (b) a charge securing amounts owing on the Interim Financing Facility (the "**Interim Financing Charge**"), with limited advances prior to the Comeback Hearing; and
- (c) a charge securing an indemnity in favour of Nexii's directors and officers (the "**Directors' Charge**").

27. The Senior Secured Lenders support the above charges, and each are necessary to facilitate these proceedings. The Administration Charge is necessary to ensure Nexii has access to the expertise, knowledge and professionals of those professionals in advancing these proceedings. The granting of the Interim Financing Charge is a condition to the Interim Financing, which, as noted above, is essential to operations. Finally, security for an indemnity for directors and officers is necessary to ensure their continued participation in the CCAA Proceedings, which will benefit the proceedings through their knowledge of Nexii's history, and their general industry and operational knowledge.

US Recognition

28. In light of NBSI's operations and assets in the US, including equipment (owned by NBSI) and ongoing contracts (between NBSI and third parties), Nexii intends to seek recognition of these proceedings in the United States pursuant to Chapter 15 of the US Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

Part 3:LEGAL BASIS

29. The Petitioners rely on the following:

- (a) The CCAA;

- (b) *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (“**BIA**”);
- (c) *Supreme Court Civil Rules* of British Columbia;
- (d) The inherent jurisdiction of this Honourable Court; and
- (e) Such further and other legal basis as counsel may advise and this Honourable Court may allow.

Purpose and application of the CCAA

30. The CCAA is remedial legislation which gives Canadian Courts broad and flexible authority to achieve the legislation’s objectives, being to facilitate an orderly restructuring of debtor companies in order to avoid the social and economic losses resulting from liquidation of an insolvent company. Accordingly, the CCAA includes empowering courts to make any order considered appropriate in the circumstances (including without notice), unless prohibited by the Act.

Century Services inc. v. Canada (Attorney General), 2010 SCC 60 at paras. 59 and 70 [*Century Services*].
CCAA, s.11.

31. The CCAA allows companies to carry on business while undertaking a restructuring in order to protect stakeholder interests, including preserving jobs and going concern value (where possible), maximizing creditor recovery, and enhancing the credit system generally.

9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10 at para 42 [*Callidus Capital*].
Century Services at para 15.

32. While the historical focus of the CCAA was to facilitate a going-concern reorganization of the debtor company, CCAA proceedings may also facilitate a sale of the business (referred to as “liquidating CCAA’s”), while still achieving the remedial purpose of the legislation, which may be achieved by, among other things, a sale process that allows the business to survive under a different corporate form or ownership.

Callidus Capital at paras 41-42 and 45.

33. The CCAA applies in respect of a “debtor company” or “affiliated debtor companies” where the total amount of claims against the debtor or its affiliates exceeds five million dollars

(\$5,000,000). The term “debtor company” is defined in Section 2 of the CCAA to include any company that is bankrupt or insolvent.

CCAA, ss. 2(1) and 3(1).

34. Each of the Petitioners is a “company” incorporated under the *Business Corporations Act* (British Columbia), or, in the case of Nexii US, is a company in Delaware which is operated from the Petitioners’ head office in British Columbia and interconnected with the other Petitioners. It is also opening a bank account in Canada. The definition of “company” includes a company incorporated under an Act of the legislature of a province, as well as any company having assets or doing business in Canada, wherever incorporated. Courts have determined that foreign companies that hold bank accounts in Canada, even where such accounts hold nominal sums, are captured by this definition.

Global Light Telecommunications Inc. (Re), 2004 BCSC 745 at paras 10-18.

CCAA, s. 2(1).

35. The Petitioners are insolvent and collectively owe more than US\$80 million. Although insolvency is not defined in the CCAA, the BIA defines an “insolvent person” as:

a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

BIA, s. 2.

36. Courts have routinely applied the BIA definition of “insolvent person” to CCAA proceedings. Further, in the context of the CCAA, this test has been interpreted expansively to include a financially troubled corporation that is “reasonably expected to run out of liquidity within

reasonable proximity of time as compared with the time reasonably required to implement a restructuring.”

Quest University Canada (Re), 2020 BCSC 318 at para 26.

Stelco Inc. (Re), 2004 CanLII 24933, 48 C.B.R. (4th) 299 (Ont. S.C.J.) at para. 26 [*Stelco*].

37. Under either definition, the Petitioners individually and collectively meet this test: they are unable to meet obligations as they come due and will run out of cash before they are able to implement a restructuring. Their ability to meet operating expenses is contingent on the Interim Financing sought to be approved in these proceedings.

38. The Petitioners have also complied with their obligations under Subsection 10(2) of the CCAA, which sets out the documentation required in connection with a petition for an initial order. For ease of reference, this required documentation consists of:

- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
- (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
- (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

CCAA, s. 10(2).

This Court is the Appropriate Forum

39. This Court is the appropriate forum in which to initiate these proceedings for all of the Petitioners. Although NBSI has contracts in the US, the head office and chief place of business for all the Petitioners is British Columbia. In particular:

- (a) to the extent the Petitioners have physical assets, they are primarily located in British Columbia;

- (b) the majority of the Petitioners' bank accounts are at banks in Canada, and accounting and finance decisions, including for Nexii US, are made by finance personnel in Vancouver, British Columbia;
- (c) the vast majority of the Petitioners' employees are located in British Columbia;
- (d) the chief executive officer is based in Vancouver, British Columbia, and he has primary responsibility for the management of all the Petitioners; and
- (e) all strategic and key operational decisions, including for Nexii US, are made by senior management located in Vancouver.

Appointment of Monitor with Enhanced Powers

40. Pursuant to s. 11.7 of the CCAA, the Court is required to appoint a person to monitor the business and financial affairs of a debtor company upon the granting of an initial order under the CCAA. The monitor must be a trustee within the meaning of subsection 2(1) of the BIA.

CCAA, s. 11.7.

41. In this case, the proposed Monitor, KSV, is a trustee within the meaning of subsection 2(1) of the BIA, not subject to any restrictions pursuant to subsection 11.7(2), and has executed a Consent to Act as Monitor in the within CCAA proceedings.

CCAA, s. 11.7(2).

42. Section 23(1) of the CCAA sets out the Monitor's duties and functions. Under subsection 23(1)(k) of the CCAA, the Court may direct the Monitor to carry out any other function in relation to the debtor company. These additional functions are known as "enhanced" or "expanded" powers of the Monitor. This provision gives the Court broad authority to tailor the Monitor's role to the particular circumstances to further the purposes of the CCAA.

Arrangement relatif à Bloom Lake General, 2021 QCCS 2946 at para. 41.

43. The Petitioners seek relief enhancing the Monitor's powers so that it is authorized to exercise any powers of Nexii's board of directors and management, including to cause Nexii to

perform such functions as the Monitor considers necessary for the Sale Process and the restructuring and the sale of the business and assets.

44. The enhanced powers are reasonably necessary not only because they are a condition of the Senior Secured Lenders supporting these proceedings, but also because they will facilitate the efficient conduct of these proceedings, particularly given the recent departures of several of NBSI's former senior management.

45. The current Senior Management supports enhancing the Monitor's powers to assist with these proceedings. As a result, the Petitioners submit that it is appropriate in the circumstances for the Court to grant the requested enhanced powers in the Initial Order.

The Requested Stay of Proceedings is Necessary

46. Section 11.02(1) of the CCAA vests the Court the jurisdiction to order a stay of proceedings that temporarily prevents creditors from proceeding with claims against the debtor company for a period of not more than 10 days. The stay may also be extended to directors and officers pursuant to section 11.03.

47. The Ontario Court has made the following comments regarding the purpose and importance of the stay of proceedings:

The Court may grant a stay of proceedings pursuant to s. 11.02 of the CCAA in respect of a debtor company if it is satisfied that circumstances exist that make the order appropriate. In order to determine whether a stay order is appropriate the Court should consider the purpose behind the CCAA. The primary purpose of the CCAA is to maintain the status quo for a period while the debtor company consults with its creditors and stakeholders with a view to continuing the company's operations for the benefit of the company and its creditors. [emphasis added]

JTI-Macdonald Corp. (Re), 2019 ONSC 1625, at para. 12

48. A stay of enforcement actions preserves the *status quo* for the debtor company and prevents a creditor from gaining an unfair advantage over other creditors. The stay also facilitates the ongoing operations of the debtor company's business, preserves the value of such business, and provides the debtor company with the necessary time, flexibility and "breathing room" to carry out a court-supervised restructuring or organized sale process.

Lehndorf General Partners Ltd. (Re), 1993 CarswellOnt 183,
17 C.B.R. (3d) 24 (Gen. Div.), at paras. 5-7.

49. The Petitioners submit the stay is necessary and appropriate to preserve the value of their property and business for the benefit of stakeholders. The commencement of any proceedings or the exercise of rights or remedies against the Petitioners would be detrimental to their restructuring efforts and would undermine a process that would otherwise benefit the Petitioners' stakeholders as a whole.

Stay of Proceedings against the Omicron Entities

50. This Court has the discretion under Section 11 of the CCAA to impose stays of proceedings in favour of "non-applicant third parties" where it is just and reasonable to do so.

CCAA, s. 11

JTI-Macdonald Corp. (Re) at para. 14.

Imperial Tobacco Canada Limited, et al (Re), 2019 ONSC 1684 at para. 12.

51. Courts have found it "just and reasonable" to extend the stay of proceedings to non-applicant third parties in a number of circumstances, including:

- (a) where extending the stay to the third party would help maintain stability and value of the enterprise as a whole during the CCAA process;
- (b) against non-applicant subsidiaries of the debtor company where such subsidiaries are guarantors under note indentures issued by the debtor company;
- (c) against non-applicant subsidiaries relating to any guarantee, contribution or indemnity obligation, liability or claim in respect of obligations and claims against the debtor companies;
- (d) where the failure to extend the stay to the third party would have a negative impact on the debtor company's ability to restructure, potentially jeopardizing the success of the restructuring and the continuance of the debtor company;
- (e) where preventing the debtor company from concluding a successful restructuring with its creditors would cause far-reaching and significant economic harm;

- (f) where the failure of the restructuring would be even more harmful to customers, suppliers, landlords and other counterparties whose rights would otherwise be stayed under the third party stay; and
- (g) where the balance of convenience favours extending the stay to the third party.

Cinram International Inc. (Re), 2012 ONSC 3767 at paras. 63-64.

Jaguar Mining Inc. (Re), 2014 ONSC 494 at paras. 38-39.

JTI-Macdonald Corp. (Re) at para. 15.

52. Extending the stay of proceedings to include the Omicron Entities is necessary in the circumstances of this case because:

- (a) the Omicron Entities are subsidiaries of NBSI and are jointly and severally liable under certain agreements with the Petitioners, specifically the obligations to the Senior Secured Lenders and under an indemnity agreement in favour of a bonding company;
- (b) it will maintain stability and value during these proceedings. If the Omicron Entities' business operations were disrupted, including parties terminating contracts as a result of the Petitioners commencing these proceedings, it would be detrimental to the group as a whole, and the value of the Petitioners may be impaired; and
- (c) NBSI is the ultimate parent company of the Omicron Entities, and the stay of proceedings will preserve value for the benefit of NBSI and its stakeholders.

53. The requested stay of proceedings is sought to enable the Petitioners to implement a sales process that the Petitioners believe will enable them to restructure and implement a transaction that will benefit their creditors and stakeholders, and in particular will provide greater benefit than a forced liquidation or a bankruptcy. The commencement of any proceedings or the exercise of rights or remedies against Nexii or the Omicron Entities would be detrimental to such restructuring efforts and would undermine a process that would otherwise benefit the Petitioners' stakeholders as a whole.

54. Extending a stay of proceedings to include the Omicron Entities is appropriate and consistent with the remedial purpose of the CCAA.

The Administration Charge

55. The Petitioners seek an Administration Charge in the amount of \$500,000 to secure the collective fees and disbursements incurred both before and after the commencement of these proceedings of the Petitioners' legal counsel, the proposed Monitor and the proposed Monitor's legal counsel. On the next application in these proceedings, the Petitioners intend to seek an order increasing this charge to \$1,500,000.

56. Section 11.52 of the CCAA expressly provides the Court with the power to grant a charge over a debtor company's assets to secure professional fees and disbursements on notice to affected secured creditors.

CCAA, s. 11.52.

57. Courts have recognized that, unless professional advisors are protected with the benefit of a charge over the assets of a debtor company, the objectives of the CCAA could be frustrated because professionals would be unlikely to risk offering their services without any assurance of ultimately being paid. Specifically, any failure to provide protection for professional fees will "result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by a bankruptcy proceeding."

Timminco Ltd. (Re), 2012 ONSC 506 at para. 66.

58. The non-exhaustive factors to be considered in determining whether to approve an administration charge and a financial advisor charge are set out below. This Court has held that the test for approval of an administration charge is the same as that for approving a financial advisor charge:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;

- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the Monitor.

Canwest Publishing Inc, 2010 ONSC 222 at para. 54 [*Canwest Publishing*].

Walter Energy Canada Holdings, Inc. (Re), 2016 BCSC 107 at para. 42.

59. The Petitioners require the specialized expertise, knowledge and continuing participation of the proposed beneficiaries of the Administration Charge in order to undertake their restructuring, including to implement a sale process, and the Administration Charge is necessary to ensure their continued assistance and participation in these proceedings.

60. The Senior Secured Lenders support the Administration Charge.

61. The amount of the proposed Administration Charge was determined in consultation with the proposed Monitor and is fair and reasonable in light of the number of beneficiaries, the size and complexity of the business and the scope, and complexity of the proposed restructuring.

62. The Petitioners do not expect that there will be any duplication of the roles of the beneficiaries of the Administration Charge. Each of these professionals will have a unique and distinct focus in the restructuring, and their joint efforts will produce a better result overall.

The Directors' Charge

63. The Petitioners seek a Directors' Charge in the amount of \$1,040,000 to secure the indemnity obligations of the Petitioners in favour of their directors and officers in respect of claims which might arise against those persons as a result of them continuing in such roles after the initiation of these proceedings. The Directors' Charge is necessary to ensure the continued involvement and participation of the Petitioners' directors and officers during the course of the Petitioners' restructuring.

64. On notice to the affected secured creditors, this Court is vested with the jurisdiction to grant a charge over the assets of a debtor company with respect to directors and officers' indemnification on a priority basis pursuant to Section 11.51 of the CCAA. The Court must be satisfied with the amount of the proposed charge, and the proposed charge may not provide coverage for the wilful misconduct or gross negligence of any director or officer of a debtor company.

CCAA, s. 11.51

Canwest Global Communications Corp. (Re), 2009 CanLII 55114,
59 CBR (5th) 72 (Ont. S.C.J.), at para. 46 [*Canwest Global*].

Canwest Publishing at paras. 56-57.

65. Consistent with both the foregoing and the British Columbia Model CCAA Initial Order, the Directors' Charge is not intended to duplicate coverage already in place under NBSI's existing directors and officers' liability insurance policies, but rather, to supplement such coverage in the event that any particular claim is not insured under those policies. The Petitioners understand that proposed Monitor and the Senior Secured Lenders are supportive of the Directors' Charge.

The Interim Financing Facility and Charge

66. The Petitioners seek approval of the Interim Financing and the granting of the related Interim Financing Charge in the maximum amount of US\$4,300,000 (of which US\$750,000 may be borrowed prior to the Comeback Hearing) plus interest and fees. The Interim Financing Charge is proposed to rank in priority to all other encumbrances on the assets, properties and undertakings of the Petitioners, other than the Administration Charge.

67. The Court has the jurisdiction to approve the Interim Financing under the CCAA s. 11.2.

CCAA, s. 11.2

U.S. Steel Canada Inc. (Re), 2014 ONSC 6145 at para. 11

68. The purpose of Interim Financing is to benefit all stakeholders by allowing the debtors to carry on business so as to protect their going-concern value while they attempt to devise a restructuring plan acceptable to creditors.

Canwest Global at para 31.

69. Section 11.2 of the CCAA also vests the Court with the jurisdiction to grant an interim financing charge over the assets of a debtor company in priority to the claim of any secured creditor of the debtor company, on notice to the secured creditors who are likely to be affected by such security or charge.

CCAA, s. 11.2

70. In deciding whether to make an order, the Court is to consider, among other things:

- (a) the period during which the debtor company is expected to be subject to proceedings under the CCAA;
- (b) how the debtor company's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor 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 debtor company;
- (e) the nature and value of the debtor 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, if any.

CCAA, s. 11.2(4)

71. These factors support the granting of the Interim Financing Charge in this proceeding. In particular, the Senior Secured Lenders, who are the party advancing the proposed Interim Financing, are the Petitioners' primary secured creditor.

72. If the Initial Order is granted, the Petitioners intend to move expeditiously to conduct the Sales Process. Without access to the Interim Financing, the Petitioners will not be able to carry on their business or preserve the value of their assets, to the detriment of their stakeholders. Accordingly, the proposed charge is necessary and appropriate in the circumstances.

Part 4: MATERIAL TO BE RELIED ON

73. The Affidavit #1 of William Tucker sworn January 10, 2024;

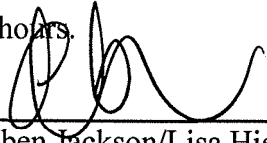
74. The Affidavit # of Ashley Kumar sworn January 9, 2024;

75. The pre-filing report of the proposed Monitor (to be filed);

76. Such further and other materials as counsel may advise and the Court may allow.

The Petitioner estimates that the application will take 1.5 hours.

Dated: 10-Jan-2024



Signature of Kibben Jackson/Lisa Hiebert
Lawyer for Petitioners

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this Petition

with the following variations and additional terms:

Date:

.....
 Signature of Judge Master

Schedule "A"

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, RSC 1985, c C-36, as amended

and

IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC.

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
JUSTICE STEPHENS) JANUARY 11, 2024
)

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 11th day of January, 2024 (the "**Order Date**"); **AND ON HEARING** Kibben Jackson and Lisa Hiebert, counsel for the Petitioners, and those other counsel listed on **Schedule "A"** hereto; **AND UPON READING** the application material filed, including the First Affidavit of William Tucker sworn January 10, 2024 (the "**Tucker Affidavit**"), and the consent of KSV Restructuring Inc. ("**KSV**") to act as Monitor; **AND UPON BEING ADVISED** that the senior secured creditor who are likely to be affected by the charges created herein were given notice; **AND PURSUANT TO** the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Petition and materials filed in support of the application for this Order (collectively, the “**Application**”) is hereby abridged such that service of the Application is deemed to be timely and sufficient and the Application is properly returnable today.

JURISDICTION

2. Each of the Petitioners is a company to which the CCAA applies. Although not Petitioners, Omicron Canada Inc., Omicron Construction Management Ltd., Omicron Consulting Inc., Grant & Sinclair Architects Ltd., Omicron Interiors Ltd. and Omicron Construction Ltd. (collectively, the “**Omicron Entities**”) shall enjoy certain protections as set out in this Order.

SUBSEQUENT HEARING DATE

3. The hearing of the Petitioners’ application for an extension of the Stay Period (as defined in paragraph 15 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at 800 Smithe Street, Vancouver, British Columbia at █.m. on █, the █ day of January, 2024 or such other date as this Court may order.

POSSESSION OF PROPERTY AND OPERATIONS

4. Subject to this Order and any further Order of this Court, the Petitioners shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”) and continue to carry on their business (the “**Business**”) in the ordinary course, or as otherwise agreed by the Monitor and the Interim Lenders (as defined below), and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently

retained or employed by them, with liberty to retain such further Assistants as the Petitioners deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

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

6. The Petitioners shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order, subject to compliance with the Cash Flow Projections (as defined in the Term Sheet, defined below):

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively “**Wages**”);
- (b) with the consent of the Monitor, amounts owing for goods and services actually supplied to the Petitioners prior to the date of this Order by third party suppliers,

if such third party is critical to the Business and ongoing operations of the Petitioners; and

- (c) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioners, whenever and wherever incurred, in respect of:
 - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;
 - (ii) any litigation in which the Petitioners are named as parties or are otherwise involved, whether commenced before or after the Order Date; and
 - (iii) any related corporate matters.

7. Except as otherwise provided herein and subject to the terms of the Term Sheet and Definitive Documents, as each such capitalized term is defined below, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure shall be approved by the Monitor;
- (b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at

the Order Date but excluding any interest on the Petitioners' obligations incurred prior to the Order Date); and

- (c) fees and disbursements of the kind referred to in paragraph 6(c) which may be incurred after the Order Date.

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

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

9. Until such time as a real property lease is disclaimed in accordance with the CCAA or subject to further Order of this Court, the Petitioners shall pay all amounts constituting rent or payable as rent under real property leases (including common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease, but, for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result

of the insolvency of the Petitioners or the making of this Order) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioners and the landlord from time to time (“**Rent**”), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

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

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of their creditors as of the Order Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trusts, mortgages, liens, charges or encumbrances upon or in respect of any of the Property, nor become guarantors or sureties, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to their customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

RESTRUCTURING

11. Each of the Petitioners shall, subject to such requirements as are imposed by the CCAA, this Order, and such covenants as may be contained in the Definitive Documents, have the right

(but not the obligation) to operate the Business in the ordinary course pending the return hearing on the Comeback Date (as defined below), subject to disclaimers that may be issued pursuant to section 32 of the CCAA.

12. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioners shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$1,500,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such employees as they deem appropriate; and
- (c) pursue all avenues of refinancing for its Business or Property, in whole or in part; all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

13. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioners, or by further Order of this Court upon application by the Petitioners, the landlord or the applicable secured creditors on at least two (2) clear days’ notice to the other parties. If the Petitioners disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning

such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioners' claim to the fixtures in dispute.

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

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

15. Until and including Monday, January 22, 2024, or such later date as this Court may order (the "**Stay Period**"), no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of the Petitioners, the Omicron Entities or the Monitor, or affecting the Business or the Property (including that of the Omicron Entities), shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners, the Omicron Entities or affecting the Business or the Property (including that of the Omicron Entities) are hereby stayed and suspended pending further Order of this Court.

16. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioners, the Omicron Entities or the Monitor, or affecting the Business or the Property (including that of the Omicron

Entities), are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

17. Nothing in this Order, including paragraphs 15 and 16, shall: (i) empower the Petitioners or the Omicron Entities to carry on any business which they are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioners.

18. The granting of this Order, the Application and any affidavits and other materials filed in support of the Application shall not, in in and of themselves, constitute a default or failure to comply by the Debtors under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.

NO INTERFERENCE WITH RIGHTS

19. 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 or agreement, licence or permit in favour of or held by the Petitioners or the Omicron Entities except with the written consent of the Petitioners, or the Omicron Entities, as applicable, and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

20. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking

services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioners are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioners and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioners that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall

be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

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

24. The directors and officers of the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,040,000, as security for the indemnity provided in paragraph 23 of this Order. The Directors' Charge shall have the priority set out in paragraphs 42 and 44 herein.

25. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioners' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 23 of this Order.

APPOINTMENT OF MONITOR

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

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

27. The Monitor, in addition to its prescribed rights and obligations under the CCAA and applicable law, and without altering in any way the obligations of the Petitioners in this CCAA proceeding, is hereby empowered, but not required, to:

- (a) exercise any powers which may be properly exercised by a board of directors or any officers of the Petitioners to cause the Petitioners, through the Petitioners' Assistants (then engaged, if any), to, without limitation:
 - (i) take any and all actions and steps, and execute all agreements, documents and writings, on behalf of, and in the name of, the Petitioners in order to facilitate the performance of any of the Petitioners' powers or obligations (collectively, the "**Petitioners' Powers & Obligations**");
 - (ii) engage, retain, or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other persons or entities, as the Monitor deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties and/or the Petitioners' Powers & Obligations. For greater certainty, any such officer, employee, consultant, agent, representative, advisor, or other persons or entities engaged or retained pursuant to this paragraph shall thereafter be deemed to be Assistants under this Order;
 - (iii) perform such other functions or duties, and enter into any agreements or incur any obligations, as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down or liquidation of the Petitioner, the realization and/or sale of all of the Petitioners' Property, the distribution of any net proceeds of the Property (the "**Proceeds**"), or any other related activities, including, without limitation, in connection with terminating this CCAA proceeding;

- (iv) exercise any rights of the Petitioners;
- (v) grant the Monitor access to all books and records that are the property of the Petitioners or that are in the Petitioners' possession or control (the "**Books and Records**");
- (vi) initiate, prosecute, and/or continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Petitioners, the Property, or the Proceeds, and, subject to further Order of this Court, 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;
- (vii) deal with any taxing or regulatory authority, including to execute any appointment or authorization form on behalf of the Petitioners that any taxing or regulatory authority may require, in order to confirm the appointment of an authorized representative of the Petitioners (which may be a representative of the Monitor) for such purposes;
- (viii) engage, deal, communicate, negotiate and, with further Order of this Court, settle with any creditor or other stakeholder of the Petitioners (including any governmental authority);
- (ix) claim any and all insurance refunds or tax refunds to which the Petitioners is entitled on behalf of the Petitioners; and
- (x) file, or take such actions necessary for the preparation and filing of, on behalf of and in the name of the Petitioners, (i) any tax returns, and (ii) the Petitioners' employee-related remittances, T4 statements and records of employments for the Petitioners' former employees, in either case, based solely upon the information in the Applicant's Books and Records and on

the basis that the Monitor shall incur no liability or obligation to any person with respect to such returns, remittances, statements, records or other documents;

- (b) monitor the Petitioners' receipts and disbursements;
- (c) 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;
- (d) assist the Petitioners, to the extent required by the Petitioners, in their dissemination to the Interim Lenders (as hereinafter defined) and their counsel on a monthly basis of financial and other information as agreed to between the Petitioners and the Interim Lenders, which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lenders;
- (e) advise the Petitioners in its preparation of the Petitioners' cash flow statements and reporting required by the Interim Lenders, which information shall be reviewed with the Monitor and delivered to the Interim Lenders and its counsel on a periodic basis, but not less than monthly, or as otherwise agreed to by the Interim Lenders;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;
- (g) 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;

- (h) perform such other duties as are required by this Order or by this Court from time to time; and
- (i) take any steps reasonably incidental to the exercise by the Monitor of the powers listed above or the performance of any statutory obligations

(collectively, the “**Monitor’s Powers**”).

28. Notwithstanding anything contained in this Order, where the Monitor exercises any of the Monitor’s Powers, it shall be the sole Person authorized to exercise such powers, to the exclusion of all other Persons, and no director or officer of the Petitioners shall incur any liability for any decisions or actions of the Monitor acting under such authority.

29. Notwithstanding anything contained in this Order, the Monitor shall not take possession of the Property or Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

30. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not,

as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. The Monitor shall provide any creditor of the Petitioners and the Interim Lenders with information provided by the Petitioners in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioners is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioners may agree.

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

ADMINISTRATION CHARGE

33. The Monitor, counsel to the Monitor and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis.

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

35. The Monitor, counsel to the Monitor and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners’ restructuring. The Administration Charge shall have the priority set out in paragraphs 42 and 44 hereof.

INTERIM FINANCING

36. The Petitioners are hereby authorized and empowered to obtain and borrow under an interim credit facility from Powerscourt Investments XXV, LP, Trinity Capital Inc. and Horizon Technology Finance Corporation (collectively, the “**Interim Lenders**”) in order to finance the Petitioners’ working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such interim credit facility shall not exceed US\$750,000 under this Order unless permitted by further Order of this Court.

37. Such interim credit facility shall be on the terms and subject to the conditions set forth in the debtor-in-possession term sheet between the Petitioners and the Interim Lenders dated as of January 9, 2024 (the “**Term Sheet**”) attached as Exhibit K to the Tucker Affidavit.

38. The Petitioners are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (with the Term Sheet, collectively the “**Definitive Documents**”), as are contemplated by the Term Sheet or as may be reasonably required by the Interim Lenders pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim Lenders under and pursuant to the Term Sheet and the Definitive Documents (collectively, the “**Interim Financing Obligations**”) as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

39. The Interim Lenders shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lenders' Charge**") on the Property as security for the Interim Financing Obligations, which Interim Lenders' Charge shall be in the aggregate amount of the Interim Financing Obligations outstanding at any given time under the Definitive Documents. The Interim Lenders' Charge shall not secure an obligation that exists before this Order is made. The Interim Lenders' Charge shall have the priority set out in paragraphs 42 and 44 hereof.

40. Notwithstanding any other provision of this Order:

- (a) the Interim Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Interim Lenders' Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lenders' Charge, the Interim Lenders, upon ~~three (3) business~~ days' notice to the Petitioners and the Monitor, may exercise any and all of their rights and remedies against the Petitioners or the Property under or pursuant to the Term Sheet, Definitive Documents and the Interim Lenders' Charge, including without limitation, to cease making advances to the Petitioners and set off and/or consolidate any amounts owing by the Interim Lenders to the Petitioners against the obligations of the Petitioners to the Interim Lenders under the Term Sheet, the Definitive Documents or the Interim Lenders' 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 Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and
- (c) the foregoing rights and remedies of the Interim Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioners or the Property.

41. The Interim Lenders, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the CCAA, or any proposal filed by the Petitioners 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

42. The priorities of the Administration Charge, the Directors' Charge and the Interim Lenders' Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – Interim Lenders' Charge (to the maximum amount of the Interim Financing Obligations at the relevant time); and

Third – Directors' Charge (to the maximum amount of \$1,040,000).

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

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

45. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtain the prior written consent

of the Monitor, the Interim Lenders and the beneficiaries of the Administration Charge and the Director's Charge.

46. The Administration Charge, the Director's Charge, the Term Sheet, the Definitive Documents and the Interim Lenders' 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 Interim Lenders shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Petitioners of any Agreement to which they are 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 Petitioners entering into the Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Petitioners pursuant to this Order, the Term Sheet 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.

47. Any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioners' interest in such real property leases.

SERVICE AND NOTICE

48. The Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder; provided that the Monitor shall not be required to make the names and addresses of individuals who are creditors publicly available unless otherwise ordered by this Court.

49. The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission (including by e-mail) to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

50. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: www.ksvadvisory.com/experience/case/Nexii (the "**Case Website**").

51. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Case Website.

52. Notwithstanding paragraphs 49 and 51 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

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

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

55. **THIS COURT REQUESTS** the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

56. Each of the Petitioners and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and

Nexii Business Solutions Inc. is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

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

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

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

60. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 42 and 44 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

61. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, is hereby dispensed with.

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

63. Where the relief sought is not opposed or contested, leave is granted for counsel to the Interim Lenders to appear at future hearings in this matter remotely by video.

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

Signature of Kibben Jackson/Lisa Hiebert

Party Lawyer for the Petitioners

BY THE COURT

REGISTRAR