

Superior Court

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-11-036886-097
DATE : July 13, 2009

PRESIDING: The Honourable Danièle Mayrand, J.S.C.

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

ADALTIS INC.

Petitioner

- and -

RSM RICHTER INC.

Monitor

AMENDED AND RESTATED INITIAL ORDER

GIVEN the initial order issued by this Court on July 3, 2009 (the "**Initial Order**") pursuant to Sections 4,5 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**");

GIVEN the Order of this Court dated July 6, 2009 correcting paragraph 40 of the Initial Order;

GIVEN the provisions of the CCAA;

FOR THESE REASONS, THE COURT RESTATES AND AMENDS THE INITIAL ORDER DATED July 3, 2009 AS FOLLOWS:

[1] GRANTS the Petition.

[2] ISSUES an order pursuant to Sections 4, 5 and 11 of the CCAA (the "**Order**"), divided under the following headings:

- Service
- Application of the CCAA
- Effective Time
- Plan of Arrangement
- Stay of Proceedings against the Petitioner, the Property, the Directors or others
- Possession of Property and Carrying on Business
- Restructuring
- Interim Financing
- Directors Indemnification and Charge
- Powers of the Monitor
- Priorities and General Provisions Relating to CCAA Charges
- Bamic Retention Agreement
- General

Service

[3] EXEMPTS Adaltis Inc. (the "**Petitioner**") from having to serve the Petition and from any notice of presentation.

Application of the CCAA

[4] DECLARES that Petitioner is a debtor company to which the CCAA applies.

Effective time

[5] DECLARES that from immediately after midnight (Montréal time) on the day prior to the Order (the "**Effective Time**") to the time of the granting of the Order, any act or action taken or notice given by any Person in respect of Petitioner, the Directors or the Property (as those terms are defined

hereinafter), are deemed not to have been taken or given, as the case may be, to the extent such act, action or notice would otherwise be stayed after the granting of the Order.

Plan of Arrangement

[6] ORDERS that Petitioner files with this Court and submit to its creditors one or more plans of compromise or arrangement under the CCAA (collectively, the "**Plan**") between, among others, Petitioner and one or more classes of its creditors as Petitioner may deem appropriate, on or before the Stay Termination Date (as defined hereinafter) or such other time or times as may be allowed by this Court.

Stay of Proceedings against the Petitioner, the Property, the Directors or others

[7] ORDERS that, until and including August 3, 2009, or such later date as the Court may order (the "**Stay Termination Date**", the period from the date of the Order to the Stay Termination Date being referred to as the "**Stay Period**"), no right, legal or conventional, may be exercised and no proceeding, at law or under a contract, by reason of this Order or otherwise, however and wherever taken (collectively the "**Proceedings**") may be commenced or proceeded with by anyone, whether a person, firm, partnership, corporation, stock exchange, government, administration or entity exercising executive, legislative, judicial, regulatory or administrative functions (collectively, "**Persons**" and, individually, a "**Person**") against or in respect of Petitioner, or any of the present or future property, assets, rights and undertakings of Petitioner, of any nature and in any location, whether held directly or indirectly by Petitioner, in any capacity whatsoever, or held by others for Petitioner (collectively, the "**Property**"), and all Proceedings already commenced against Petitioner or any of the Property, are stayed and suspended until the Court authorizes the continuation thereof, the whole subject to the provisions of the CCAA.

[8] ORDERS that, without limiting the generality of the foregoing, during the Stay Period, all Persons having agreements, contracts or arrangements with Petitioner or in connection with any of the Property, whether written or oral, for any subject or purpose:

- (a) are restrained from accelerating, terminating, cancelling, suspending, refusing to modify or extend on reasonable terms such agreements, contracts or arrangements or the rights of Petitioner or any other Person thereunder;
- (b) are restrained from modifying, suspending or otherwise interfering with the supply of any goods, services, or other benefits by or to such Person thereunder (including, without limitation, any directors' and officers' insurance, any telephone numbers, any form of telecommunications service, any oil, gas, electricity or other utility supply);
- (c) are restrained from interfering or retaining in any manner the delivery of any goods by or to the Petitioner, so long as Petitioner pay the prices or charges for the services rendered by such Persons for the services received after the date of the Order as such prices or charges become due in accordance with the law or as may be hereafter negotiated;
- (d) shall continue to perform and observe the terms and conditions contained in such agreements, contracts or arrangements, so long as Petitioner pays the prices or charges for such goods and services received after the date of the Order as such prices or charges become due in accordance with the law or as may be hereafter negotiated (other than deposits whether by way of cash, letter of credit or guarantee, stand-by fees or similar items which Petitioner shall not be required to pay or grant), unless the prior

written consent of Petitioner and the Monitor is obtained or the leave of this Court is granted; and

- (e) shall continue to operate bank services and accounts currently in place and available to Petitioner at the National Bank of Canada and at the Royal Bank of Canada in accordance with existing banking services agreements, are restrained from stopping, withholding, redirecting or otherwise interfering with any amount in the Accounts or setting off (subject to paragraph 9 hereof) or applying amounts in the Accounts against any indebtedness owing to it by Petitioner, or from discontinuing, failing to renew on terms no more onerous than those existing prior to these proceedings, altering, interfering with or terminating existing related banking arrangements, and shall continue to honour debits and cheques (including those already in circulation at the date of the Order) drawn on the Accounts, unless otherwise directed by Petitioner and the Monitor, in each case provided that there are sufficient funds in the relevant Account for such debit items or cheques, or other reasonable assurances of payments are provided to the National Bank of Canada or the Royal Bank of Canada.

- [9] ORDERS that, without limiting the generality of the foregoing and subject to Section 18.1 of the CCAA, if applicable, cash or cash equivalents placed on deposit by Petitioner with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity including particularly amounts advanced to Petitioner under the Interim Financing, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount

of any cheques drawn by Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

[10] ORDERS that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, bond or guarantee (the "**Issuing Party**") at the request of Petitioner shall be required to continue honouring any and all such letters, bonds and guarantees, issued on or before the date of the Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid therefore.

[11] DECLARES that, to the extent any rights, obligations, or time or limitation periods, including, without limitation, to file grievances, relating to Petitioner or any of the Property may expire, other than the term of any lease of real property, the term of such rights or obligations, or time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that Petitioner becomes bankrupt or a receiver within the meaning of paragraph 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") is appointed in respect of Petitioner, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of Petitioner in determining the 30-day periods referred to in Sections 81.1 and 81.2 of the *BIA*.

[12] ORDERS that no Person may commence, proceed with or enforce any Proceedings against any former, present or future director or officer of Petitioner or any person that, by applicable legislation, is treated as a director of Petitioner or that will manage in the future the business and affairs of Petitioner (each, a "**Director**", and collectively the "**Directors**") in

respect of any claim against such Director that arose before this Order was issued and that relates to obligations of Petitioner for which such Director is or is alleged to be liable (as provided under Section 5.1 of the CCAA) until further order of this Court or until the Plan, if one is filed, is sanctioned by the Court or is refused by the creditors or is not sanctioned by the Court.

- [13] ORDERS that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, officers, employees, legal counsel or financial advisers of Petitioner, the Monitor, the Interim Lender (as defined hereinafter) or the legal counsel or financial advisers to the Monitor or to the Interim Lender, for or in respect of the Restructuring (as defined hereinafter) or the formulation and implementation of the Plan without first obtaining leave of this Court, upon seven days written notice to Petitioner's ad litem counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.

Possession of Property and Carrying on Business

- [14] ORDERS that, subject to the terms of the Order, Petitioner shall remain in possession of the Property until further order in these proceedings.
- [15] ORDER that Petitioner shall continue to carry on its business and financial affairs in a manner consistent with the commercially reasonable preservation thereof.

Restructuring

[16] DECLARES that, to facilitate the orderly restructuring of its business and financial affairs (the "**Restructuring**"), Petitioner shall have the right, subject to approval of the Monitor or further order of the Court, to:

- (a) permanently or temporarily cease, downsize or shut down any of its operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan;
- (b) pursue all avenues to market and sell, subject to subparagraph (c), the Property, in whole or part;
- (c) convey, transfer, assign, lease, or in any other manner dispose of the Property, in whole or in part, provided that the price in each case does not exceed \$25,000 or \$100,000 in the aggregate, and provided that Petitioner apply any proceeds thereof in reduction of amounts due from time to time to the Interim Lender;
- (d) terminate the employment of such of its employees or temporarily or permanently lay off such of its employees (including employees already laid-off) as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision for any consequences thereof in the Plan, as Petitioner may determine;
- (e) subject to paragraphs 18 and 19 hereof, vacate or abandon any leased real property or repudiate any lease and ancillary agreements related to any leased premises as it deems appropriate, provided that Petitioner gives the relevant landlord at least seven days prior written notice, on such terms as may be agreed between Petitioner and such landlord, or failing such

agreement, to make provision for any consequences thereof in the Plan; and

- (f) repudiate such of its agreements, contracts or arrangements of any nature whatsoever, whether oral or written, as it deems appropriate, on such terms as may be agreed between Petitioner and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan and to negotiate any amended or new agreements or arrangements.

[17] DECLARES that, in order to facilitate the Restructuring, Petitioner may, subject to approval of the Monitor:

- (a) settle claims of customers and suppliers that are in dispute; and
- (b) establish a plan for the retention of key employees and the making of retention payments or bonuses in connection therewith.

[18] DECLARES that, if leased premises are vacated or abandoned by Petitioner pursuant to subparagraph [16](e), the landlord may take possession of any such leased premises without waiver of, or prejudice to, any claims or rights of the landlord against Petitioner, provided the landlord mitigates its damages, if any, and re-leases any such leased premises to third parties on such terms as any such landlord may determine.

[19] ORDERS that Petitioner shall provide to any relevant landlord notice of Petitioner's intention to remove any fixtures or leasehold improvements at least seven days in advance. If Petitioner has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute.

[20] DECLARES that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5,

Petitioner is permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to its advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with Petitioner binding it to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to Petitioner or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation and implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by Petitioner.

Interim Financing

[21] ORDERS that, notwithstanding any other provision of the Order, Petitioner be and is hereby authorized to borrow, repay and reborrow from Victoria Square Ventures Inc. (the "**Interim Lender**") such amounts from time to time as Petitioner may consider necessary or desirable, up to a maximum principal amount of \$3,000,000.00 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet attached hereto as Schedule A (the "**Interim Financing Term Sheet**") and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioner and its subsidiaries and to pay such other amounts as are permitted by the terms of the Order and the Interim Financing Documents (as defined hereinafter) (the "**Interim Facility**");

- [22] ORDERS that, notwithstanding any other provision of the Order, Petitioner is hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the "**Interim Financing Documents**") as may be required by the Interim Lender in connection with the Interim Facility and the Interim Financing Term Sheet, and Petitioner is hereby authorized to perform all of its obligations under the Interim Financing Documents;
- [23] ORDERS that, notwithstanding any other provision of the Order, Petitioner shall pay to the Interim Lender when due all amounts owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other advisers to or agents of the Interim Lender on a full indemnity basis (the "**Interim Lender Expenses**")) under the Interim Financing Documents and shall perform all of its other obligations to the Interim Lender pursuant to the Interim Financing Term Sheet, the Interim Financing Documents and the Order;
- [24] ORDERS that all of the Property of Petitioner, save the asset-back commercial paper held by Petitioner, is hereby charged by a hypothec, mortgage, lien and security interest to the extent of the aggregate amount of \$3,750,000 (such hypothec, mortgage, lien and security interest, together with any hypothec, mortgage, lien or security interest created by the Interim Financing Documents, the "**Interim Lender Charge**") in favour of the Interim Lender as security for all obligations of Petitioner to the Interim Lender with respect to all amounts owing (including principal, interest and the Interim Lender Expenses) under or in connection with the Interim Financing Term Sheet and the Interim Financing Documents. The Interim Lender Charge shall have the priority established by paragraphs 40 and 41 hereof;
- [25] ORDERS that the claims of the Interim Lender pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to

the Plan or these proceedings and the Interim Lender, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan;

[26] ORDERS that the Interim Lender may:

- (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lender Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
- (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to Petitioner in accordance with and to the extent provided in the provisions of the Interim Financing Term Sheet and the Interim Financing Documents;

[27] ORDERS that the Interim Lender shall not take any enforcement steps under the Interim Financing Documents or the Interim Lender Charge without providing at least 3 business days written notice (the "**Notice Period**") of a default thereunder to the Petitioner, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lender shall be entitled to take any and all steps under the Interim Financing Documents and the Interim Lender Charge and otherwise permitted at law, the whole in accordance with applicable provincial laws, but without having to send any demands under Section 244 of the BIA;

[28] ORDERS that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs 21 to 27 hereof unless either (a) notice of a motion for such order is served on the Interim Lender by the moving party within seven (7) days after that party was served with the Order or (b) the Interim Lender applies for or consents to such order;

[29] DECLARES that the formal valuation and minority approval requirements contained in sections 5.4 and 5.6 of Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions need not be complied with in connection with the Interim Facility;

Directors Indemnification and Charge

[30] ORDERS that, in addition to any existing indemnities, Petitioner shall indemnify each of the Directors from and against the following (collectively, “**D&O Claims**”):

- (a) all costs (including, without limitation, full defence costs), charges, expenses, claims, liabilities and obligations, of any nature whatsoever, which may arise on or after the date of the Order relating to acts, omissions or circumstances which occurred after the Effective Time (including, without limitation, an amount paid to settle an action or a judgment in a civil, criminal, administrative or investigative action or proceeding to which a Director may be made a party), provided that any such liability relates to such Director in that capacity, and, provided that such Director (i) acted honestly and in good faith in the best interests of Petitioner and (ii) in the case of a criminal or administrative action or proceeding in which such Director would be liable to a monetary penalty, such Director had reasonable grounds for believing his or her conduct was lawful, except if such Director has actively breached any fiduciary duties or has been grossly negligent or guilty of wilful misconduct; and
- (b) all costs, charges, expenses, claims, liabilities and obligations relating to the failure of Petitioner to make any payments or to pay amounts in respect of employee or former employee entitlements to wages, vacation pay, termination pay, severance pay, pension or other benefits, in each case accruing and falling due after, or

any other amount for services performed on or after the date of the Order and that such Directors sustain, by reason of their association with Petitioner as a Director, except to the extent that they have actively breached any fiduciary duties or have been grossly negligent or guilty of wilful misconduct.

The foregoing shall not constitute a contract of insurance or other valid and collectible insurance, as such term may be used in any existing policy of insurance issued in favour of Petitioner or any of the Directors.

[31] DECLARES that, as security for the obligation of Petitioner to indemnify the Directors pursuant to paragraph 30 hereof, the Directors are hereby granted a hypothec on, mortgage of, lien on and security interest in the Property to the extent of the aggregate amount of \$650,000 (the "**D&O Charge**"), having the priority established by paragraphs 40 and 41 hereof. Such D&O Charge shall not constitute or form a trust. Such D&O Charge, notwithstanding any language in any applicable policy of insurance to the contrary, shall only apply to the extent that the Directors do not have coverage under any directors' and officers' insurance, which shall not be excess insurance to the D&O Charge. In respect of any D&O Claim against any of the Directors (collectively, the "**Respondent Directors**"), if such Respondent Directors do not receive confirmation from the applicable insurer within 21 days of delivery of notice of the D&O Claim to the applicable insurer, confirming that the applicable insurer will provide coverage for and indemnify the Respondent Directors, then, without prejudice to the subrogation rights hereinafter referred to, Petitioner shall pay the amount of the D&O Claim upon expiry. Failing such payment, the Respondent Directors may enforce the D&O Charge provided that the Respondent Directors shall reimburse Petitioner to the extent that they subsequently receive insurance benefits for the D&O Claim paid by Petitioner, and provided further that Petitioner shall, upon payment, be

subrogated to the rights of the Respondent Directors to recover payment from the applicable insurer as if no such payment had been made.

Powers of the Monitor

[32] ORDERS that RSM Richter Inc. is hereby appointed to monitor the business and financial affairs of Petitioner as an officer of this Court (the "**Monitor**") and that the Monitor shall, in addition to the duties and functions referred to in Section 11.7 of the CCAA:

- (a) send notice of the Order, within 10 days, to every known creditor of Petitioner having a claim of more than \$250 against it, advising that such creditor may obtain a copy of the Order on the internet at the website of the Monitor (the "**Website**") or, failing that, from the Monitor and the Monitor shall so provide it. Such notice shall be sufficient in accordance with Subsection 11(5) of the CCAA;
- (b) assist Petitioner, to the extent required by Petitioner, in dealing with its creditors and other interested Persons during the Stay Period;
- (c) assist Petitioner, to the extent required by Petitioner, with the preparation of its cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (d) advise and assist Petitioner, to the extent required by Petitioner, to review Petitioner's business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (e) assist Petitioner, to the extent required by Petitioner, with the Restructuring and in its negotiations with its creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;

- (f) report to the Court on the state of the business and financial affairs of Petitioner or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;
- (g) report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- (h) retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (i) engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- (j) may act as a "foreign representative" of Petitioner in any proceedings outside of Canada;
- (k) may give any consent or approval as are contemplated by the Order; and
- (l) perform such other duties as are required by the Order, the CCAA or this Court from time to time.

The Monitor shall not otherwise interfere with the business and financial affairs carried on by Petitioner, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of Petitioner.

- [33] ORDERS that Petitioner and its directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of Petitioner in connection with the Monitor's duties and responsibilities hereunder.
- [34] DECLARES that the Monitor may provide creditors and other relevant stakeholders of Petitioner with information in response to requests made by them in writing addressed to the Monitor and copied to Petitioner's counsel. The Monitor shall not have any duties or liabilities in respect of such information disseminated by it pursuant to the provisions of the Order or the CCAA, other than as provided in paragraph [36] hereof. In the case of information that the Monitor has been advised by Petitioner is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of Petitioner, as the case may be, unless otherwise directed by this Court.
- [35] DECLARES that the Monitor shall not be, nor be deemed to be, an employer or a successor employer of the employees of Petitioner or a related employer in respect of Petitioner within the meaning of any federal, provincial or municipal legislation governing employment, labour relations, pay equity, employment equity, human rights, health and safety or pensions or any other statute, regulation or rule of law or equity for any similar purpose and, further, that the Monitor shall not be, nor be deemed to be, in occupation, possession, charge, management or control of the Property or business and financial affairs of Petitioner pursuant to any federal, provincial or municipal legislation, statute, regulation or rule of law or equity which imposes liability on the basis of such status, including, without limitation, the *Environment Quality Act* (Québec), the *Canadian Environmental Protection Act, 1999* or the *Act Respecting Occupational*

Health and Safety (Québec) or similar other federal or provincial legislation.

[36] DECLARES that, in addition to the rights and protections afforded to the Monitor by the CCAA, the Order or its status as an officer of the Court, the Monitor shall not incur any liability or obligation as a result of its appointment and the fulfilment of its duties or the provisions of the Order, save and except any liability or obligation arising from the gross negligence or wilful misconduct, and no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph [32](h) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.

[37] ORDERS that Petitioner shall pay the fees and disbursements of the Monitor, the Monitor's legal counsel, Petitioner's legal counsel and other advisers, incurred in connection with or with respect to the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

[38] ORDERS that the Petitioner will make the necessary arrangements for the receipt of the invoices of the above-mentioned professionals on a weekly basis, but no later than every second week, and ORDER Petitioner to pay such invoices within three (3) business days of their receipt.

[39] DECLARES that the Monitor, the Monitor's legal counsel, the Petitioner's legal counsel and other advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order in respect of these proceedings, the Plan and the Restructuring, in addition

to the retainers referred to paragraph [37] hereof, be entitled to the benefit of and are hereby granted a hypothec on, mortgage of, lien on, and security interest in the Property to the extent of the aggregate amount of \$850,000 (the "**Administration Charge**"), having the priority established by paragraphs [40] and [41] hereof.

Priorities and General Provisions Relating to CCAA Charges

[40] DECLARES that the priorities of the Administration Charge, D&O Charge and Interim Lender Charge (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:

- (a) first, the Administration Charge;
- (b) second, the D&O Charge; and
- (c) the Interim Lender Charge

[41] DECLARES that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, conditional sale agreements, financial leases, charges, encumbrances or security of whatever nature or kind (collectively, "**Encumbrances**") affecting any of the Property, save and except (i) that the asset-back commercial paper held by Petitioner which shall not be charged by the Interim Lender Charge and (ii) that the Interim Lender Charge shall rank immediately subsequent to the charge of the National Bank of Canada on the immovable property bearing civic address 10,900 in the City and District of Montréal.

[42] ORDERS that, except as otherwise expressly provided for herein, Petitioner shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless

Petitioner obtains the prior written consent of the Monitor and the prior approval of the Court.

[43] DECLARES that each of the CCAA Charges shall attach, as of the Effective Time of the Order, to all present and future Property of Petitioner, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

[44] DECLARES that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the *BIA* in respect of Petitioner or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds Petitioner (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

- (a) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by Petitioner of any Third Party Agreement to which it is a party; and
- (b) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.

[45] DECLARES that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving

order filed pursuant to the *BIA* in respect of Petitioner and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by Petitioner pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

- [46] DECLARES that the CCAA Charges shall be valid and enforceable as against all Property of Petitioner and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of Petitioner, for all purposes.

Bambic Retention Agreement

- [47] APPROVES the Bambic Retention Agreement, filed as Exhibit R-6;
- [48] ORDERS the sealing of the Bambic Retention Agreement, filed as Exhibit R-6;

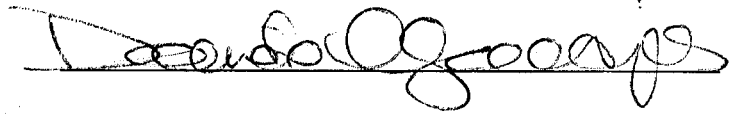
General

- [49] DECLARES that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [50] DECLARES that, except as otherwise specified herein, Petitioner is at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission

to Persons or other appropriate parties at their respective given addresses as last shown on the records of Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.

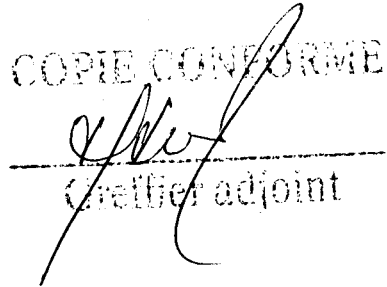
- [51] DECLARES that Petitioner may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
- [52] DECLARES that any party in these proceedings, other than Petitioner, may serve any court materials electronically, by emailing a PDF or other electronic copy of all materials to counsels' email addresses, provided that such party shall deliver both PDF or other electronic copies and "hard copies" of all materials to counsel to Petitioner (Davies Ward Phillips & Vineberg LLP, c/o Mark Schrager and Christian Lachance) and the Monitor and to any other party requesting same.
- [53] DECLARES that, unless otherwise provided herein or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for Petitioner (Davies Ward Phillips & Vineberg LLP, c/o Mark Schrager and Christian Lachance) and the Monitor and has filed such notice with this Court.
- [54] DECLARES that Petitioner or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.

- [55] DECLARES that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon seven days notice to Petitioner (Davies Ward Phillips & Vineberg LLP, c/o Mark Schragger and Christian Lachance), the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
- [56] DECLARES that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [57] DECLARES that the Monitor, with the prior consent of Petitioner, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, China, Italy, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under section 304 of the *U.S. Bankruptcy Code*, for which the Monitor shall be the foreign representative of Petitioner. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.
- [58] REQUESTS the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in China, Italy or the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.
- [59] ORDERS the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security.
- [60] THE WHOLE without costs.



The Honourable Danièle Mayrand, J.S.C.

COPIE CONFORME



Greffier adjoint