

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No :

SUPERIOR COURT
(COMMERCIAL DIVISION)

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
1985, c. C-36)

IN THE MATTER OF THE *COMPANIES
CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, as amended:

POSITRON TECHNOLOGIES INC., a legal
person duly incorporated pursuant to the
Companies Act (Quebec), Part 1A, having its head
office at 18107, Trans-Canada Highway, in
Kirkland, province of Quebec, H9J 3K1

Petitioner

-and-

RSM RICHTER INC., a legal person duly
incorporated having a place of business at 2 Place
Alexis Nihon, 3500 de Maisonneuve Blvd West,
22nd floor, in the city and district of Montreal,
H3Z 3C2,

Monitor

MOTION FOR AN INITIAL ORDER PURSUANT TO SECTIONS 4, 5 AND 11
OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT* ("the CCAA")
(R.S.C., 1985 c. C-36)

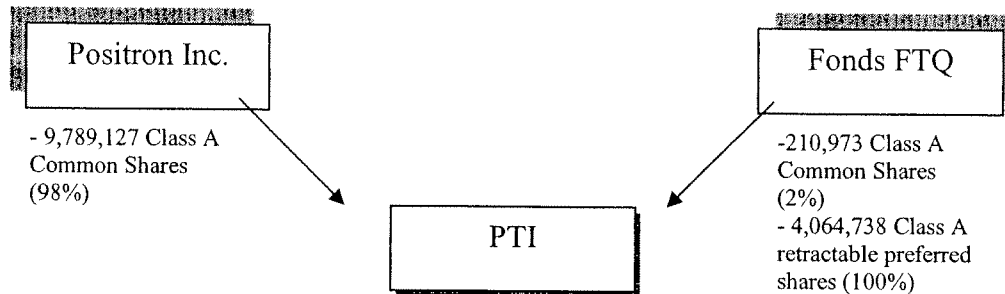
TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT SITTING IN
COMMERCIAL CHAMBER IN AND FOR THE DISTRICT OF MONTREAL, THE
PETITIONER RESPECTFULLY SUBMITS:

A. **INTRODUCTION**

1. The Petitioner, *Positron Technologies Inc.* (hereinafter referred to as “*PTI*”) is incorporated under part 1A of the *Companies Act (Quebec)* and has its head office and principal place of business at 18107 Trans-Canada Highway, in the city of Kirkland, province of Quebec, H9J 3K1, as more fully appears from an excerpt of the Corporate registry (CIDREQ), filed herewith as **EXHIBIT R-1**;
2. PTI is a “*Debtor Company*” within the meaning of the CCAA;
3. The total claims against PTI exceed five million dollars, as described more fully herein;
4. PTI is in the process of restructuring its operations and intends, in the context thereof, to file a plan of compromise and arrangement for all or part of its secured and unsecured debts, in accordance with their respective classes, and will request that this Honourable Court convene a meeting of its creditors so that they may vote on the plan of arrangement and compromise to be proposed;
5. As such, PTI is seeking the orders set forth herein from this Honourable Court in order to ensure the continuation of its operations and to prevent and stay any recourses and remedies of PTI’s creditors for an initial period of thirty (30) days (hereinafter referred to as the “*Initial Period*”);

B. **CORPORATE HISTORY**

6. PTI was originally a division of *Positron Inc.* (hereinafter referred to as “*Positron*”) and became an independent company in 2002;
7. Positron owns the trademark of the “Positron” name and logo and, as such, has granted to PTI the right to use same for a limited period of time;
8. PTI’s authorized capital stock is made up of an unlimited number of Class A Common Shares, Class B Common Shares, Class A Preferred Shares, Class B Preferred Shares, Class C Preferred Shares, Class D Preferred Shares, all without par value;
9. As of the date hereof, 10,000,100 Class A Common Shares and 4,064,738 Class A Preferred Shares are issued and outstanding as fully paid and 716,906 Class B Common Shares are reserved for issuance under PTI’s Stock Option Plan;
10. The capital stock of PTI is held by Positron and *Fonds de solidarité des travailleurs du Québec F.T.Q.* (hereinafter referred to as “*Fonds FTQ*”), as appears from the following chart:



11. Moreover, PTI has issued convertible debentures to the following entities:

- (i) *Quorum Investment Pool Limited Partnership* (hereinafter referred to as "*Quorum*"), for an amount of \$ 3,000,000;
- (ii) Positron, for an amount of \$ 1,000,000; and
- (iii) Mr. Aaron Fish (hereinafter referred to as "*Fish*"), for an amount of \$ 1,000,000;

C. PTI'S CORE BUSINESS

- 12. PTI is a contract manufacturer of high technology electronic devices. PTI's customers develop new products and delegate the manufacturing of same to PTI;
- 13. The relationship between PTI and its customers is very close as the latter's operations are very dependant on the timely supply of the products manufactured by PTI;
- 14. In order for PTI to obtain contracts, it must demonstrate to its customers that it can manufacture their products at a lower cost and in a more flexible and efficient manner;
- 15. As at the end of its last completed fiscal year on March 31, 2007, PTI employed 432 persons, but this number has since been brought down to 250 in the context of the restructuring process of PTI;

D. FINANCIAL INFORMATION

I) General

- 16. As appears from the last unaudited financial statements of PTI covering the first six months of its current fiscal year, filed herewith as **EXHIBIT R-2**, the book value of the assets of the company amounted to \$34,308,000, as at September 30, 2007;
- 17. As appears from the same financial statements, Exhibit R-2, PTI's liabilities amounted to \$32,562,000 as at September 30, 2007;

18. The half-yearly financial statements of PTI, Exhibit R-2, also indicate that the company generated sales for \$40,615,000, but suffered a loss of \$3,297,000 during the first six months of its current fiscal year;

II) Secured Creditors

19. As at September 30, 2007, PTI's total secured liabilities, amounted to approximately \$14,254,000, as appears from the following chart:

<u>Secured Creditors</u>	<u>Rank of the Security Interest</u>	<u>Amount of PTI's Indebtedness</u>	<u>Secured Property</u>
Royal Bank of Canada ("RBC")	1	\$ 8,382,000 Short term debt	Universality of inventories, claims and accounts receivables
La Financière du Québec ("IQ")	2	\$ 872,000 Long term debt	Universality of Movable Property Universality of equipment, office furniture, tools machinery and rolling stock
Quorum Investment Pool LLP	3 (<i>pari passu</i>)	\$ 3,000,000 Long term debt	Universality of Movable Property
Aaron Fish	3 (<i>pari passu</i>)	\$ 1,000,000 Long term debt	Universality of Movable Property
Positron Inc.	3 (<i>pari passu</i>)	\$ 1,000,000 Long term debt	Universality of Movable Property

III) Unsecured Creditors

20. As at September 30, 2007, PTI's total unsecured accounts payable and accrued liabilities amounted to \$16,793,000;
21. It should also be noted that the Class A Preferred Shares issued in favour of Fonds FTQ are retractable at the option of its holder, for an amount of \$8,000,000;

E. FINANCIAL DIFFICULTIES

22. Although PTI has made all reasonable efforts to raise the funds necessary to meet its capital needs (on or around April 30, 2007, PTI raised \$3,000,000 pursuant to the convertible debentures issued to Quorum, Fish and Positron), PTI's current financial situation, including its significant debt load, have hindered its capacity to pursue its business plan to achieve profitability;
23. The current financial difficulties experienced by PTI may be explained by:
- (i) The rapid growth of PTI's business;
 - (ii) A slowing down in the orders and payments of customers for products manufactured for their account;
 - (iii) PTI's difficulties in managing its inventory level and the timely coordination of its supply chain;
 - (iv) The decline in the value of the U.S. dollar, as most of PTI's end customers are located outside of Canada and as many of PTI's contracts refer to U.S. currency; and
 - (v) The loss of important clients, some of which have been experiencing financial difficulties, and the resulting write-off of important receivables and inventories;

II) Rapid Growth of PTI's Business

24. In 2004, PTI embarked on an ambitious plan to take advantage of the growing market as a contract manufacturer for developers of high-tech electronic devices;
25. The business plan established by PTI in 2004, provided for the following objectives:
- (i) Become the largest independent electronic contract manufacturer of its class (Tier 2) in eastern Canada;
 - (ii) Promote full service turnkey production ("box build") including purchasing, manufacturing, testing, packaging, direct order fulfillment, after sales services and repairs;
 - (iii) Acquire a metal enclosure and printed circuit board (PCB) company;
 - (iv) Create an alliance with small contract manufacturing prototype companies;
 - (v) Establish strategic partnerships with suppliers of PCB scale assemblies and associated hardware to augment PTI's non-core competencies;
 - (vi) Enhance the manufacturing capabilities to box-build assembly, system integration and final system integrated test (FIST); and

- (vii) Take advantage of PTI's Information Technology infrastructure to provide instantaneous mutual visibility, control and access to customers' information.

(hereinafter referred to as the "**2004 Plan**");

- 26. To achieve the goals set forth in the 2004 Plan, significant relocation and equipment investments were required in early 2005, at a time when PTI's had a limited number of customers;
- 27. By June 2005, such investments resulted in the need for significant financial support, which was obtained by PTI in the following manner:
 - (i) The conversion of advances made to PTI by Positron in an amount of \$8,700,000, into Class A Common Shares;
 - (ii) The injection by Fonds FTQ of \$ 8,000,000 in exchange for retractable Class A Preferred Shares and Class A Common Shares;
 - (iii) The injection by Quorum of \$ 2,000,000 pursuant to the issuance of a Secured Convertible Debenture;

(hereinafter collectively referred to as "**2005 Financing**")

- 28. Despite the 2005 Financing, PTI posted a loss of \$5,445,000 for the year ending on March 31, 2006, which was largely attributed to a decrease in sales coupled with an increase in fixed costs, as more fully appears from a copy of the audited financial statements for the year ending on March 31, 2006, filed herewith as **EXHIBIT R-3**;
- 29. In addition, PTI posted a further loss of \$6,584,000 in its fiscal year ended on March 31, 2007, as appears from its unaudited financial statements for such year, filed herewith as **EXHIBIT R-4**;
- 30. Nevertheless, since the 2005 Financing, PTI has been able to add new customers and increase its revenues;

III) PTI's Difficulties in Managing its Inventories and its Supply Chain

- 31. On or about July 6, 2007, *K-Buy Inc.* (hereinafter referred to as "**KBI**"), a company specialized in developing, consulting and outsourcing solutions aimed at improving the financial and operational performance of companies' procurement functions, was given the mandate to analyze PTI's current supply chains and the management of its inventories;
- 32. On or about July 18, 2007, KBI provided PTI with its analysis, as more fully appears from the report prepared by KBI, filed herewith as **EXHIBIT R-5** (hereinafter referred to as "**KBI Report**");
- 33. Essentially, KBI concluded, *inter alia*, that :

- (i) PTI's suppliers' delivery dates were not accurate and never confirmed, which resulted in an increase of PTI's overall inventories;
- (ii) The performance of the personnel in charge of procuring components (hereinafter referred to as the "**Procurement Personnel**") was not evaluated;
- (iii) The significant amount of last minute orders placed by PTI's Procurement Personnel, their extensive use of brokers and the absence of volume consolidation by component, resulted in supply chain inefficiencies and increased inventory volumes;

The whole as it more fully appears from the KBI Report (R-5);

IV) Loss of Important Clients and Write-Off of Important Receivables

a) SR Telecom

- 34. *SR Telecom*, an important client of PTI, generating revenues of approximately \$23,000,000 on a yearly basis since May 2006, experienced major financial difficulties in the past year;
- 35. The financial difficulties experienced by *SR Telecom* resulted in PTI having to support a financial burden of more than \$ 6,000,000 in inventories since May 2007, which was reduced to approximately \$ 3,000,000 in the last few months, in the context of the restructuring process described herein;
- 36. In fact, on November 19, 2007, *SR Telecom* obtained the protection of this Honourable Court pursuant to the CCAA, hence increasing PTI's financial burden, considering the significant inventory exposure and the loss of business volume resulting therefrom;

b) Société en Commandite Avestor

- 37. On October 31, 2006, *Société en Commandite Avestor* filed a notice of its intention to file a proposal in accordance with section 50.4 of the *Bankruptcy and Insolvency Act*, the whole as more fully appears from the Court's file bearing the number #500-11-030484-071;
- 38. At the time the notice of intention was filed as well as at the date hereof, *Société en Commandite Avestor* was, and still is, indebted towards PTI in an approximate amount of \$ 600,000;

c) Miscellaneous

- 39. At least three (3) of PTI's other major clients have experienced serious financial difficulties in the past year, resulting in a significant reduction of its business volume;

40. In addition, some important clients have informed PTI of their intention to transfer the manufacturing of their products to Malaysia and/or Mexico as of January 2008, resulting in an important yearly loss of business volume for PTI;

F. RESTRUCTURING EFFORTS

41. On or about April 23, 2007, Mr. Dominic Deveaux was appointed as Chief Operating Officer of PTI;

42. Mr. Deveaux is a recognized turnaround manager, having conducted a series of important reorganization in the province of Québec, as more fully appears from a copy of Mr. Deveaux's résumé, filed herewith as **EXHIBIT R-6**;

43. Since the appointment of Mr. Deveaux, PTI has implemented the following changes in order to redress its financial situation:

- (i) **Reduction of staff:** PTI has proceeded with a global adjustment of its staff, which resulted in the termination of 180 jobs since March 2007, a reduction of approximately 35 %;
- (ii) **Reduction of the Risk Exposure with Major Customers:** Since May 2007, PTI has reduced its inventory level from \$ 20,500,000 as at May 31, 2007, to \$12,000,000 as at October 31, 2007;
- (iii) **Supply Chain Assessment:** PTI has proceeded with an evaluation of its management of inventories and performance of its Procurement Personnel, as it more fully appears from the KBI Report (**R-33**). The implementation of the KBI Report's conclusions is ongoing;
- (iv) **Improvement of the Timely Delivery to Customers:** PTI in its efforts to improve the management of its supply chain, reduced the level of accounts payable from \$17,355,000 as at March 31, 2007 to \$11,436,000 as at September 30, 2007;
- (v) **Negotiation of terms and conditions with key suppliers:** PTI has negotiated new terms and conditions of payments with its key suppliers in order to keep a steady flow of supplies;

44. Since Mr. Deveaux was appointed, payments of interest have been duly made to all of PTI's secured creditors, i.e. RBC, Quorum, IQ, Fish and Positron (hereinafter collectively referred to as the "**Secured Creditors**") in accordance with the terms and conditions of their respective debt supporting agreements;

G. PRELIMINARY RESTRUCTURING PLAN

45. Since Mr. Deveaux was appointed, PTI has undertaken serious restructuring efforts to implement its turnaround plan, which, *inter alia*, provided for the injection of additional capital;

46. As such, PTI has engaged in serious discussions with potential investors interested in the acquisition of some or all of the capital stock of PTI and/or the acquisition of PTI's assets and/or the merger of PTI with some other corporate entity;
47. In fact, on or about October 15, 2007, PTI received a serious offer from a company that is specialized in the manufacturing of high technology devices (hereinafter referred to as the "**Offeror**"), which provided for, *inter alia*, the following:
- (i) The acquisition of all outstanding and issued shares held by Positron and Fonds FSTQ in PTI;
 - (ii) The repayment in full of the convertible debentures held by Quorum, Fish and Positron;
 - (iii) A significant investment in the working capital of PTI; and
 - (iv) The assumption of the RBC debt, the IQ debt, and all other liabilities.

(hereinafter referred to as the "**Offer**")

48. The Offer was financially supported by an important institutional investor in Québec (hereinafter referred to as the "**Investor**"), which support was conditional upon the completion of a parallel bank financing by the Offeror (the "**Financing Condition**");
49. The closing of the transaction contemplated by the Offer would have allowed PTI to address its liabilities, restore its working capital and insure the continuation of its business, and given the support of the Investor, PTI believed that it would happen;
50. Unexpectedly, after more than a month of ongoing negotiations, on or about November 21, 2007, the Offeror informed PTI of its inability to meet the Financing Condition;
51. Consequently, the same day, PTI was informed by the Investor that the Offer could not be maintained in light of the Offeror's incapacity to meet Financing Condition;

H. NEED FOR PROTECTION PURSUANT TO THE CCAA

52. Given the failure to conclude the transaction contemplated by the Offer, PTI intends to embark forthwith upon a process to identify a strategic purchaser for its business on a going concern basis, thus preserving the employment of a majority of its employees and its relationship with suppliers and customers, and maximizing the value of its assets to the benefit of all stakeholders;
53. Pursuant to the Initial Order being sought herein, the Monitor (as defined herein), with the assistance of PTI, shall implement a sales process, in order to attract potential investors and purchasers for the assets and business of PTI;
54. PTI's current cash flow is under tremendous pressure, resulting in its inability to meet its liabilities as they become due;

55. In order to pursue the implementation of its turnaround plan while protecting its going concern, it is appropriate that this Court issues the Initial Order being sought hereby pursuant to the CCAA;
56. PTI has conducted a cash flow analysis to determine the amounts required to finance its operations for the next 30 days, the whole as appears from said cash flow projections, attached in support of the present Motion as **EXHIBIT R-7** (the "*Cash Flow Projections*");

I. OPERATING CREDIT

57. With a view to obtain the continuing support of RBC, its operating lender, during the course of its restructuring process, PTI has agreed to the following:
- (i) PTI renounces to any right that it may have to terminate any agreement between itself and RBC pursuant to the CCAA;
 - (ii) RBC is not required to authorize or permit additional borrowings under the credit facilities granted to PTI, unless PTI respects the margin requirements set forth in the applicable credit and security agreements. Accordingly, RBC may refuse to honour any cheque or payment request whenever such margin requirements are not being met as determined by RBC;
 - (iii) PTI shall continue to deposit all sums that it collects into the account(s) that it has opened with RBC in accordance with the applicable credit and security agreements;
 - (iv) The Monitor (as defined herein) shall keep RBC continually informed and will communicate all information which RBC may require, in relation to the restructuring process set forth in the present Motion and the business of PTI, the whole without any requirement for the Monitor to obtain the prior approval of PTI before disclosing any information; and
 - (v) The D&O Charge and the Administration Charge, both as set forth in the conclusions hereof, shall be subtracted in the context of the calculation of margin requirements and available credit.

J. MONITOR

58. PTI requests that this Honourable Court appoint RSM Richter Inc., acting through its administrator, Mr. Yves Vincent, FCA, CIRP, Monitor, in accordance with the provisions of the CCAA and the Order to be rendered by the Court (the "Monitor");
59. RSM Richter Inc. has agreed to act as Court appointed Monitor to PTI, as more fully appears from a copy of a consent letter, filed herewith as **EXHIBIT R-8**
60. In addition to any powers or obligations provided for by the CCAA, PTI hereby requests that this Court grant the Monitor the powers, rights, obligations and protections detailed

in the conclusions of this Motion, namely the orders related to the Administration charge detailed in paragraphs 31 and 32 of the orders sought;

K. DIRECTORS, OFFICERS AND THE CRO

61. Mr. Dominic Deveau has consented to act as the Chief Restructuring Officer (the "CRO") of PTI throughout the restructuring process pursuant to the CCAA, on the terms and conditions set forth herein;
62. A successful restructuring of PTI will only be possible with the continued participation of PTI's board of directors and CRO. These personnel are essential to the ongoing viability of PTI's business, and the successful restructuring thereof;
63. Even though PTI intends to comply with all applicable laws and regulations, PTI's director, and its CRO, are nevertheless concerned about the potential for their personal liability in the context of the present restructuring;
64. Absent the protections sought in the conclusions of the present Motion, PTI is concerned that its director or the CRO will be led to resign their posts, which would jeopardize the continuation of the PTI's business operations, and its successful restructuring;
65. Accordingly, PTI requests that the Initial Order to be granted pursuant hereto include the protections sought in the conclusions of the present Motion, namely, the orders related to the indemnification and charge in favour of the directors and officers of the corporation;
66. The creation of a charge on the assets of PTI to protect the directors and officers of PTI from the consequences of their statutory liabilities is also a means to retain PTI's personnel by insuring the payment of their salary and vacation pay accrued and to accrue;

L. CONCLUSIONS SOUGHT

67. Considering the urgency of PTI's situation, PTI respectfully submits that the notices given of the presentation of the present Motion are proper and sufficient;
68. PTI respectfully submits that this Motion should be granted in accordance with its conclusions;

WHEREFORE, MAY IT PLEASE THE COURT:

1. **GRANT** the Petition.
2. **ISSUE** 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
- Directors Indemnification and Charge
- Powers of the Monitor
- Priorities and General Provisions Relating to CCAA Charges
- General

Service

3. **EXEMPT** Positron Technologies Inc. (the "Petitioner") from having to serve the Motion and from any notice of presentation.

Application of the CCAA

4. **DECLARE** that Petitioner is a debtor company to which the CCAA applies.

Effective time

5. **DECLARE** 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 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. **ORDER** that Petitioner shall file 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. **ORDER** that, until and including December 21, 2007, 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. **ORDER** 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); and
 - (c) 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;
9. **ORDER** 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, 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. **ORDER** 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 therefor.

11. **DECLARE** 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. **ORDER** 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 refused by the creditors or is not sanctioned by the Court.
13. **ORDER** 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, or the Monitor, 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. **ORDER** 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.
16. **ORDER** that, from and after the date of this Order, the Petitioner shall be entitled to pay all reasonable costs and expenses incurred in carrying on its business, in carrying out the provisions of this Order and for the purposes of the Plan and the Restructuring (as defined below), in each case when due and payable, which costs and expense may include, without limitation:

- (a) the cost of goods and services actually supplied to Petitioner after the date of this 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, consultants, officers or directors or individuals that provide or have provided services to Petitioner as individual contractors;
- (c) all outstanding and future insurance premiums (including directors and officers liability insurance, property and casualty, group insurance or other necessary insurance policy);
- (d) with the consent of the Monitor, expenses and capital expenditures reasonably necessary for the preservation of Petitioner's Property or business (including, without limitation, payments on account of insurance, maintenance and security);
- (e) all outstanding and future fees and disbursements of the Monitor, the Monitor's and Petitioner's legal counsel, and any financial and other advisers retained by Petitioner in respect of the Plan, the Restructuring or these proceedings;
- (f) all outstanding and future priority claims of the federal or provincial Crown or a municipality in respect of 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 taxes, income tax source deductions and other analogous withholdings, Canada Pension Plan, and Quebec Pension Plan and 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 or excise or other taxes;
- (g) rent and other payments required pursuant to any leases of real property under existing arrangements in respect of the period after the date of this Order while Petitioner is in actual occupation of such real property;

provided that, unless provided in subparagraphs (a) to (g) listed above, Petitioner shall only be entitled (but not required) to pay costs and expenses that were incurred before the date of this Order with the approval of the Monitor, provided the amount of such payment is undisputed and deemed necessary to avoid significant disruptions to any of Petitioner's business and ongoing operations, or upon further order in these proceedings.

Restructuring

17. **DECLARE** 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 \$50,000 or \$100,000 in the aggregate;
 - (d) terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other indemnification 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.
18. **DECLARE** 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.
19. **DECLARE** that, if leased premises are vacated or abandoned by Petitioner, 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.
20. **ORDER** 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.

21. **DECLARE** 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 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 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.

Directors Indemnification and Charge

22. **APPOINT** Mr. Dominic Deveau as chief Restructuring Officer (“**CRO**”) to PTI’s affairs and grant him any and all powers necessary to complete and implement the Restructuring pursuant hereto, including in respect of the sale of Petitioner’s assets or business;
23. **ORDER** that, in addition to any existing indemnities, Petitioner shall indemnify each of the Directors and Mr. Dominic Deveau acting in his capacity as CRO (the defined term “**Directors**” shall henceforth include Mr. Dominic Deveau acting in his capacity as CRO) 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 have arisen prior to, may arise on or after the date of the Order (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, or any other amount for services

performed prior to, 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.

24. **DECLARE** that, as security for the obligation of Petitioner to indemnify the Directors pursuant to paragraph 21 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 \$1,100,000 (the “**D&O Charge**”), having the priority established by paragraphs 32 and 33 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

25. **ORDER** that *RSM Richter Inc.* (Mr. Yves Vincent, FCA, CIRP) 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) with Petitioner's assistance, pursue all avenues to market and sell the Property, in whole or part, including the preparation of a sales process to facilitate such sale;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) may act as a "foreign representative" of Petitioner in any proceedings outside of Canada;
- (l) may give any consent or approval as are contemplated by the Order; and
- (m) 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.

26. **ORDER** 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.

27. **DECLARE** 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 28 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 unless otherwise directed by this Court.
28. **DECLARE** 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* (Quebec), the *Canadian Environmental Protection Act, 1999* or the *Act Respecting Occupational Health and Safety* (Quebec) or similar other federal or provincial legislation.
29. **DECLARE** 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 24(h) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
30. **ORDER** that Petitioner shall pay the fees and disbursements of the Monitor, the Monitor's legal counsel, legal counsel for the Royal Bank of Canada (« **RBC** »), 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.
31. **DECLARE** that the Monitor, the Monitor's legal counsel, RBC'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 30 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 \$250,000 (the "**Administration Charge**"), having the priority established by paragraphs 32 and 33 hereof.

Priorities and General Provisions Relating to CCAA Charges

32. **DECLARE** that the priorities of the Administration Charge and 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;
- (b) second, the D&O Charge; and

33. **DECLARE** 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.

34. **ORDER** 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 obtain the prior written consent of the Monitor and the prior approval of the Court.

35. **DECLARE** 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.

36. **DECLARE** 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.

37. **DECLARE** 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.
38. **DECLARE** 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.

General

39. **DECLARE** 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.
40. **DECLARE** 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.
41. **DECLARE** 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.
42. **DECLARE** 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 and the Monitor and to any other party requesting same.
43. **DECLARE** 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 and the Monitor and has filed such notice with this Court.

44. **DECLARE** 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.
45. **DECLARE** 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, 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.
46. **DECLARE** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
47. **DECLARE** 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, 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.
48. **REQUEST** 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.
49. **GRANT ACTE** of the Petitioner's undertakings and acknowledgments to RBC, as set forth in paragraph 57 of the Motion and **DECLARE** that:
- (a) Notwithstanding anything else contained herein, Petitioner has renounced to any right that it may have to terminate any agreement between itself and RBC pursuant to the CCAA;
 - (b) RBC is not required to authorize or permit additional borrowings under the credit facilities granted to Petitioner, unless Petitioner respects the margin requirements set forth in the applicable credit and security agreements. Accordingly, RBC may refuse to honour any cheque or payment request whenever such margin requirements are not being met as determined by RBC;
 - (c) Petitioner shall continue to deposit all sums that it collects into the account(s) that it has opened with RBC in accordance with the applicable credit and security agreements;
 - (d) The Monitor shall keep RBC continually informed and will communicate all information which RBC may require, in relation to the restructuring process set forth in the present Motion and the business of Petitioner, the whole without any

requirement for the Monitor to obtain the prior approval of Petitioner before disclosing any information; and

- (e) The D&O Charge and the Administration Charge shall be subtracted in the context of the calculation of margin requirements and available credit.

50. **ORDER** the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security.

Montréal, November 27, 2007

(s) Fasken Martineau DuMoulin LLP

FASKEN MARTINEAU DuMOULIN LLP

Attorneys for Petitioner Positron Technologies Inc.

TRUE COPY


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FASKEN MARTINEAU DuMOULIN LLP