



**Ninth Report of  
KSV Restructuring Inc.  
as CCAA Monitor of  
1462598 Ontario Inc.  
(d/b/a Tricon Films & Television)  
and the Companies Listed on  
Appendix “A”**

November 23, 2020

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COURT FILE NO.: CV-16-11634-00CL

**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 1462598 ONTARIO INC. (D/B/A TRICON FILMS & TELEVISION)  
AND THE COMPANIES LISTED ON APPENDIX "A"**

**NINTH REPORT OF KSV RESTRUCTURING INC. AS  
MONITOR**

**November 23, 2020**

## **1.0 Introduction**

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on December 12, 2016, as amended and restated on December 20, 2016 (the "Amended and Restated Initial Order"), 1462598 Ontario Inc., carrying on business as Tricon Films & Television (the "Company"), and its direct and indirect subsidiaries listed on Appendix "A" (collectively, the Company and the subsidiaries listed on Appendix "A" are referred to as the "Applicants"<sup>1</sup>) were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") and KSV Restructuring Inc. ("KSV")<sup>2</sup> was appointed Monitor (the "Monitor"). A copy of the Amended and Restated Initial Order is attached as Appendix "B".
2. The principal purpose of these restructuring proceedings was to create a stabilized environment to realize on the Applicants' businesses and assets in an orderly manner, including their film productions, tax credits, accounts receivable and film library.
3. On April 11, 2017, the Court issued an order (the "Distribution Agreement Approval Order") approving, *inter alia*, a distribution agreement (the "Distribution Agreement") among certain of the Applicants, Sonar Canada Inc. ("Sonar") and SunTrust Bank, Inc. ("SunTrust"), the Applicants' principal secured creditor. A copy of the Distribution Agreement Approval Order is attached as Appendix "C".

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<sup>1</sup> Pursuant to the Approval and Vesting Order granted by the Court on April 11, 2017, the proceeding under the CCAA was terminated solely in respect of Tricon Television82 Inc.

<sup>2</sup> On August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

4. Pursuant to the Distribution Agreement Approval Order, the stay of proceedings was extended until the date that is two weeks following the earlier of: (a) the expiry of the five-year term of the Distribution Agreement; and (b) any earlier termination of the Distribution Agreement in accordance with its terms. On November 4, 2020, the Distribution Agreement expired.

## **1.1 Purposes of this Report**

1. The purposes of this report (“Report”) are to:
  - a) provide a status update on the Applicants’ affairs and these proceedings;
  - b) report on the expiry of the Distribution Agreement as required under the Distribution Agreement Approval Order;
  - c) recommend that the Monitor be discharged of its duties and obligations under the Initial Order and other Court orders made in these proceedings, subject to filing a certificate with this Honourable Court (the “Discharge Certificate”);
  - d) summarize the few outstanding issues in these proceedings which the Monitor intends to complete prior to filing the Discharge Certificate; and
  - e) recommend that this Honourable Court make an order:
    - terminating these CCAA proceedings and discharging the Monitor upon the filing of the Discharge Certificate; and
    - releasing the Monitor from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting as Monitor, save and except for its gross negligence or wilful misconduct on the Monitor’s part.

## **1.2 Currency**

1. All currency references in this Report are to Canadian dollars unless otherwise specified.

## **1.3 Restrictions**

1. In preparing this Report, the Monitor has relied upon unaudited financial information of the Applicants, the books and records of the Applicants, and discussions with the Applicants’ former controller, who continues to be retained by the Applicants on a part-time basis. The Monitor has not performed an audit or other verification of such information. The Monitor expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Monitor in preparing this Report. Any party wishing to place reliance on the Applicants’ financial information is encouraged to perform its own diligence and any reliance placed by any party on the information herein shall not be considered sufficient for any purpose whatsoever.

## 2.0 Background

1. The Applicants were production, post-production and distribution companies which created, developed, produced and distributed television shows and films. The business was founded in 2000 by Andrea Gorfolova, the Applicants' sole director.
2. Ms. Gorfolova's affidavit sworn December 9, 2016, filed in support of the Applicants' application for CCAA protection, provides, *inter alia*, the Applicants' background, the reasons for the commencement of these proceedings and details regarding the secured creditors of each of the Applicants, including SunTrust, the Applicants' principal secured creditor and DIP lender in these proceedings.
3. SunTrust was owed approximately US\$10.4 million at the commencement of these proceedings. As at the date of this Report, SunTrust is owed approximately US\$8.1 million (including advances of \$1.5 million under the DIP facility), plus interest and costs which continue to accrue. SunTrust will incur a shortfall on its advances to the Applicants.
4. The Monitor's Fifth Report to Court dated April 5, 2017 ("Fifth Report") provided, *inter alia*, a summary of the results of a Court-approved sale process carried out by the Monitor and the Applicants in accordance with a Court order made on December 20, 2016 ("Sale Process"). As a result of the Sale Process, a transaction ("Transaction") was completed with Sonar for the sale of certain of the Applicants' assets, which was approved pursuant to an approval and vesting order made on April 11, 2017, and the Distribution Agreement, which was approved pursuant to the Distribution Agreement Approval Order. A copy of the Fifth Report (without appendices or supplements) is attached as Appendix "D".
5. Court materials filed in these proceedings are available on the Monitor's website at <https://www.ksvadvisory.com/insolvency-cases/case/tricon-films-and-television-2>.

## 3.0 The Applicants' Affairs

1. Since the completion of the Transaction, the Applicants, with the assistance of three former employees who have been retained by the Applicants on a contract basis, have worked with the Monitor to: (a) realize on the remaining assets of the Applicants (principally tax credits and accounts receivable); (b) resolve certain issues raised by third-party producers; and (c) carry out the Applicants' obligations under the Distribution Agreement, including activities in connection with the ongoing administration of the film library.

### 3.1 Cash

1. There is presently approximately \$100,000 in the Applicants' bank accounts, which will be used to fund the professional fees of the Monitor and its counsel incurred in connection with this final motion in these proceedings<sup>3</sup>. The balance will be distributed to SunTrust in accordance with Court orders issued previously in these proceedings.

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<sup>3</sup> The Initial Order provides that the Monitor and its counsel are only required to pass their accounts if requested by the Court or any interested party. To date, no such request has been received.

### 3.2 Tax Credits

1. Since the commencement of these proceedings, the Applicants, with the Monitor's assistance, have collected approximately \$4.5 million in tax credits from Canada Revenue Agency ("CRA").
2. Tax credits related to four productions totaling approximately \$1.75 million were denied by CRA during these proceedings.
3. As at the date of this Report, there are no further tax credits owing to the Applicants.

### 3.3 Accounts Receivable

1. Since the completion of the Transaction, the Applicants have collected substantially all accounts receivable, with collections totaling approximately \$1.2 million.
2. As at the date of this Report, there are no further receivables owing to the Applicants. The final quarterly amount of approximately \$90,000 payable by Sonar to the Applicants under the Distribution Agreement was paid by Sonar on November 17, 2020.

### 3.4 Distribution Agreement<sup>4</sup>

1. Pursuant to the Distribution Agreement, Sonar was required to, *inter alia*, provide the Applicants with quarterly statements reflecting the activity of its distribution of the Applicants' library. Effective September 30, 2019, the proceeds of the Distribution Agreement exceeded the Distribution Advance of \$300,000 and, accordingly, the Applicants became entitled to receive quarterly payments from Sonar in accordance with the Distribution Agreement.
2. The Distribution Agreement includes an automatic termination provision to the extent amounts payable to the Applicants under the Distribution Agreement are less than the carrying costs incurred by the Applicants. The 18-month automatic termination was initially scheduled to occur on November 3, 2018.
3. Pursuant to amending agreements among the Applicants, SunTrust and Sonar, the trigger date of the automatic termination provision was extended as follows:

Date	Amending Agreement	Automatic Termination Trigger Date
November 2, 2018	Second Distribution Agreement Amendment	May 3, 2019
April 18, 2019	Third Distribution Agreement Amendment	November 4, 2019
November 1, 2019	Fourth Distribution Agreement Amendment	November 4, 2020

4. As of November 4, 2020, the amounts payable by the Distributor pursuant to section 6.4.4 of the Distribution Agreement following the Effective Date was less than the aggregate Carrying Costs by hundreds of thousands of dollars. As a result, on November 4, 2020, the Distribution Agreement expired automatically pursuant to section 10.1.4 of the Distribution Agreement, as amended.

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<sup>4</sup> Defined terms in this section of the Report have the meanings ascribed to them in the Distribution Agreement.

5. There are no additional amounts payable to Sonar pursuant to the Distribution Agreement.
6. Pursuant to Paragraph 6 of the Distribution Agreement Approval Order, the stay of proceedings under the CCAA expires two weeks following the termination of the Distribution Agreement and the Monitor is required to file a supplemental report to Court in connection with any material adverse change, which includes an early termination of the Distribution Agreement.

#### **4.0 Distributions to SunTrust**

1. SunTrust is owed approximately US\$8.1 million (including advances of \$1.5 million under the DIP facility), plus interest and costs which continue to accrue.
2. Pursuant to the Distribution Agreement Approval Order, the Court authorized and directed the Monitor, on behalf of the Applicants, to distribute to SunTrust any amounts received from the realization of the assets of the Applicants (excluding the assets of Tricon 80 and 81), including the proceeds generated from the Transaction, from time to time upon receipt of such funds, up to the amount of the Applicants' indebtedness owing to SunTrust, without further Court order.
3. Since the date of the Fifth Report, the Monitor has distributed approximately \$4 million to SunTrust pursuant to the Distribution Agreement Approval Order, which amount is net of costs in these proceedings.

#### **5.0 Monitor's Proposed Discharge**

1. With the expiry of the Distribution Agreement, there are no further assets to be realized upon and no basis or funding to continue these CCAA proceedings.
2. Accordingly, the Monitor is recommending that it be discharged upon the filing of the Discharge Certificate as, subject to completing the outstanding sundry matters detailed below, its duties and responsibilities under the Initial Order and other orders granted in these proceedings will have been completed.
3. The Monitor intends to file the Discharge Certificate once it causes the Applicants to: (a) pay any final professional fees in connection with these proceedings; and (b) distribute the balance of the funds in the Applicants' bank accounts to SunTrust.
4. SunTrust has consented to the termination of these proceedings at that time.

## 6.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 (1)(e) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
SOLELY IN ITS CAPACITY AS CCAA MONITOR OF THE APPLICANTS  
AND NOT IN ITS PERSONAL OR ANY OTHER CAPACITY**



## **Appendix “A”**

## Filing Entities

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1. 1462598 Ontario Inc.
2. Operator Post Inc.
3. Tricon Education Inc.
4. Tricon Films Inc.
5. Tricon Interactive Inc.
6. Tricon Television Inc.
7. Tricon Television10 Inc.
8. Tricon Television44 Inc.
9. Tricon Television49 Inc.
10. Tricon Television54 Inc.
11. Tricon Television55 Inc.
12. Tricon Television58 Inc.
13. Tricon Television59 Inc.
14. Tricon Television62 Inc.
15. Tricon Television63 Inc.
16. Tricon Television64 Inc.
17. Tricon Television65 Inc.
18. Tricon Television66 Inc.
19. Tricon Television67 Inc.
20. Tricon Television68 Inc.
21. Tricon Television69 Inc.
22. Tricon Television70 Inc.
23. Tricon Television71 Inc.
24. Tricon Television72 Inc.
25. Tricon Television73 Inc.
26. Tricon Television74 Inc.
27. Tricon Television75 Inc.
28. Tricon Television76 Inc.
29. Tricon Television77 Inc.
30. Tricon Television78 Inc.
31. Tricon Television79 Inc.
32. Tricon Television80 Inc.
33. Tricon Television81 Inc.
34. Tricon Television82 Inc.
35. Tricon Television83 Inc.
36. Tricon Television84 Inc.
37. Tricon Television85 Inc.
38. Tricon Television86 Inc.
39. Tricon Television87 Inc.
40. Tricon Media Holdings, Inc.
41. Tricon Media Productions, Inc.
42. Tricon Media, Inc.
43. Tricon US Productions1 Inc.
44. Tricon US Productions14 Inc.
45. Tricon US Productions15 Inc.
46. Tricon Films (UK) Limited

## **Appendix “B”**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) MONDAY, THE 12<sup>TH</sup> DAY  
JUSTICE WILTON-SIEGEL ) OF DECEMBER, 2016

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
1462598 ONTARIO INC., carrying on business as TRICON FILMS AND TELEVISION,  
AND THE OTHER COMPANIES LISTED IN SCHEDULE "A"

APPLICANTS

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants, 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 Andrea Gorfolova sworn December 9, 2016 (the "**Gorfolova Affidavit**") and the Exhibits thereto, and on reading the Report of KSV Kofman Inc. as proposed CCAA Monitor dated December 11, 2016 and the Confidential Supplement to the Report of KSV Kofman Inc. as proposed CCAA Monitor dated December 12, 2016 (the "**Confidential Supplement**"), 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 the Applicants, counsel for SunTrust Bank and counsel for KSV Kofman Inc., and on reading the consent of KSV Kofman Inc. to act as the Monitor,

## SERVICE

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

## APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

## PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants 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 Applicants 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**”). Subject to further Order of this Court, the Applicants shall carry on business in a manner consistent with the preservation of the value of their businesses (the “**Business**”) and Property on the basis described in the Gorfolova Affidavit. The Applicants are 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 they deem 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 Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Gorfolova Affidavit 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 Applicants 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 Applicants, 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 Applicants 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 Applicants 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 Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

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

8. THIS COURT ORDERS that the Applicants 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 Applicants in connection with the sale of goods and services by the Applicants, 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 Applicants.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants 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 Applicants 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 Applicants 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 Applicants to any of their creditors as of this date, except to the DIP Lender in accordance with the Commitment Letter; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

### **RESTRUCTURING AND ORDERLY WIND DOWN**

11. THIS COURT ORDERS that the Applicants 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 \$100,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue a sale or liquidation of its Business or Property, in whole or part, subject to prior approval of this Court being obtained for any sale or liquidation except as provided in subparagraph (a) above,

all of the foregoing to permit the Applicants to proceed with an orderly sale or winding down of the Business.

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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 Applicants, or by further Order of this Court



upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they 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 of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice 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 Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, 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 Applicants 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 APPLICANTS OR THE PROPERTY**

14. THIS COURT ORDERS that until and including January 11, 2017, 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 Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants 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 Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this

Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants 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 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 Applicants, except with the written consent of the Applicants 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 Applicants 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 Applicants, 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 Applicants, and that the Applicants 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 Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants 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 Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **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 Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

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

20. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, 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 Applicants 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 \$250,000, 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 Error! Reference source not found. 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 Applicants' 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 KSV Kofman Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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.

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 Applicants' 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 Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel as contemplated by the Commitment Letter (defined below) of financial and other information as agreed to between the Applicants and the DIP Lender (defined below) which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' 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 as required under the Commitment Letter;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;

- (f) assist the Applicants, to the extent required by the Applicants, 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 Applicants, to the extent that is necessary to adequately assess the Applicants' 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;
- (i) perform such other duties as are required by this Order or by this Court from time to time;
- (j) assist, to the extent required, with the wind-down of the Business and operations of the Applicants; and
- (k) assist the Applicants and SunTrust, to the extent required, in protecting and realizing on tax credits, including making the necessary filings in relation thereto.

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 Applicants and the DIP Lender with information provided by the Applicants 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 Applicants are 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 Applicants 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 Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a monthly basis.

30. THIS COURT ORDERS that, if requested by the Court or any interested party, 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 and the Applicants' 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 \$500,000, 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 Error! Reference source not found. hereof.

### **DIP FINANCING**

32. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from SunTrust Bank (in such capacity, the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures.

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 Applicants and the DIP Lender dated as of December 12, 2016 (the "**Commitment Letter**"), substantially in the form filed.

34. THIS COURT ORDERS that the Applicants are 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 Applicants are hereby authorized and directed to pay and perform all of their 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 Error! Reference source not found. 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 3 business days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants 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 Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants 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 Applicants and for the appointment of a trustee in bankruptcy of the Applicants; 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 Applicants 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 Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Commitment Letter or 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 follows:

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



Second – DIP Lender’s Charge; and

Third – Directors’ Charge (to the maximum amount of \$250,000).

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

40. THIS COURT ORDERS that each of the Administration Charge, the DIP Lender’s Charge and the Directors’ 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 (except that the DIP Lender’s Charge and the Directors’ Charge shall not rank ahead of statutory super priority deemed trusts and liens for unpaid employee source deductions and shall each be subordinated to the right, title, and interests of Bravo Media Productions LLC (“Bravo”) in the television series currently titled ‘Timber Creek Lodge’ formerly known as ‘The Lodge’ and formerly known as ‘Après Ski’ (the “Bravo Series”), including but not limited to any tax credits (and proceeds thereof) payable to Tricon Television<sup>80</sup> Inc. and to Tricon Television<sup>81</sup> Inc.), and the security granted by the Definitive Documents charging the Property shall have the same priority as the DIP Lender’s Charge. Notwithstanding the foregoing, the DIP Lender’s Charge shall rank in priority to the right, title, and interests of Bravo in the Bravo Series only to the extent of expenses paid from and after the date of this Order in connection with the Bravo Series in accordance with the budgets approved by Tricon and Bravo in writing or as otherwise agreed to by Bravo in writing until such amounts have been paid by Bravo to Tricon.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants 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 Applicants also obtain 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 Applicants, 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 Applicants 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 Applicants 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 Applicants 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 Applicants' interest in such real property leases.

**SEALING**

44. THIS COURT ORDERS that the Confidential Supplement shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

**SERVICE AND NOTICE**

45. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail 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 Applicants 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 (except that the names, addresses and claim amounts of any employee creditors shall not be published) in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

46. 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/eservice-commercial/>) 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: <http://www.ksvadvisory.com/insolvency-cases/tricon-films-&-television/>.

47. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants 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 Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants 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**

48. THIS COURT ORDERS that the Applicants 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.

49. 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 Applicants, the Business or the Property.

50. 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 Applicants, 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

51. THIS COURT ORDERS that each of the Applicants 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.

52. THIS COURT ORDERS that any interested party (including the Applicants 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.

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



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**Joseph Doria, Registrar**

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

DEC 21 2016

PER / PAR:



## Schedule "A"

1. 1462598 Ontario Inc.
2. Operator Post Inc.
3. Tricon Education Inc.
4. Tricon Films Inc.
5. Tricon Interactive Inc.
6. Tricon Television Inc.
7. Tricon Television10 Inc.
8. Tricon Television44 Inc.
9. Tricon Television49 Inc.
10. Tricon Television54 Inc.
11. Tricon Television55 Inc.
12. Tricon Television58 Inc.
13. Tricon Television59 Inc.
14. Tricon Television62 Inc.
15. Tricon Television63 Inc.
16. Tricon Television64 Inc.
17. Tricon Television65 Inc.
18. Tricon Television66 Inc.
19. Tricon Television67 Inc.
20. Tricon Television68 Inc.
21. Tricon Television69 Inc.
22. Tricon Television70 Inc.
23. Tricon Television71 Inc.
24. Tricon Television72 Inc.
25. Tricon Television73 Inc.
26. Tricon Television74 Inc.
27. Tricon Television75 Inc.
28. Tricon Television76 Inc.
29. Tricon Television77 Inc.
30. Tricon Television78 Inc.
31. Tricon Television79 Inc.
32. Tricon Television80 Inc.
33. Tricon Television81 Inc.
34. Tricon Television82 Inc.
35. Tricon Television83 Inc.
36. Tricon Television84 Inc.
37. Tricon Television85 Inc.
38. Tricon Television86 Inc.
39. Tricon Television87 Inc.
40. Tricon Media Holdings, Inc.
41. Tricon Media Productions, Inc.
42. Tricon Media, Inc.
43. Tricon US Productions1 Inc.
44. Tricon US Productions14 Inc.
45. Tricon US Productions15 Inc.
46. Tricon Films (UK) Limited

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1462598 ONTARIO INC., CARRYING ON BUSINESS AS TRICON FILMS AND TELEVISION, AND THE COMPANIES LISTED IN SCHEDULE "A"

Applicants

Court File No. CV16-11634-00CL

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

Proceedings commenced at Toronto

**AMENDED AND RESTATED  
INITIAL ORDER**

**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

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**Lawyers for the Applicants**

## **Appendix “C”**



**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

THE HONOURABLE	)	TUESDAY, THE 11 <sup>th</sup> DAY
	)	
JUSTICE NEWBOULD	)	OF APRIL, 2017



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

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
1462598 ONTARIO INC., carrying on business as TRICON FILMS AND TELEVISION,  
AND THE OTHER COMPANIES LISTED IN SCHEDULE "A"**

APPLICANTS

**APPROVAL ORDER – DISTRIBUTION AGREEMENT**

**THIS MOTION** made by the Applicants for an Order, inter alia, (i) approving the transactions contemplated under the distribution agreement entered into between Sonar Canada Inc. (the "**Distributor**"), as agent, and 1462598 Ontario Inc. and certain of the other Applicants (together, the "**Company**") dated as of April 4, 2017 (the "**Distribution Agreement**") and for certain related relief, and (ii) the granting of the Distributor's Charge (as defined below) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of Applicants, the fifth report of KSV Kofman Inc. in its capacity as CCAA Monitor of the Applicants dated April 5, 2017 (the "**Report**"), and on being advised that the secured creditors who are likely to be affected by the charge created herein were given notice, and on hearing the submissions of counsel for the Applicants, the Monitor and SunTrust Bank ("**SunTrust**") and those other parties listed on the counsel slip, no one appearing

for any other person although duly served as appears from the affidavit of service of Amy Casella sworn April 6, 2017,

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Report is hereby abridged and that this Motion is properly returnable today and that service, including form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated December 12, 2016 (the “**Initial Order**”) and the Distribution Agreement, including the schedules thereto, as applicable.

### **APPROVAL OF DISTRIBUTION AGREEMENT**

3. **THIS COURT ORDERS** that the Distribution Agreement and the transactions contemplated therein and thereunder are hereby approved, authorized and ratified and that the execution of the Distribution Agreement by the Company is hereby approved, authorized and ratified with such minor amendments to which the Company, SunTrust and the Distributor may agree in writing. Subject to the provisions of this Order, the Company is hereby authorized to perform the provisions of the Distribution Agreement and take all actions and execute all agreements and other documents as may be necessary or desirable to implement the Distribution Agreement and each of the transactions contemplated therein.

4. **THIS COURT ORDERS** that the Distributor is authorized, as agent for the Company, to exercise the Distribution Rights and all other rights granted to the Distributor under the Distribution Agreement (collectively, the “**Distributor’s Rights**”) in accordance with the terms of this Order and the Distribution Agreement, and for such purposes the Distributor shall have and be entitled to the benefit of the stay of proceedings and other protections provided in the Initial Order and subsequent orders of the Court (including paragraphs 14 through 17 of the Initial Order).

5. **THIS COURT ORDERS** that, subject to the terms of this Order, the Distribution Agreement and any future order of the Court: (a) the Program Rights remain the property of the Company and subject to the stay of proceedings and other protections of the Initial Order and subsequent orders of the Court; and (b) during the Stay Period, no creditor or other stakeholder of the Company will interfere with (i) the exercise by the Distributor of the Distributor's Rights in accordance with the terms of this Order and the Distribution Agreement, or (ii) the exercise by a licensee of any Program Rights licensed to it by the Distributor as agent for the Company, without leave of the Court on notice to the Distributor, Monitor, Company, SunTrust and the applicable licensee. For certainty, nothing in this paragraph 5 will prevent the Company or SunTrust from enforcing their respective rights, if any, under the Distribution Agreement and this Order, or from acting in a manner consistent with the provisions of this Order and the Distribution Agreement.

6. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until the date that is two (2) weeks following the expiry or earlier termination of the Term, provided that the Monitor is hereby directed to report to the Court on the affairs of the Applicants (excluding Tricon Television<sup>82</sup> Inc.) no less than every twelve (12) months, and promptly upon any material adverse change in the Applicants' affairs, which includes the expiry or earlier termination of the Term; provided if the Purchase Agreement terminates in accordance with its terms, the Monitor shall serve and file a supplemental report forthwith and the Stay Period shall expire ten (10) days following the date upon which the Monitor serves and files such supplemental report.

6A. **THIS COURT ORDERS** that, notwithstanding the stay of proceedings, Rhombus Media Inc. ("**Rhombus**") shall be entitled to terminate the agreements by and between (i) Rhombus and Tricon Films Inc. dated May 1, 2013, as amended from time to time (Sensitive Skin I), (ii) Skin II Productions Inc. and Tricon Films Inc. dated May 6, 2015, as amended from time to time (Sensitive Skin II), and (iii) Rhombus and Tricon Films Inc. dated May 5, 2011, as amended from time to time (Michael, Tuesdays and Thursdays).

7. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in the Initial Order or any subsequent order of the Court, until the expiry or earlier termination of the Term,

the stay of proceedings and other protection of the Initial Order and subsequent orders of the Court, including this Order, shall not be lifted or suspended except with the written consent of the Applicants, Monitor, Distributor and SunTrust, or Order of the Court made on not less than seven (7) days' prior notice to the Applicants, Monitor, Distributor and SunTrust.

8. **THIS COURT ORDERS** that the Company is hereby authorized and directed, in accordance with the Distribution Agreement, to remit and pay to the Distributor all amounts that are or become due to it thereunder and, whether such amounts are retained by the Distributor from Gross Receipts or paid or repaid to the Distributor by the Company or SunTrust, when received by Distributor such amounts shall be free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence on or prior to the date this Order or came into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively, "**Claims**"), including, without limitation, the indebtedness, liabilities and obligations owing by the Applicants to SunTrust, the Administration Charge, the DIP Lender's Charge and the Directors' Charge, and any other charges hereafter granted by this Court in these proceedings, and all Claims, charges, security interests or liens evidenced by registration pursuant to the *Personal Property Security Act* (Ontario) or any other personal or removable property registration system (all such Claims, charges, security interests and liens collectively referred to herein as "**Encumbrances**"), which Encumbrances, subject to this Order and the Initial Order, will attach instead to the Distribution Advance and other amounts received by the Company pursuant to the Distribution Agreement, in the same order and priority as they existed against the Program Rights on the date of commencement of the Term in respect of each Program.

9. **THIS COURT ORDERS** that, until the expiry or earlier termination of the Term, the Distributor shall have access to all Program Rights and be entitled to exercise the Distributor's Rights in respect thereof in accordance with the terms of applicable trademark, trade name or other intellectual property licenses and Third Party Distribution Agreements on the basis that the

Distributor is an agent of the Company and the Company has granted the right of access and the Distributor's Rights to the Distributor as its agent. To the extent that the terms of any applicable trademark, trade name or other intellectual property license or Third Party Distribution Agreement are in conflict with the terms of this Order, the terms of this Order shall govern. Nothing in this Order shall be construed to create or impose upon the Company or the Distributor any additional restrictions not contained in the applicable trademark, trade name or other intellectual property licenses or Third Party Distribution Agreements.

10. **THIS COURT ORDERS** that the Distributor, as agent for the Company, is authorized to advertise and promote the Distribution Rights, without further consent of any Person other than the Company to the extent required under the Distribution Agreement.

#### **LIMITATIONS ON DISTRIBUTOR LIABILITY**

11. **THIS COURT ORDERS** that, in carrying out the terms of the Distribution Agreement and this Order, the Distributor shall be acting solely as an agent to the Company, and that it shall not be liable for any claims against the Company other than as expressly provided in the Distribution Agreement (including the Distributor's indemnity obligations thereunder). More specifically:

(a) the Distributor shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and

(b) the Distributor shall have no liability whatsoever (including without limitation losses, costs, damages, fines, or awards) to any Person other than the Company relating to any claims of customers, licensees, distributors, licensors, vendors, agents, employees and any other Persons arising from the exercise of the Distributor's Rights during and after the Term, except in accordance with the Distribution Agreement.

## **DISTRIBUTOR AN UNAFFECTED CREDITOR**

12. **THIS COURT ORDERS** that the Distribution Agreement shall not be repudiated, resiliated or disclaimed by the Company or any receiver or trustee in bankruptcy of Company or its property. The claims of the Distributor pursuant to the Distribution Agreement and under the Distributor's Charge shall be treated as unaffected and shall not be compromised or arranged pursuant to any plan of arrangement or compromise filed by or in respect of the Applicants under the *Companies' Creditors Arrangement Act (Canada)* ("CCAA") or any proposal filed by or in respect of the Company under the *Bankruptcy and Insolvency Act (Canada)* (the "BIA").

## **DISTRIBUTION TO SUNTRUST AND LIMITATION OF SUNTRUST LIABILITY**

13. **THIS COURT ORDERS** that the Monitor, on behalf of the Applicants, shall be authorized and directed, without further Order of the Court, to distribute to SunTrust any amounts received from the realization of the assets of the Applicants (excluding the assets of Tricon Television 80 Inc. and Tricon Television 81 Inc.), including but not limited to the Distribution Advance, Net Receipts, Purchase Price (as defined in the agreement of purchase and sale between certain of the Applicants and Sonar Canada Inc. dated April 4, 2017), and amounts received in respect of tax credits and accounts receivable collections, subject: a) in the case of the Purchase Price, to retaining a reserve in the amount specified in the Estimated Holdback Calculation attached to the Third Amending and Extension Agreement to Interim Financing Term Sheet made as of April 10, 2017 among SunTrust and the Applicants party thereto (the "Third DIP Extension"); b) in the case of tax credits received, provision being made for payment in full of the professional fees subject to the Administration Charge in an amount to be agreed by the Applicants, the Monitor and SunTrust; and c) in the case of all other amounts including accounts receivable collections, subject to retaining a reasonable reserve in an amount to be agreed by the Applicants, the Monitor and SunTrust in accordance with the Initial Agreed Quarterly Budget and the Agreed Quarterly Budgets (each as defined in the Third DIP Extension), in each case, upon receipt of such funds. In addition, the directions to pay the Distribution Advance and Net Receipts directly to SunTrust are authorized and approved subject to the terms and conditions set out therein. All such distributions shall:

(a) be applied against any indebtedness, liabilities and obligations owing by any of the Applicants to SunTrust, including, in SunTrust's discretion, to the obligations pursuant to the revolving credit, security, guaranty and pledged agreement dated as of August 22, 2013, as amended, restated supplemented or modified (the "SunTrust Facility"),

(b) be, upon the receipt thereof by SunTrust, free of all Claims, Encumbrances and charges granted by or relating to the Applicants; and,

(c) be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants or constitute or be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the Bankruptcy and Insolvency Act (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

Such authorization and direction shall continue until SunTrust is paid in full in respect of all obligations of the Applicants to SunTrust including pursuant to the SunTrust Facility, the interim financing term sheet made as of December 12, 2016, as amended, restated, modified or supplemented from time to time, and all interest, fees, expenses or other amounts owing in respect thereof.

14. **THIS COURT ORDERS** that, except for the obligation of SunTrust to pay the Distributor up to \$150,000 in the circumstances set forth in Section 10.1.4 of the Distribution Agreement, SunTrust, or any of its directors, officers, employees or agents, or any of SunTrust's affiliates or their directors, officers, employees or agents, shall not be liable to the Tricon Entities or the Distributor for any damages, losses, liabilities, costs, fees or expenses of any kind whatsoever, directly or indirectly arising out of or in connection with the transactions contemplated by the Distribution Agreement. The obligation to pay up to \$150,000 in the circumstances set forth in Section 10.1.4 of the Distribution Agreement shall be and is the sole and exclusive direct or indirect remedy available to the Distributor against SunTrust or any of its directors, officers, employees or agents, or any of SunTrust's affiliates or their directors, officers,

employees or agents arising directly or indirectly out of or in connection with the transactions contemplated by the Distribution Agreement.

**NO RECOURSE TO TAX CREDIT ASSETS AND EXISTING ACCOUNTS RECEIVABLE**

15. **THIS COURT ORDERS** that notwithstanding anything express or implied in this Order or the Distribution Agreement, in satisfaction of any damages, losses, liabilities, costs, fees or expenses of any kind whatsoever, directly or indirectly arising out of or in connection with the transactions contemplated by the Distribution Agreement and any amounts payable to Distributor pursuant to the terms of the Distribution Agreement, the Distributor shall only have recourse to the Program Rights (other than Program Rights relating to productions for which Tax Credit Assets are outstanding) and the amounts held in trust for the benefit of the Distributor pursuant to Section 6.2 of the Distribution Agreement and paragraph 16 hereof. No recourse, remedy or right of recovery or contribution shall be had by the Distributor under the Distribution Agreement, this Order or any document delivered in connection with the Distribution Agreement, against the Existing Accounts Receivable or the Tax Credit Assets.

**AGENCY ACCOUNTS**

16. **THIS COURT ORDERS** that all amounts deposited in the Agency Accounts pursuant to the Distribution Agreement including Gross Receipts, net of GST/HST, shall be and be deemed to be held in trust as follows: (a) amounts to be paid or repaid to the Distributor in accordance with Sections 6.4.1, 6.4.2, 6.4.3 and 10.1.4 of the Distribution Agreement in trust for the Distributor, and (b) all other amounts in trust for the Company, in each case to be distributed and otherwise dealt with in accordance with the provisions of Distribution Agreement and this Order.

**DISTRIBUTOR'S CHARGE AND SECURITY INTEREST**

17. **THIS COURT ORDERS** that subject to the receipt by the Company of the Distribution Advance, the Distributor be and is hereby granted a charge (the "**Distributor's Charge**") on the Program Rights (excluding Program Rights relating to productions for which Tax Credit Assets are outstanding) and all amounts held in trust for the benefit of the Distributor from time to time pursuant to Section 6.2 of the Distribution Agreement and paragraph 16 hereof, including all proceeds from realization thereon (the "**Distributor Charge Assets**"), which charge shall rank in



priority to all Encumbrances. The Distributor's Charge shall stand as security for (i) the payment of all amounts to be paid or repaid to the Distributor pursuant to Sections 6.4.1, 6.4.2, 6.4.3 and 10.1.4 of the Distribution Agreement, and (ii) up to \$150,000 for damages, losses, liabilities, costs, fees or expenses incurred by the Distributor as a result of third party claims arising out of or in connection with the Distribution Agreement (collectively, the "**Distributor Amounts**").

#### **PRIORITY OF CHARGES**

18. **THIS COURT ORDERS** that the priorities of the Distributor's Charge, the Administration Charge, the DIP Lender's Charge and the Directors' Charge, as among them, in respect of the Distributor Charge Assets, shall be as set follows:

- (a) First, Distributor's Charge (to the maximum of the Distributor Amounts);
- (b) Second, Administration Charge (to the maximum amount of \$500,000)
- (c) Third, DIP Lender's Charge; and
- (d) Fourth, Directors' Charge (to the maximum amount of \$250,000).

**THIS COURT ORDERS** that the filing, registration or perfection of the Distributor's Charge shall not be required, and that the Distributor's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Distribution Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

19. **THIS COURT ORDERS** that the Company shall not grant or suffer to exist any Encumbrances over any Distributor Charge Assets that rank in priority to, or *pari passu* with the Distributor's Charge.

20. **THIS COURT ORDERS** that the Distributor's Charge shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Distributor Charge Assets and shall rank in priority to all other Encumbrances of or in favour of any Person in respect of the Distributor Charge Assets to the extent of the Distributor Amounts.

21. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA, in respect of the Company, or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Company; (d) the provisions of any federal or provincial statute; 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 document or agreement which binds the Company:

(a) the Distribution Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Distributor thereunder, and

(b) the Distributor's Charge,

shall be binding on any trustee in bankruptcy that may be appointed in respect to the Company and shall not be void or voidable by any Person, including any creditor of the Company, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

#### **PERSONAL INFORMATION**

22. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, the Company and the Monitor are, as required to perform the Distribution Agreement, authorized and permitted to transfer to the Distributor personal information in each's custody and control, and Distributor is permitted to use and disclose such personal information subject to and in accordance with the terms of the Distribution Agreement.

#### **GENERAL**

23. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States and elsewhere to give effect to this Order and to assist the Company, the Monitor and their 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Company and the Monitor, and their agents, in carrying out the terms of this Order.

24. **THIS COURT ORDERS** that 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.

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

26. **THIS COURT ORDERS AND DIRECTS** that the unredacted copy of the Distribution Agreement, filed, be kept confidential and sealed in the court file pending further order of this Court.



**C. Irwin**  
Registrar

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

APR 11 2017

PER / PAR 

## SCHEDULE A

1. 1462598 Ontario Inc.
2. Operator Post Inc.
3. Tricon Education Inc.
4. Tricon Films Inc.
5. Tricon Interactive Inc.
6. Tricon Television Inc.
7. Tricon Television10 Inc.
8. Tricon Television44 Inc.
9. Tricon Television49 Inc.
10. Tricon Television54 Inc.
11. Tricon Television55 Inc.
12. Tricon Television58 Inc.
13. Tricon Television59 Inc.
14. Tricon Television62 Inc.
15. Tricon Television63 Inc.
16. Tricon Television64 Inc.
17. Tricon Television65 Inc.
18. Tricon Television66 Inc.
19. Tricon Television67 Inc.
20. Tricon Television68 Inc.
21. Tricon Television69 Inc.
22. Tricon Television70 Inc.
23. Tricon Television71 Inc.
24. Tricon Television72 Inc.
25. Tricon Television73 Inc.
26. Tricon Television74 Inc.
27. Tricon Television75 Inc.
28. Tricon Television76 Inc.
29. Tricon Television77 Inc.
30. Tricon Television78 Inc.
31. Tricon Television79 Inc.
32. Tricon Television80 Inc.
33. Tricon Television81 Inc.
34. Tricon Television82 Inc.
35. Tricon Television83 Inc.
36. Tricon Television84 Inc.
37. Tricon Television85 Inc.
38. Tricon Television86 Inc.
39. Tricon Television87 Inc.
40. Tricon Media Holdings, Inc.
41. Tricon Media Productions, Inc.
42. Tricon Media, Inc.
43. Tricon US Productions1 Inc.
44. Tricon US Productions14 Inc.
45. Tricon US Productions15 Inc.
46. Tricon Films (UK) Limited

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1462598 ONTARIO INC., CARRYING ON BUSINESS AS TRICON FILMS AND TELEVISION, AND THE COMPANIES LISTED IN SCHEDULE "A"

Applicants

Court File No. CV16-11634-00CL

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

Proceedings commenced at Toronto

**APPROVAL ORDER – DISTRIBUTION  
AGREEMENT**

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**Lawyers for the Applicants**

## **Appendix “D”**



**Fifth Report of  
KSV Kofman Inc.  
as CCAA Monitor of  
1462598 Ontario Inc.  
(d/b/a Tricon Films & Television)  
and the Companies Listed on  
Appendix “A”**

April 5, 2017

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COURT FILE NO.: CV-16-11634-00CL

**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 1462598 ONTARIO INC. (D/B/A TRICON FILMS & TELEVISION)  
AND THE COMPANIES LISTED ON APPENDIX "A"**

**FIFTH REPORT OF KSV KOFMAN INC. AS MONITOR**

**APRIL 5, 2017**

## **1.0 Introduction**

1. Pursuant to an order of the Ontario Superior Court of Justice (the "Court") made on December 12, 2016, as amended and restated on December 20, 2016 (the "Amended and Restated Initial Order"), 1462598 Ontario Inc., carrying on business as Tricon Films & Television (the "Company"), and its direct and indirect subsidiaries listed on Appendix "A" (collectively, the Company and the subsidiaries listed on Appendix "A" are referred to as the "Applicants") were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") and KSV Kofman Inc. ("KSV") was appointed as Monitor (the "Monitor"). A copy of the Amended and Restated Initial Order is attached as Appendix "B".
2. The principal purpose of these restructuring proceedings is to create a stabilized environment to realize on the Company's business and assets in an orderly manner, including its productions, tax credits, accounts receivable and film library.
3. KSV is filing this report ("Report") in its capacity as Monitor.

### **1.1 Purposes of this Report**

1. The purposes of this Report are to:
  - a) provide background information about the Applicants and these proceedings;
  - b) summarize the results of a sale process ("Sale Process") carried out by the Monitor and the Applicants in accordance with a Court order made on December 20, 2016 (the "Sale Process Order");

- c) summarize a transaction (the “Recommended Transaction”) pursuant to a Share Purchase Agreement (the “SPA”) dated April 4, 2017 between certain of the Applicants and Sonar Canada Inc. (the “Purchaser”), including the transactions contemplated by a License Agreement (the “License Agreement”) between certain of the Applicants and the Purchaser and a Distribution Agreement (the “Distribution Agreement”) between certain of the Applicants, the Purchaser and SunTrust Bank, Inc. (“SunTrust”), each in the form appended to the SPA;
- d) set out the basis on which the Monitor supports the Recommended Transaction;
- e) set out the Monitor’s recommendations regarding distributions to SunTrust, including from the proceeds of the Recommended Transaction;
- f) report on the Applicants’ consolidated cash flow projection for the six-month period ending September 30, 2017 (“Cash Flow Forecast”);
- g) provide the Monitor’s rationale for its support of the Applicants’ request to extend the stay of proceedings and the DIP facility for the duration of the stay extension granted on April 11, 2017, which is being sought to cover the five year term of the Distribution Agreement (April 11, 2022); and
- h) recommend that this Honourable Court make an order:
  - i. approving the SPA, the License Agreement, the Distribution Agreement and the Recommended Transaction;
  - ii. authorizing and ratifying the execution by the Applicants of the SPA, License Agreement, Distribution Agreement and all other ancillary documents and agreements required to complete the Recommended Transaction;
  - iii. vesting in the Purchaser the Applicants’ right, title and interest in and to the Purchased Assets (as defined in the SPA) free and clear of all liens, charges, security interests and other encumbrances;
  - iv. approving an extension of the DIP facility for the duration of the stay extension granted on April 11, 2017, which is being sought to cover the five year term of the Distribution Agreement (April 11, 2022);
  - v. sealing the summary of offers and the unredacted versions of the SPA, License Agreement and Distribution Agreement until further Court order;
  - vi. authorizing the Applicants, or the Monitor on behalf of the Applicants, to distribute to SunTrust the proceeds of the Recommended Transaction contemplated by the SPA and to make additional distributions to SunTrust without further Court order until the Applicants’ indebtedness to SunTrust is repaid in full; and

- vii. granting the Applicants' request for an extension of their stay of proceedings for the duration of the stay extension granted on April 11, 2017, which is being sought to cover the five year term of the Distribution Agreement (April 11, 2022), subject to the filing by the Monitor of a report to Court by no later than September 30, 2017 to provide a status report on the CCAA proceedings, an updated cash flow projection and its view at that time of the need to file further reports and cash flow projections.

## 1.2 Currency

1. All currency references in this Report are to Canadian dollars unless otherwise specified.

## 1.3 Restrictions

1. In preparing this Report, the Monitor has relied upon unaudited financial information of the Applicants, the books and records of the Applicants, and discussions with the Applicants' management, the Applicants' counsel and the financial advisor to SunTrust, Carl Marks Advisory Group ("Carl Marks"). The Monitor has not performed an audit or other verification of such information. The Monitor expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Monitor in preparing this Report. Any party wishing to place reliance on the Applicants' financial information is encouraged to perform its own diligence and any reliance placed by any party on the information herein shall not be considered sufficient for any purpose whatsoever.
2. An examination of the Applicants' Cash Flow Forecast as outlined in the Chartered Professional Accountant Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon the Applicants' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or form of assurance on whether the Cash Flow Forecast will be achieved.

## 2.0 Background

1. The Applicants are production, post-production and distribution companies which create, develop, produce and distribute television shows and films. The business was founded in 2000 by Andrea Gorfolova, the Applicants' President and CEO.
2. Ms. Gorfolova's affidavit sworn December 9, 2016, filed in support of the Applicants' application for CCAA protection, provides, *inter alia*, the Applicants' background, the reasons for the commencement of these proceedings and details regarding the secured creditors of each of the Applicants, including SunTrust, the Applicants' principal secured creditor and the DIP lender in these proceedings. As at the date of this Report, SunTrust was owed approximately US\$9.7 million (including advances of \$1.5 million under the DIP facility). Interest and costs continue to accrue.
3. KSV's pre-filing report dated December 11, 2016 (the "Pre-filing Report") provided additional information on the Applicants. A copy of the Pre-Filing Report is attached as Appendix "C" (without appendices).

4. The Monitor's Fourth Report to Court dated March 28, 2017 (the "Fourth Report") provided, *inter alia*, a summary of the Applicants' and the Monitor's activities since February 25, 2017, the date of the Monitor's Third Report. The Monitor's activities described in the Fourth Report were approved pursuant to a Court order made on March 31, 2017.

### 3.0 Sale Process

1. The Sale Process was approved pursuant to the Sale Process Order. The Monitor commenced the Sale Process immediately following its approval. An overview of the Sale Process is as follows:
  - a) The Sale Process was intended to attract offers from going-concern buyers.
  - b) The Monitor prepared an interest solicitation letter that was circulated to 66 acquisition targets, including potential purchasers identified by the Applicants, SunTrust, Carl Marks and the Monitor.
  - c) Attached to the solicitation letter was a confidentiality agreement ("CA") that interested parties were required to sign in order to obtain access to an online data room set up by the Monitor. Twenty-five prospective going-concern purchasers executed the CA and were granted access to the data room.
  - d) The information in the data room included distribution agreements in connection with the Applicants' film library, historical and projected financial information, other detailed information on each title, including a digital catalogue, tax returns and information related to the Applicants' two ongoing productions, being *Counterfeit Cat* and *Timber Creek Lodge*.
  - e) During the Sale Process, the Monitor facilitated due diligence by interested parties, including updating the data room with current financial and other information, as required.
  - f) Interested parties were also provided an opportunity to attend at the Applicants' head office for a meeting with management. Four such meetings were conducted with the Applicants' management team, with a representative of the Monitor in attendance at each meeting.
  - g) Due to the complexity of any transaction resulting from the need to preserve the Applicants' tax credits (estimated to have a value of approximately \$5 million), interested parties were not required to submit bids in a standardized form of asset purchase agreement, as is commonly the case in transactions in an insolvency proceeding. Offers were to include the following information: name of the purchaser; purchase price; evidence of financing required to complete a transaction; details concerning the structure of the transaction, including how tax credits would be preserved and collected; timeline to complete the transaction; material conditions; and any other information relevant to the offer.
  - h) Offers were due on January 17, 2017. Bidders were required to provide a deposit of 15% of the purchase price together with their offer.

### 3.1 Sale Process Results

1. A summary of the Sale Process results is as follows:
  - a) Eight offers were submitted on January 17, 2017. Certain of the offers contemplated the continued distribution of the Applicants' film library pursuant to a distribution arrangement, while others contemplated an outright purchase of certain of the Applicants' assets.
  - b) On January 24, 2017, the Monitor, in consultation with the Applicants, SunTrust and their respective advisors, sent a letter to each bidder requesting, *inter alia*, that bidders submit final offers by January 27, 2017 and provide additional information and clarification in respect of their offers. The points of clarification were primarily required to determine the implications, if any, of each offer on the Applicants' tax credits. A copy of the Monitor's January 24<sup>th</sup> letter to bidders is attached as Appendix "D".
  - c) All but one of the eight bidders submitted a revised offer on January 27, 2017.
  - d) The Purchaser's offer contemplated a distribution arrangement for the majority of the library titles other than *Counterfeit Cat*, and a purchase of the shares of Tricon Television82 Inc. (the "CC Entity"), being the *Counterfeit Cat* production entity. This structure has the benefit of realizing immediately on the *Counterfeit Cat* production assets, including the tax credit and accounts receivable, without having to fund the costs to completion (including any cost overruns) and/or it mitigates collection or other risks associated with monetizing the CC Entity's assets.
  - e) From January 27, 2017 to February 6, 2017, the Monitor worked with the Applicants, SunTrust, the Purchaser and their respective advisors to obtain further clarification on the material terms and conditions of the Purchaser's offer.
  - f) On February 6, 2017, the Purchaser's offer was accepted, subject to finalizing definitive documents and Court approval.
2. A summary of the offers is provided in Confidential Appendix "1". The Monitor's rationale for its request that certain information be sealed at this time is provided in section 4.2 below.

### 4.0 Recommended Transaction<sup>1</sup>

1. A summary of the SPA is as follows:
  - a) **Purchaser:** The Purchaser is a wholly-owned Canadian subsidiary of Sonar Entertainment, Inc., a leading independent producer and global distributor of television content with headquarters in the U.S.

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<sup>1</sup> Defined terms in this section of the Report have the meanings provided to them in the SPA and/or the Distribution Agreement.

- b) **Purchased Assets:** The shares of the CC Entity, certain other projects in progress referred to as the “Purchased Development Pipeline Assets” (which include the Purchased Intellectual Property and the Purchased Development Pipeline Contracts), the Purchased CC Contracts (which include contracts relating to the *Counterfeit Cat* production held by Applicants other than the CC Entity), the CC Receivables, the Assigned Receivables and the Equipment.
- c) **Purchase Price:** The Purchase Price is comprised of cash consideration plus the Assumed Liabilities, which amount is to remain confidential for the reasons set out in section 4.2 below.

The Purchase Price is subject to an adjustment mechanism, which is meant to capture working capital like changes between the offer date and the Closing Date. The SPA requires an estimate to be prepared at least three business days prior to the Closing Date and a final adjustment is to occur within three business days following the Closing Date.

- d) **Deposit:** The Purchaser submitted a deposit representing 15% of its initial offer, which remains on deposit in the Monitor’s trust account.
- e) **Employees/Contractors:** The SPA contemplates that the Purchaser will offer employment to Ms. Gorfolova and will engage three other current employees/contractors of the Applicants on a contract basis (the “Subject Employees”).
- f) **Representations and Warranties:** The SPA includes representations and warranties in respect of organization and corporate power, authorization, tax matters, litigation and intellectual property, Purchased Assets, employees, liabilities, material contracts, brokers and Competition Act.
- g) **Closing:** The Outside Date is April 11, 2017 or such other date as may be agreed to in writing by the Applicants and the Purchaser, with the consent of SunTrust required for the Applicants. If the Recommended Transaction does not close by April 11, 2017, there is no obligation to continue negotiations and the Applicants can pursue other opportunities.
- h) **Services Agreement:** The SPA contemplates that certain of the Applicants and Ms. Gorfolova will enter into a services agreement with the Purchaser relating to the ongoing collection of accounts receivable owing to the Applicants (other than the CC Entity) in exchange for an administration fee payable to the Purchaser (calculated as a percentage of the amounts collected).
- i) **Material Conditions:** The material conditions precedent to closing are:
- obtaining consents from (i) four contract counterparties to assign to the Purchaser agreements involving certain Applicants other than the CC Entity related to the *Counterfeit Cat* production and (ii) two contract counterparties to assign to the Purchaser agreements involving certain of the Applications in respect of the Development Pipeline and providing evidence of notice of the transaction to one contract counterparty. The Monitor understands that obtaining these consents and providing this notice are not expected to delay closing;

- the production of *Counterfeit Cat* will be continuing or will have been completed. As at the date of this Report, this production is in its final stages of completion;
  - employment agreement/contract agreements being entered into between an affiliate of the Purchaser and each of Ms. Gorfolova and the Subject Employees, as applicable;
  - certain of the Applicants shall have completed the Pre-Closing Intercompany Reorganization to eliminate certain inter-company balances;
  - the Company shall have assigned its trademark application in *Counterfeit Cat* to the CC Entity;
  - the opinion rendered by the Minister of Canadian Heritage confirming the Purchaser's status as Canadian for the purposes of the *Investment Canada Act* shall not have been revoked. (This opinion was required to preserve the Applicants' tax credits.);
  - there shall not have been any Material Adverse Effect in the CC Entity's business. The Monitor is not aware of any Material Adverse Effect as at the date of this Report;
  - the parties entering into the License Agreement. The License Agreement provides for the license of certain copyright owned or licensed by certain of the Applicants in respect of titles in the Development Pipeline for which tax credits are still outstanding; and
  - the Court shall have issued a Sale Approval and Vesting Order.
2. The SPA is also conditional on the parties entering into the Distribution Agreement. The Distribution Agreement provides for the appointment of Sonar Canada Inc. as the exclusive Distributor on behalf of the Applicants for the purpose of exhibiting, distributing and otherwise exploiting 153 titles in the Applicants' film library. The material terms of the Distribution Agreement include the following:
- a) **Economic Terms:** The Distribution Advance, Distribution Fee and cap on Distribution Expenses, which according to the Applicants' management are standard terms in distribution agreements in the television industry, are to remain confidential for the reasons set out in section 4.2 below.
  - b) **Agency Accounts:** The Distributor is to establish separate bank accounts for the deposit of Gross Receipts and disbursement of amounts payable to the Applicants under the Distribution Agreement.
  - c) **Reporting:** The Distributor is to provide quarterly accounting statements and each statement shall be accompanied by payment of the amount owing by the Distributor to the Applicants at that time. The Applicants have audit rights which can be exercised on an annual basis in respect of the reports to be provided by the Distributor.

- d) **Term:** Five years, subject to an automatic termination provision should the Applicants' net proceeds on an aggregate basis generated from the Distribution Agreement be less than the Carrying Costs<sup>2</sup> funded by the Applicants for the first 18 months of the Distribution Agreement or any semi-annual period thereafter.
  - e) **Post-Term Rights:** The Distributor has certain rights that extend for a two year period following the Term, including that any sub-distribution or sub-license agreement entered into during the Term (other than in the last six months of the Term) can extend beyond the Term for not longer than this two year period.
  - f) **Right of First Refusal:** Upon receipt of a notice of termination of the Distribution Agreement, the Distributor is granted an exclusive right during the applicable notice period to purchase any or all of the Program Rights from the Applicants (other than Program Rights relating to productions for which tax credits are owing) at fair market value as of the date of the termination notice. The fair market value for the Program Rights shall be determined by the midpoint of a third party appraisal to be obtained at that time by each of the Applicants and the Purchaser.
  - g) **Security Interest:** The Distribution Agreement (and proposed Approval Order) contemplates that the Applicants grant to the Distributor a security interest in the Distributor's share of the proceeds of the Distribution Agreement and the Program Rights, other than Program Rights relating to productions for which tax credits are owing. The security interest is also to cover damages, losses, liabilities, costs, fees or expenses actually incurred by the Distributor as a result of third party claims arising in connection with the Distribution Agreement up to an amount equivalent to half of the Distribution Advance.
3. Subject to the Distribution Agreement being automatically terminated pursuant to the funding issue described in 2(d) above, the Distribution Agreement contemplates that the Applicants will take commercially reasonable steps to ensure that the CCAA proceedings and all stays of proceedings and other protections remain in place throughout the five year term of the agreement.
4. A redacted version of the SPA (which includes a redacted version of the Distribution Agreement as Schedule "D" and the License Agreement as Schedule "F") is attached as Appendix "E". An unredacted version is filed as Confidential Appendix "2". The basis for sealing the unredacted versions of the transaction documents is provided in section 4.2 below.

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<sup>2</sup> Carrying Costs refer to expenses to be funded by the Applicants over the term of the Distribution Agreement, including professional fees, library administration costs, dubbing, digitization, residuals, billing, transportation, material, foreign versioning and payments to third-party producers.



## 4.1 Recommendation

1. The Monitor believes the Recommended Transaction is appropriate for the following reasons:
  - a) the Sale Process was carried out in accordance with the terms of the Sale Process Order. The Sale Process was commercially reasonable, including timelines, breadth of the canvassing of the market, information made available to interested parties, including information in the data room, and the availability of management for meetings, conference calls and head office visits. The market was canvassed for sale and/or distribution arrangement proposals for all or portions of the Applicants' business and assets;
  - b) the Monitor does not believe that further time spent marketing the Applicants' business and assets will result in a superior transaction. Moreover, there is no funding available for an extended sale process and SunTrust is not willing to fund any process that puts at risk the Recommended Transaction;
  - c) the transaction has been extensively negotiated and thoughtfully structured with a view to preserving the value of the Applicants' tax credits. It is also expected to enhance accounts receivable collections given the transitional provisions in the Distribution Agreement;
  - d) SunTrust has consented to the Recommended Transaction notwithstanding that it is projected to incur a substantial shortfall on its advances to the Applicants;
  - e) there is urgency to complete a transaction for the following reasons: i) the Applicants' lack of liquidity - the DIP facility expires on April 7, 2017 and is unlikely to be extended past April 11, 2017 absent approval of the Recommended Transaction; ii) SunTrust requires the Applicants to reduce costs immediately; iii) distribution efforts need to ramp up quickly so that recoveries on the film library can be maximized – the insolvency proceedings have cast a shadow over the state of the library; and
  - f) the Recommended Transaction does not prejudice any of the Company's stakeholders, including producers who will either have their content distributed pursuant to the Distribution Agreement or returned to them given its exclusion from the Recommended Transaction.
2. Based on the foregoing, the Monitor recommends that this Honourable Court approve the Recommended Transaction.

## 4.2 Sealing

1. The Monitor recommends that the offer summary, SPA, License Agreement and Distribution Agreement be filed with the Court on a confidential basis and remain sealed until further Court order as the availability of this information to other parties may negatively impact any future purchase and/or distribution offers for the Applicants' business and assets if the Recommended Transaction does not close. The Monitor does not believe that any stakeholder will be prejudiced if the information is sealed.

## 5.0 DIP Facility

1. The DIP facility was approved pursuant to the Amended and Restated Initial Order. The Amended and Restated Initial Order provides for, *inter alia*, a priority DIP Lender's Charge covering the full amount of the DIP facility at that time, being \$1.4 million. The DIP facility and DIP Lender's Charge were increased to \$1.55 million pursuant to a Court order made on February 28, 2017. As at the date of this Report, the Applicants have drawn \$1.5 million on the DIP facility.
2. As at the date of this Report, the DIP facility expires on April 7, 2017. On April 7, 2017, the Applicants are seeking Court approval to extend the DIP facility to April 11, 2017 pursuant to a Second Extension Agreement dated April 4, 2017 between SunTrust and the Applicants, a copy of which is attached as Appendix "F".
3. Subject to the approval of the Recommended Transaction, the Applicants are seeking to extend the term of the DIP facility for the duration of the stay extension granted on April 11, 2017, which is being sought to cover the five year term of the Distribution Agreement (April 11, 2022), subject to Court approval.
4. The Monitor believes it is appropriate to extend the term of the DIP facility. The DIP facility is necessary to, and is projected to be sufficient to, fund these proceedings as reflected in the Cash Flow Forecast. Without the DIP facility, the Applicants will not have the funding they require to carry out their obligations under the Distribution Agreement. In this regard, funding is required to retain a limited number of former employees on a "term and task" contract basis to assist with the administration of the Applicants' film library and/or the wind-down of the Applicants' business, including tax credit collections. The costs of the process, including professional fees, will be funded from the DIP facility and/or further recoveries on the Applicants' remaining assets, principally accounts receivable and tax credits.

## 6.0 Cash Flow Forecast

1. The Applicants have prepared a consolidated Cash Flow Forecast covering the first six months of the contemplated stay extension period. The Cash Flow Forecast and the Applicants' statutory report on the cash flow pursuant to Section 10(2)(b) of the CCAA is attached as Appendix "G".
2. The Cash Flow Forecast reflects, *inter alia*, that the Applicants are not projected to require an increase in the maximum borrowings under the DIP facility, which presently totals \$1.55 million.

3. Based on the Monitor's review of the Cash Flow Forecast, there are no material assumptions which seem unreasonable in the circumstances. The Monitor's statutory report on the cash flow is attached as Appendix "H".
4. Should the Recommended Transaction not close for any reason, a revised Cash Flow Forecast will need to be prepared and filed with this Honourable Court.
5. The Monitor believes it is appropriate to provide a report by the end of September, 2017 updating the Court on the status of these proceedings. Attached to that report will be an updated Cash Flow Forecast. The Monitor will advise the Court at the time of its view as to whether further Cash Flow Forecasts should be filed in these proceedings, including the frequency for doing so.

## 7.0 Stay Extension

1. As at the date of this Report, the stay of proceedings expires on April 7, 2017. On April 7, 2017, the Applicants are seeking Court approval of a short extension of the stay of proceedings from April 7, 2017 to the return of the Sale Approval Motion.
2. The Monitor supports the Applicants' request for an extension of the stay of proceedings covering the term of the Distribution Agreement for the following reasons:
  - the Applicants continue to act in good faith and with due diligence;
  - the extension is required for the Applicants to complete the Recommended Transaction, carry out their obligations under the Distribution Agreement and realize on their remaining assets, particularly tax credits with a book value of approximately \$5 million;
  - subject to Court approval of the requested amendment to the DIP facility, the Applicants are projected to have sufficient funding available to continue to meet all of their obligations to the end of the proposed stay extension period;
  - completion of the Recommended Transaction is projected to maximize recoveries for SunTrust, as well as provide the other benefits set out in section 4.1 of this Report;
  - the Distributor requires that a stay of proceedings be in place for the duration of the Distribution Agreement in order to provide it with the best opportunity to maximize recoveries on the Applicants' film library;
  - the cost of additional stay extension motions throughout the term of the Distribution Agreement does not appear necessary at this time given the only affected creditor is SunTrust and it supports the Recommended Transaction and a long stay extension;
  - the Monitor will still comply with Section 23(1)(d) of the CCAA, which will require it to, among other things, file a report with this Honourable Court on the Applicants' business and financial affairs without delay after ascertaining a material adverse change in the Applicants' projected cash-flow or financial circumstances; and

- no creditor will be prejudiced if the extension is granted. In this regard, the Monitor intends to work with the Applicants to terminate the applicable agreements that were excluded from the Distribution Agreement in order to allow for those titles and related property to be returned to those producers.

## 8.0 Distributions to SunTrust

1. SunTrust is the Applicants' principal secured creditor. As at the date of this Report, SunTrust is owed approximately US\$9.7 million (including advances of \$1.5 million under the DIP facility), plus interest and costs which continue to accrue.
2. Bennett Jones LLP, the Monitor's counsel, provided an opinion<sup>3</sup> dated December 9, 2016 which, subject to the standard assumptions and qualifications contained therein, concluded that the security granted by the Canadian Applicants, as registered under the Ontario *Personal Property Security Act*, creates a valid and perfected security interest in the Applicants' business and assets situated in Ontario, other than the assets of Tricon Television<sup>80</sup> Inc. and Tricon Television<sup>81</sup> Inc. ("Tricon 80 and 81").
3. Tricon 80 and 81 are the production entities for *Timber Creek Lodge*. The assets of Tricon 80 and 81 are not subject to the Recommended Transaction. Bravo Media Productions LLC is the principal secured creditor of those entities, whose assets are comprised of tax credits related to that production.
4. The Monitor is not aware of any other secured creditors or any claim that ranks or may rank in priority to SunTrust other than the costs of these proceedings, which are covered under the Administration Charge. In this regard, all payroll obligations are current, including accrued vacation pay which has either been paid to terminated employees or provided for in the Cash Flow Forecast for the remaining employees.
5. Based on the foregoing, the Monitor recommends that this Honourable Court issue an order authorizing and directing the Monitor, on behalf of the Applicants, to distribute to SunTrust any amounts received from the realization of the assets of the Applicants (excluding the assets of Tricon 80 and 81), including the proceeds generated from the Recommended Transaction, from time to time upon receipt of such funds, up to the amount of the Applicants' indebtedness owing to SunTrust, without further Court order, subject to retaining a reasonable reserve to cover the projected expenses through to the end of the applicable stay period, in an amount to be agreed by the Applicants, the Monitor and SunTrust in accordance with the attached Cash Flow Forecast.
6. Subject to the amount of cash on deposit in the Applicants' bank accounts on the closing date of the Recommended Transaction, should it receive Court approval, the Monitor will determine if a holdback is required from the proceeds of the Recommended Transaction prior to making the first distribution to SunTrust.

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<sup>3</sup> A copy of the security opinion will be made available to the Court should the Court wish to review it.

## 9.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(h) of this Report.

\* \* \*

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc". The signature is written in a cursive, flowing style.

**KSV KOFMAN INC.,  
SOLELY IN ITS CAPACITY AS CCAA MONITOR OF THE APPLICANTS  
AND NOT IN ITS PERSONAL OR ANY OTHER CAPACITY**