

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
DIVISION NO.: 01-MONTRÉAL
COURT NO.: 500-11-047847-146
ESTATE NO.:

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE PROPOSAL OF:

MEXX CANADA COMPANY, an insolvent person, having its domicile at 905 Hodge Street, Montréal, Quebec, H4N 2B3.

PROPOSAL

We, Mexx Canada Company (the “Debtor” or the “Company”), hereby submit the following proposal under the *Bankruptcy and Insolvency Act*:

1. **Definitions:** For all purposes relating to the present proposal under the *Bankruptcy and Insolvency Act*, the following terms shall have the following meaning:

“Act” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

“Approval” means the situation arising from the Proposal having been duly accepted by the required majority of creditors of the Company and having been duly approved by the Court in a judgment which has become executory as a result of the delay for appeal having expired without there having been an appeal, or an appeal having been lodged and the judgment having been confirmed or the appeal withdrawn or otherwise settled;

“Claim” means the claim of any Creditor of the Company, whether it is a Secured Claim, a Preferred Claim, an Employee Claim or an Unsecured Claim. However, it does not include a Subsequent Claim;

“Court” means the Superior Court of the District of Montréal sitting in bankruptcy and insolvency matters (Commercial Division);

“Creditor” means the holder of a Claim;

“Employee Claim(s)” means, for each employee, the aggregate sum of all amounts owing to such employee, including any amounts owing in respect of notice of termination or pay in lieu thereof and severance claims, as set forth in the Employee Claim Notice.

“Employee Claim Notice” means the notice sent to each employee together with this Proposal setting out the employee’s Employee Claim.

“Employee Creditor” means a Creditor having an Employee Claim;

“Gores” means Gores Malibu Holdings L.P

“Gores Contribution” means an amount of \$600,000, being comprised of (i) an amount that Gores will remit to the Trustee, to be distributed to the designated Creditors of the Company and (ii) an amount representing post-filing obligations to Gores, that Gores will remit to the Trustee, to be distributed to the designated Creditors of the Company, the whole as set forth herein. Said contribution is only to be distributed, in accordance with the terms of the Proposal, once the Creditors have duly approved the Proposal and the Approval has been obtained;

“Landlords” means those Creditors of which the Company was a commercial tenant under a lease of real property, as acknowledged by the Company;

“Landlord Claims” means the Unsecured Claims of the Landlords for the actual losses resulting from the disclaimers of leases in accordance with 65.2(4)b of the Act, which Claims shall be treated as Unsecured Claims in accordance with Section 65.2(5) of the Act;

“Notice of Intention” means the Notice of Intention to Make a Proposal under the Act filed by the Company on December 3, 2014;

“Preferred Claims” means all claims of the Company directed by section 136 the Act to be paid in priority by the Company to all other claims in the distribution of the property of an insolvent party;

“Preferred Creditor” means a Creditor having a Preferred Claim;

“Proposal” means this Proposal;

“Proposal Expenses” means all fees, expenses, liabilities and obligations of the Trustee, and all legal fees, consulting fees and accounting fees on and incidental to the proceedings arising out of the Notice of Intention and the Proposal and including without limitation advice to the Company and the Trustee in connection therewith;

“Proven Claim” means the amount accepted by the Company for any Claim, or further to the Court’s determination and then as per the final judgment to be rendered and that the delay of appeal has expired without having been an appeal, or an appeal having been lodged and the judgment having been confirmed or the appeal withdrawn or otherwise settled;

“Secured Claims” means claims of secured creditors within the meaning of the Act;

“Secured Creditor” means a Creditor having a Secured Claim;

“**Settlement Fund**” means all available cash on hand (currently estimated at an amount of no less than \$4,700,000) to be remitted by the Company to the Trustee upon Approval for distribution to the Subsequent Creditors, Secured Creditors, the Preferred Creditors and then the Unsecured Creditors in full and final settlement of their Claims against the Company, in accordance with the terms of this Proposal;

“**Subsequent Claims**” means the claims arising in respect to goods supplied, services rendered or other consideration given as and from the date of the filing of the Notice of Intention, including amounts owed to Landlords of the Company where the Company is a commercial tenant under a lease of real property (up to the effective date of disclaimer of such leases pursuant to Section 65.2(1) of the Act), will be paid by the Company in full in the ordinary course of business and on regular trade terms or as may be arranged by the Company;

“**Subsequent Creditor**” means the holder of a Subsequent Claim;

“**Trustee**” means Richter Advisory Group Inc., the Trustee under the Notice of Intention and the Trustee named in the Proposal of the Company;

“**Unsecured Claims**” means in respect of the Company, the claims of the Unsecured Creditors including claims of every nature and kind whatsoever, whether due or not due for payment as of the date of the filing of the Notice of Intention as well as contingent or unliquidated claims arising out of any transaction entered into by the Company prior to the date thereof;

“**Unsecured Creditor**” means a Creditor having an Unsecured Claim or a Landlords Claim;

2. **Secured Claims:** The Secured Claims shall be paid in accordance with arrangements existing between the Company and the holders of Secured Claims or as may be arranged between the Company and the holders of Secured Claims. The Company declares that this Proposal is not made in respect of the Claims of the Secured Creditors;
3. **Employee Claims:** Each employee which is in agreement with the Employee Claim Notice shall not be required to file a proof of claim and his (her) Proven Claim shall be deemed to be as set forth in the Employee Claim Notice, for voting and distribution purposes under the Proposal. Employees who do not agree with the amount of their claim as set forth in the Employee Claim Notice must complete and file their proof of claim in respect of their Claim, prior to the first meeting of creditors if they wish to vote on the Proposal, together with any and all supporting documents, and a proper statement of account, which proof of claim shall be dealt with pursuant to the Act;
4. **Amounts:**
 - (a) owing to Her Majesty in right of Canada or a Province that could be subject to a demand under Section 224 (1.2) of the *Income Tax Act*, or under any substantially similar provision of provincial legislation, outstanding at the time of the filing of the Notice of Intention, will be paid in full within six (6) months after the Approval, as per the Act;


- (b) owing to employees and former employees, that they would have been entitled to receive under Paragraph 136(1)(d) of the Act if the employer became bankrupt on the date of the filing of the Notice of Intention, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Approval, will be paid in full immediately after the Approval as per the Act.
5. **Proposal Expenses:** The Proposal Expenses shall be paid by the Company in priority to all Claims and Subsequent Claims;
6. **Preferred Claims:** The payment of the Preferred Claims other than those referred to in Section 3(b) hereof will be paid in full in priority to all Unsecured Claims, thirty (30) days after the Approval;
7. **Distribution of the Settlement Fund:** The Company will remit to the Trustee, no later than ten (10) days after the Approval, the Settlement Fund to be distributed by the Trustee as follows and in the following order:
- (a) in payment of the Subsequent Claims, if any;
 - (b) in payment of the Secured Claims, if any;
 - (c) in payment of all Proven Claims of the Preferred Claims of the Preferred Creditors, to be paid in accordance with paragraphs 4 and 6 above;
 - (d) the balance of the Settlement Fund, to be distributed to the Unsecured Creditors with a Proven Claim, in full and final settlement of its Unsecured Claims, without interest, as follows:
 - (1) the lesser of: (i) the amount of the Proven Claim of such Unsecured Creditor and (ii) \$1,800 (the "**First Level Distribution**") which amount, subject to paragraph e) below, shall be received within (i) thirty (30) days after the Approval for all the Unsecured Creditors other than the Employee Creditors and (ii) fifteen (15) days of the receipt by the Trustee of the required governmental confirmations in respect of the Employees Creditors only;
 - (2) an amount equal to such Unsecured Creditor's pro rata share, calculated on the basis of the remaining amount of its Proven Claim, of any amount remaining in the Settlement Fund after the distribution of all of the First Level Distribution amounts, and subject to paragraph e) below, to all Unsecured Creditors ("**Second Level Distribution**"). The Second Level Distribution will be paid by the Trustee as follows:
 - (i) 80% of the Second Level Distribution, within (i) thirty (30) days after the Approval for all the Unsecured Creditors other than the Employee Creditors and (ii) fifteen (15) days of the receipt by the Trustee of the required governmental confirmations in respect of the Employees Creditors only;

- (ii) the balance of 20% of the Second Level Distribution, within ninety (90) days after the Approval.
 - (e) the distribution referred to above shall be net of any amount to be set aside by the Trustee while Claims are being determined, litigated or for any disputed Claim. The Trustee shall use its best judgment in the determination of any amount which should be set aside, and for which period.
- 8. **Distribution of the Gores Contribution:** No later than ten (10) days after the Approval, Gores will remit the Gores Contribution to the Trustee. The Trustee will distribute the Gores Contribution together with the first payment to be made in respect of the Second Level Distribution, as follows:
 - (a) an amount of \$600,000 to be paid to the Employees Creditors on a pro rata basis of their respective Proven Claim.
- 9. **Reviewable Transactions and Preferential Payments:** Conditionally upon the Approval, the statutory terms of Sections 95 to 101 of the Act and any provision of provincial legislation having a similar objective (including but not limited to Articles 1631 to 1636 of the *Civil Code of Quebec*) shall not apply, the whole pursuant to Section 101.1 of the Act;
- 10. **Claims against directors:** In accordance with Section 50(13) of the Act, the Proposal herein made will constitute a compromise of claims against the present and past directors of the Company that arose before the filing of the Notice of Intention and that relate to the obligations of the Company where the directors are by law liable in their capacity as directors for the payment of such obligations, and acceptance of the Proposal, upon Approval, will operate as a discharge in favour of such present and past directors with respect to such obligations. Nothing herein shall be interpreted as an acknowledgement of any liability or obligation of the directors of the Company;
- 11. **Deemed approval:** Each of the Unsecured Creditors with a Proven Claim equal to or less than \$1,800 shall be deemed to have voted in favour of the Proposal. Likewise, any employee that has not filed a proof of claim, **prior to the first meeting of creditors**, shall be deemed to have voted in favour of the Proposal in an amount equal to the Employee Claim. Notwithstanding the foregoing, the Unsecured Creditors and the Employees described in the present clause may choose to vote against the Proposal in the context of the creditors' vote on the Proposal.
- 12. **Trustee:** The Trustee will be the Trustee under the Proposal and all monies payable under the Proposal will be paid over to the Trustee which will remit the dividends in accordance with the terms of the Proposal.

IN THE EVENT OF ANY DISCREPANCY BETWEEN THE ENGLISH AND THE FRENCH VERSION OF THIS PROPOSAL, THE ENGLISH VERSION WILL TAKE PRECEDENCE.

DATED AT LONDON, ENGLAND, this 1st day of June 2015.

MEXX CANADA COMPANY

Per:  ROBBIE REYNDERS, PRESIDENT