

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

NO: 500-11-042345-120

DATE: MARCH 19, 2012

PRESENT: THE HONOURABLE MARK SCHRAGER, J.S.C.

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

AVEOS FLEET PERFORMANCE INC. / AVEOS PERFORMANCE AÉRONATIQUE INC.

- and -

AERO TECHNICAL US, INC.

Petitioners

- and -

FTI CONSULTING CANADA INC.

Monitor

INITIAL ORDER

- [1] **ON READING** Petitioners' petition for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended the "**CCAA**") and the exhibits, the affidavit of Joseph Kolshak filed in support thereof (the "**Petition**"), the consent of FTI Consulting Canada Inc. to act as monitor (the "**Monitor**"), relying upon the submissions of counsel and being advised that the interested parties, including secured creditors who are likely to be affected by the charges created herein, other affected parties and Air Canada were given prior notice of the presentation of the Petition;

[2] **GIVEN** the provisions of the CCAA;

WHEREFORE, THE COURT:

[3] **GRANTS** the Petition.

[4] **DECLARES** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Petition;

[5] **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:

A) Service

B) Application of the CCAA

C) Effective Time

D) Plan of Arrangement

E) Stay of Proceedings against the Petitioners and the Property

F) Stay of Proceedings against the Directors and Officers

G) Possession of Property and Operations

H) No Exercise of Rights or Remedies;

I) No Interference with Rights

J) Continuation of Services

K) Non-Derogation of Rights

L) Directors' and Officers' Indemnification and Charge

M) Restructuring

N) Powers of the Monitor

O) Priorities and General Provisions Relating to CCAA Charges

P) General

A) Service

[6] **DECLARES** that the time for service of the petition is hereby abridged and hereby dispenses Petitioners with further service thereof;

- [7] **DECLARES** that sufficient prior notice of the presentation of this Petition has been given by the Petitioners to interested parties, including the secured creditors who are likely to be affected by the charges created herein.

B) Application of the CCAA

- [8] **DECLARES** that the Petitioners are each a debtor company to which the CCAA applies.

C) Effective time

- [9] **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard / Daylight Time on the date of this Order (the "**Effective Time**").

D) Plan of Arrangement

- [10] **DECLARES** that the Petitioners shall have the authority to file with this Court and to submit to their creditors one or more plans of compromise or arrangement (collectively, the "**Plan**") in accordance with the CCAA.

E) Stay of Proceedings against the Petitioners and the Property

- [11] **ORDERS** that, until and including April 5, 2012, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Petitioners, or affecting the Petitioners' business operations and activities (the "**Business**") or the Property (as defined herein below), including as provided in paragraph [22] herein below except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 of the CCAA.

F) Stay of Proceedings against the Directors and Officers

- [12] **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioners nor against any person deemed to be a director or an officer of the Petitioners under subsection 11.03(3) of the CCAA (each, a "**Director**", and collectively the "**Directors**") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioners where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

G) Possession of Property and Operations

- [13] **ORDERS** that the Petitioners shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind

whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph [32] hereof. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel (including any foreign counsel of the Petitioners) and such other persons (collectively the "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

- [14] **ORDERS** that the Petitioners shall be entitled to continue to maintain in place, and to continue to operate, utilise, service and administer the central cash management system currently in place (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Petitioners of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Petitioners, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.
- [15] **ORDERS** that Air Canada is stayed from setting off any claims against the Petitioners' funds, including without limitation, funds that are processed by Air Canada pursuant to the Master Services Agreement as defined in the Petition, unless such set-off is raised by Air Canada in defence to an action instituted by Petitioners for the recovery of any debt, the whole subject to further Order from this Court.
- [16] **ORDERS** that the Petitioners shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order, provided such payments are in accordance with the cash flow filed with the Court from time to time and approved by the Third Party Secured Lenders (the "**Cash Flow**"):
- a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable before or after the date of this Order, in each case incurred in the ordinary course of business, and consistent with compensation policies and arrangements existing at the time incurred; and
 - b) the current fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring or insolvency, at their standard rates and charges whenever and wherever incurred, including without limitation (i) these proceedings or any similar proceedings in other jurisdictions in which the Petitioners or affiliated companies of the Petitioners are domiciled; (ii) any litigation in which the Petitioners are named as a party or as otherwise involved, whether convened before or after the date of this Order; and (iii) any related matters.

- [17] **ORDERS** that except as otherwise provided to the contrary herein, and provided such payments are in accordance with the Cash Flow, the Petitioners shall be entitled but not required to pay all reasonable expenses incurred by the Petitioners in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- a) all expenses reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
 - b) payment for goods or services actually supplied to the Petitioners following the date of this Order.
- [18] **ORDERS** that the Petitioners shall remit, in accordance with legal requirements, or pay:
- a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
 - b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
 - c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Petitioners.
- [19] **ORDERS** that the Petitioners' obligation, as applicable, to make contributions or payments (other than normal cost contributions, contributions to a defined contribution provision, amounts deducted by the Petitioners from members' remuneration, if any) (the "**Pension Contributions**") to the following pension plans (together, the "**Pension Plans**") are hereby suspended pending further order of this Court:
- a) Aveos Defined Contribution Pension Plan (OSFI registration no. 57460)
 - b) Retirement Plan for Employees of Aveos (OSFI registration no. 57573)
 - c) Retirement Plan for Unionized Employees of Aveos (not registered by OSFI)

- [20] **ORDERS** that directors, officers and agents of the Petitioners shall not incur any liability as a result of the failure of the Petitioners to make the Pension Contributions.
- [21] **ORDERS** that except as specifically permitted by this Order and except with the consent of the Third Party Secured Lenders, the Petitioners are hereby directed, until further Order of this Court:
- a) To make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of the creditors as of the date of this Order;
 - b) To make no payments in respect of any financing leases;
 - c) To grant no security interests, hypothecs, trusts, mortgages, liens, charges or encumbrances upon or in respect of any of the Property, nor borrow under or increase the principal amount secured by any existing security interest, hypothec, trust, mortgages, lines, charges or encumbrances upon or in respect of any of the Property nor become a guarantor or surety, no otherwise become liable in many manner with respect to any other person or entity;
 - d) To not grant credit except in the ordinary course of the business only to the customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the date of this Order;
 - e) To not incur liabilities except in the ordinary course of Business; and
 - f) Except for as provided for in paragraph 32(c), convey, transfer, assign or dispose of any property of the Petitioners.

H) No Exercise of Rights or Remedies

- [22] **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioners, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.
- [23] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Petitioners or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, 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 the Petitioners become bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") is appointed in respect of the Petitioners, the period between

the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioners in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

I) No Interference with Rights

- [24] **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners, except with the written consent of the Petitioners and the Monitor, or with leave of this Court; nor shall any Person impede or hinder lawful access to the Petitioners' places of business across Canada.

J) Continuation of Services

- [25] **ORDERS** that during the Stay Period and subject to paragraph [27] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioners or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioners, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Petitioners, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners, with the consent of the Monitor, or as may be ordered by this Court.
- [26] **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 of the CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioners on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Petitioners.
- [27] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Petitioners 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 Petitioners and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the

Petitioners' account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

K) Non-Derogation of Rights

[28] **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Petitioners shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this 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.

L) Directors' and Officers' Indemnification and Charge

[29] **ORDERS** that the Petitioners shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioners after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, willful misconduct or gross or intentional fault as further detailed in Section 11.51 of the CCAA.

[30] **ORDERS** that the Directors of the Petitioners shall be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of Five Million Dollars (\$5,000,000) (the "**Directors' Charge**"), as security for the indemnity provided in paragraph [29] of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs [44] and [45] of this Order.

[31] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph [29] of this Order.

M) Restructuring

[32] **DECLARES** that, to facilitate the orderly wind down or restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioners shall have the right to:

- a) permanently or temporarily cease, downsize or shut down any of the operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan or otherwise;

- b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 of the CCAA, and under reserve of subparagraph c);
- c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$500,000 or \$2,000,000 in the aggregate, save and except that no Property necessary for the completion of work in process may be disposed of without the authorization of the Court;
- d) terminate the employment of such of the employees or temporarily or permanently lay off such of the employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioners and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan or otherwise, as the Petitioners may determine;
- e) subject to the provisions of section 32 of the CCAA, disclaim or resiliate, any of the agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Petitioners and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
- f) subject to section 11.3 of the CCAA, assign any rights and obligations of Petitioners.

[33] **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of the Petitioners pursuant to section 32 of the CCAA and subparagraph [32][32]e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Petitioners and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioners, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

[34] **ORDERS** that the Petitioners shall provide to any relevant landlord notice of the Petitioners' intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Petitioners have already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between the Petitioners and the landlord.

- [35] **DECLARES** that, in order to facilitate the Restructuring, the Petitioners may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.
- [36] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the Petitioners are 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 the 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 the Petitioners 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 Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or 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 the Petitioners.

N) Powers of the Monitor

- [37] **ORDERS** that FTI Consulting Canada Inc. is hereby appointed to monitor the business and financial affairs of the Petitioners as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:
- a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, in *The Globe & Mail* National Edition; and (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website (the "**Website**") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioners of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made there under;
 - b) shall monitor the Petitioners' receipts and disbursements;
 - c) shall assist the Petitioners, to the extent required by the Petitioners, in dealing with their creditors and other interested Persons during the Stay Period;

- d) shall assist the Petitioners, to the extent required by the Petitioners, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- e) shall advise and assist the Petitioners, to the extent required by the Petitioners, to review the Petitioners' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- f) shall assist the Petitioners, to the extent required by the Petitioners, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- g) shall report to the Court on the state of the business and financial affairs of the Petitioners 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) shall 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) may 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) may 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) with the written consent of the Petitioners, may act as a "foreign representative" of the Petitioners or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;
- l) may give any consent or approval as may be contemplated by the Order or the CCAA; and
- m) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioners, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Petitioners and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

[38] **ORDERS** that the Petitioners and their 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 Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioners in connection with the Monitor's duties and responsibilities hereunder.

- [39] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioners with information in response to reasonable requests made by them in writing addressed to the Monitor and copied to the Petitioners' counsel. In the case of information that the Monitor has been advised by the Petitioners is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioners unless otherwise directed by this Court.
- [40] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioners or continues the employment of the Petitioners' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
- [41] **DECLARES** that 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 37(i) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [42] **ORDERS** that Petitioners shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioners' Canadian and U.S. counsel and other advisors on a periodic basis. The Monitor, the Monitor's legal counsel, the Petitioners' Canadian and U.S. counsel shall render their invoices to the Petitioners' for payment on a weekly basis.
- [43] **DECLARES** that the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel and the Petitioners' advisers, counsel to the Third Party Secured Lenders and the Third Party Secured Lenders' advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order and directly related to the Petitioners' insolvency, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of Three Million Dollars (\$3,000,000) (the "**Administration Charge**"), having the priority established by paragraphs [44] and [45] hereof.

O) Priorities and General Provisions Relating to CCAA Charges

- [44] **DECLARES** that the priorities of the Administration Charge and Directors' 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 Directors' Charge;

- [45] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind including without limitation any deemed trust created under the *Pension Benefits Standards Act, 1985* (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances in favour of those parties who have been notified of the Petition.
- [46] **ORDERS** that, except as otherwise expressly provided for herein, the Petitioners 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 Petitioners obtain the prior written consent of the Monitor and the Third Party Secured Lenders and the prior approval of the Court.
- [47] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
- [48] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioners 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 Petitioners; 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 the Petitioners (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 the Petitioners 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.
- [49] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioners and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioners, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Petitioners 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.
- [50] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners and against all Persons, including, without limitation, any

trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners, for all purposes.

P) General

- [51] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Petitioners or of the Monitor or its legal counsel in relation to the Business or Property of the Petitioners, without first obtaining leave of this Court, upon five (5) days written notice to the Petitioners' counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
- [52] **DECLARES** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioners under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [53] **DECLARES** that, except as otherwise specified herein, the Petitioners and the Monitor are 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 the Petitioners 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.
- [54] **DECLARES** that the Petitioners and any party to these proceedings 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 Petitioners shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
- [55] **DECLARES** that, unless otherwise provided herein, under the CCAA, 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 the Petitioners and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings.
- [56] **DECLARES** that the Petitioners 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.
- [57] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Petitioners, 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, such application or motion shall be filed during the Stay Period ordered by this Order, unless otherwise ordered by this Court.

- [58] **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [59] **ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.
- [60] **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.
- [61] **ORDERS** the provisional execution of the Order notwithstanding any appeal.


HON. MARK SCHRAGER, J.S.C.

Hearing date: March 19, 2012

Me Roger P. Simard
Me Louis Dumont
Me Vikki-Ann Flansberry
Me Ari Y. Sorek
Me Ryan Jacobs
Me Shayne Kukulowicz
Fraser Milner Casgrain LLP
Counsel to Petitioners

COPIE CONFORME


Greffier adjoint