

**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  
UNIQUE BROADBAND SYSTEMS INC.

**MOTION RECORD  
(returnable 26 July 2012)**

Date: 23 July 2012

**GOWLING LAFLEUR HENDERSON LLP**

Barristers & Solicitors

1 First Canadian Place, Suite 1600

100 King Street West

Toronto, ON M5X 1G5

**E. PATRICK SHEA (LSUC. No. 39655K)**

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Solicitors for the Applicant

## **INDEX**

Notice of Motion returnable 26 July 2012 .....	1
Affidavit of Robert Ulicki sworn 23 July 2012 .....	2

**TAB 1**

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UNIQUE BROADBAND SYSTEMS INC.

**NOTICE OF MOTION**

**UNIQUE BROADBAND SYSTEMS INC. AND UBS WIRELESS SERVICES INC.**  
**(together "UBS")**, will make a motion to the Court on Thursday, the 26<sup>th</sup> of July 2012, at 10:00  
a.m., or as soon after that time as the motion can be heard, at 393 University Avenue, Toronto,  
Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order for extending the Stay Period as defined in the Initial Order dated 5 July 2011 from 30 July 2012 to 30 October 2012.
2. Such further order as may be required in the circumstances and this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The grounds set forth in the Affidavit of Robert Ulicki sworn 23 July 2012 and the Fourth Report of Duff & Phelps Canada Restructuring Inc.

2. Circumstances exist that make the extension of the Stay Period appropriate.
3. UBS has acted, and is acting, in good faith and with due diligence.
4. The *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.
5. Such further and other grounds as counsel may advise and this Honourable Court may accept.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

1. The affidavit of Robert Ulicki sworn 23 July 2012.
2. The Fourth Report of Duff & Phelps Canada Restructuring Inc.
3. Such further and other evidence as this Honourable Court may permit.

Date: 23 July 2012

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<p style="text-align: center;"><b>Court File No.:</b> CV-11-9283-00CL</p> <p style="text-align: center;">IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED</p> <p style="text-align: center;">AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF UNIQUE BROADBAND SYSTEMS INC.</p>	
<p style="text-align: center;"><b>ONTARIO</b></p> <p style="text-align: center;"><b>SUPERIOR COURT OF JUSTICE</b></p> <p style="text-align: center;"><b>(COMMERCIAL LIST)</b></p> <p style="text-align: center;">(PROCEEDING COMMENCED AT TORONTO)</p>	
<p style="text-align: center;"><b>NOTICE OF MOTION</b></p>	
	<p><b>GOWLING LAFLEUR HENDERSON LLP</b>  Barristers and Solicitors  1 First Canadian Place  100 King Street West, Suite 1600  Toronto ON M5X 1G5</p> <p><b>E. Patrick Shea (LSUC No. 39655K)</b>  Tel: (416) 369-7399  Fax: (416) 862-7661</p> <p>Solicitors for the Applicant</p>

# TAB 2

**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  
UNIQUE BROADBAND SYSTEMS, INC.

**AFFIDAVIT OF ROBERT ULICKI  
(sworn 23 July 2012)**

**I, ROBERT ULICKI**, of the City of Toronto in the Province of Ontario **MAKE OATH  
AND SAY:**

1. I am a director of Unique Broadband Systems, Inc. ("**UBS**") and its wholly-owned subsidiary UBS Wireless Services Inc. ("**UBS Wireless**" and, together with UBS, the "**Applicants**"). I have personal knowledge of the matters herein deposed, save and except where I refer to matters based on information and belief, in which cases I identify the source(s) of that information and believe it to be true. I have also reviewed relevant records, press releases and public filings as necessary, and rely on the information contained in those records, press releases, etc. and believe that information to be true.
2. I am also the portfolio manager and owner of Clareste Wealth Management Inc. ("**CWM**"). CWM manages Clareste LP, which owns approximately 1 per cent of the shares of UBS.



## **I. Introduction and Summary**

3. This Affidavit is filed in support of a Motion brought by UBS seeking to extend the Stay Period as defined in the Initial Order made in these proceedings on 5 July 2011 from 30 July 2012 to 30 October 2012 to permit the determine a large disputed claims asserted against UBS to be completed in accordance with an on-going claims procedure that has been implemented by the Court to determine that claim. The disputed claim is material to the CCAA proceedings and the ability of the Applicants to develop a plan under the CCAA.
4. Aside from the Applicants, the major stakeholders in the CCAA proceedings to date have been Mr. Alex Dolgonos and companies controlled by Mr. Dolgonos, including DOL Technologies Inc. (“**DTI**” and, together with Mr. Dolgonos, “**DOL**”) and Gerald McGoeey and Jolian Investments Inc. (“**JII**” and, together with Mr. McGoeey, “**Jolian**”). Mr. Dolgonos is the founder of UBS and corporations controlled by him own a large number of UBS shares. Until July of 2010, Mr. Dolgonos was, through DTI, a consultant to UBS. Mr. McGoeey was, until July of 2010, a senior officer whose services were provided to UBS by JII and a director of UBS. The departure of Mr. Dolgonos and Mr. McGoeey was precipitated by a change in the composition of the UBS board of directors at took place in July of 2010.
5. DOL and Jolian filed large claims against UBS. UBS and DOL have, as described further below, negotiated a mutually acceptable settlement, but Jolian’s claim remains to be determined in the CCAA proceedings.

## **II. CCAA Proceedings**

6. The Applicants are incorporated pursuant to the *Business Corporation Act*, R.S.O. 1990, c. B.16 and its shares are listed. UBS is a holding company that owns all of the issued and outstanding shares of UBS Wireless. UBS’ only realizable assets are its 39 per cent indirect interest in LOOK Communications Inc. (“**LOOK**”). UBS’ involvement in LOOK is described further in my Affidavit sworn 7 February 2012.

7. As set forth above, on 5 July 2011, the Court made an Initial Order in respect of UBS pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. A true copy of the Initial Order is attached as **Exhibit "A"**. RSM Richter Inc, now Duff & Phelps Canada, Restructuring Inc. (the "**Monitor**") was appointed as monitor of the Applicants. The Stay Period has been extended a number of times and currently expires on 30 July 2012.
8. The CCAA proceedings were precipitated by litigation commenced against UBS in July of 2010 by DTI and JII. In that litigation DOL and JII claimed certain payments that they are owing by UBS. UBS defended the litigation.
9. As described in my Affidavit sworn 4 July 2011:
  4. *UBS and UBS Wireless are both insolvent and are seeking to commence proceedings under the CCAA to, inter alia:*
    - (a) *facilitate the determination and compromise or arrangement of creditor claims against UBS to permit the company to propose a plan to realize value from the company's assets, including its shareholdings in LOOK Communications Inc. ("LOOK"), and its accumulated tax losses and public listing;*
    - (b) *avert an imminent liquidity crisis being caused by litigation-related expenses that will prevent UBS from: (i) continuing to carry on business for the benefit of its stakeholders; (ii) defending certain proceedings brought against the company; and (iii) prosecuting claims commenced by UBS; and*
    - (c) *provide a process to determine certain claims being asserted against UBS asserted by certain former directors and officers on their merits.*
  5. *But for the commencement of proceeding under the CCAA, UBS will not be able to continue and will likely be forced into a liquidating proceeding. This will not be in the best interests of UBS's stakeholders.*

...

53. *The cost of the Litigation [with DOL and Jolian] is, as set forth below, causing a serious strain on UBS's cash flow. The costs of the Litigation are such that UBS believes that it will not be able to fund the Litigation through to a determination on the merits. If UBS is not able to continue to fund the defence of the Litigation (and the prosecution of the counterclaims), the matter will not be determined on its merits and this will result in prejudice to UBS's other stakeholders. The amount being claimed against UBS in the Litigation is more than the total value of UBS's assets and will "swamp" the claims of UBS's other creditors.*

...

80. *UBS ... believes that a CCAA claims process will facilitate the determination of the claims asserted against UBS in the Litigation [with DOL and Jolian] and the Oppression Action in a more cost-effective and expedient manner for the benefit of UBS's stakeholders.*

### III. CCAA Claims Procedure

10. On 4 August 2011, the Court made an Order (the "**First Extension and Claims Order**"), *inter alia*, establishing a procedure (the "**Claims Procedure**") for the filing of claims against UBS.
11. In accordance with the First Extension and Claims Order:
- (a) DOL and Jolian filed claims against UBS;
  - (b) the claims filed by DOL and Jolian against UBS were, based on the fact that they were disputed by UBS, disallowed by the Monitor;
  - (c) DOL and Jolian appealed the disallowance of their claims by the Monitor; and
  - (d) the parties agreed that DOL's and Jolian's disputed claims against UBS should be determined by a Judge.
12. Pursuant to an Order dated 13 April 2012 (the "**Claims Procedure Timeline Order**") the Court established a timeline for the initial stage of the process by which DOL and Jolian

disputed claims would be determined. A true copy of the Claims Procedure Timeline Order is attached as **Exhibit “B”**.

13. The Claims Procedure Timeline Order required that DOL, Jolian and UBS exchange documents describing their claims and counterclaims, including the legal and factual basis for the claims, and identify relevant documents. This has been done.
14. The Claims Procedure Timeline Order further contemplated that:
  - (a) DOL and Jolian could bring Motions to bring third party and cross-claims they wished to bring against former directors and, in the case of DOL, the former CFO of UBS into the Claims Procedure; and
  - (b) DOL and Jolian would bring Motions seeking leave to enforce an Order made by Mr. Justice Marrocco prior to the CCAA proceedings being commenced requiring that UBS advance professional fees to DOL and Jolian (the “**Marrocco Order**”)<sup>1</sup>.
15. As contemplated by the Claims Procedure Timeline Order, on 13 June 2012, Mr. Justice Wilton Siegel heard the following Motions:
  - (a) Motions by DOL and Jolian seeking to add third party claims they wish to bring against the former directors and, in the case of Dolgonos, a former officer of UBS into the Claims Procedure;
  - (b) Motions by DOL and Jolian seeking to enforce the Marrocco Order; and

<sup>1</sup> The Motion to lift the stay imposed by the Initial Order was brought pursuant to an Order made by Justice Simmons of the Ontario Court of Appeal, a copy of which is attached as **Exhibit “G”**.

- (c) Motions by the former directors of UBS seeking advances in respect of professional fees if DOL and Jolian were permitted to advance third party claims in the Claims Procedure<sup>2</sup> (together, the “**Interim Motions**”).

- 16. Mr. Justice Wilton-Siegel has not yet released his decision on the Interim Motions. The outcome of the Interim Motions will determine the balance of the schedule for the Claims in accordance with the Claims Procedure.

#### IV. 2012 AGM

- 17. On 8 March 2012, companies controlled by Mr. Dolgonos that own a significant number of UBS shares delivered a Requisition requesting that UBS call a special meeting of shareholders for the purpose of removing and replacing the UBS board with Kenneth D. Taylor, Azim S. Fancy, Daniel Marks and Victor Wells. UBS agreed to hold this meeting at the same time as UBS’ 2012 annual general meeting of shareholders on 12 July 2012 (the “**2012 AGM**”), subject to the 2012 AGM being adjourned to allow the Claims Procedure to be advanced.
- 18. UBS scheduled a Motion for 6 July 2012 (the “**UBS AGM Motion**”) seeking an Order, *inter alia*, an Order suspending or delaying the 2012 AGM until the major claims against UBS were resolved.

#### V. DOL/UBS Settlement

- 19. Prior to UBS AGM Motion being heard, UBS and DOL negotiated a settlement (the “**DOL/UBS Settlement**”) that resolved all of the issues as between UBS and DOL. The terms of the DOL/UBS Settlement are described in the Monitor’s Ninth Report dated 5 July 2012 and include a reconstitution of the UBS board of directors, a true copy of which is attached as **Exhibit “C”**.
- 20. Pursuant to an Order dated 6 July 2012, a true copy of which is attached as **Exhibit “D”**, the Court: (a) approved the DOL Settlement; and (b) Ordered that, subject to a further

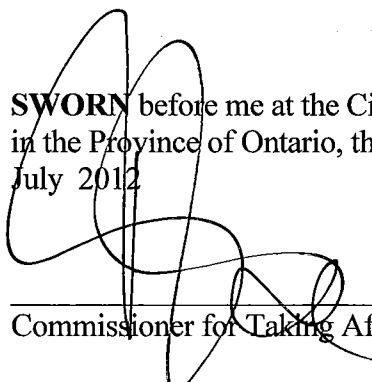
<sup>2</sup> A Motion by the former CFO of UBS seeking similar relief was adjourned to be dealt with at a later date.

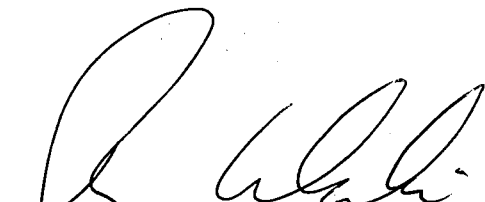
Order of the Court, the Applicants were not required to convene or hold a meeting of shareholders under the CCAA proceedings were terminated.

21. On 12 July 2012, the UBS board held a meeting at which, through a series of resolutions, the UBS board was reconstituted. The current UBS board is comprised of Mr. Wells, Mr. Taylor and me. Mr. Wells and Mr. Taylor are new to the UBS board and are now in the process of becoming familiar with, inter alia, the CCAA proceedings, Jolian's disputed claims against UBS and the Claims Procedure. The newly constituted UBS board will be holding a meeting on 23 July 2012 to receive a briefing from UBS' counsel with respect to the CCAA proceedings and the Claims Procedure.

## **VI. Sale of UBS Property**

22. There was to be a Motion on 26 July 2012 at which Motion UBS was to seek approval to implement a process to identify purchasers for its shares in LOOK. Given the change in the constitution of the UBS board took place on 12 July 2012 and that fact that Mr. Wells and Mr. Taylor have not yet had the opportunity to be fully briefed with respect to the CCAA proceedings, UBS has determined that it will not seek to have a marketing process approved at this time. The company may, once the newly constituted board has had an opportunity to properly consider the matter, bring a Motion at a later date.

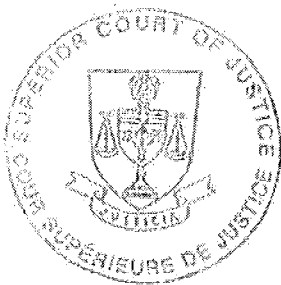
**SWORN** before me at the City of Toronto  
in the Province of Ontario, this 23<sup>rd</sup> day of  
July 2012  
  
\_\_\_\_\_  
Commissioner for Taking Affidavits or Notary

  
\_\_\_\_\_  
**ROBERT ULICKI**

**THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF  
ROBERT ULICKI, SWORN BEFORE ME ON  
JULY 23, 2012**

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**A COMMISSIONER FOR TAKING OATHS**



Court File No.: CV-11-9283-00CL

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

**THE HONOURABLE MR**  
**JUSTICE WILTON-SIEGEL**

)  
)  
)

**TUESDAY, THE 5<sup>TH</sup> DAY**  
**OF JULY, 2011**

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  
UNIQUE BROADBAND SYSTEMS, INC.

**INITIAL ORDER**

**THIS APPLICATION**, made by the Unique Broadband Systems, Inc. ("UBS"), 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 Robert Ulicki sworn 4 July 2011 and the Exhibits thereto, and on being advised that there or no 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 Applicant, and on reading the consent of RSM Richter Inc. ("**Richter**" or, in its capacity as monitor, the "**Monitor**") 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 UBS and its wholly owned subsidiary UBS Wireless Services Inc. (together, the "**Applicant**") are companies to which the CCAA applies.

**PLAN OF ARRANGEMENT**

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

**POSSESSION OF PROPERTY AND OPERATIONS**

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

5. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:
- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
  - (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.
6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
  - (b) payment for goods or services actually supplied to the Applicant following the date of this Order.
7. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

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

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

10. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.
11. **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 Applicant 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 Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

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

12. **THIS COURT ORDERS** that until and including 4 August 2011, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

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

## **NO INTERFERENCE WITH RIGHTS**

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

**CONTINUATION OF SERVICES**

15. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

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

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

**APPOINTMENT OF MONITOR**

18. **THIS COURT ORDERS** that Richter is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with 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.
19. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Applicant's receipts and disbursements;
  - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

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except for Action  
Court File Number  
08-10-9036-0001

- (c) advise the Applicant in its preparation of the Applicant's cash flow statements;
- (d) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

20. **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.

21. **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.

22. **THIS COURT ORDERS** that that the Monitor shall provide any creditor [or shareholder] of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.
23. **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.
24. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each

case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis.

25. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$750,000, 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 28.

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

27. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration 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 Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.
28. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on the Property and the Administration Charge 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.

29. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant or cause to be granted any Encumbrances that rank in priority to, or *pari passu* with, the Administration Charge unless the Applicant also obtains the prior written consent of the Monitor, and the beneficiaries of the Administration Charge (the "**Chargees**"), or further Order of this Court.
30. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees entitled to the benefit of the Administration Charge shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:
- (a) neither the creation of the Administration Charge shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
  - (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and
  - (c) the payments made by the Applicant pursuant to this Order, and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive

conduct, or other challengeable or voidable transactions under any applicable law.

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

#### **SERVICE AND NOTICE**

32. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in *The Globe & Mail* a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (c) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.
33. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.
34. **THIS COURT ORDERS** that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email

addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at [www.rsmrichter.com](http://www.rsmrichter.com).

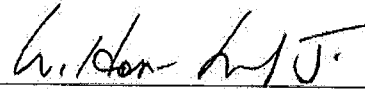
#### **GENERAL**

35. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
36. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.
37. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
38. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
39. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than

*get aside,*  
*AMS*

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.

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



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

JUL 05 2011

PER/PAR:



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED  
AND IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF UNIQUE BROADBAND SYSTEMS INC.

(the "Applicant")

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

(PROCEEDING COMMENCED AT TORONTO)

**ORDER**

**GOWLING LAFLEUR HENDERSON LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

**E. Patrick Shea**  
LSUC No.: 39655K  
Telephone: (416) 369-7399  
Facsimile: (416) 862-7661

SOLICITORS FOR THE APPLICANT

**THIS IS EXHIBIT "B" TO THE AFFIDAVIT OF  
ROBERT ULICKI, SWORN BEFORE ME ON  
JULY 23, 2012**



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**A COMMISSIONER FOR TAKING OATHS**



ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

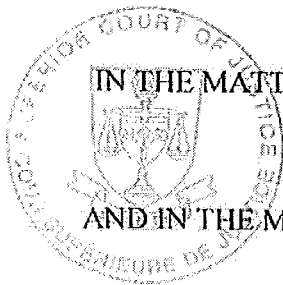
THE HONOURABLE MR.

JUSTICE WILTON-SIEGEL

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)  
)

THURSDAY, THE 4<sup>TH</sup> DAY

OF AUGUST, 2011



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 UNIQUE  
BROADBAND SYSTEMS, INC.

FIRST EXTENSION

AND

CLAIMS BAR PROCEDURE ORDER

THIS MOTION, made by Unique Broadband Systems, Inc. ("UBS") and UBS Wireless Services Inc. ("UBSW" and, together with UBS, 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 Robert Ulicki sworn 22 July 2011 and the Exhibits thereto and the First Report of RSM Richter Inc. (the "Monitor") in its capacity as Monitor of UBS and UBSW,

## **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.

## **EXTENSION OF STAY**

- [2] **THIS COURT ORDERS AND DECLARES** that the Stay Period (as defined in the Initial Order dated 5 July 2011) be and is hereby extended to 31 October 2011.

## **DEFINITIONS**

- [3] **THIS COURT ORDERS** that the following terms in this Order shall, unless otherwise indicated, have the following meanings ascribed thereto:
- a) **"Business Day"** means a day, other than a Saturday, a Sunday, or a day when banks are not open for business in the Province of Ontario;
  - b) **"CCAA Proceedings"** means the proceedings in respect of the UBS and UBSW before the Court commenced pursuant to the CCAA;
  - c) **"Claim"** means any right or claim of any Person against any of the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever of any of the Applicants, owed to such Person and any interest accrued thereon or costs payable in respect thereof, whether reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, together with any other claims of any kind that, if unsecured, would have
-

been claims provable in bankruptcy had the Applicants become bankrupt on the Determination Date;

- d) **"Claims Bar Date"** means 19 September 2011 at 1700 Eastern Time;
- e) **"Claims Officer"** means the individual(s) appointed as claims officer(s) pursuant to paragraph [11] of this Order;
- f) **"Claims Package"** means the document package which shall include the Notice to Creditors, the Proof of Claim Form and the Creditors' Instructions;
- g) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- h) **"Creditor"** means any Person having a Claim and may, where the context requires, include the assignee of a Claim or a trustee, interim receiver, receiver, receiver and manager, or other Person acting on behalf of such Person.
- i) **"Creditors' Instructions"** means an instruction letter substantially in the form attached hereto as **Schedule "A"** regarding the completion of a Proof of Claim Form;
- j) **"Creditors' List"** means the list of Creditors prepared in accordance with s. 23(1) of the CCAA;
- k) **"Determination Date"** means 5 July 2011;
- l) **"Dispute Package"** means, with respect to any Claim, a copy of the related Proof of Claim Form, Notice of Revision or Disallowance and Notice of Dispute;
- m) **"Disputed Claim"** means a Claim in respect of which a Notice of Dispute has been delivered.

- n) **"Initial Order"** means the order of this Court made under the CCAA on 5 July 2011, as amended and/or restated from time to time thereafter;
- o) **"Known Creditor"** means the Creditors listed on the Creditors' List;
- p) **"Notice of Dispute"** means the notice that may be delivered by a Creditor who has received a Notice of Revision or Disallowance disputing such Notice of Revision or Disallowance, which notice shall be substantially in the form attached hereto as **Schedule "B"**;
- q) **"Notice of Revision or Disallowance"** means the notice advising a Creditor that the Monitor has revised or rejected all or part of such Creditor's Claim set out in its Proof of Claim Form and setting out the reasons for such revision or disallowance, which notice shall be substantially in the form attached hereto as **Schedule "C"**;
- r) **"Notice to Creditors"** means the notice substantially in the form attached hereto as **Schedule "D"**;
- s) **"Person"** means any individual, partnership, firm, joint venture, trust, entity, corporation, limited or unlimited liability company, body corporate, unincorporated association or organization, governmental body or agency, or similar entity, howsoever designated or constituted and any individual or other entity owned or controlled by or which is the agent of any of the foregoing;
- t) **"Plan"** means a plan of compromise or arrangement filed or to be filed by one or more of the Applicants pursuant to the CCAA, as such plan may be amended or supplemented from time to time;
- u) **"Proof of Claim Form"** means the form to be completed and filed by a Creditor setting forth its purported Claim, which Proof of Claim Form shall be substantially in the form attached hereto as **Schedule "E"**;

- v) **"Proven Claim"** means the amount of any Claim of any Creditor as of the Determination Date, filed and determined in accordance with the provisions of the CCAA and this Order;
- w) **"Publication Date"** means the date on which the publication of the Newspaper Notice in accordance with this Order has been completed.

#### **NOTICE OF CLAIMS**

- [4] **THIS COURT ORDERS** that the Monitor shall cause the Notice to Creditors to be placed in *The Globe & Mail* (National Edition) as soon as possible following the issuance of this Order, but in any event no later than 15 August 2011.
- [5] **ORDERS** that the Monitor shall send a copy of the Claims Package to each Known Creditor at the last known address for each Known Creditor by no later than 15 August 2011.
- [6] **THIS COURT ORDERS** that the Monitor shall cause a copy of the Claims Package to be sent to any Person requesting a Claims Package.
- [7] **THIS COURT ORDERS** that the publication of the Notice to Creditors, the posting of the Claims Package on the Monitor's website and the mailing of the Claims Package to the Known Creditors as well as to any other Person requesting such material in accordance with the requirements of this Order shall constitute good and sufficient service and delivery of notice of this Order and the Claims Bar Date on all Persons who may be entitled to receive notice and who may wish to assert Claims and that no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Order.

## **FILING OF PROOFS OF CLAIM**

- [8] **THIS COURT ORDERS** that every Creditor asserting a Claim against the Applicants shall complete a Proof of Claim Form and deliver it to the Monitor so that it is actually received by the Monitor by no later than the Claims Bar Date.
- [9] **THIS COURT ORDERS** that, unless otherwise authorized by this Court, any Creditor who does not file a Proof of Claim Form in respect of a Claim in accordance with this Order by the Claims Bar Date shall be forever barred from asserting such Claim against any of the Applicants and such Claim shall be forever extinguished and any holder of such Claim shall not be entitled to participate as a Creditor in the CCAA Proceedings or receive any further notice in respect of those proceedings and shall not be entitled to vote on any matter in those proceedings, including any Plan, or from advancing a Claim against the Applicants or from receiving a distribution under any Plan or otherwise from the Applicants, or the Monitor on behalf of the Applicants, in respect of such Claim.

## **REVIEW AND DETERMINATION OF CLAIMS**

- [10] **THIS COURT ORDERS** that the following procedure shall apply where a Creditor delivers a Proof of Claim Form to the Monitor on or before the Claims Bar Date:
- a) the Monitor, together with the Applicants, shall review the Proof of Claim Form and the terms set out therein;
  - b) where the Applicants advise the Monitor that they dispute a Claim or the quantum asserted as owing by a Creditor, the Monitor shall a Notice of Revision or Disallowance to that Creditor;
  - c) a Creditor who receives a Notice of Revision or Disallowance and wishes to dispute it shall, within twenty (20) Business Days of receipt by the Creditor of the Notice of Revision or Disallowance, send a Notice of Dispute to the Monitor setting out the basis for the dispute;

- d) unless otherwise authorized by this Court, if the Creditor does not provide a Notice of Dispute to the Monitor within the time period provided for above, such Creditor shall be deemed to have accepted the value of its Claim as set out in the Notice of Revision or Disallowance;
- e) within fifteen (15) Business Days of receipt of a Notice of Dispute, the Monitor shall, after consulting with the Applicants and the applicable Creditor as to whether the matters set out in the Notice of Revision or Disallowance and the Notice of Dispute are most appropriate for determination by a Claims Officer or a Judge of the Court, the Monitor shall:
  - (i) if the Applicant and the Creditor agree that the Disputed Claim should be determined by a Claims Officer: either (A) bring a motion to have a Claims Officer appointed to determine the Disputed Claim, or (B) assign the Disputed Claim to a Claims Officer already appointed by the Court to determine Disputed Claims;
  - (ii) if the Creditor and the Applicant agree that the Disputed Claim should be determined by a Judge of the Court, bring a motion seeking to have a Judge of the Court assigned to determine the Disputed Claim; or
  - (iii) if there is a dispute between the Creditor and the Applicant as to how the Disputed Claim should be determined, bring a motion to the Court to obtain advice and directions as to whether the Disputed Claim should be determined by a Claims Officer or a Judge of the Court;
- f) the Monitor shall deliver a Dispute Package to the Claims Officer or the Judge assigned to determine the Claim; and
- g) the Monitor shall not be required to send to any Creditor a confirmation of receipt by the Monitor of any document provided by a Creditor pursuant to this Order and each Creditor shall be responsible for obtaining proof of delivery, if they so require, through their choice of delivery method.

## **CLAIMS OFFICER**

- [11] **THIS COURT ORDERS** that the Court may appoint a person or persons to act as Claims Officers for the purpose of resolving any Disputed Claims.
- [12] **THIS COURT ORDERS** that the Claims Officer shall incur no liability or obligation as a result of its appointment or the fulfilling of its duties in carrying out of the provisions of this Claims Order, save and except for any gross negligence or willful misconduct on its part. The Applicants shall indemnify and hold harmless the Claims Officer with respect to any liability or obligation as a result of its appointment or the fulfilling of its duties in carrying out the provisions of this Claims Order, save and except for any gross negligence or willful misconduct on its part. No action, application or other proceeding shall be commenced against the Claims Officer as a result of, or relating in any way to its appointment as the Claims Officer, the fulfillment of its duties as the Claims Officer or the carrying out of any Order of this Court except with leave of this Court being obtained, and notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the Claims Officer at least seven (7) days prior to the return date of any such motion for leave.
- [13] **THIS COURT ORDERS** that, subject to further Order of the Court, the parties to the Disputed Claim may offer evidence in support of or in opposition to the Disputed Claim, and the Claims Officer shall, after consultation with the Applicants and the Creditor, determine the manner in which any such evidence may be brought before him by the parties, as well as any other procedural or evidentiary matter that may arise in respect of the hearing of a Disputed Claim, including, without limitation, the production of documents by any of the parties involved in the hearing of a Disputed Claim; provided, for greater certainty, that the hearing of the Disputed Claim and all such determinations made therein and in connection therewith, including procedural or evidentiary matter, shall be made in accordance with applicable common law in the Province of Ontario.
- [14] **THIS COURT ORDERS** that the Claims Officer may, at any time, engage such advisors as it deems necessary or appropriate to inquire into and report on any question of fact, opinion or law relating to the hearing of a Disputed Claim.



- [15] **THIS COURT ORDERS** that the Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before the Claims Officer shall be paid.

#### **APPEAL OF CLAIMS OFFICER DETERMINATION**

- [16] **THIS COURT ORDERS** that the Applicants or the Creditor may, at his/her/its/their own expense, appeal the Claims Officer's determination of a Disputed Claim to this Court within twenty-one (21) calendar days of notification of the Claims Officer's determination of such Creditor's Claim by serving upon the Applicants or the Creditor, as applicable, and the Monitor and filing with this Court a notice of motion returnable on a date to be fixed by this Court as soon as practicable. If an appeal is not filed within such period in strict accordance with this Order, then the Claim Officer's determination shall, subject to further order of this Court, be final and binding in all respects, with no further right of appeal.
- [17] **THIS COURT ORDERS** that findings of fact made by a Claims Officer in respect of a Disputed Claim shall be final and binding and shall not be subject to review on appeal to this Court, unless the Court determines that said findings of fact made by the Claims Officer constitute a palpable and overriding error.

#### **NOTICES AND COMMUNICATIONS**

- [18] **THIS COURT ORDERS** that any notice or other communication to be given in connection with this Order by the Applicants or the Monitor to a Creditor, other than the Notice to Creditors to be published as provided by this Order, will be sufficiently given to a Creditor if given by registered mail, by courier, by delivery or by facsimile transmission or electronic mail to the Creditor to such address, facsimile number or e-mail address appearing in the books and records of the Applicants or in any Proof of Claim Form filed by the Creditor. Any such notice or other communication (a) if given by registered mail, shall be deemed received on the third (3rd) Business Day after mailing to a destination within Ontario, the fifth (5th) Business Day after mailing to a destination elsewhere within Canada or to the United States and the tenth (10th) Business Day after mailing to

any other destination; (b) if given by courier or delivery, shall be deemed received on the Business Day following dispatch; (c) if given by facsimile transmission or electronic mail before 1700, on a Business Day, shall be deemed received on such Business Day; and (d) if given by facsimile transmission or electronic mail after 1700 on a Business Day, shall be deemed received on the following Business Day.

[19] **THIS COURT ORDERS** that, in the event that the day on which any notice or communication required to be delivered pursuant to this Order is not a Business Day, then such notice or communication shall be required to be delivered on the next Business Day.

[20] **THIS COURT ORDERS** that, if during any period during which notices or other communication are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications then not received or deemed received shall not, absent further Order of this Court, be effective. Notices and other communications given hereunder during the course of any such postal strike or postal work stoppage of general application shall only be effective if given by electronic mail, courier, delivery or facsimile transmission in accordance with this Order.

#### **GENERAL PROVISIONS**

[21] **THIS COURT ORDERS** that for the purposes of this Order, all Claims that are denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging currency to Canadian dollars on the Determination Date.

[22] **THIS COURT ORDERS** that the Monitor shall use reasonable discretion as to the adequacy of completion and execution of any document completed and executed pursuant to this Order and, where the Monitor is satisfied that any matter to be proven under this Order has been adequately proven, the Monitor may waive strict compliance with the requirements of this Order as to the completion and execution of documents.

[23] **THIS COURT OREDERS** that the Monitor may apply to this Court for directions regarding its obligations in respect of the claims process provided for in this Claims Order.

W. Den. M.J.

TOR\_LAW 77111992

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ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

AUG - 4 2011

PER/PAR:



## SCHEDULE "A"

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### INSTRUCTION LETTER FOR THE CLAIMS PROCEDURE FOR

### UNIQUE BROADBAND SYSTEMS, INC. ("UBS") AND UBS WIRELESS SERVICES INC. ("UBSW" AND, TOGETHER WITH UBS, THE "APPLICANTS")

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#### CLAIMS PROCESS

By Order dated 4 August 2011 (as may be amended from time to time, the "**Claims Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"), RSM Richter Inc. in its capacity as Court-appointed Monitor of the Applicants, has been authorized to conduct a claims process (the "**Claims Process**"). A copy of the Claims Order can be obtained from the Monitor's website at [www.rsmrichter.com](http://www.rsmrichter.com)

This letter provides general instructions for completing the Proof of Claim form. As of the date of this instruction letter, there have been no proposed plans of arrangement or compromise pursuant to the CCAA. Capitalized terms not defined within this instruction letter shall have the meaning set out in the Claims Order. You should review the Claims Order carefully for all terms defined therein.

The Claims Process is intended for any Person with a Claim of any kind or nature whatsoever, against any or all of the Applicants arising on or prior to 5 July 2011, whether unliquidated, contingent or otherwise.

All notices and inquiries with respect to the Claims Process should be directed to the Monitor at the address below:

RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

**Attention:** Lana Bezner  
**Telephone:** 416-932-6009  
**Fax:** 416-932-6200  
**Email:** [lbezner@rsmrichter.com](mailto:lbezner@rsmrichter.com)

**FOR CREDITORS SUBMITTING A PROOF OF CLAIM FORM**

If you believe that you have a Claim against any or all of the Applicants you must file a Proof of Claim form with the Monitor. All Proofs of Claim for Claims arising prior to 5 July 2011 must be received by the Monitor **before 5:00 pm (Eastern Standard Time) on 19 September 2011 (the "Claims Bar Date")**, unless the Monitor and the Applicants agree in writing or the Court orders that the Proof of Claim be accepted after that date. If your claim is not received by the Claims Bar Date, it will be forever barred and extinguished and you will not be entitled to participate in any Plan.

Additional Proof of Claim forms can be obtained from the Monitor's website at [www.rsmrichter.com](http://www.rsmrichter.com) or by contacting the Monitor at **416-932-6009** or [lbezner@rsmrichter.com](mailto:lbezner@rsmrichter.com) and by providing the particulars as to your name, address, facsimile number, email address and contact person. Once the Monitor has this information, you will receive, as soon as practicable, additional Proof of Claim forms.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**SCHEDULE "B"**

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**NOTICE OF DISPUTE**

**UNIQUE BROADBAND SYSTEMS, INC. ("UBS") AND UBS WIRELESS SERVICES  
INC. ("UBSW" AND, TOGETHER WITH UBS, THE "APPLICANTS")**

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Applicant(s) against which a Claim is asserted:

☐

USB

☐

USBW

**1. Particulars of Creditor**

(a) Full Legal Name of Creditor (include trade name, if different):

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(the "Creditor").

(b) Full Mailing Address of the Creditor:

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(c) Other Contact Information of the Creditor:

Telephone Number:

Email Address:

Facsimile Number:

Attention (Contact Person):

**2. Particulars of original Creditor from whom you acquired the Claim, if applicable:**

(a) Have you acquired this Claim by assignment? If yes, if not already provided, attach documents evidencing assignment.

☐ Yes☐ No

(b) Full Legal Name of original creditor(s):

**3. Dispute of Revision or Disallowance of Claim for Voting and/or Distribution Purposes**

The Creditor hereby disagrees with the value of its Claim as set out in the Notice of Revision or Disallowance and asserts a Claim as follows:

**Amount Allowed by Monitor  
Amount Claimed by Creditor**

**Secured Claim****Unsecured Claim**

**If you are Disputing a Claim against more than one of the Applicants, please complete a Dispute Notice for each disputed Claim.**

**REASON(S) FOR THE DISPUTE (ATTACHED)**

*(You must include a list of reasons as to why you are disputing your Claim as set out in the Notice of Revision or Disallowance.)*

**SERVICE OF DISPUTE NOTICES**

If you intend to dispute the Notice of Revision or Disallowance, you must deliver to the Monitor this Dispute Notice **by 5:00 p.m. (Eastern Standard Time) on the date that is twenty (20) Business Days after receipt of this Notice of Revision or Disallowance** to the following address.

RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

**Attention:** Lana Bezner  
**Telephone:** 416-932-6009  
**Fax:** 416-932-6200  
**Email:** lbezner@rsmrichter.com

**THE TIMING FOR THE DEEMED RECEIPT OF CORRESPONDENCE IS SET OUT IN THE CLAIMS ORDER.**

[SEE NEXT PAGE FOR SIGNATURE]

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

Name of Creditor:

\_\_\_\_\_  
(Name)

Witness

\_\_\_\_\_  
Per: Name:  
Title:  
(*please print*)



**SCHEDULE "C"**

---

**NOTICE OF REVISION OR DISALLOWANCE**

**UNIQUE BROADBAND SYSTEMS, INC. ("UBS") AND UBS WIRELESS SERVICES  
INC. ("UBSW" AND, TOGETHER WITH UBS, THE "APPLICANTS")**

---

**TO:**

---

*(Name of Creditor)*

Capitalized terms not defined within this Notice of Revision or Disallowance shall have the meaning ascribed thereto in the order of the Ontario Superior Court of Justice (Commercial List) dated 4 August 2011 (the "**Claims Order**").

Pursuant to the Claims Order, RSM Richter Inc., in its capacity as Court-appointed Monitor of the Applicants, hereby gives you notice that the Applicants, with the assistance of the Monitor, has reviewed your Proof of Claim and has revised or disallowed your Claim. Subject to further dispute by you in accordance with the Claims Order, your Claim will be allowed or disallowed as follows:

**(a) UBS**

<b>Amount Claimed by Creditor</b>	<b>Amount Allowed by Monitor</b>
-----------------------------------	----------------------------------

**Secured Claim**

**Unsecured Claim**

**(b) UBSW**

<b>Amount Claimed by Creditor</b>	<b>Amount Allowed by Monitor</b>
-----------------------------------	----------------------------------

**Secured Claim**

**Unsecured Claim**

**REASON(S) FOR THE REVISION OR DISALLOWANCE****SERVICE OF DISPUTE NOTICES**

If you intend to dispute this Notice of Revision or Disallowance, you must deliver to the Monitor a Dispute Notice (in the form enclosed) **by 5:00 p.m. (Eastern Standard Time) on the date that is twenty (20) Business Days after receipt of this Notice of Revision or Disallowance** to the following address.

RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

Attention: **Lana Bezner**  
Telephone: **416-932-6009**  
Fax: **416-932-6200**  
Email: **lbezner@rsmrichter.com**

**THE TIMING FOR THE DEEMED RECEIPT OF CORRESPONDENCE IS SET OUT IN THE CLAIMS ORDER.**

**IF YOU FAIL TO FILE YOUR DISPUTE NOTICE BY 5:00 P.M. (EASTERN STANDARD TIME) ON THE DATE THAT IS TWENTY (20) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE OF REVISION OR DISALLOWANCE THE VALUE OF YOUR CLAIM WILL BE DEEMED TO BE ACCEPTED AS FINAL AND BINDING AS SET OUT IN THIS NOTICE OF REVISION OR DISALLOWANCE.**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

## **SCHEDULE "D"**

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### **NOTICE TO CREDITORS AND OTHERS OF FILING CLAIMS AS AGAINST**

### **UNIQUE BROADBAND SYSTEMS, INC. ("UBS") AND UBS WIRELESS SERVICES INC. ("UBSW" AND, TOGETHER WITH UBS, THE "APPLICANTS")**

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**RE: NOTICE OF CLAIMS PROCESS AND CLAIMS BAR DATE**

**PLEASE TAKE NOTICE** that this notice is being published pursuant to an Order of the Superior Court of Justice of Ontario made 4 August 2011 (the "**Claims Order**"). The Court has ordered that the Court-appointed Monitor of the Applicants, RSM Richter Inc. (the "**Monitor**"), send Proof of Claim Document Packages to the Known Creditors of the CCAA Parties as part of the Court-approved claims process (the "**Claims Process**"). All capitalized terms shall have the meaning given to those terms in the Claims Order.

The Claims Order, the Proof of Claim Document Package, additional Proofs of Claim and related materials may be accessed from the Monitor's website at [www.rsmrichter.com](http://www.rsmrichter.com).

Please take notice that any person who believes that they have a Claim against Applicants that existed as at the date of the 5 July 2011 must send a Proof of Claim to the Monitor to be received **before 5:00 p.m. (Eastern Standard Time) on 19 September 2011 (the "Claims Bar Date")**.

**PROOFS OF CLAIM MUST BE RECEIVED BY THE MONITOR BY THE CLAIMS BAR DATE OR THE APPLICABLE CLAIM WILL BE FOREVER BARRED AND EXTINGUISHED.**

Reference should be made to the Claims Order for the complete definition of "Claim" to which the Claims Process applies.

The Monitor can be contacted at the following address to request a Proof of Claim Document Package for any other notices or enquiries with respect to the Claims Process:

RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

**Attention:** Lana Bezner  
**Telephone:** 416-932-6009  
**Fax:** 416-932-6200  
**Email:** [lbezner@rsmrichter.com](mailto:lbezner@rsmrichter.com)

## SCHEDULE "E"

### PROOF OF CLAIM

#### FOR CREDITORS OF UNIQUE BROADBAND SYSTEMS, INC. ("UBS") AND UBS WIRELESS SERVICES INC. ("UBSW" AND, TOGETHER WITH UBS, THE "APPLICANTS")

Please read carefully the enclosed Instruction Letter for completing this Proof of Claim form. Capitalized terms not defined within this Proof of Claim form shall have the meaning ascribed thereto in the Order of the Ontario Superior Court of Justice (Commercial List) dated 4 August 2011, as may be amended from time to time (the "**Claims Order**").

#### 4. PARTICULARS OF CREDITOR:

- (a) Full Legal Name of Creditor (include trade name, if different):

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(the "**Creditor**"). The full legal name should be the name of the Creditor of the Applicant(s), notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred prior to or following 5 July 2011.

- (b) Full Mailing Address of the Creditor:

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The mailing address should be the mailing address of the Creditor and not any assignee.

- (c) Other Contact Information of the Creditor:

Telephone Number: 

---

Email Address: 

---

Facsimile Number: 

---

Attention (Contact Person): 

---

- (d) Has the claim set out herein been sold, transferred or assigned by the Creditor to another party?

☐ Yes ☐ No

5. **PARTICULARS OF ASSIGNEE(S) (IF APPLICABLE)**

*If the Claim set out herein has been sold, transferred or assigned, complete the required information set out below. If there is more than one assignee, please attach a separate sheet that contains all of the required information set out below for each assignee.*

- (a) Full Legal Name of Assignee:

\_\_\_\_\_  
\_\_\_\_\_

- (b) Full Mailing Address of the Assignee:

\_\_\_\_\_  
\_\_\_\_\_

Other Contact Information of the Assignee:

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Attention (Contact Person): \_\_\_\_\_

6. **PROOF OF CLAIM – CLAIM AGAINST THE APPLICANT(S)**

**THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:**

- (a) That I:

☐ am a Creditor of one or more of the Applicants; **OR**

☐ Am

\_\_\_\_\_  
(state position or title)

Of

\_\_\_\_\_  
(name of Creditor)

- (b) That I have knowledge of all the circumstances connected with the Claim described and set out below;
- (c) The Applicant(s) was and still is indebted to the Creditor as follows (include all Claims that you assert against the Applicant(s). Claims should be filed in the currency of the transactions, with reference to the contractual rate of interest, if any, and such currency should be indicated as provided below in respect of the following Claim(s):

(complete using original currency and amount)

	Amount of Claim	Currency	Secured	Unsecured
<input type="checkbox"/> USB			<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> USBW			<input type="checkbox"/>	<input type="checkbox"/>

7. **NATURE OF CLAIM – Complete ONLY if you are asserting a Secured Claim**

Applicant: \_\_\_\_\_

☐ Secured Claim of \$ \_\_\_\_\_  
(Original Currency and amount)

In respect of this debt, I hold security over the assets of the Applicant(s) valued at

\$ \_\_\_\_\_  
(Original Currency and amount)

the particulars of which security and value are attached to this Proof of Claim form.

*(Give full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security, the basis for such valuation and attach a copy of the security documents evidencing the security.)*

*(If you are asserting multiple secured claims, against one or more of the Applicants, please provide full details of your security against each of the Applicants)*

## 8. PARTICULARS OF CLAIM

Other than as already set out herein, the particulars of the undersigned's total Claim against the Applicant(s) are attached on a separate sheet.

*Provide all particulars of the Claim and supporting documentation that you feel will assist in the determination of your claim. at a minimum, you are required to provide (if applicable) the invoice date, invoice number, the amount of each outstanding invoice and the related purchase order number. Further particulars may include the following if applicable: a description of the transaction(s) or agreement(s) giving rise to the Claim; contractual rate of interest (if applicable); name of any guarantor which has guaranteed the Claim; details of all credits, discounts, etc. claimed; and description of the security if any, granted by the affected Applicant(s) to the Creditor and, the estimated value of such security and the basis for such valuation.*

## 9. FILING OF CLAIM

This Proof of Claim form must be received by the Monitor by no later than **5:00 p.m. (Eastern Standard Time) on 19 September 2011**, to the following address:

RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

Attention: **Lana Bezner**  
Telephone: **416-932-6009**  
Fax: **416-932-6200**  
Email: **lbezner@rsmrichter.com**

**THE TIMING FOR THE DEEMED DELIVERY OF CORRESPONDENCE IS SET OUT IN THE CLAIMS ORDER.**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Name of Creditor: \_\_\_\_\_

(Name)

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

Name:

Title:

(please print)

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

AND IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF UNIQUE BROADBAND SYSTEMS INC.  
(the "Applicant")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

(PROCEEDING COMMENCED AT TORONTO)

**ORDER**

**GOWLING LAFLEUR HENDERSON LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

**E. Patrick Shea**  
LSUC No.: 39655K  
Telephone: (416) 369-7399  
Facsimile: (416) 862-7661

SOLICITORS FOR THE APPLICANT



**THIS IS EXHIBIT "C" TO THE AFFIDAVIT OF  
ROBERT ULICKI, SWORN BEFORE ME ON  
JULY 23, 2012**

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**A COMMISSIONER FOR TAKING OATHS**

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DUFF & PHELPS

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**Ninth Report to Court of Duff &  
Phelps Canada Restructuring Inc.  
as CCAA Monitor of Unique  
Broadband Systems, Inc. and UBS  
Wireless Services Inc.**

July 5, 2012

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## Contents

	Page
1.0 Introduction.....	1
1.1 Purposes of this Report.....	2
1.2 Currency .....	2
2.0 Background .....	2
3.0 UBS and DOL Group .....	2
3.1 Claims of DOL Group against UBS .....	3
3.2 Claims of UBS against DOL Group .....	3
4.0 Settlement .....	4
4.1 Recommendation .....	5
5.0 Conclusion and Recommendation .....	6

## Appendices

	Tab
DOL Group Claims .....	A

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Court File No.: CV-11-9283-00CL

**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  
UNIQUE BROADBAND SYSTEMS, INC.**

**NINTH REPORT OF DUFF & PHELPS CANADA RESTRUCTURING INC.  
AS CCAA MONITOR OF  
UNIQUE BROADBAND SYSTEMS, INC.  
AND UBS WIRELESS SERVICES INC.**

**July 5, 2012**

**1.0 Introduction**

Pursuant to an order ("Initial Order") of the Ontario Superior Court of Justice (Commercial List) ("Court") made on July 5, 2011, Unique Broadband Systems, Inc. ("UBS") and UBS Wireless Services Inc. ("Wireless") (UBS and Wireless are jointly referred to as the "Company") were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") and RSM Richter Inc. ("Richter") was appointed as the monitor ("Monitor"). Pursuant to a Court order made on December 12, 2011 (the "Substitution Order"), Duff & Phelps Canada Restructuring Inc. ("D&P"), as part of its acquisition of the Toronto restructuring practice of Richter, was substituted in place of Richter as Monitor<sup>1</sup>.

Pursuant to an order of the Court made on April 13, 2012, the Company's stay of proceedings expires on July 30, 2012.

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<sup>1</sup> On December 9, 2011, the assets used by Richter in its Toronto restructuring practice were acquired by D&P. Pursuant to the Substitution Order, D&P was substituted in place of Richter in certain ongoing mandates, including acting as Monitor in these proceedings. The licensed trustees/restructuring professionals overseeing this mandate prior to December 9, 2011 remain unchanged.

---

## **1.1 Purposes of this Report**

The purposes of this report ("Report") are to:

- a) Provide background information about the Company and these CCAA proceedings;
- b) Summarize a settlement between the Company, on the one hand, and DOL Technologies Inc. ("DOL"), Mr. Alex Dolgonos and companies controlled by him (collectively, "DOL Group"), on the other hand, with respect to all known claims that exist between them, subject to Court approval ("Settlement"); and
- c) Recommend that this Honourable Court make an order approving the Settlement.

## **1.2 Currency**

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

## **2.0 Background**

Background information concerning the Company is detailed in the affidavit of Robert Ulicki (the "Ulicki Affidavit"), a director of the Company, sworn July 4, 2011 and filed with the Company's CCAA application materials. The Ulicki Affidavit details, *inter alia*, the Company's history, financial position, ownership interest in Look Communications Inc. and litigation.

Additional information concerning the Company and these proceedings is provided in the proposed monitor's report and the Monitor's reports filed in these proceedings. Copies of these reports can be found on the Monitor's website at: [www.duffandphelps.com/restructuringcases](http://www.duffandphelps.com/restructuringcases).

## **3.0 UBS and DOL Group**

The Company commenced these CCAA proceedings in order to implement a process to have determined, on an expedited and cost effective basis, claims made against it principally by two creditor groups – the claims of DOL Group and Jolian Investments Limited and its principal, Mr. Gerald McGoey (together, "Jolian"). The claims arise from the replacement of the Company's board of directors ("Board") in July, 2010 at a special meeting of UBS's shareholders ("Meeting"). Mr. Dolgonos was the Company's Chief Technology Officer prior to the date of the Meeting.

Mr. Dolgonos controls 2064818 Ontario Inc. ("206") and 6138241 Canada Inc., which together are the Company's largest shareholders, owning in excess of 22% of UBS's shares.

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The Company's litigation with DOL Group has been at the center of this proceeding since it commenced. The issues between DOL Group and the Company have resulted in UBS incurring significant costs. A summary of the claims between DOL Group and the Company is provided below.

### **3.1 Claims of DOL Group against UBS**

DOL Group filed claims against the Company pursuant to a Court order made August 4, 2011 ("Claims Bar Procedure Order"). The claims include the following:

- Over \$8 million for, among other things, a payment under a Technology Development and Strategic Marketing Agreement dated July 12, 2008 between DOL and UBS, unpaid bonuses awarded to DOL prior to the date of the Meeting, amounts owing in respect of the cancellation of a share appreciation rights plan, DOL's legal fees and other costs incurred prior to the date of the Initial Order, plus taxes and interest;
- Indemnification for legal fees and other expenses incurred by DOL and Mr. Dolgonos subsequent to the date of the Initial Order in amounts to be determined; and
- An action pursuant to the oppression remedy provisions of the *Business Corporations Act* (Ontario) against UBS and each of its directors ("Oppression Action") in amounts to be determined.

Copies of DOL Group's claims filed against the Company pursuant to the Claims Bar Procedure Order are provided in Appendix "A", without attachments.

### **3.2 Claims of UBS against DOL Group**

Prior to the commencement of this proceeding, UBS had filed defences and counterclaims with respect to DOL Group's (and Jolian's) claims. UBS denied any amounts were owing to DOL Group and sought, among other things, a declaration that Mr. Dolgonos failed to act honestly and in good faith with a view to the best interests of UBS. UBS sought damages of \$8 million in the aggregate as against DOL Group and Jolian.

As part of a Court order made April 13, 2012 ("Claims Determination Process Order"), and in order to advance the Claims Process, the Company limited its claims against DOL Group to:

- Reimbursement of approximately \$270,000 in improper or unsupported expenses;

- 
- Damages associated with DOL Group's role in a transaction between the Company and UBS Ltd. in 2003 and events subsequent thereto, in amounts to be determined; and
  - The return of advances made by UBS to DOL Group's legal counsel in amounts to be determined.

## 4.0 Settlement

The Company, with the Monitor's assistance, has been exploring settlement options with DOL Group for several months. A key issue for DOL Group has been the composition of the Board and the election or replacement of the current directors. DOL Group has made clear during this proceeding that it wishes to change the Board composition and has taken steps to attempt to have the Board reconstituted.

The Court was scheduled to hear a motion by the Company on July 6, 2012 ("Hearing Date") seeking to postpone a meeting of shareholders that the Company scheduled for July 11, 2012 ("Shareholder Meeting"), but which the Company advised was subject to a potential postponement. One of the issues that was to be considered at the Shareholder Meeting was the appointment of a new board of directors sought by DOL Group.

Settlement discussions recently accelerated and led to the Settlement, which is summarized below:

- a) All litigation claims between DOL Group and UBS, including the Oppression Action, will be dismissed and the parties will deliver mutual releases. Mutual releases will prevent DOL Group from making any indemnification claims against UBS in respect of all matters currently known to DOL Group, but will not prevent UBS from taking proceedings against persons other than DOL Group.
- b) UBS will direct the Monitor to admit DOL's claim against UBS for \$500,000 pursuant to the Claims Bar Procedure Order, inclusive of all legal and professional expenses payable under any indemnities. This will include all claims by DOL, 206 and Mr. Dolgonos, including Mr. Dolgonos's indemnification claim.
- c) The UBS board will be reconstituted through to the conclusion of the CCAA proceedings with Messrs. Vic Wells, Ken Taylor (together, the "Proposed Directors") and one of the current UBS directors as directors. The UBS board may be reconstituted at an annual meeting of UBS shareholders ("AGM") or, to avoid the cost of an AGM, by way of a Court order under the CCAA<sup>2</sup>.

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<sup>2</sup> UBS intends to seek a Court order in this regard on July 6, 2012 to have the AGM stayed or suspended and to then proceed to reconstitute the Board through a series of sequential Board meetings.

- 
- d) DOL Group agrees to support the reconstituted UBS board, including any decision made by the UBS board with respect to how it will resolve/determine the claims made against UBS by Jolian and Mr. McGoey in the CCAA proceedings, through to the conclusion of the CCAA proceedings and to not seek a Court order terminating the CCAA proceedings. UBS will continue defending claims and reorganizing itself in the Court-supervised CCAA proceeding.
  - e) Mr. Dolgonos will not seek to be a director or officer of UBS, or have any direct or indirect consulting arrangement with the Company, through to the completion of the CCAA proceedings.
  - f) A Court order would be made that, subject to further Court order, UBS will not be obliged to convene any shareholder meetings until the CCAA proceedings are terminated.

The Settlement is subject to Court approval.

#### **4.1 Recommendation**

The Monitor supports the Settlement and respectfully recommends that it be approved by the Court for the following reasons:

- a) The Settlement resolves DOL Group's claims (in excess of \$8 million) for a claim of \$500,000;
- b) The Board supports the Settlement;
- c) The Company has limited resources. Those resources have been used to fund litigation, and in all likelihood would continue to be depleted, in order to respond to motions brought by or in respect of DOL Group's claims and in having DOL Group's claims determined by the Court;
- d) The Settlement resolves one of the two largest claims against the Company and will allow the Company to concentrate its efforts on dealing with Jolian's claims;
- e) The Company and the Monitor have met, in person or by phone, with the Proposed Directors. The Proposed Directors have advised that they have no relationship with any party to this proceeding or a conflict of interest in this matter. There is no reason to believe that the Proposed Directors will not act in good faith and in the best interests of the Company. The Proposed Directors are experienced professionals. The Monitor and the Court will continue their supervisory roles;



- 
- f) The Proposed Directors will have the benefit of the remaining current director's experience and history of the CCAA proceedings, which should limit any costs and delays associated with a change in the Board composition; and
  - g) The Proposed Directors have agreed to compensation during the CCAA proceedings at the same rate as the existing directors - \$20,000 each per annum.

## 5.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,

*Duff & Phelps Canada Restructuring Inc.*

**DUFF & PHELPS CANADA RESTRUCTURING INC.  
IN ITS CAPACITY AS COURT APPOINTED CCAA MONITOR OF  
UNIQUE BROADBAND SYSTEMS, INC.  
AND UBS WIRELESS SERVICES INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**

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**PROOF OF CLAIM**

**FOR CREDITORS OF UNIQUE BROADBAND SYSTEMS, INC. ("UBS") AND UBS  
WIRELESS SERVICES INC. ("UBSW" AND, TOGETHER WITH UBS, THE  
"APPLICANTS")**

---

Please read carefully the enclosed Instruction Letter for completing this Proof of Claim form. Capitalized terms not defined within this Proof of Claim form shall have the meaning ascribed thereto in the Order of the Ontario Superior Court of Justice (Commercial List) dated 4 August 2011, as may be amended from time to time (the "Claims Order").

**1. PARTICULARS OF CREDITOR:**

- (a) Full Legal Name of Creditor (include trade name, if different):

DOL Technologies Inc.

---

(the "Creditor"). The full legal name should be the name of the Creditor of the Applicant(s), notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred prior to or following 5 July 2011.

- (b) Full Mailing Address of the Creditor:

207 Arnold Avenue, Thornhill, Ontario  
L4J 4C1

---

The mailing address should be the mailing address of the Creditor and not any assignee.

- (c) Other Contact Information of the Creditor: (c/o Alex Dolgonos)

Telephone Number: (416) 567-9647

Email Address: adolgonos@ad2007.com

Facsimile Number: (905) 707-1639

Attention (Contact Person): Alex Dolgonos

---

- (d) Has the claim set out herein been sold, transferred or assigned by the Creditor to another party?

☐ Yes ☒ No

2. PARTICULARS OF ASSIGNEE(S) (IF APPLICABLE)

*If the Claim set out herein has been sold, transferred or assigned, complete the required information set out below. If there is more than one assignee, please attach a separate sheet that contains all of the required information set out below for each assignee.*

- (a) Full Legal Name of Assignee:

\_\_\_\_\_  
\_\_\_\_\_

- (b) Full Mailing Address of the Assignee:

\_\_\_\_\_  
\_\_\_\_\_

- (c) Other Contact Information of the Assignee:

Telephone Number:

\_\_\_\_\_

Email Address:

\_\_\_\_\_

Facsimile Number:

\_\_\_\_\_

Attention (Contact Person):

\_\_\_\_\_

3. PROOF OF CLAIM – CLAIM AGAINST THE APPLICANT(S)

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

- (a) That I:

☐ am a Creditor of one or more of the Applicants; OR  
☒ am

Chief Technology Officer  
(state position or title)

of

DOL Technologies Inc.

(name of Creditor)

- (b) That I have knowledge of all the circumstances connected with the Claim described and set out below; and
- (c) The Applicant(s) was and still is indebted to the Creditor as follows (include all Claims that you assert against the Applicant(s). Claims should be filed in the currency of the transactions, with reference to the contractual rate of interest, if any, and such currency should be indicated as provided below in respect of the following Claim(s):

(complete using original currency and amount)

	Amount of Claim	Currency	Secured	Unsecured
<input checked="" type="checkbox"/> UBS	See Schedule "A" (18,042,716)	CDN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> UBSW			<input type="checkbox"/>	<input type="checkbox"/>

4. NATURE OF CLAIM – Complete ONLY if you are asserting a Secured Claim

Applicant: \_\_\_\_\_

☐ Secured Claim of \$ \_\_\_\_\_  
(Original currency and amount)

In respect of this debt, I hold security over the assets of the Applicant(s) valued at

\$ \_\_\_\_\_  
(Original currency and amount)

the particulars of which security and value are attached to this Proof of Claim form.

(Give full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security, the basis for such valuation and attach a copy of the security documents evidencing the security.)

**Schedule "A" to  
Proof of Claim of DOL Technologies Inc.**

This Schedule "A" and the documents referenced herein and/or attached hereto form part of the Proof of Claim of DOL Technologies Inc. ("**DOL**" or the "**Claimant**") against Unique Broadband Systems, Inc. ("**UBS**" or the "**Company**").

**Nature of the Claims**

1. DOL is a private Ontario corporation of which 2064818 Ontario Inc. is a shareholder.
2. The Claimant claims against UBS the amount of \$8,042,716 (all amounts in Canadian Dollars unless otherwise indicated) plus other amounts as indicated herein, including without limitation, any applicable GST, HST or other taxes ("**Tax**"), or otherwise determined to be payable by UBS to DOL by the Court or the Claims Officer.
3. The \$8,042,716 consists of the following claims (all rounded to the nearest dollar), all as described in greater detail herein.

<b>Claim</b>	<b>Amount</b>
I. Deferred bonus award	\$1,256,677 plus Tax
II. SAR cancellation payouts	\$345,586 plus Tax
III. Indemnification for legal expenses	\$245,003 plus interest
IV. Default and breach by UBS under the Technology Development and Strategic Marketing Agreement entered into between UBS and DOL, dated July 12, 2088 (the " <b>Technology Agreement</b> ") and/or "termination without Cause"	\$6,195,450 plus Tax

**Particulars of Claims**

***I. Deferred Bonus Award***

4. On or about August 28, 2009, the Board of Directors of UBS (the "**UBS Board**") granted to DOL a deferred bonus award ("**DBA**") for 2009 of \$1,200,000 plus Tax. Attached hereto as Appendix "**1**" is a memorandum, dated September 8, 2009, from the Chairman and Chief Executive Officer of UBS at the time, Gerald McGoey, to DOL confirming approval of the DBA by the UBS Board and stating that:

"The DBA will be payable on the earlier of the following conditions:

1. Adequate cash resources being received by the Company;

2. The termination of the Technology Agreement between DOL and the Company;
  3. A change of control of the Company; and
  4. At the discretion of the Board of Directors.”
5. Based upon the above language, only one of the above conditions needed to be met in order for the DBA to be payable. Despite the fact that at least one of the above conditions had been met prior to July 5, 2011 (the “**CCAA Filing Date**”), UBS failed to make the required DBA payment to DOL and such DBA payment remains outstanding as at the date of this Proof of Claim.
  6. In addition to the amount of \$1,200,000 plus Tax, pursuant to the terms of the DBA as noted in the DBA memorandum, the DBA accrues compounded monthly interest at the prime rate of interest of Scotia Bank, and such interest is to be paid at the same time as the payment of the DBA. Based upon Scotia Bank’s published prime rates from September 1, 2009 to June 30, 2011 (i.e. the 21 full months between the declaration of the DBA on August 28, 2009 and the CCAA Filing Date), the weighted average prime interest rate applicable to the DBA is approximately 2.65% per annum, or 0.22% per month, resulting in the following claim:

Principal amount of DBA Claim	\$1,200,000
Interest (21 months compounded at 0.22%/month)	\$56,677
Total DBA Claim	\$1,256,677 plus Tax

7. Further particulars of the DBA claim are set out in: (i) the Statement of Claim of DOL filed against UBS in Ontario Court File No. CV-10-406609 and attached hereto as Appendix “2”; (ii) the Reply and Defense To Counterclaim of DOL and Mr. Alex Dolgonos (“**Dolgonos**”) filed in Ontario Court File No. CV-10-406609 and attached hereto as Appendix “3” (collectively, the “**DOL/Dolgonos Pleadings**”).

## **II. SAR Cancellation Payout**

8. On August 28, 2009 the UBS Board also granted DOL a performance incentive of \$330,000 plus Tax, in exchange for the relinquishment by the Claimant of its Share Appreciation Rights Units as at May 31, 2009 (“**SAR Cancellation Payout**”). Attached hereto as Appendix “4” is a copy of a letter agreement (“**SAR Cancellation Agreement**”) from the Chairman and Chief Executive Officer of UBS at the time, Gerald McGoey, to DOL evidencing and setting out details of the SAR Cancellation Payout terms.
9. The SAR Cancellation Agreement states that payment of the SAR Cancellation Payout was conditional upon: receiving a full and final release from the Claimant in respect of

the cancellation of SAR Units; Look Communications Inc. ("Look") receiving the remaining \$50 million consideration for the sale of its spectrum and broadcast licenses to Inukshuk Wireless Partnership; and UBS receiving adequate cash resources. A copy of the required full and final release was executed by the Claimant and is attached at the end of the SAR Cancellation Agreement attached hereto as Appendix "4" hereto. In addition, both of the other conditions to the payment of the SAR Cancellation Payout were met in that Look received the remaining consideration for the sales of its spectrum and broadcast licenses to Inukshuk in or about September 2009 according to the press release dated December 4, 2009 from Look attached hereto as Appendix "5" and UBS had, or would have had if UBS and its new board of directors appointed in July 2010 were acting in good faith in pursuing full payments and dividends which should have been paid by Look to UBS, adequate cash resources to make the \$330,000 payment plus Tax.

10. In addition to the amount of \$330,000.00 plus Tax, pursuant to the terms of the SAR Cancellation Agreement, the SAR Cancellation Payout accrues compounded monthly interest at the prime rate of interest of Scotia Bank, and such interest is to be paid at the same time as the payment of the SAR Cancellation Payout. As set out, in paragraph 6 above, the interest rate applicable to the SAR Cancellation Payout is 0.22% per month compounded monthly for 21 months (i.e. the full months between the date of the SAR Cancellation Agreement and the CCAA Filing Date) resulting in the following claim:

Principal amount of SAR Cancellation Payout:	\$330,000
Interest (21 months compounded at 0.22% per month):	\$15,586
Total SAR Cancellation Payout Claim:	\$345,586 plus Tax

11. Despite the conditions to the SAR Cancellation Payout having been met prior to the CCAA Filing Date, UBS has failed to pay the SAR Cancellation Payout to DOL and the full amount of the SAR Cancellation Payout remains outstanding as at the date of this Proof of Claim.

### ***III. Indemnification for Legal Expenses***

12. Pursuant to Section 3.3.5 of the Technology Agreement, attached hereto as Appendix "6", UBS agreed to reimburse DOL for all reasonable legal expenses incurred in respect of the Technology Agreement, DOL's performance of the services under Technology Agreement and any other matter relating to the Company including the defence against actions commenced by regulatory authorities. UBS also agreed to make all reimbursements to DOL on a monthly basis.
13. In addition to its indemnification obligations under the Technology Agreement, UBS also has an obligation to indemnify DOL pursuant to an Indemnification Agreement dated January 25, 2007 between UBS and AD Enterprises (the "**DOL Indemnification Agreement**"), attached hereto as Appendix "7". AD Enterprises was a proprietorship



owned by Dolgonos. As indicated in the Marrocco Judgment (as defined below), when Dolgonos incorporated DOL, AD Enterprises transferred its business and assets to DOL, including its rights under the DOL Indemnification Agreement. There is also a separate indemnification agreement dated January 25, 2007 between UBS and Dolgonos personally (the "**Dolgonos Indemnification Agreement**"), attached hereto as Appendix "8".

14. DOL brought a motion before the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), heard on or about April 27, 2011, seeking indemnification from UBS of the legal and other expenses incurred by the Claimant. By a Judgment of the Court dated April 27, 2011, the Honourable Mr. Justice Marrocco ordered that UBS has an obligation to indemnify DOL and Dolgonos for their existing and ongoing legal and other expenses, all as more particularly set out in the Judgment of the Court attached hereto as Appendix "9" and the reasons of Mr. Justice Marrocco issued in connection therewith and attached hereto as Appendix "10" (together, the "**Marrocco Judgment**").
15. Despite the Marrocco Judgment, UBS has failed, since the time of the appointment of its new Board on July 5, 2010 up to and including the date of this Proof of Claim, to pay any expenses incurred by the Claimant for which the Claimant has demanded indemnification and reimbursement. UBS had adequate resources during this time period to reimburse DOL for its legal and other expenses and DOL understands that UBS has in fact selectively been reimbursing other directors and officers, including payment of a retainer to Lax O'Sullivan Scott Lisus LLP for payment of the legal expenses of the current directors relating to an oppression action filed against them, while failing to reimburse the Claimant.
16. As at the CCAA Filing Date, the Claimant had incurred \$245,003 (inclusive of applicable Tax) plus interest of legal fees and expenses for which it is entitled to indemnification and reimbursement from UBS and from which UBS has not reimbursed the Claimant. Attached are copies of legal bills from the Claimant's lawyers Roy Elliott O'Connor LLP (attached hereto as Appendix "11"), Bennett Jones LLP (attached hereto as Appendix "12") in the aggregate amount of \$245,003. Pursuant to the Marrocco Judgment, the Claimant is entitled to and claims payment of this amount plus interest at 3% per annum from the date of the Marrocco Judgment (being April 27, 2011). In addition, the Claimant has continued to incur additional legal and other expenses since the CCAA Filing Date, for which it is entitled to ongoing indemnification and reimbursement as set out above.

#### ***IV. Breach by UBS of the Technology Agreement***

17. Under the Technology Agreement, DOL agreed to cause Dolgonos to perform the services of Chief Technology Consultant of UBS.
18. Under Section 5.3.1 of the Technology Agreement, in the event of a Good Reason following a Change-of-Control, DOL is entitled to terminate the Technology Agreement. If the Technology Agreement is terminated by DOL on that basis, or in the event of a "termination without Cause" by UBS, DOL is then entitled to 300% of the aggregate of:

- (a) DOL's Core Compensation (\$475,000.000);
  - (b) a bonus equal to the greater of:
    - (i) the bonus paid in the immediately preceding fiscal year;
    - (ii) the bonus paid in the immediately preceding calendar year;
    - (iii) the average of the bonuses paid in the two immediately preceding fiscal years;
    - (iv) or the average of the bonuses paid in the two immediately preceding calendar years; and
  - (c) amounts due and owing pursuant to Section 3.3 [Benefits] and Section 3.6 [Tax Effective Payments] at the time of termination.
19. Pursuant to the Technology Agreement "Good Reason" means "that the Consultant's business relationship with the company has been substantially altered by the Board."
20. Pursuant to the Technology Agreement, "Change-in-Control" means "that control (control includes a Person or group of Persons acting in concert holding more than 20% of the voting shares of the Company) of the Company has transferred to another Person or Persons acting in concert.
21. At the special meeting of the shareholders of UBS on July 5, 2010, the shareholders voted to remove the incumbent Board of Directors, from the UBS Board and replaced them with a new slate of directors, being Messrs. Robert Ulicki, Grant McCutcheon, and Henry Eaton.
22. As set out in greater detail in the DOL/Dolgonos Pleadings attached as Appendices 2 and 3 hereto, the above actions resulted in a "Good Reason following a Change of Control" and a "termination without Cause" entitling DOL to terminate the Technology Agreement and entitling DOL to payment therefor pursuant to section 5.3.1 thereof.
23. UBS's Management Circular dated May 30, 2010, which was approved by the independent directors (i.e. not including Dolgonos) of the UBS Board, and filed with the regulatory authorities, recognized and noted that the removal of Dolgonos from the UBS Board would result in this a payment of an estimated \$7.2 million becoming due and payable to the Claimant:

*In the event that new Board of Directors terminates the Technology Development and Strategic Marketing Agreement without "Cause", the payment that would be due to DOL is estimated by UBS to be \$7.2 Million, taking into account performance incentives aid or awarded only by UBS. See 'Part 3 - Compensation'. Any such payments due to DOL under the Technology Development and Strategic Marketing Agreement are payable to DOL in a lump-sum payment within 5 business days of its termination and, in the case of a*

*portion of a contingent restructuring award granted by UBS to DOL in 2009, immediately upon such termination. The portion of the contingent restructuring award is also immediately payable upon a change of control of UBS.*

24. As set out in greater detail in the DOL/Dolgonos Pleadings attached as Appendices 2 and 3 hereto, the Claimant is entitled to payment of and claims \$6,015,000 plus applicable Tax from UBS pursuant to section 5.3.1 of the Technology Agreement, consisting of the following:

Base Fee per Technology Agreement	\$475,000
Performance incentive	\$1,530,000
Total termination value (sum of above items)	\$2,005,000
Total termination claim (\$2,005,000 x 300%) before interest plus Tax	\$6,015,000

25. In breach of its contractual duties to the Claimant under the Technology Agreement, UBS had failed by the CCAA Filing Date and continues to fail to pay the Claimant the above amount notwithstanding that such payments are determinable and/or have been determined by the independent directors of UBS, and were thus due immediately or at the latest within 5 business days of the termination of the Technology Agreement pursuant to the terms thereof. Accordingly, the Claimant also claims interest from July 5, 2010 to the CCAA Filing Date at the pre-judgment interest rate of 3% per annum pursuant to section 128 of the *Courts of Justice Act* (Ontario), for a claim of \$6,195,450 (\$6,015,000 plus \$180,450 interest) plus Tax.

#### **Non-Waivers of Post-Filing Claims and Other Rights**

26. In addition to any and all amounts claimed above, the Claimant also maintains a claim in relation to all amounts payable by UBS to the Claimant for the period after the CCAA Filing Date ("**Post Filing Claims**"), including but not limited to, any and all amounts for indemnification of legal and other expenses to which the Claimant may be entitled pursuant to the Marrocco Judgment, the Technology Agreement, the DOL Indemnification Agreement, and the Dolgonos Indemnification Agreement, whether in relation to UBS or otherwise, and for any interest payable after the CCAA Filing Date.
27. The Claimant does not waive, and expressly reserves, any and all rights, remedies, arguments, causes of actions and defences it may have in respect of the claims asserted herein or otherwise in relation to UBS or any other person or entity.
28. The Claimant reserves the right to amend or supplement this Proof of Claim and to provide any additional information, documentation or evidence as may be required or desired by the Claimant to establish or support its claims, arguments and defences.

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**PROOF OF CLAIM**

**FOR CREDITORS OF UNIQUE BROADBAND SYSTEMS, INC. ("UBS") AND UBS  
WIRELESS SERVICES INC. ("UBSW" AND, TOGETHER WITH UBS, THE  
"APPLICANTS")**

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Please read carefully the enclosed Instruction Letter for completing this Proof of Claim form. Capitalized terms not defined within this Proof of Claim form shall have the meaning ascribed thereto in the Order of the Ontario Superior Court of Justice (Commercial List) dated 4 August 2011, as may be amended from time to time (the "Claims Order").

**1. PARTICULARS OF CREDITOR:**

- (a) Full Legal Name of Creditor (include trade name, if different):

ALEX DOLGONOS

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(the "Creditor"). The full legal name should be the name of the Creditor of the Applicant(s), notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred prior to or following 5 July 2011.

- (b) Full Mailing Address of the Creditor:

207 Arnold Avenue, Thornhill, Ontario  
L4J 1C1

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The mailing address should be the mailing address of the Creditor and not any assignee.

- (c) Other Contact Information of the Creditor:

Telephone Number:

(416) 567-9647

Email Address:

adolgonos@ad2007.com

Facsimile Number:

(905) 707-1639

Attention (Contact Person):

Alex Dolgonos

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(d) Has the claim set out herein been sold, transferred or assigned by the Creditor to another party?

☐

Yes

☒

No

2. **PARTICULARS OF ASSIGNEE(S) (IF APPLICABLE)**

*If the Claim set out herein has been sold, transferred or assigned, complete the required information set out below. If there is more than one assignee, please attach a separate sheet that contains all of the required information set out below for each assignee.*

(a) Full Legal Name of Assignee:

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(b) Full Mailing Address of the Assignee:

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(c) Other Contact Information of the Assignee:

Telephone Number:

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Email Address:

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Facsimile Number:

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Attention (Contact Person):

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3. **PROOF OF CLAIM – CLAIM AGAINST THE APPLICANT(S)**

**THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:**

(a) That I:

☒

am a Creditor of one or more of the Applicants; **OR**

☐

am

\_\_\_\_\_  
(state position or title)

of

\_\_\_\_\_  
(name of Creditor)

- (b) That I have knowledge of all the circumstances connected with the Claim described and set out below; and
- (c) The Applicant(s) was and still is indebted to the Creditor as follows (include all Claims that you assert against the Applicant(s). Claims should be filed in the currency of the transactions, with reference to the contractual rate of interest, if any, and such currency should be indicated as provided below in respect of the following Claim(s):

(complete using original currency and amount)

	Amount of Claim	Currency	Secured	Unsecured
<input checked="" type="checkbox"/> UBS	<i>To be determined.</i>	<i>CDN</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> UBSW			<input type="checkbox"/>	<input type="checkbox"/>

4. **NATURE OF CLAIM – Complete ONLY if you are asserting a Secured Claim**

Applicant: \_\_\_\_\_

☐ Secured Claim of \$ \_\_\_\_\_  
(Original currency and amount)

In respect of this debt, I hold security over the assets of the Applicant(s) valued at

\$ \_\_\_\_\_  
(Original currency and amount)

the particulars of which security and value are attached to this Proof of Claim form.

*(Give full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security, the basis for such valuation and attach a copy of the security documents evidencing the security.)*

*(If you are asserting multiple secured claims, against one or more of the Applicants, please provide full details of your security against each of the Applicants.)*

**5. PARTICULARS OF CLAIM**

Other than as already set out herein, the particulars of the undersigned's total Claim against the Applicant(s) are attached on a separate sheet.

*Provide all particulars of the Claim and supporting documentation that you feel will assist in the determination of your claim. At a minimum, you are required to provide (if applicable) the invoice date, invoice number, the amount of each outstanding invoice and the related purchase order number. Further particulars may include the following if applicable: a description of the transaction(s) or agreement(s) giving rise to the Claim; contractual rate of interest (if applicable); name of any guarantor which has guaranteed the Claim; details of all credits, discounts, etc. claimed; and description of the security if any, granted by the affected Applicant(s) to the Creditor and, the estimated value of such security and the basis for such valuation.*

*See schedule "A" and attached Appendices.*

**6. FILING OF CLAIM**

This Proof of Claim form must be received by the Monitor by no later than 5:00 p.m. (Eastern Daylight Time) on 19 September 2011, to the following address:

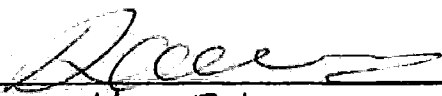
RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

Attention: Lana Bezner  
Telephone: 416-932-6009  
Fax: 416-932-6200  
Email: lbezner@rsmrichter.com

**THE TIMING FOR THE DEEMED DELIVERY OF CORRESPONDENCE IS SET OUT IN THE CLAIMS ORDER.**

DATED this 16th day of September, 2011.

Name of Creditor: Alex Dolgonos.  
(Name)

Per:   
Name: Alex Dolgonos  
Title:  
(please print)

**Schedule "A" to  
Proof of Claim of Alex Dolgonos**

This Schedule "A" and the documents referenced herein and/or attached hereto form part of the Proof of Claim of Alex Dolgonos ("**Dolgonos**" or the "**Claimant**") against Unique Broadband Systems, Inc. ("**UBS**" or the "**Company**").

**Nature of the Claims**

1. The Claimant claims indemnification and reimbursement against UBS, in an amount to be determined, plus other amounts as may be determined to be payable by UBS to the Claimant by the Court or the Claims Officer.

**Particulars of Claims**

***Entitlement to Indemnification and Reimbursement of Legal Fees and Expenses***

2. As indicated in the Proof of Claim (the "**DOL Proof of Claim**") filed by DOL Technologies Inc. ("**DOL**"), there is a indemnification agreement dated January 25, 2007 between UBS and Dolgonos (the "**Dolgonos Indemnification Agreement**"), attached hereto as Appendix "**1**".
3. Also as indicated in the DOL Proof of Claim, a Judgment of the Ontario Superior Court of Justice (Commercial List), dated April 27, 2011, by the Honourable Mr. Justice Marrocco ordered that UBS has an obligation to indemnify each of DOL and Dolgonos for their existing and ongoing legal and other expenses, all as more particularly set out in the Judgment of the Court attached hereto as Appendix "**2**" and the reasons of Mr. Justice Marrocco issued in connection therewith and attached hereto as Appendix "**3**" (together, the "**Marrocco Judgment**"). In addition, pursuant to the Marrocco Judgment, if a court decides that Dolgonos was an officer of UBS and that he acted honestly and in good faith with a view to the best interests of UBS, then UBS has an obligation to indemnify Dolgonos pursuant to Article 7 of UBS' bylaws.
4. Dolgonos submits this proof of claim, in an amount to be determined, to preserve all of his rights to indemnification and reimbursement from UBS in accordance with the Dolgonos Indemnification Agreement and the Marrocco Judgment.

**Non-Waivers of Post-Filing Claims and Other Rights**

5. In addition to any and all claims asserted above, the Claimant also maintains a claim in relation to all amounts payable by UBS to the Claimant for the period after the CCAA Filing Date ("**Post Filing Claims**"), including but not limited to, any and all amounts for indemnification of legal and other expenses to which the Claimant may be entitled pursuant to the Dolgonos Indemnification Agreement and the Marrocco Judgment, whether in relation to UBS or otherwise, and for any interest payable on such amounts.



6. The Claimant does not waive, and expressly reserves, any and all rights, arguments, causes of actions and defences it may have in respect of the claims asserted herein or otherwise in relation to UBS or any other person or entity.
7. The Claimant reserves the right to amend or supplement this Proof of Claim and to provide any additional information, documentation or evidence as may be required or desired by the Claimant to establish or support its claims, arguments and defences.

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**PROOF OF CLAIM**

**FOR CREDITORS OF UNIQUE BROADBAND SYSTEMS, INC. ("UBS") AND UBS  
WIRELESS SERVICES INC. ("UBSW" AND, TOGETHER WITH UBS, THE  
"APPLICANTS")**

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Please read carefully the enclosed Instruction Letter for completing this Proof of Claim form. Capitalized terms not defined within this Proof of Claim form shall have the meaning ascribed thereto in the Order of the Ontario Superior Court of Justice (Commercial List) dated 4 August 2011, as may be amended from time to time (the "Claims Order").

**1. PARTICULARS OF CREDITOR:**

(a) Full Legal Name of Creditor (include trade name, if different):

206 4818 Ontario Inc.

(the "Creditor"). The full legal name should be the name of the Creditor of the Applicant(s), notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred prior to or following 5 July 2011.

(b) Full Mailing Address of the Creditor:

207 Arnold Avenue, Thornhill, Ontario  
L4J 1C1

The mailing address should be the mailing address of the Creditor and not any assignee.

(c) Other Contact Information of the Creditor: (c/o Alex Dolgenos)

Telephone Number:

(416) 567-9647

Email Address:

adolgenos@ad2007.com

Facsimile Number:

(905) 707-1639

Attention (Contact Person):

Alex Dolgenos

- (d) Has the claim set out herein been sold, transferred or assigned by the Creditor to another party?

☐ Yes

☒ No

2. **PARTICULARS OF ASSIGNEE(S) (IF APPLICABLE)**

*If the Claim set out herein has been sold, transferred or assigned, complete the required information set out below. If there is more than one assignee, please attach a separate sheet that contains all of the required information set out below for each assignee.*

- (a) Full Legal Name of Assignee:

\_\_\_\_\_  
\_\_\_\_\_

- (b) Full Mailing Address of the Assignee:

\_\_\_\_\_  
\_\_\_\_\_

- (c) Other Contact Information of the Assignee:

Telephone Number:

\_\_\_\_\_

Email Address:

\_\_\_\_\_

Facsimile Number:

\_\_\_\_\_

Attention (Contact Person):

\_\_\_\_\_

3. **PROOF OF CLAIM – CLAIM AGAINST THE APPLICANT(S)**

**THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:**

- (a) That I:

☐ am a Creditor of one or more of the Applicants; **OR**

☒ am

Authorized Signatory  
(state position or title)

of

2064818 Ontario Inc.  
(name of Creditor)

- (b) That I have knowledge of all the circumstances connected with the Claim described and set out below; and
- (c) The Applicant(s) was and still is indebted to the Creditor as follows (include all Claims that you assert against the Applicant(s). Claims should be filed in the currency of the transactions, with reference to the contractual rate of interest, if any, and such currency should be indicated as provided below in respect of the following Claim(s):

(complete using original currency and amount)

	Amount of Claim	Currency	Secured	Unsecured
<input checked="" type="checkbox"/> UBS	<i>To be determined</i>	<i>CDN</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> UBSW			<input type="checkbox"/>	<input type="checkbox"/>

4. **NATURE OF CLAIM – Complete ONLY if you are asserting a Secured Claim**

Applicant: \_\_\_\_\_

☐ Secured Claim of \$ \_\_\_\_\_  
(Original currency and amount)

In respect of this debt, I hold security over the assets of the Applicant(s) valued at

\$ \_\_\_\_\_  
(Original currency and amount)

the particulars of which security and value are attached to this Proof of Claim form.

*(Give full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security, the basis for such valuation and attach a copy of the security documents evidencing the security.)*

*(If you are asserting multiple secured claims, against one or more of the Applicants, please provide full details of your security against each of the Applicants.)*

**5. PARTICULARS OF CLAIM**

Other than as already set out herein, the particulars of the undersigned's total Claim against the Applicant(s) are attached on a separate sheet.

*Provide all particulars of the Claim and supporting documentation that you feel will assist in the determination of your claim. At a minimum, you are required to provide (if applicable) the invoice date, invoice number, the amount of each outstanding invoice and the related purchase order number. Further particulars may include the following if applicable: a description of the transaction(s) or agreement(s) giving rise to the Claim; contractual rate of interest (if applicable); name of any guarantor which has guaranteed the Claim; details of all credits, discounts, etc. claimed; and description of the security if any, granted by the affected Applicant(s) to the Creditor and, the estimated value of such security and the basis for such valuation.*

*See Schedule "A" and  
attached Appendices*

**6. FILING OF CLAIM**

This Proof of Claim form must be received by the Monitor by no later than **5:00 p.m. (Eastern Daylight Time) on 19 September 2011**, to the following address:

RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

Attention: Lana Bezner  
Telephone: 416-932-6009  
Fax: 416-932-6200  
Email: lbezner@rsmrichter.com

**THE TIMING FOR THE DEEMED DELIVERY OF CORRESPONDENCE IS SET OUT IN THE CLAIMS ORDER.**

DATED this 16<sup>th</sup> day of September, 2011.

Name of Creditor: 2064818 Ontario Inc.  
(Name)

Per:

  
Name: Alex Dolgonos  
Title: Authorized Signatory  
(please print)

**Schedule "A" to  
Proof of Claim of 2064818 Ontario Inc.**

This Schedule "A" and the documents referenced herein and/or attached hereto form part of the Proof of Claim of 2064818 Ontario Inc. ("206" or the "Claimant") against Unique Broadband Systems, Inc. ("UBS" or the "Company").

**Nature of the Claims**

1. 206 has issued a Statement of Claim against, among other defendants, UBS, in the Ontario Superior Court of Justice (Commercial List), Court File No. CV-10-9036-00CL (the "Action"), a copy of which is attached hereto as Appendix "1".
2. Pursuant to paragraph 17 of the Initial Order of the Ontario Superior Court of Justice (Commercial List) in the proceeding of UBS under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA Proceeding"), all proceedings against the current or future directors of UBS are stayed, except for the Action.
3. The Claimant submits this Proof of Claim to preserve any and all rights and claims that it has as against the defendant UBS under or in connection with the Action.

**Non-Waivers of Post-Filing Claims and Other Rights**

4. In addition to any and all claims asserted above, the Claimant also maintains a claim in relation to any amounts payable by UBS to the Claimant for the period after the CCAA Filing Date ("**Post Filing Claims**").
5. The Claimant does not waive, and expressly reserves, any and all rights, arguments, causes of actions and defences it may have in respect of the claims asserted herein or otherwise in relation to UBS or any other person or entity.
6. The Claimant reserves the right to amend or supplement this Proof of Claim and to provide any additional information, documentation or evidence as may be required or desired by the Claimant to establish or support its claims, arguments and defences.
7. Nothing herein shall constitute or be deemed to constitute the submission or attornment by the Claimant of the Action, or any part thereof, to the jurisdiction of the Court presiding over the CCAA Proceeding.

**THIS IS EXHIBIT "D" TO THE AFFIDAVIT OF  
ROBERT ULICKI, SWORN BEFORE ME ON  
JULY 23, 2012**



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**A COMMISSIONER FOR TAKING OATHS**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR

JUSTICE CAMPBELL

)  
)  
)

FRIDAY, THE

6<sup>TH</sup> DAY OF JULY, 2012



**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  
UNIQUE BROADBAND SYSTEMS, INC.**

**CONSENT ORDER**

**THIS MOTION**, made by Unique Broadband Systems, Inc. ("UBS") and UBS Wireless Services Inc. (together with UBS, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Minutes of Settlement dated 5 July 2012 (the "**Minutes of Settlement**") and the Ninth Report of the Monitor, Duff & Phelps Canada Restructuring Inc. in its capacity as Monitor of the Applicants dated 5 July 2012, and on hearing the submissions of counsel;

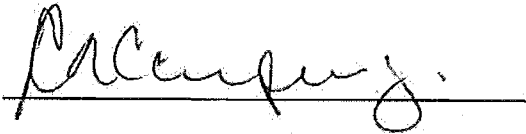


1. **THIS COURT ORDERS** that, subject to further Order of the Court, the Applicants shall not be required to convene or hold any meetings of their shareholders until the termination of these proceedings as a result of a plan of compromise or arrangement or otherwise.
2. **THIS COURT ORDERS** that the Minutes of Settlement be and are hereby approved.

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



JUL 6 2012



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED  
AND IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF UNIQUE BROADBAND SYSTEMS INC.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

(PROCEEDING COMMENCED AT TORONTO)

**CONSENT ORDER**

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SOLICITORS FOR THE APPLICANTS

**Court File No.:** CV-11-9283-00CL

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 UNIQUE BROADBAND SYSTEMS INC.

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

(PROCEEDING COMMENCED AT TORONTO)

**AFFIDAVIT OF ROBERT ULICKI**  
(sworn 23 July 2012)

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Solicitors for the Applicant

<p style="text-align: right;"><b>Court File No.:</b> CV-11-9283-00CL</p> <p><b>IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED</b></p> <p><b>AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF UNIQUE BROADBAND SYSTEMS INC.</b></p>	
<p style="text-align: center;"><b>ONTARIO</b></p> <p style="text-align: center;"><b>SUPERIOR COURT OF JUSTICE</b> <b>(COMMERCIAL LIST)</b></p> <p style="text-align: center;">(PROCEEDING COMMENCED AT TORONTO)</p>	
<p style="text-align: center;"><b>MOTION RECORD</b> <b>(RETURNABLE 26 JULY 2012)</b></p>	
<p><b>GOWLING LAFLEUR HENDERSON LLP</b> Barristers and Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 Toronto ON M5X 1G5</p> <p><b>E. Patrick Shea (LSUC No. 39655K)</b> Tel: (416) 369-7399 Fax: (416) 862-7661</p> <p>Solicitors for the Applicant</p>	