

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
COMMERCIAL DIVISION

NO: 500-11-022623 -
041

IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF :

QBIOGÈNE INC., a legal person duly
constituted, having its domicile at 1801 de
Maisonneuve Boulevard West, 8th Floor,
Montréal, Québec, H3H 1J9

Petitioner

and

RICHTER & ASSOCIÉS INC., a legal person
duly constituted, having its domicile at 2 Place
Alexis-Nihon, 22nd Floor, Montréal, Québec,
H3Z 3C2

Monitor

ORDER

[1] **WHEREAS** the Court has taken knowledge of the Petition for an initial order under section 11 of the Companies' Creditors Arrangement Act, the affidavit of Steve Perrone sworn on March 8, 2004, the exhibits, the consent of Richter & Associés to act as Monitor, and the submissions of counsel for Qbiogène Inc.;

FOR THESE REASONS, THE COURT:

[2] **GRANTS** the present motion and issues an order pursuant to section 11 of the Companies' Creditors Arrangement Act (the "Order");

SERVICE

[3] **EXEMPTS** Qbiogène Inc. (the "Petitioner") from having to serve this motion and from any notice or delay of presentation;

APPLICATION OF THE CCAA

- [4] **DECLARES** that the Petitioner is a debtor company within the meaning of the Companies' Creditors Arrangement Act, R.S.C. 1985, C-36, as amended (the "CCAA");

EFFECTIVE TIME

- [5] **ORDERS** that from immediately after midnight (Montreal 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 any of the Petitioner, the Subsidiaries, the Directors or the Property (as those terms are subsequently defined), will be 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 the Petitioner shall have the exclusive authority to prepare and file with this Court and submit to its creditors a compromise or an arrangement under the CCAA (the "Plan") between the Petitioner and one or more classes of its creditors as the Petitioner may deem appropriate, on or before the Stay Termination Date (as subsequently defined) or such other time or times as may be allowed by this Court;

STAY OF PROCEEDINGS

- [7] **ORDERS** that, until and including April 8, 2004, or such later date as the Court may order (the "Stay Termination Date", the period from the date of the Order to the Stay Date being referred to as the "Stay Period"), no proceeding, including without limitation any suit, complaint, action, grievance, arbitration, application, injunction, enforcement process, right, or job action, decision, ruling or award resulting from any process, grievance or arbitration, or other remedy whether judicial or extra-judicial, statutory or non-statutory (collectively, the "Proceedings") shall be commenced, issued, taken, proceeded with, implemented, enforced, imposed or continued, by any person, firm, corporation, government, administrative or regulatory body or other entity or organization wherever situate or domiciled in Canada (including, without limitation, any former, existing or future shareholders, creditors, customers, suppliers, employees, pensioners, unions, regulators, contracting parties, lessors, licensors, co-venturers or partners of any of the Petitioner or the subsidiaries (as subsequently defined) (collectively, "Persons" and individually a "Person") against or in respect of the Petitioner, or Qbiogene S.A., Qbiogene Research Services S.A., Quantum Biotechnologies S.A., Alexis Corporation (Delaware) and all of their wholly-

owned subsidiaries wherever located (each of the foregoing being a "Subsidiary" and collectively the "Subsidiaries"), or any of the present or future property, assets, rights, undertakings, estate and effects of any nature of any of the Petitioner or the Subsidiaries, wherever located, and whether held directly or indirectly, as principal, nominee, agent, tenant or licensee, beneficially or otherwise, or held by others for the benefit of any of the Petitioner and the Subsidiaries (collectively, the "Property"), and all Proceedings already commenced against or in respect of the Petitioner or the Subsidiaries or any of the Property are stayed and suspended and the continuation thereof is restrained unless the prior written consent of the applicable Petitioner or Subsidiary and the Monitor is obtained, or leave of this Court is granted;

[8] **ORDERS** that, during the Stay Period, the right of any Person:

- (a) to commence or continue realization of, or proceedings relating to, any hypothec, privilege, right (including any right of revendication or retention or repossession), security interest, encumbrance, lien (including mechanic's lien), charge, mortgage or other security held in relation to, or any trust attaching to, any of the Property (including, without limitation, the right of any Person to take any step in asserting or perfecting any right or interest therein or to exercise any right of registration of security, distress, seizure, stoppage in transit, foreclosure or sale) or from serving or issuing a notice or prior notice; and
- (b) to assert, enforce or exercise any right, option or remedy available to it arising by law, under any agreement or otherwise (including, without limitation, any right under section 224(1.2) of the Income Tax Act (Canada) or substantially similar provision under provincial law (subject to section 11.4 of the CCAA); any right of dilution, buy-out, divestiture, forced sale, demand, acceleration, termination, suspension, modification, cancellation, set-off or consolidation of accounts; any right of first refusal; any right to give notice of assignment of a claim; or any right to revoke any qualification or registration), against or in respect of any of the Petitioner or the Subsidiaries or any of the Property or arising out of, relating to or triggered by the occurrence of any default or non-performance by or the insolvency of any of the Petitioner or the Subsidiaries, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings;

is stayed and restrained unless the prior written consent of the applicable Petitioner or Subsidiary and the Monitor is obtained, or leave of this Court is granted;

- [9] **ORDERS** that, without limiting the generality of paragraph [7], cash or cash equivalents placed on deposit by the Petitioner with any Person during the Stay Period, whether in an operating account or otherwise and whether for its own account or for the account of any other entity, 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 which may become due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof, provided that nothing in this paragraph shall prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by the Petitioner and properly honoured by the financial institution, or (ii) holding the amount of any cheques or other instruments deposited into the 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, during the Stay Period, all Persons having agreements or other arrangements with the Petitioner in connection with any of the Property, whether written or oral (including, without limitation, contracts for the supply of goods or services to or by the Petitioner, insurance policies, partnership agreements, joint venture agreements, operating agreements, outsourcing agreements, commercial leases, equipment leases, licences, advertising agreements, purchase agreements, supply agreements, security service agreements, consignment agreements, customs brokerage agreements, warranty service contracts, conditional sales contracts, charge, credit and debit card agreements, bank and other operating accounts, management agreements, transportation contracts, computer software and support systems, maintenance and service contracts):
- (a) are restrained from accelerating, terminating, cancelling, suspending, withdrawing, failing to renew or extend on reasonable terms, modifying, or otherwise interfering with such agreements or other arrangements or the rights of the Petitioner or any other Person thereunder or exercising any other remedy provided for under such agreements or arrangements, including without limitation any licences, permits, approvals or consents in respect of the Petitioner or in connection with such Property, and without limitation to the foregoing, the operation of any provision of any such agreement or other arrangement that purports to accelerate, terminate, cancel, suspend or modify such agreement or arrangement as a result of the occurrence of any default or non-performance by or the insolvency of the Petitioner, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings is stayed and restrained;
 - (b) are restrained from modifying, discontinuing or otherwise interfering with the supply of any goods, services, or other benefits by or to such Person thereunder (including, without limitation, any modification of,

discontinuance of, or interference with any directors' and officers' insurance, any telephone numbers, any form of telecommunications service or any oil, gas, electricity or other utility supply); and

- (c) shall continue to perform and observe the terms and conditions contained in such agreements or other arrangements (including, without limitation, the payment of all sums to be paid in respect of services performed or to be performed by the Petitioner), so long as the Petitioner pays the normal 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 present payment practices or as may be hereafter negotiated (other than deposits whether by way of cash, or otherwise, letter of credit or guarantee, stand-by fees or similar items which the Petitioner shall not be required to pay or grant), unless the prior written consent of the Petitioner and the Monitor is obtained, or the leave of this Court is granted;

[11] **ORDERS** that notwithstanding paragraphs [8] and [9], any Person who provided letters of credit, standby letters of credit, performance bonds, payment bonds, completion guarantees or guarantees (the "Issuing Party") at the request of the Petitioner shall be required to continue honouring any and all such letters of credit, standby letters of credit, performance bonds, payment bonds and/or guarantees, issued on or before the date of the order subject to the Issuing Party being entitled (where applicable) to retain the bills of lading and/or shipping or other documents relating thereto until paid therefor. For greater certainty, (i) the Issuing Party shall be prohibited from terminating, suspending, modifying, determining, refusing to honour in accordance with the terms thereof or cancelling any such letters of credit, standby letters of credit, performance bonds, payment bonds or guarantees; and (ii) the beneficiaries of such letters of credit, standby letters of credit, performance bonds, payment bonds or guarantees for the supply and delivery of goods, shall be entitled to draw on such letters of credit, standby letters of credit, performance bonds, payment bonds and/or guarantees, as the case may be, in accordance with their respective terms and conditions, without either the prior written consent of the Petitioner and the Monitor, or leave of this Court;

[12] **ORDERS** that, during the Stay Period, no landlord of the Petitioner shall:

- (a) exercise any right to terminate or accelerate rent due under a lease with the Petitioner;
- (b) interfere with the possession and enjoyment of real property by the Petitioner;

- (c) exercise any right of distraint, or take possession of any premises leased to such Petitioner unless those premises have been abandoned by the Petitioner;
- (d) interfere with the removal of inventory, chattels and equipment from premises leased by the Petitioner; or
- (e) hinder in any way the orderly liquidation of any Property from premises leased by the Petitioner,

all subject to paragraph [13] and the obligation, if any, of the Petitioner to pay occupation rent ~~(only if rent was agreed to be payable as between the landlord and the Petitioner in the 30 days preceding the Order)~~, for the period commencing with the date of the Order and while the Petitioner enjoys actual occupation of leased premises, at the presently payable rental rate calculated on a per diem basis, or otherwise as may be negotiated by the Petitioner from time to time;

[13] **ORDERS** that notwithstanding paragraphs [7] to [12]:

- (a) in the case of agreements for the supply of goods, services, the use of leased or licensed property or other valuable consideration to the Petitioner, no Person is prohibited, solely by the terms of the Order, from requiring immediate payment for any goods, services, use of leased or licensed property (other than as contemplated by paragraph [22].(b) or other valuable consideration to be provided to the Petitioner after the date of the Order;
- (b) no Person is required, solely by the terms of the Order, to make further advances of money or credit to the Petitioner;
- (c) no Person is prohibited, solely by the terms of the Order, from commencing or continuing any action, suit or proceeding against any person, other than the Petitioner, who is obligated under a letter of credit in relation to the Petitioner;
- (d) no Person is prohibited, solely by the terms of the Order, from exercising any right to terminate, amend or claim any accelerated payment under an "eligible financial contract" (as that term is defined in section 11.1 of the CCAA) and, for greater certainty, when an eligible financial contract entered into before the date of the Order is terminated on or after the date of the Order, the setting off of obligations between the Petitioner and the Person (as parties thereto) in accordance with the provisions of the eligible financial contract and the CCAA is permitted, but paragraphs [7] to

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Julie Dubois
Officier autorisé

[12] will restrain any step or proceeding against the Petitioner, or any of the Property, in respect of a claim for any "net termination value" (as defined in section 11.1 of the CCAA) owing to the Person; and

(e) no Person is prohibited, solely by the terms of the Order, from exercising such rights of set-off as are permitted under section 18.1 of the CCAA;

[14] **ORDERS** that to the extent any rights or obligations, or time or limitation periods (including, without limitation, the time to file grievances), relating to the Petitioner or any of the Property may expire or terminate with the passage of time (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 and, without limitation to the foregoing, in the event that the Petitioner becomes bankrupt or a receiver within the meaning of the paragraph 243(2) of the Bankruptcy and Insolvency Act (Canada) (the "BIA") is appointed in respect of the Petitioner, the period between the date of the Order and the day on which the Stay Period in respect of the Petitioner ends shall not be calculated in determining the 30-day periods referred to in sections 81.1 and 81.2 of the BIA.

[15] **ORDERS** that no Person may commence or continue any action, suit or other proceeding against any former, present or future director or officer of the Petitioner or any other person deemed by applicable legislation to be or to be treated as a director of the Petitioner, or that presently or in the future manages the business and affairs of the Petitioner (each, a "Director", and collectively the "Directors") in respect of any claim against such Director that arose before the commencement of these proceedings and that relates to obligations of the Petitioner where such Director is or is alleged to be, under any law, liable that capacity for the payment of such obligations, 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 the Court;

[16] **ORDERS** that no Person shall commence or continue any proceeding against any of the directors, officers, employees, legal counsel or financial advisers of the Petitioner, the Monitor, for or in respect of the Restructuring (as defined herein) or the creation and implementation of the Plan without first obtaining leave of this Court, upon seven days written notice to the Petitioner's 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 OF BUSINESS

- [17] **ORDERS** that the Petitioner shall remain in possession of its Property until further order in these proceedings;
- [18] **ORDERS** that the Petitioner shall continue to carry on its business, including the business of any person, firm, joint venture or corporation owned by the Petitioner, in a manner consistent with the commercially-reasonable preservation of the Property and the business, except as otherwise specifically authorized or directed by the Order or any further order in these proceedings;
- [19] **ORDERS** that, without limitation to paragraph [18], the Petitioner is authorized to continue to retain or employ any employees, agents, servants, lawyers, advisers and consultants who are retained or employed as of the date of the Order, with liberty to retain or employ such further employees, agents, servants, solicitors, auditors, advisers and consultants as the Petitioner deems necessary or desirable to carry on business, to carry out the terms of this Order or for the purposes of the Plan;
- [20] **ORDERS** that the Petitioner and the Subsidiaries are authorized to complete any outstanding transactions and to engage in new transactions with each other and with any of their respective affiliates and other entities, partnerships and joint ventures in which they have a material direct or indirect ownership interest (collectively with the Petitioner, the "Petitioner's Group"), subject to the following:
- (a) the Petitioner may continue on and after the date of the Order to buy and sell goods and services and allocate, collect and pay costs, including without limitation head office expenses and shared goods and services, from and to each other and from and to the other members of the Petitioner's Group in the ordinary course of business on terms consistent with existing arrangements or past practice;
 - (b) the Petitioner, with the prior approval of the Monitor, may but is not obligated to (i) make advances to and make payments on behalf of other members of the Petitioner's Group to fund their operations and expenses on terms consistent with existing arrangements or past practice, provided that such other members of the Petitioner's Group agree that they will not exercise any rights of set-off in respect of any such advances and any pre-filing claims of such member of the Petitioner's Group against any the Petitioner, and (ii) make payments to other members of the Petitioner's Group in respect of goods and services provided prior to the date of the Order where the payment is of benefit to the Petitioner having regard to the preservation of its business and Property, the Restructuring (as

defined herein) and its direct or indirect ownership interest in such member; and

- (c) other than as permitted elsewhere by the Order, the Petitioner shall not enter into any new transactions outside the ordinary course of business with any other member of the Petitioner's Group unless such new arrangements: (i) are on commercially-reasonable terms as determined by the Petitioner, and (ii) are approved by the Monitor;

[21] **ORDERS** that, subject to the provisions of the Order, in order to facilitate the Restructuring, the Petitioner shall be permitted to carry on business without any interference of any kind from any Person and in the manner and to the extent determined by it, to dispose of any or all of the Property wherever situate without any interference of any kind from its landlords and, for greater certainty, the Petitioner shall have the right to realize its Property and other assets in such manner and at such locations as it deems suitable or desirable for the purpose of maximizing the proceeds and recovery therefrom and to make provision for the consequence of such actions in the Plan;

PAYMENT OF CREDITORS

[22] **ORDERS** the Petitioner, except as authorized by the Order or any further order in these proceedings:

- (a) to make no payments to any Person on account of any amount owing by the Petitioner as of the date of the Order;
- (b) to make no rental or other payments on account of movable property leased or other property licensed to the Petitioner as of the date of the Order, except in respect of and to the extent that such Petitioner continues to make use of such property after the date of the Order and the lessor or licensor is entitled to require immediate payment for such use pursuant to section 11.3(a) of the CCAA; and
- (c) to grant no hypothec, mortgage, charge or other security upon or in respect of any of the Property, other than in compliance with paragraph [43];

[23] **ORDERS** the Petitioner to remit, in accordance with legal requirements, or pay when due:

- (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof which are required to be deducted from employees' wages including, without limitation, amounts in respect of

employment insurance, Canada Pension Plan, Quebec Pension Plan and income taxes;

- (b) amounts accruing and payable by the Petitioner in respect of employment insurance, Canada Pension Plan, Quebec Pension Plan, workers compensation, employer health taxes and similar obligations of any jurisdiction with respect to employees; and
- (c) all goods and services taxes and all provincial or other applicable sales taxes payable or collectable by the Petitioner in connection with the sale of goods and services by the Petitioner;

[24] **ORDERS** that, from the date of the Order, the Petitioner shall be entitled to pay when due all reasonable costs and expenses it incurs in connection with its business, the Order, the Plan, and the Restructuring (as defined below), which costs and expenses may include, without limitation:

- (a) the cost of goods and services actually supplied to the Petitioner after the date of the Order;
- (b) all outstanding and future wages, salaries, commissions, vacation pay, pension and other benefits, reimbursement of expenses (including, without limitation, amounts charged by employees to credit cards) and other amounts accruing due to current, former or future employees, officers or directors or individuals who provide or have provided services to the Petitioner as individual contractors, and all outstanding and future severance pay, termination pay and other like amounts due to current, former or future employees if terminated in the ordinary course as the Petitioner may in its discretion determine;
- (c) all outstanding and future contributions to or payments in respect of any pension or benefit plans sponsored by the Petitioner;
- (d) all outstanding and future fees and disbursements of the Monitor, the Monitor's and the Petitioner's respective legal counsel, and any financial and other advisers retained by the Petitioner in respect of the Plan, the Restructuring (as subsequently defined), these proceedings or other matters affecting the business and operation of the Petitioner;
- (e) all outstanding and future fees and disbursements of the Petitioner's directors;
- (f) without limitation to paragraph [23], all outstanding and future priority claims of the Crown in right of Canada or any Province thereof, or a municipality, in respect of the Petitioner or any of the Property, which may

have priority over any security held by other Persons, including, without limitation, amounts owing in respect of provincial sales taxes, federal goods and services tax, deduction at source for income tax and other withholdings, Canada Pension Plan, Quebec Pension Plan, employment insurance contributions, employer health taxes, obligations to any workers' compensation authority, obligations in respect of any provincial or federal environmental legislation, gross receipts taxes, and realty, excise or other taxes;

- (g) all outstanding and future premiums on existing or future directors' and officers' liability insurance, including, without limitation, any premiums in connection with any extended reporting period;
- (h) rent and other payments required pursuant to any leases of movable property under existing arrangements in respect of the period after the date of the Order while the Petitioner is in actual occupation of such movable property;
- (i) all outstanding and future amounts due from the Petitioner under any charge, debit or credit card arrangement, including, without limitation, arrangements with American Express, MasterCard or Visa;
- (j) all expenses and capital expenditures incurred after the date of the Order in the ordinary course of business or necessary for environmental compliance or to preserve the Property or the business of the Petitioner, including, without limitation, payments on account of service, maintenance, repairs, insurance and security;
- (k) principal, interest and other payments to holders of security in respect of any of the Property if the amount secured by such security is, in the reasonable opinion of the Petitioner with the concurrence of the Monitor, less than or equal to the fair value of such security after having regard to, among other things, the priority of such security; and
- (l) any other amounts the payment of which is provided for by the terms hereof,

provided that, unless provided in subparagraphs (a) to (l) listed above, the Petitioner shall be entitled but not required to pay costs and expenses that were incurred before the date of the Order with the approval of the Monitor or upon further order in these proceedings;

- [25] **ORDERS** that the Petitioner shall be entitled to exercise any rights of set-off or claim any allowances or benefits which it is entitled to claim against amounts payable by the Petitioner to any Person, including, without limitation, amounts payable to any supplier of goods or services or any landlord of premises leased or occupied by the Petitioner;

RESTRUCTURING

- [26] **ORDERS** that, to facilitate the orderly restructuring of its businesses and affairs (the "Restructuring"), the Petitioner shall have the right to:
- (a) permanently or temporarily cease, downsize or shut down any of its respective 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), all or material parts of the Property of the Petitioner, in whole or part;
 - (c) sell, convey, transfer, assign, lease, or in any other manner dispose of the Property or any part or parts thereof:
 - i) in the ordinary course of business without the specific approval of this Court;
 - ii) pursuant to any agreement or arrangement that was entered into prior to the date of the Order with an arm's length purchaser in good faith and for valuable consideration; and
 - iii) otherwise, subject to prior approval of this Court;
 - (d) terminate the employment of its employees or temporarily or permanently lay off its employees as it deems appropriate and, to the extent any amounts owing in respect thereof are not paid in the ordinary course as the Petitioner may in its discretion determine (including, without limitation, amounts on account of notice, termination or severance pay), to make provision for any consequences thereof in the Plan;
 - (e) subject to paragraphs [28] and [29], vacate or abandon any leased real property and/or repudiate any lease and ancillary agreements related to any leased premises as it deems appropriate, provided that the Petitioner gives the landlord at least seven (7) days prior written notice, on such terms as may be agreed between the Petitioner and the landlord, or failing such agreement, to make provision for any consequences thereof in the Plan; and

- (f) repudiate such of its respective arrangements or agreements of any nature whatsoever (other than arrangements with the Petitioner's existing lenders in connection with the Petitioner's existing financing documents) whether oral or written, as it deems appropriate on such terms as may be agreed between the Petitioner and the relevant counter-party, or failing such agreement, to make provision for the consequences thereof in the Plan and to negotiate any new or replacement agreements or arrangements;
- [27] **ORDERS** that, in order to facilitate the Restructuring, the Petitioner shall have the right, with the approval of the Monitor, to:
- (a) settle claims of customers and suppliers that are in dispute;
 - (b) wind up or bankrupt any of its direct or indirect subsidiaries; and
 - (c) establish a plan for the retention of key employees and the making of retention payments or bonuses in connection therewith;
- [28] **ORDERS** that any sale of Property made pursuant to subparagraph [26](c) shall be deemed not to be a bulk sale and shall be exempt from the application of, and deemed not to be in contravention of, any laws of Canada or any Province thereof prohibiting, restricting or regulating the sale of such Property;
- [29] **ORDERS** that, if leased premises are vacated or abandoned by the Petitioner pursuant to subparagraph [26](e), the landlord shall be entitled to take possession of any such leased premises without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioner in respect of the vacating or abandoning of such leased premises, and the landlord shall be entitled to gain possession of and re-lease any such leased premises to third parties on such terms as any such landlord may determine, subject to the landlord's obligation to mitigate any damages claimed in connection therewith;
- [30] **ORDERS** that the Petitioner shall provide to any landlord notice of the Petitioner's intention to remove any fixtures or leasehold improvements at least seven (7) days prior to the intended date of removal from any leased premises vacated or abandoned by the Petitioner. The relevant landlord shall be entitled to have a representative present at the leased premises to observe such removal and, if the landlord disputes the Petitioner's entitlement to remove any item under the provisions of the lease, such items shall remain on the premises and shall be dealt with as agreed to between any applicable secured creditors, the landlord and the Petitioner, or by further order of this Court on seven (7) days notice to the parties. If the Petitioner has otherwise vacated the leased premises, it shall

not be considered to be in occupation of such location pending the resolution of any such dispute;

- [31] **ORDERS** that, pursuant to subparagraph 7(3)(c) of the Personal Information Protection and Electronic Documents Act, S.C. 2000, c.5, the 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 their advisers (individually, a "Third Party"), to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction in furtherance thereof, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them 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 the 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 shall be entitled to continue to use the personal information in a manner which is in all material respects identical to the prior use of such personal information by the Petitioner;

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

- [32] **ORDERS** that, in addition to any existing indemnities, the Petitioner shall indemnify each of the Directors and each Person who was or in the future is requested by an Petitioner to act, and who is acting or did or does act or is deemed or treated by applicable legislation to be acting or to have acted, as a director, officer or person of a similar position (a "Responsible Person") of the Petitioner or another entity in which the Petitioner has a direct or indirect interest (an "Associated Entity") 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 (including, without limitation, an amount paid to settle an action or satisfy a judgment in a civil, criminal, administrative or investigative action or proceeding to which such Director or Responsible Person may be made a party by reason of being or having been a Director or Responsible Person, provided that any such liability described above relates to the Director or Responsible Person in that capacity, and, provided that such Director or Responsible Person (i) acted honestly and in good faith with a view to the best interests

of the Petitioner or Associated Entity (as the case may be) and (ii) in the case of a criminal or administrative action or proceeding that is enforced by monetary penalty, such Director or Responsible Person had reasonable grounds for believing his or her conduct was lawful, except to the extent that such Director or Responsible Person has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct; and

- (b) all costs (including without limitation, full defence costs), charges, expenses, claims, liabilities and obligations relating to the failure of the Petitioner or an Associated Entity at any time to make payments of the nature referred to in paragraphs [23] to [24] or to pay amounts in respect of employee or former employee entitlements to wages, vacation pay, termination pay, severance pay, pension or other benefits, or any other amount for services performed, whether incurred or accruing prior to, on or after the date of the Order and that he or she sustains or incurs by reason of or in relation to his or her association with the Petitioner or Associated Entity as a Director or Responsible Person (as the case may be), except to the extent that such Director or Responsible Person has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct;

provided that the foregoing shall not constitute a contract of insurance and shall not constitute other valid and collectible insurance as such term may be used in any existing policy of insurance issued in favour of the Petitioner or Associated Entities or any of the Directors or Responsible Persons;

- [33] **ORDERS** that, as security for the Petitioner's obligation, to indemnify the Directors and Responsible Persons pursuant to paragraph [32], the Directors and Responsible Persons are hereby granted a fixed lien on, mortgage and hypothec of, and security interest in the Property in the amount of \$100,000 (the "D&O Charge"), having the priority established by paragraphs [41] and [42]. 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 and Responsible Persons do not have coverage under the provisions of the Petitioner's directors' and officers' insurance which shall not be excess insurance to the D&O Charge. In respect of any D&O Claim that is asserted against any of the Directors and Responsible Persons, if the Directors and Responsible Persons against whom the D&O Claim is asserted (collectively, the "Respondent Directors") do not receive satisfactory 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 against the D&O Claim then, without prejudice to the subrogation rights hereinafter referred to, the

Petitioner shall pay the amount of the D&O Claim as it becomes payable by the Respondent Directors and, failing such payment, the Respondent Directors shall be entitled to enforce the D&O Charge; provided that the Respondent Directors shall reimburse the Petitioner to the extent that they subsequently receive insurance proceeds in respect of the D&O Claim paid by the Petitioner, and provided further that the Petitioner shall, in the event of such payment being made, be subrogated to the rights of the Respondent Directors to pursue recovery thereof from the applicable insurer as if no such payment had been made;

POWERS OF THE MONITOR

- [34] **ORDERS** that Richter & Associés Inc. is hereby appointed to monitor the business and affairs of the 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 the Petitioner having a claim of more than \$250. Such notice shall be sufficient to comply with subsection 11(5) of the CCAA;
 - (b) assist the Petitioner, to the extent required by the Petitioner, in dealing with its creditors and other Persons during the Stay Period;
 - (c) assist the Petitioner, to the extent required by the 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 the Petitioner, to the extent required by the Petitioner, to review the Petitioner's business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
 - (e) assist the Petitioner, to the extent required by the Petitioner, with the Restructuring and in its negotiations with its creditors and other Persons and with the holding and administering of any meetings held to consider the Plan;
 - (f) report to this Court on the state of the business and financial affairs of the Petitioner, or developments in these proceedings or any related proceedings, at such times as required by the CCAA and at such other times as considered appropriate by the Monitor or as this 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) be at liberty to 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, entities related to or affiliated with the Monitor;
- (i) be at liberty to 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 proceedings, under the Order or under the CCAA;
- (j) be at liberty to act as a foreign representative of the Petitioner in any proceedings outside of Canada;
- (k) be at liberty to 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,

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

- [35] **ORDERS** that the Petitioner and its respective directors, officers, employees, 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 the Petitioner in connection with the Monitor's duties and responsibilities hereunder.
- [36] **ORDERS** that the Monitor may provide creditors and other relevant stakeholders of the Petitioner with information in response to reasonable requests made by them in writing addressed to the Monitor and copied to the 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 [38]. If the Petitioner advises the Monitor that any information is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioner unless otherwise directed by this Court;
- [37] **ORDERS** that the Monitor shall not be, nor be deemed to be, an employer or a successor employer of the employees of the Petitioner, or a related employer in respect of the 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 or affairs of the 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 (Quebec), the Canadian Environmental Protection Act, 1999 or the Act Respecting Occupational Health and Safety (Quebec) or similar other federal or provincial legislation;

- [38] **ORDERS** 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, the fulfilment of its duties or its carrying out of the provisions of the Order (including, without limitation, with respect to any report or any information provided to claimants), 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 of the provisions of any order of this Court, except with prior leave of this Court, on at least 7 days notice to the Monitor and its counsel and upon further order securing, as security for costs, the extra-judicial costs of the Monitor, if any, in connection with any such action or proceeding, provided further that the liability of the Monitor hereunder shall not in any event exceed the quantum of the fees and disbursements paid to or incurred by it in connection with this proceeding. The entities related to or affiliated with the Monitor referred to in subparagraph [34].(h) shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [39] **ORDERS** that the Petitioner shall pay the fees and disbursements of each of the Monitor, the Monitor's legal counsel, the Petitioner's legal counsel and the Petitioner's financial and other advisers, whether incurred before or after the the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements if so requested.
- [40] **ORDERS** that the Monitor, counsel to the Monitor, and the Petitioner's legal counsel, as security for the professional fees and disbursements incurred both before and after the Order in respect of these proceedings, the Plan and the Restructuring in accordance with the provisions hereof, shall, in addition to the retainers referred to paragraph [39] hereof, be entitled to the benefit of and are hereby granted a hypothec and mortgage of, lien on, and security interest in the Property to the extent of the aggregate amount of \$300,000 (the "Administration Charge"), having the priority established by paragraphs [41] and [42];

PRIORITIES AND GENERAL PROVISIONS RELATING TO CCAA CHARGES

- [41] **ORDERS** that the priorities of the Administration Charge and the D&O 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; and;
 - (b) second, the D&O charge;
- [42] **ORDERS** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, priorities, conditional sale agreements, financial leases, liens, charges, security interests, encumbrances or security of whatever nature or kind ("Encumbrances") affecting any of the Property;
- [43] **ORDERS** that, except as otherwise expressly provided for herein, the 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 the Petitioner obtains the prior written consent of the Monitor and the prior approval of the Court, and any Encumbrances granted by the Petitioner contrary to the Order shall be void;
- [44] **ORDERS** that each of the CCAA Charges shall attach, as of the Effective Time of the Order, to all present and future Property of the Petitioner (including, without limitation, any lease, sub-lease, offer to lease, licence, permit or other contract) notwithstanding any requirement for the consent of the lessor or other party to any such lease, licence, permit or contract or any other Person or the failure to comply with any other condition precedent;
- [45] **ORDERS** that any requirement to give or obtain any consent or to comply with any condition precedent, each as referred to in the previous paragraph, is dispensed with and the absence of any such consent or fulfillment of condition precedent shall not constitute a breach of or default under any such lease, licence, permit or contract;
- [46] **ORDERS** that the the CCAA Charges shall be valid and enforceable and the rights and remedies of the CCAA Charges shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order issued pursuant to the BIA in respect of the 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 the 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 existing agreement, lease, sub-lease, offer to lease or other arrangement which binds the Petitioner (a

"Third Party Agreement"), and notwithstanding any provision to the contrary in any Third Party Agreement, no beneficiaries of the CCAA Charges shall 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;

- [47] **ORDERS** that notwithstanding: (i) these proceedings, and any declaration of insolvency made in these proceedings, (ii) any petition for a receiving order issued pursuant to the BIA in respect of the Petitioner and any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner, and (iii) the provisions of any federal or provincial statute, 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;
- [48] **ORDERS** that the beneficiaries of the CCAA Charges shall not be required to file, register, record or perfect the CCAA Charges and that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioner and against all Persons (including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioner) for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the creation of the CCAA Charges hereby, notwithstanding any failure to file, register, record or perfect the CCAA Charges;


GENERAL


- [49] **ORDERS** that the Order and the proceedings leading to the making of the Order, including the contents of any motion or affidavit, shall not, in and of themselves, constitute a default or failure to comply (or evidence thereof) by the Petitioner or any Person owned directly or indirectly by the Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other instrument or requirement;
- [50] **ORDERS** that, except as otherwise specified herein, the 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 addresses as last shown in the records of the 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] **ORDERS** that the 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 the Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;
- [52] **ORDERS** that any party to these proceedings (other than the 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 the Petitioner and the Monitor and to any other party upon request;
- [53] **ORDERS** that the 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;
- [54] **ORDERS** that any interested Person may apply to this Court on March 15, 2004, or such later date as this Court may direct, to vary or rescind the Order or seek other relief upon seven (7) days notice to the Petitioner, 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;
- [55] **ORDERS** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [56] **ORDERS** that the Monitor, with the prior consent of the 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, the United States of America or elsewhere, for orders in other jurisdictions which aid and complement the Order and any subsequent orders of this Court including, 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 the 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;
- [57] **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 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;

- [58] **ORDERS** the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security;
- [59] **THE WHOLE** without costs.

Montreal, March 9, 2004.


The Honourable J.C.S.

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