

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

TRUIST BANK, AS AGENT

Applicant

- and -

KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED**

**MOTION RECORD
(Returnable April 9, 2020)**

Date: April 6, 2020

TORYS LLP

79 Wellington St. W., Suite 3000
Box 270, TD Centre
Toronto, Ontario M5K 1N2 Canada
Fax: 416.865.7380

David Bish (LSO#: 41629A)

Tel: 416.865.7353

Email: dbish@torys.com

Tony DeMarinis (LSO#: 29451Q)

Tel: 416.865.8162

Email: tdemarinis@torys.com

Adam Slavens (LSO#:54433J)

Tel: 416.865.7333

Email: aslavens@torys.com

Lawyers for FTI Consulting Canada Inc., the
Court-appointed Receiver and Manager of
Kew Media Group Inc. and Kew Media
International (Canada) Inc.

INDEX

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

TRUIST BANK, AS AGENT

Applicant

- and-

KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED**

INDEX

<u>Document</u>	<u>Tab No.</u>
Notice of Motion, dated April 3, 2020	1
Receiver's First Report dated April 6, 2020	2
Draft Approval and Vesting Order	3
Blackline of Draft Approval and Vesting Order to Model Order	4
Draft Repayment and Distribution Order	5

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

TRUIST BANK, AS AGENT

Applicant

- and-

KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED**

**NOTICE OF MOTION
(Returnable April 9, 2020)
(Sale Approval – TCB Media Rights Ltd.)**

FTI CONSULTING CANADA INC. (“**FTI**”), in its capacity as the Court-appointed receiver and manager (FTI, in such capacity, the “**Receiver**”) of all of the undertaking, property and assets of Kew Media Group Inc. (“**KMG**”) and Kew Media International (Canada) Inc. (together with KMG, the “**Kew Group**”) acquired for, or used in relation to a business carried on by the Kew Group (collectively, the “**Property**”), will make a telephonic motion to a Judge presiding over the Ontario Superior Court of Justice (Commercial List), on April 9 2020, at 10:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR orders:

- (a) approving the purchase and sale of the issued share capital of TCB Media Rights Ltd. currently owned by KMG (the “**Transaction**”) pursuant to a share purchase agreement dated March 31, 2020 (the “**SPA**”), between the Receiver and Beyond Entertainment Limited (the “**Purchaser**”);
- (b) approving and authorizing the Receiver’s execution of the SPA and authorizing and directing the Receiver to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of KMG’s right, title and interest in and to the shares described in the SPA (the “**Purchased Shares**”) to the Purchaser;
- (c) vesting KMG’s right, title and interest in and to the Purchased Shares free and clear of certain encumbrances upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached to the draft order confirming, among other things, that all terms and conditions under the SPA have been satisfied or waived by the Receiver and the Purchaser (the “**Receiver’s Certificate**”);
- (d) declaring that, for greater certainty, the Receiver is not bound by any prior contractual agreement by KMG not to enter into or complete the Transaction or to do so only with the consent of a third party;
- (e) authorizing the Receiver to repay any portion of the principal sums advanced to it pursuant to a receiver’s borrowing certificate, together with interest

thereon and all reasonable expenses incurred by the holder or holders of such receiver's borrowing certificate, all in accordance with the Receivership Order (as defined below), in the within proceedings;

- (f) authorizing the Receiver, subject to the establishment of reasonable reserves in the discretion of the Receiver (including, without limitation, for any priority claims and the Receiver's costs of administration), to distribute from time to time any proceeds of sale or other realizations by the Receiver, other than the Purchase Price received for the TCB Shares, to Truist Bank, as administrative agent (in such capacity, the "**Agent**") for Truist Bank, Bank of Montreal and Toronto-Dominion Bank, provided that the aggregate amount so distributed shall not exceed the obligations of the Kew Group to such lenders. For greater certainty, the Purchased Price received for the sale of the TCB Shares shall not be distributed without further Order of this Court;
- (g) amending the style of cause of the within proceedings to remove Architect Films Inc., as a respondent; and
- (h) such further and other relief as counsel may request and this Court may deem just,

substantially in the form of the draft orders included in the Receiver's Motion Record.

THE GROUNDS FOR THE MOTION ARE:

- (a) On February 28, 2020, this Court granted an order (the "**Receivership Order**") appointing FTI as Receiver of the Property pursuant to Section 243(1) of the

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, R.S.O. 1990, c. C.43, as amended (the “**CJA**”);

- (b) The Receivership Order authorizes the Receiver to market any or all of the Property and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (c) As described in greater detail in the First Report of the Receiver (to be filed) (the “**First Report**”), the Purchased Shares were suitably marketed in a process that was fair, transparent and reasonable in the circumstances and otherwise consistent with the *Soundair*;
- (d) Also as described in greater detail in the First Report, negotiations between the Receiver and the Purchaser (in consultation with the Agent) culminated in the SPA, which represents the highest and best offer in terms of both price and conditions, in the view of the Receiver;
- (e) The granting of an approval and vesting order substantially in the form of the draft order is a condition of the SPA;
- (f) The Agent, a secured creditor and the Applicant in these proceedings, supports this Transaction;
- (g) The proceeds generated by the Transaction (and further proceeds of sale or other realizations by the Receiver) are expected to permit the Receiver to make

distribution(s) to the Agent and repayments of amounts owed under Receiver's borrowing certificates;

- (h) Section 247 of the BIA and other provisions of the BIA;
- (i) Sections 1.04, 1.05, 2.03, 3.02, 37 and 138 of the CJA;
- (j) The *Rules of Civil Procedure*, R.R.O. 1990, reg. 194, including, without limitation, rules 1.04(1) and 6.01(1) thereof; and
- (k) Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The First Report; and
- (b) Such further and other evidence as counsel may advise and this Court may permit.

Date: April 3, 2020

TORYS LLP

79 Wellington St. W., Suite 3000
Box 270, TD Centre
Toronto, Ontario M5K 1N2
Fax: 416.865.7380

David Bish (LSO#: 41629A)

Tel: 416.865.7353

Email: dbish@torys.com

Tony DeMarinis (LSO#: 29451Q)

Tel: 416.865.8162

Email: tdemarinis@torys.com

Adam Slavens (LSO#:54433J)

Tel: 416.865.7333

Email: aslavens@torys.com

Lawyers for FTI Consulting Canada Inc., the
Court-appointed Receiver and Manager of
Kew Media Group Inc. and Kew Media
International (Canada) Inc.

TO: This Court

AND TO: The Service List

KEW MEDIA SERVICE LIST

(as at April 6, 2020)

TO:	<p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1</p> <p>Kenneth Kraft Tel: (416) 863-4374 Fax: (416) 863-4592 kenneth.kraft@dentons.com</p> <p>Robert Kennedy Tel: (416) 367-6756 robert.kennedy@dentons.com</p> <p>Mark A. Freake Tel: (416) 863-4456 mark.freake@dentons.com</p> <p><i>Lawyers for the Applicant, Truist Bank, as Agent</i></p>
AND TO:	<p>GOODMANS LLP Bay Adelaide Centre - West Tower 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7</p> <p>Robert Chadwick Tel: (416) 597-4285 Fax: (416) 979-1234 rhadwick@goodmans.ca</p> <p>Joseph Pasquariello Tel: (416) 597-4216 jpasquariello@goodmans.ca</p> <p>Bradley Wiffin Tel: (416) 597-4208 bwiffen@goodmans.ca</p> <p>Jason Wadden Tel: (416) 597-5165 jwadden@goodmans.ca</p> <p>Andrew Harmes aharmes@goodmans.ca</p> <p><i>Lawyers for the Respondents, Kew Media Group Inc. and Kew Media International (Canada) Inc.</i></p>

	<p>FTI CONSULTING CANADA INC. TD Waterhouse Tower 79 Wellington Street West, Suite 2010 Toronto, ON M5K 1G8</p> <p>Nigel Meakin Tel: (416) 649-8065 Fax: (416) 649-8101 nigel.meakin@fticonsulting.com</p> <p>Toni Vanderlaan Tel: (416) 649-8075 toni.vanderlaan@fticonsulting.com</p> <p>Jim Robinson Jim.Robinson@fticonsulting.com</p> <p><i>Court appointed Receiver of Kew Media Group Inc. and Kew Media International (Canada) Inc.</i></p>
	<p>TORYS LLP TD South Tower 79 Wellington Street West, 33rd Floor Toronto, ON M5K 1N2</p> <p>Tony DeMarinis Tel: (416) 865-8162 Fax: (416) 865-7380 tdemarinis@torys.com</p> <p>David Bish Tel: (416) 865-7353 dbish@torys.com</p> <p><i>Lawyers for FTI Consulting Canada Inc. in its capacity as Court appointed Receiver of Kew Media Group Inc. and Kew Media International (Canada) Inc.</i></p>

	<p>MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 Toronto, ON M5H 3S1</p> <p>Jeffrey C. Carhart Tel: (416) 595-8615 Fax: (416) 595-8695 jcarhart@millerthomson.com</p> <p>Jonathan Dyck Tel: (416) 595-7944 jdyck@millerthomson.com</p> <p><i>Lawyers for Bank of Montreal, in its capacity as lender to certain production subsidiaries of Kew Media Group Inc.</i></p>
	<p>BLAKE, CASSELS & GRAYDON LLP 199 Bay Street, Suite 4000 Commerce Court West Toronto, ON M5L 1A9</p> <p>Chris Burr Tel: (416) 863-3261 Fax: (416) 863-2653 chris.burr@blakes.com</p> <p><i>Lawyers for Argonon Ltd.</i></p>
	<p>MCMILLAN LLP Brookfield Place, Suite 4400 181 Bay Street Toronto, ON M5J 2T3</p> <p>Tushara Weerasooriya Tel: (416) 865-7890 Fax: (416) 865-7048 tushara.weerasooriya@mcmillan.ca</p> <p>Stephen Brown-Okruhlik Tel: (416) 865-7043 stephen.brown-okruhlik@mcmillan.ca</p> <p><i>Lawyers for Paul Heaney and Dina Subhani</i></p>
	<p>Paul Heaney paul.heaney@tcbmediarights.com</p>

EMAIL LIST

kenneth.kraft@dentons.com; robert.kennedy@dentons.com; mark.freake@dentons.com;
rhadwick@goodmans.ca; jpasquariello@goodmans.ca; aharmes@goodmans.ca;
bwiffen@goodmans.ca; jwadden@goodmans.ca; nigel.meakin@fticonsulting.com;
toni.vanderlaan@fticonsulting.com; Jim.Robinson@fticonsulting.com; tdemarinis@torys.com;
dbish@torys.com; jcarhart@millertomson.com; jdyck@millertomson.com;
chris.burr@blakes.com; tushara.weerasooriya@mcmillan.ca; Stephen.brown-okruhlik@mcmillan.ca; paul.heaney@tcbmediarights.com

<p>TRUIST BANK, AS AGENT</p> <p style="text-align: right;">Applicant</p> <p>-and-</p> <p>KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.</p> <p style="text-align: right;">Respondents</p>	<p style="text-align: right;">Court File No: CV-20-00637081-00CL</p>
	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding Commenced at TORONTO</p> <hr/> <p style="text-align: center;">NOTICE OF MOTION (Returnable April 9, 2020) (Sale Approval – TCB Media Rights Ltd.)</p> <hr/> <p>TORYS LLP 79 Wellington St. W., Suite 3000 Box 270, TD Centre Toronto, Ontario M5K 1N2 Fax: 416.865.7380</p> <p>David Bish (LSO#: 41629A) Tel: 416.865.7353 Email: dbish@torys.com</p> <p>Tony DeMarinis (LSO#: 29451Q) Tel: 416.865.8162 Email: tdemarinis@torys.com</p> <p>Adam Slavens (LSO#:54433J) Tel: 416.865.7333 Email: aslavens@torys.com</p> <p>Lawyers for FTI Consulting Canada Inc., the Court-appointed Receiver and Manager of Kew Media Group Inc. and Kew Media International (Canada) Inc.</p>

TAB 2

Court File No. CV-20-00637081-00CL

**KEW MEDIA GROUP INC.
KEW MEDIA INTERNATIONAL (CANADA) INC.**

FIRST REPORT OF THE RECEIVER

April 6, 2020

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE RECEIVERSHIP OF
KEW MEDIA GROUP INC.
KEW MEDIA INTERNATIONAL (CANADA) INC.

**FIRST REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS RECEIVER**

INTRODUCTION

1. Pursuant to the Order of the Honourable Mr. Justice Koehnen (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted February 28, 2020 (the “**Date of Receivership**”), FTI Consulting Canada Inc. was appointed as receiver and manager (the “**Receiver**”) without security, of all of the assets, undertakings and properties of Kew Media Group Inc. (“**KMG**”) and Kew Media International (Canada) Inc. (“**KMICI**” and, together with KMG, the “**Debtors**”), acquired for, or used in relation to a business carried on by KMG and KMICI. The proceedings were commenced by way of application under section 101 of the *Courts of Justice Act, R.S.O. 1990, c. C.43*, as amended, and section 243 of the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*, as amended (the “**BIA**”), and shall be referred to herein as the “**Receivership**”). A copy of the Receivership Order is attached hereto as **Appendix A** for ease of reference.
2. The purpose of this, the Receiver’s first report, (the “**Report**”), is to provide information the Court on the following:
 - (a) The activities of the Receiver since the Date of Receivership;
 - (b) The receipts and disbursements of the Receiver for the period February 28 to March 31, 2020;

- (c) The opinion of Torys LLP, independent counsel to the Receiver (“**Torys**” or the “**Receiver’s Counsel**”), on the validity and enforceability of the security (the “**Syndicate Security**”) held by Truist Bank (the “**Agent**”), as agent for and on behalf of a syndicate of lenders (the “**Syndicate**”) consisting of the Agent, Bank of Montreal and Toronto-Dominion Bank, in respect of the Property;
- (d) The Receiver’s motion for the granting of an Order (the “**Approval and Vesting Order**”) *inter alia*:
 - (i) Approving the sale of the of the shares (the “**TCB Shares**”) of TCB Media Rights Ltd. (“**TCB**”), a wholly-owned subsidiary of KMG, pursuant to the Share Purchase Agreement between the Receiver and Beyond Entertainment Limited (the “**Beyond**”) dated March 31, 2020 (the “**TCB SPA**”);
 - (ii) Providing for the vesting of the right, title, benefit and interest of KMG in and to the TCB Shares in and to the Purchaser, free and clear of all Liens other than the Permitted Encumbrances, each as defined in the TCB SPA; and
 - (iii) Declaring that, for greater certainty, the Receiver is not bound by any prior contractual agreement by KMG not to enter into or complete the sale of the TCB Shares or to do so only with the consent of a third party; and
- (e) The Receiver’s motion for the granting of an Order (the “**Repayment & Distribution Order**”) providing for, *inter alia*:
 - (i) The repayment of the Receiver’s Borrowings;
 - (ii) The distribution of proceeds of realization to the Agent on account of the secured claim of the Syndicate; and
 - (iii) Amending the style of cause for the Receivership.

TERMS OF REFERENCE

3. In preparing this Report, the Receiver has relied upon unaudited financial information of the Debtors, the Debtors' books and records, and discussions with the Debtors' employees and various interested parties (the "**Information**").
4. Except as described in this Report:
 - (a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) The Receiver has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
5. The Receiver has prepared this Report in connection with the Receiver's motions for the issuance of the Approval and Vesting Order and the Repayment & Distribution Order, scheduled to be heard on April 9, 2020. The Report should not be relied on for other purposes.
6. Future oriented financial information reported or relied on in preparing this Report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Receivership Order.

EXECUTIVE SUMMARY

REQUEST FOR APPROVAL AND VESTING ORDER

8. For the reasons set out in this Report, the Receiver is of the view that:

- (a) The marketing process as commenced by KMG's investment banker prior to the receivership and completed by the Receiver after its appointment, which process culminated in the execution of the TCB SPA, was fair, transparent and reasonable in the circumstances and was consistent with the principles of *Soundair*;
 - (b) The Syndicate is the only stakeholder with an economic interest in the sale of the TCB Shares;
 - (c) The Receiver and each member of the Syndicate have reasonably exercised their business judgment in determining that the sale of the TCB SPA represents the highest and best bid available for the TCB Shares;
 - (d) It would be contrary to the fundamental purpose of the Receivership – the maximization of realizations from the Property of the Debtors for the benefit of all stakeholders – to allow Mr. Heaney, a former owner of TCB and an unsuccessful bidder in the marketing process, to veto the sale of the TCB Shares to Beyond in an effort to force a sale, at a lower value, to Party 2, Mr. Heaney's partner, Ms. Subhani, and Mr. Heaney himself;
 - (e) The sale of the TCB Shares in the Heaney Consent Right would only give rise to a claim for damages against KMG, which claim would be unsecured and subordinate to the Syndicate Indebtedness; and
 - (f) In the Receiver's business judgment, there is urgency to the approval of the TCB SPA and closing of the transaction.
9. Accordingly, the Receiver respectfully requests that this Honourable Court grant the Receiver's motion for the issuance of the Approval and Vesting Order.

THE REPAYMENT & DISTRIBUTION ORDER

10. For the reasons set out in this Report, the Receiver is of the view that:

- (a) There are no claims ranking in priority to the Receiver's Borrowing Charge, other than amounts secured by the Receiver's Charge;
 - (b) The Security Opinion will confirm the validity and enforceability of the Syndicate Security over the assets of the Debtors, and the proceeds arising from the realization of such assets, with the exception of the TCB Shares, for which the analysis is not yet complete;
 - (c) The Receivership Order does not provide express authority for the Receiver to repay amounts owing that are secured by the Receiver's Borrowing Charge; and
 - (d) The Receivership Order does not provide authority for the Receiver to distribute proceeds of realization to creditors.
11. Accordingly, the Receiver respectfully seeks authority to make distributions from time to time to the Agent on account of the Syndicate Indebtedness, subject to the establishment of reserves in the discretion of the Receiver, including, without limitation, on account of any priority claims and the Receiver's present and anticipated future costs of administration. Such distributions will be made from the proceeds of sale or other realizations other than the Purchase Price received for the TCB Shares.

AMENDMENT OF STYLE OF CAUSE

12. The Receivership Order in its style of cause includes the name of Architect Films Inc. ("**Architect**"). Neither Architect nor any of its property is actually subject to the Receivership Order. The inclusion of Architect in the style of cause was in error. Furthermore, the Receiver has sold the shares of Architect.
13. Accordingly, the Receiver is seeking an Order amending the style of cause for these Receivership Proceedings to remove the reference to Architect.

ACTIVITIES SINCE THE DATE OF RECEIVERSHIP

CONTROL OF THE PROPERTY

14. On the Date of Receivership, the Receiver took steps to secure possession and control over the Property and all proceeds, receipts and disbursements arising out of or from the Property. These steps included, but were not limited to, the following:
- (a) The Receiver changed the locks and security codes of the KMG and KMICI premises in Toronto, Ontario;
 - (b) A review of the existing insurance coverage was undertaken to ensure that adequate insurance and liability coverage was in place;
 - (c) The Receiver froze the KMG bank account¹, although that account had been cleared of funds and was in overdraft as a result of payments made by KMG immediately before the Receivership Proceedings; and
 - (d) The Receiver secured and made back-up copies of the Debtor's electronic books and records.

EMPLOYEES

15. At the Date of Receivership, the Debtors employed nineteen individuals. The employment of nine individuals was terminated on the Date of Receivership and ten employees were retained. The Receiver held various meetings and conference calls with the employees to inform them of the Receivership Proceedings and related matters. Four of the retained employees have since resigned.

¹ KMICI had no bank accounts.

16. The Receiver has made the required filings under the *Wage Earner Protection Program Act* (“WEPPA”) and provided copies of the WEPPA submissions to former employees. The Receiver has also written to those former employees determined to be ineligible for WEPPA to inform them of that determination.
17. Following edicts by the Government of Ontario addressing the covid-19 pandemic, the Receiver closed the Debtors’ offices and the remaining employees are now working from home.

NOTICE TO CREDITORS

18. On or before March 3, 2020, the Receiver caused to be sent to the Superintendent of Bankruptcy and the known creditors of each of the Debtors:
 - (a) a notice of the Receiver’s appointment in the prescribed form in accordance with section 245(1)(b) of the BIA; and
 - (b) a copy of the Receiver’s statement prepared pursuant to Section 246 of the BIA.

WEBSITE AND RECEIVER CONTACTS

19. The Receiver has established a website at <http://cfcanada.fticonsulting.com/kmg> at which the Receiver will post periodic updates on the progress of the Receivership, together with copies of court orders, motion materials and reports filed in the Receivership. In addition, the Receiver has created a dedicated email address, kmg@fticonsulting.com, and a dedicated telephone number, 416-649-8108 or 1-844-709-6730, at which the Receiver can be contacted.

REALIZATION OF ASSETS

20. The assets of the Debtors consist primarily of the shares of subsidiaries held by KMG and sales tax receivables.

21. Paragraph 3(f) of the Receivership Order empowers and authorizes the Receiver to receive and collect all monies and accounts owing to the Debtors. Since the Date of Receivership, the Receiver has collected the sales tax refund owing for January 2020 and has filed the sales tax return for February 2020.
22. Paragraph 3(k) of the Receivership Order empowers and authorizes the Receiver, where the Receiver considers it necessary or desirable, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - (a) Without the approval of this Court in respect of any transaction not exceeding \$2,500,000, provided that the aggregate consideration for all such transactions does not exceed \$10,000,000; and
 - (b) With the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
23. In addition to the negotiation of the TCB SPA, since the Date of Receivership, the Receiver, with the concurrence of the Syndicate, has negotiated and completed six sale transactions, with aggregate proceeds of \$3,455,452, for the following KMG subsidiaries:
 - (a) Architect Films Inc.;
 - (b) BGM Inc.;
 - (c) Big Timber Media Inc.²;
 - (d) Frantic Films Corporation;
 - (e) Media Headquarters Film and Television Inc.; and
 - (f) Sienna Films Inc.

² The sale of Big Timber Media Inc. was completed in conjunction with the sale of two wholly-owned indirect subsidiaries of KMG whose shares were held by a Kew Media Group company that is not party to the Receivership Order.

24. The Receiver is also undertaking the sale process for the sale of the 50.1% interest in Jigsaw Productions LLC held by Kew Media US, Inc. (“**KMG US**”), a wholly-owned indirect subsidiary of KMG.

NOTIFICATION OF POTENTIAL CLAIMS

25. On March 17, 2020, the Receiver received a copy of a written demand and notice of claim letter (the “**March 17 Dentons Letter**”) addressed to, amongst others, the former directors and officers of KMG (the “**D&O**”), from Dentons Canada LLP, counsel to the Syndicate. The March 17 Dentons Letter referenced claims and possible claims against the D&O and included particulars of wrongful acts known to the Syndicate. The March 17 Dentons Letter was copied to the relevant insurers.
26. The Receiver was also aware of various information and disclosure provided by KMG prior to the Date of Receivership, including pursuant to a press release dated December 11, 2019, which referred to inaccurate information contained in reports to the Syndicate.
27. On March 17, 2020, the Receiver’s Counsel wrote to the D&O to:
- (a) Inform them that the Receiver also intends to conduct its own investigations of these and other matters, and that such investigations may reveal claims, possible claims and wrongdoings additional to those referenced in the March 17 Dentons Letter and KMG's disclosure to date;
 - (b) Notify them of claims and possible claims against them and in respect of which the Receiver intends to conduct investigations and have recourse to its rights and remedies under all applicable laws; and
 - (c) Request that the D&O promptly take necessary and appropriate actions to notify all relevant insurers, advisors and other interested persons of the matters and to preserve and exercise any and all related rights and privileges of indemnity, guarantee and insurance that they may have.

28. KMG held a Buyer-Side Representations and Warranties Policy issued by Chubb Insurance Company of Canada (the “**Rep Policy**”). On March 19, 2020, the Receiver’s Counsel provided to Chubb notice of Breach or possible Breach, as defined in the Rep Policy, and Forms of Claim Notice from the Receiver and on behalf of the Additional Insureds, as defined in the Rep Policy.

LIASON WITH ADMINISTRATORS OF KMIL

29. Kew Media International Limited (“**KMIL**”) is a wholly-owned indirect UK subsidiary of KMG and is a co-borrower under the secured loan agreements. In parallel with the receivership application, KMIL was placed into administration pursuant to the UK’s *Insolvency Act 1986* on February 28, 2020. The Receiver and the Administrators have been liasing closely since their respective appointments.

RECEIPTS & DISBURSEMENTS FOR THE PERIOD TO MARCH 31, 2020

30. The Receiver’s receipts and disbursements for the period from February 28 to March 31, 2020, are summarized below:

	\$000
Receipts:	
Proceeds of realization	3,455.5
Sales tax refunds	142.7
Bank interest, net of bank charges	1.1
Total Receipts	3,599.3
Disbursements:	
Employee and contractor costs	157.2
Rent	34.4
Other operating disbursements	14.4
Receiver and Counsel fees and expenses	655.4
Other professional fees and expenses	205.9
Funding of subsidiaries	97.0
Sales taxes	96.4
Total Disbursements	1,260.7
Net Cash Flow	2,338.6
Receiver Borrowings	1,070.5
Cash Balance	3,409.1

31. Proceeds of realization are the realizations from the sales of six KMG subsidiaries as described earlier in this Report.
32. Rent costs relate to the two Toronto offices of the Debtors. The Receiver's plans to vacate those premises have been stalled as a result of the restrictions imposed due to the covid-19 pandemic.
33. The successful sales of the six KMG subsidiaries required the simultaneous preparation and negotiation of transaction documents in several jurisdictions. Those sales have been achieved significantly more quickly than had been projected and, accordingly, a significant amount of Receiver and Counsel costs have been incurred earlier than was expected. In addition, the resignation of KMG staff, both before and after the appointment of the Receiver, that the Receiver had intended to retain resulted in increased requirements of the Receiver. It is anticipated that Receiver and Counsel fees will be considerably lower in future periods.
34. Other professional fees are the payments made, with the consent of the Syndicate, to TD Securities Inc., KMG's investment banker, in connection with the marketing process that had been undertaken and the transition of that process to the Receiver.
35. Funding of subsidiaries are payments made by the Receiver on behalf of KMG US as permitted by paragraph 3(r) of the Receivership Order.
36. Receiver Borrowings is the Canadian dollar equivalent of US\$800,000 borrowed by the Receiver on March 4, 2020, to fund the receivership expenses pursuant to paragraph 21 of the Receivership Order and the funding term sheet between the Receiver and the Syndicate dated as of February 28, 2020, which borrowings are secured by the Receiver's Borrowing Charge.

THE SECURITY OPINION

37. The current indebtedness owing to the Syndicate is approximately US\$113.8 million plus interest and costs (the "**Syndicate Indebtedness**").

38. Torys has conducted a review of the Syndicate Security and has reported verbally to the Receiver on the results of that review and is in the process of preparing its written opinion (the “**Security Opinion**”).
39. As yet, the Receiver has been unable to locate the original share certificate for the TCB Shares. Accordingly, Torys’ analysis in respect of the TCB Shares for the purposes of the Security Opinion is not yet complete.
40. Torys has informed the Receiver that it expects to deliver the Security Opinion, excluding matters related to the TCB Shares, on or before April 8, 2020, and that the Security Opinion, subject to the customary qualifications and assumptions set out therein, will opine that:
 - (a) The Syndicate Security constitutes a valid and enforceable obligation of each Debtor party thereto, enforceable against each such Debtor, or a trustee in bankruptcy in respect thereof if appointed as of the date of the Security Opinion;
 - (b) Other than with respect to the TCB Shares, for which the analysis is incomplete, the Syndicate Security creates a valid security interest in favour of the Agent in the personal property described in the Syndicate Security in which each Debtor party thereto now has rights, and is sufficient to create a valid security interest in favour of the Agent in any such personal property in which each Debtor party thereto subsequently acquires any rights when those rights are acquired, in each case to secure the payment and performance of the obligations described as being secured by the Syndicate Security; and
 - (c) Based solely on the review of PPSA search results, registration has been made in all public offices provided for under the laws of the Province of Ontario where such registration is necessary or desirable to preserve, protect, or perfect the security interests created by the Syndicate Security in the personal property defined as collateral in the Syndicate Security. Further, there are no registrations in favour of any other secured party that predates the registration of the financing statements by the Agent.

REQUEST FOR APPROVAL AND VESTING ORDER

THE SALE PROCESS

41. A process for soliciting offers for the acquisition of KMG, its subsidiaries or their businesses and assets was commenced by KMG prior to the appointment on the Receiver. That process was run by TD Securities Inc., the investment banker to KMG (the “**TD Sale Process**”). The process commenced in January 2020 and was international in scope.
42. The TD Sale Process was undertaken in consultation with the Syndicate and its advisors, including FTI Consulting Canada Inc., and was designed to be fair, transparent and reasonable in the circumstances and consistent with the principles of the decision in the leading case of *Royal Bank of Canada v. Soundair Corp.*
43. 99 potentially interested parties were contacted regarding the opportunity. A “teaser” document was provided and any party that executed a non-disclosure agreement (“**NDA**”) was given access to a virtual data room (the “**VDR**”) where they could obtain information regarding the various businesses of the KMG subsidiaries (collectively, the “**Kew Media Group**”). 39 parties executed an NDA, having expressed interest in TCB specifically or any and all parts of the Kew Media Group, including TCB. Four of those parties elected not to pursue the opportunity and the remaining 35 were provided access to the VDR.
44. A deadline of February 18, 2020, was set for the submission of expressions of interest (the “**EOI Deadline**”) and communicated to those parties that had executed an NDA. Four expressions of interest in respect of TCB were received on or before the EOI Deadline.
45. Three of those expressions of interest were rejected as the indicative values were too low to justify continuing in the process. The fourth expression of interest was submitted by Beyond, who was invited to continue with is diligence with a view to submitting a binding offer.
46. Following the appointment of the Receiver, diligence activities continued, with Beyond being provided direct access to TCB and its personnel. Beyond was informed that the Receiver was aiming to execute a transaction by no later than March 31, 2020.

47. On March 4, 2020, the Receiver’s representatives were contacted by a new interested party (“**Party 2**”) that had not submitted an expression of interest at the EOI Deadline. That interested party informed the Receiver that it was working with Mr. Paul Heaney, the Chief Executive Officer and Director of TCB and Ms. Dina Subhani³, also a Director and employee of TCB, and wished to participate in the sale process. Mr. Heaney and Ms. Subhani had submitted an expression of interest prior to the EOI Deadline, but with a purchase price that was unacceptable to KMG and the Syndicate. Party 2 was invited to commence diligence and asked to submit an expression of interest. Party 2 was also informed during the discussions on March 4, 2020, that the Receiver was aiming to execute a transaction by no later than March 31, 2020.
48. On March 11, 2020, Party 2, together with Mr. Heaney, submitted a written expression of interest for the acquisition of the TCB Shares (the “**March 11 EOI**”) which stated, *inter alia*, that:
- (a) They expected to be able to complete due diligence and documentation by March 31, 2020; and
 - (b) Completion of the Transaction would require approvals from Party 2’s Board of Directors and the controlling member.
49. Diligence continued and by March 11, 2020, the Receiver provided a template share purchase agreement to both interested parties. Negotiation of the share purchase agreement (an “**SPA**”) with each party was conducted in parallel with the ongoing diligence.
50. By March 27, 2020, both interested parties had informed the Receiver that they had largely completed their diligence. Negotiation of the share purchase agreements was also well advanced. Late that afternoon, the Receiver informed both interested parties in writing:

³ The Receiver understands that Ms. Subhani is Mr. Heaney’s life partner.

- (a) That, as had been previously communicated, it was the Receiver's intention to select the successful bidder and execute a sale agreement by no later than March 31, 2020; and
 - (b) To that end, the Receiver required that each interested party confirm by email, by no later than 6:00 pm (Eastern Time) on Sunday, March 29, 2020, that its current bid represents its best and final bid (and if not, to provide its best and final bid), together with confirmation that it will be ready to execute an agreed form of SPA no later than 5:00pm (Eastern Time) on Tuesday, March 31, 2020.
51. On March 28, 2020, Beyond confirmed that its current bid represented its highest and best offer and that it would be ready to execute an agreed form SPA no later than 5:00 pm (Eastern Time) on Tuesday, March 31, 2020.
52. On March 29, 2020, Party 2 confirmed the bid outlined in March 11 EOI. Party 2 did not confirm that they would be ready to execute an agreed form SPA no later than 5:00 pm (Eastern Time) on Tuesday, March 31, 2020, nor did they provide any indication of when they would be ready to execute an SPA.
53. Given the failure to provide such confirmation, the conditionality regarding necessary approvals set out in the March 11 EOI and in order to ensure it had clarity on the status of Party 2's interest and the options available, the Receiver held a conference call with Party 2 and a representative of its controlling member on Monday March 30, 2020. On that call, the Receiver was informed that the necessary approvals had not yet been obtained and that Party 2 would require until the end of the week to be in a position to execute an SPA.
54. The consideration confirmed by Beyond on March 28, 2020, was 5% higher than the consideration confirmed by Party 2 on March 29, 2020.
55. On March 31, 2020, the Receiver and Beyond finalized the terms of a mutually acceptable SPA and Beyond had confirmed that it was in position to execute the SPA. Party 2 had still not provided any feedback on the latest draft of the SPA provided to them by the Receiver on March 28, 2020.

56. Based on discussions with Beyond, the Receiver was of the view that there was a significant risk that Beyond would withdraw its offer if the March 31 deadline was further extended.
57. Furthermore, there was no guarantee that Party 2 would obtain the necessary corporate approvals for the transaction or maintain its purchase price if it learned that Beyond had withdrawn its offers.
58. As a result, in the business judgment of the Receiver, the Beyond offer provided a better recovery for stakeholders, was more certain and represented the highest and best bid available. Accordingly, the Receiver, with the concurrence of the Syndicate, and Beyond executed the TCB SPA on March 31, 2020.

THE TCB SPA

59. Capitalized terms used in this section of this Report not otherwise defined are as defined in the TCB SPA, a copy of which is attached hereto as **Appendix B**.
60. Pursuant to the TCB APA, Beyond will purchase the entire issued share capital of TCB for the Purchase Price of £1,521,347.58 and will advance funds to TCB sufficient for TCB to repay in full the outstanding indebtedness owing from TCB to KMG in the amount of £578,652.42 on the Closing Date (the “**KMG Intercompany Debt**”). The aggregate consideration is therefore £2,100,000.00, being the sum of the Purchase Price and the KMG Intercompany Debt Settlement.
61. The Closing Date is stated in the TCB SPA to be the first Business Day following the day that is 10 days after the date of the Approval and Vesting Order, or such other date as may be agreed by Beyond and the Receiver. Beyond has informed the Receiver that there is urgency to completing the transaction, that it would like to close as soon as possible after the granting of the Approval and Vesting Order, if granted, and that it will forego the 10-day period set out in the TCB SPA.
62. The TCB SPA provides for the following releases:

- (a) Beyond and TCB will release the Receiver, KMG and each of KMG's Affiliates (other than the TCB) from any and all actions, claims and demands which they may have in connection with all accrued and contingent liabilities owed as at the Closing Date by KMG and each Affiliate of KMG;
 - (b) All guarantees and security interests in favour of the Agent in (i) the Purchased Shares, and (ii) the assets and other personal property of TCB shall be terminated and discharged⁴;
 - (c) KMG shall release TCB from any and all claims that KMG had, has or may have against TCB, other than the KMG Intercompany Debt, which shall be paid in full; and
 - (d) Kew Media International Limited (“**KMIL**”) shall release TCB from the KMIL Intercompany Debt and any and all other claims that KMIL had, has or may have against TCB⁵.
63. Pursuant to the TCB SPA, the Receiver will arrange for KMIL to provide a loss surrender consent in favour of TCB so as to permit TCB to make an appropriate claim for Group Relief for the year ended December 31, 2018, to reduce TCB's corporation tax liability to nil, as would have been possible had TCB's 2018 tax returns been filed prior to the commencement of the KMIL administration proceedings. The Administrator has confirmed to the Receiver that the losses to be surrendered would be of no value to the Administrator.
64. The TCB SPA is subject to the following conditions in favour of Beyond, which are to be performed or complied with at or prior to the Time of Closing:

⁴ TCB is a guarantor of the Syndicate Indebtedness.

⁵ As TCB is a secured guarantor of the Syndicate Indebtedness and KMIL is a co-borrower, the Syndicate holds security over the assets of both TCB and KMG and the KMIL Intercompany Debt has no realizable value.

- (a) The representations and warranties of the Receiver set forth in the TCB SPA will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;
 - (b) The Receiver will have performed or complied in all material respects with all obligations and covenants set forth in the TCB SPA to be performed or complied with by the Receiver at or prior to the Time of Closing;
 - (c) No action or proceeding in Canada will be pending by any third party to enjoin or prohibit the sale and purchase of the TCB Shares;
 - (d) The Receivership Order will not have been stayed, varied in any material respect, set aside or appealed (or any such appeal shall have been dismissed with no further appeal therefrom); and
 - (e) The Approval and Vesting Order will have been granted by the Court and such order will not have been stayed, varied in any material respect, set aside or appealed (or any such appeal shall have been dismissed with no further appeal therefrom).
65. The TCB SPA is subject to the following conditions in favour of the Receiver, which are to be performed or complied with at or prior to the Time of Closing:
- (a) The representations and warranties of Beyond set forth in the TCB SPA will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;
 - (b) Beyond will have performed or complied in all material respects with all obligations and covenants set forth in the TCB SPA to be performed or complied with by Beyond at or prior to the Time of Closing;
 - (c) No action or proceeding in Canada will be pending by any third party to enjoin or prohibit the purchase and sale of the TCB Shares;

- (d) The Receivership Order will not have been stayed, varied in any material respect, set aside or appealed (or any such appeal shall have been dismissed with no further appeal therefrom); and
 - (e) The Approval and Vesting Order will have been granted by the Court and such order will not have been stayed, varied in any material respect, set aside or appealed (or any such appeal shall have been dismissed with no further appeal therefrom).
66. The TCB SPA may be terminated, amongst other reasons, if the conditions precedent become impossible to satisfy and have not been waived prior to April 30, 2020, or such later date as the parties may determine.
67. The TCB SPA contains no conditions requiring that any key employees of TCB remain as employees. The Receiver also notes that any employment or other contracts to which TCB is a party are unaffected by the TCB SPA. Notwithstanding, Beyond has informed the Receiver that they have had discussions with Mr. Heaney and Ms. Subhan regarding their post-closing employment terms and responsibilities. A copy of an email dated April 6, 2020, from Mr. Mikael Borglund, Chief Executive Officer and Managing Director of Beyond International Limited, the parent company of Beyond, to the Receiver providing an update on those discussions is attached hereto as **Appendix C**.

THE HEANEY CONSENT RIGHTS

68. In addition to being the Chief Executive Officer of TCB and a bidder for the TCB Shares, both in his own right in the TD Sale Process and with Party 2 during the Receivership, Mr. Heaney is a co-founder and former shareholder of TCB.
69. KMG acquired the TCB Shares pursuant to a Share Purchase Agreement made as of October 10, 2017, among KMG, as purchaser, Paul Heaney and Dina Subhani, as vendors, and TCB (the “**Original Acquisition Agreement**”).
70. Section 6.8(b)(i) of the Original Acquisition Agreement states that:

“The Purchaser⁶ undertakes to the Vendors⁷ that, until the end of the Earn-out Period or the full Earn-out Amount being earned, whichever is earlier, save with the prior written consent of Paul⁸, it shall:

(b) (i) not sell, transfer or otherwise dispose of (which shall not restrict the granting of Liens) any of the shares in the capital of the Company⁹ (except to an Affiliate of the Purchaser or pursuant to a sale of substantially all of the assets of the Purchaser)”

71. The Earn-out Period has not yet ended and while the Receiver has been unable to confirm, it is likely that the Earn-out Amount has not yet been earned. Accordingly, the right of consent provided by section 6.8(1)(b) (the “**Heaney Consent Right**”) is likely extant.
72. Section 6.9 of the Original Acquisition Agreement states:

“6.9 Consequences of Non-Compliance

If the Purchaser does not comply with its undertakings in Section 6.7 or 6.8 and such non-compliance has the effect of reducing any Earn-out Payment or Earn-out On-Ramp Payment, then any deemed reduction will be ignored and added back in calculating that Earn-out Payment or Earn-out On-Ramp Payment. For greater certainty, the Purchaser shall not be in breach of this Agreement if an adjustment is made by the Purchaser in respect of such non-compliance pursuant to the preceding sentence.”

73. In the Receiver’s view:

⁶ KMG

⁷ Paul Heaney and Dina Subhani

⁸ Paul Heaney

⁹ TCB

- (a) Contractual restrictions on the sale of property that is subject to a court-appointed receivership, such as the Heaney Consent Right, are not effective as against a receiver so that such receiver is not obstructed in fulfilling its mandate, being the realization of the property subject to the receivership order;
 - (b) In any event, the Court has the jurisdiction to grant the Approval and Vesting Order notwithstanding the Heaney Consent Right; and
 - (c) The sale of the TCB Shares in breach of section 6.8(b)(i) would only give rise to a claim for damages against KMG, which claim would be unsecured and subordinate to the Syndicate Indebtedness.
74. Notwithstanding the foregoing, and in accordance with its obligation under section 4.01(2) of the TCB SPA, on March 31, 2020, the Receiver requested that Mr. Heaney consent to the sale of the TCB Shares to Beyond pursuant to the TCB SPA. Mr. Heaney responded on April 1, 2020, by email, a copy of which is attached as **Appendix D** to this Report. In his email, Mr. Heaney:
- (a) Stated that he was unable at to give his consent to the sale at that time;
 - (b) Stated that he disagreed with the Receiver's interpretation of the consent rights and believed them to be both valid and enforceable;
 - (c) Requested that the issues be raised with the Court and that the Court be provided a copy of his email; and
 - (d) Requested that he be provided me with a copy of the Court application when it is issued and that he be given at least two business days' written notice of any relevant Court hearing date.
75. On April 2, 2020, the Receiver informed Mr. Heaney that the motion for the approval of the sale of the TCB Shares would be heard on Thursday April 9, 2020, and that copies of the materials would be provided when filed.

THE APPROVAL AND VESTING ORDER

76. The Approval and Vesting Order is consistent with the Commercial List Users' Committee model order (the "**Model AVO**"), with the following amendments:
- (a) The addition of paragraph 1 abridging and validating service;
 - (b) The addition of language in paragraph 2 to address the issue of the Heaney Consent Right;
 - (c) The deletion of paragraphs 3 and 6 of the Model AVO, which are not relevant in this case; and
 - (d) The deletion of paragraph 8 which is no longer relevant given the repeal of the *Bulk Sales Act (Ontario)*.

THE RECEIVER'S COMMENTS

77. The consideration provided for in the TCB SPA exceeds the limit set out in paragraph 3(k)(a) of the Receivership Order. Accordingly, pursuant to paragraph 3(k)(b) of the Receivership Order, Court approval of the transaction is required. Accordingly, the granting of the Approval and Vesting Order is a condition of the TCB SPA.
78. The leading case of *Royal Bank of Canada v. Soundair Corp.* ("**Soundair**") sets out the relevant considerations in assessing a sale by a receiver, as follows:
- (a) Whether the debtor made sufficient effort to obtain the best price and has not acted improvidently;
 - (b) The interests of the parties;
 - (c) The efficacy and integrity of the process by which offers were obtained; and
 - (d) Whether there was unfairness in the working out of the process.

79. The Receiver is of the view that the marketing process as commenced by KMG's investment banker prior to the receivership and completed by the Receiver after its appointment, which process culminated in the execution of the TCB SPA, was fair, transparent and reasonable in the circumstances and was consistent with the principles of *Soundair*.
80. The Syndicate will suffer a shortfall on the Secured Indebtedness that, in the Receiver's estimate, will exceed US\$90 million. As such, the Syndicate is the only stakeholder with an economic interest in the sale of the TCB Shares. As noted earlier in this Report, the Receiver and each member of the Syndicate have exercised their business judgment in determining that the sale of the TCB SPA represented the highest and best bid available for the TCB Shares. The Receiver notes that the Syndicate also holds direct security on the TCB assets securing the Syndicate Indebtedness.
81. As described earlier in this Report, both Beyond and Party 2 were informed that the Receiver was aiming to execute a transaction by no later than March 31, 2020. Both interested parties were given a final opportunity to submit their highest and best offers. Both interested parties confirmed that they had indeed submitted their highest and best offers. Accordingly, in the Receiver's view, there has been no unfairness in the working out of the process.
82. As noted earlier in this Report, in the Receiver's view, the sale of the TCB Shares in breach of section 6.8(b)(i) of the Original Acquisition Agreement would only give rise to a claim for damages against KMG, which claim would be unsecured and subordinate to the Syndicate Indebtedness.
83. Furthermore, it would, in the Receiver's view, be contrary to the fundamental purpose of the Receivership – the maximization of realizations from the Property of the Debtors for the benefit of all stakeholders – to enable Mr. Heaney to veto the sale of the TCB Shares to Beyond in an effort to force a sale, at a lower value, to Party 2, Mr. Heaney's partner, Ms. Subhani, and Mr. Heaney himself.

84. As noted earlier in this Report, Beyond has informed the Receiver that there is urgency to completing the transaction, that it would like to close as soon as possible after the granting of the Approval and Vesting Order, if granted, and that it will forego the 10-day period set out in the TCB SPA.
85. In the Receiver's business judgment, there is urgency to the approval of the TCB SPA and closing of the transaction for the following reasons:
- (a) The TCB business has been under strain for a significant period of time, which has been further complicated by the receivership of KMG;
 - (b) The KMG nominee directors resigned from the board of TCB prior to the Receivership, leaving Mr. Heaney and Ms. Subhani as the only directors and officers of TCB; and
 - (c) The position of Mr. Heaney and Ms. Subhani as management of TCB and also as unsuccessful bidders, coupled with the refusal of Mr. Heaney to consent to the sale of the TCB Shares pursuant to the TCB SPA.
86. Accordingly, the Receiver respectfully requests that this Honourable Court grant the Receiver's motion for the issuance of the Approval and Vesting Order.

REQUEST FOR REPAYMENT & DISTRIBUTION ORDER

REPAYMENTS OF RECEIVER BORROWINGS AND DISTRIBUTIONS TO THE AGENT

87. As described earlier in this report, the Receiver has successfully completed six sale transactions to date and anticipates that the transaction contemplated by the TCB SPA will close quickly if the Approval and Vesting Order is granted.
88. Also as noted earlier in this Report, on March 4, 2020, the Receiver borrowed US\$800,000 to fund the receivership expenses pursuant to paragraph 21 of the Receivership Order and the funding term sheet between the Receiver and the Syndicate dated as of February 28, 2020, which borrowings are secured by the Receiver's Borrowing Charge.

89. Pursuant to paragraph 21 of the Receivership Order, the Receiver's Borrowings Charge provides security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

90. Section 14.06(7) of the BIA states:

“Any claim by Her Majesty in right of Canada or a province against the debtor in a bankruptcy, proposal or receivership for costs of remedying any environmental condition or environmental damage affecting real property or an immovable of the debtor is secured by security on the real property or immovable affected by the environmental condition or environmental damage and on any other real property or immovable of the debtor that is contiguous with that real property or immovable and that is related to the activity that caused the environmental condition or environmental damage, and the security

(a) is enforceable in accordance with the law of the jurisdiction in which the real property or immovable is located, in the same way as a mortgage, hypothec or other security on real property or immovables; and

(b) ranks above any other claim, right, charge or security against the property, despite any other provision of this Act or anything in any other federal or provincial law.”

91. The Debtors own no real property and none of the realizations by the Receiver arose from real property. Accordingly, there can be no claims secured by the charge provided for in section 14.06(7) of the BIA.

92. Section 81.4 of the BIA gives a charge on current assets securing:

- (a) The claim of a clerk, servant, travelling salesperson, labourer or worker who is owed wages, salaries, commissions or compensation by a person who is subject to a receivership for services rendered during the six months before the first day on which there was a receiver in relation to the person is secured, as of that day, to the extent of \$2,000 — less any amount paid for those services by a receiver or trustee — by security on the person’s current assets that are in the possession or under the control of the receiver; and
 - (b) The claim of a travelling salesperson who is owed money by a person who is subject to a receivership for disbursements properly incurred in and about the person’s business during the six months before the first day on which there was a receiver in relation to the person is secured, as of that day, to the extent of \$1,000 — less any amount paid for those disbursements by a receiver or trustee — by security on the person’s current assets that are in the possession or under the control of the receiver.
93. The Receiver was informed that wages, salaries and vacation pay to the Date of Receivership were paid by the Debtors immediately prior to the granting of the Receivership Order. Furthermore, based on its review of the books and records of the Debtors, the Receiver is not aware of any potential claims secured pursuant to section 81.4 of the BIA.
94. Section 81.6 provides security for certain claims related to prescribed pension plans. The Debtors did not participate in any prescribed pension plan and, accordingly, there can be no claims secured by section 81.6 of the BIA.
95. Based on the foregoing, the Receiver is of the view that there are no claims ranking in priority to the Receiver’s Borrowing Charge, other than amounts secured by the Receiver’s Charge.

96. The Receivership Order does not provide express authority for the Receiver to repay amounts owing that are secured by the Receiver's Borrowing Charge. Accordingly, the Receiver now seeks authority to repay amounts owing that are secured by the Receiver's Borrowing Charge.
97. The Receivership Order also does not provide authority for the Receiver to distribute proceeds of realization to creditors. As described earlier in this Report, Torys has informed the Receiver that it will be providing the Security Opinion which confirms the validity and enforceability of the Syndicate Security over the assets of the Debtors, and the proceeds arising from the realization of such assets, with the exception of the TCB Shares, for which the analysis is not yet complete.
98. Accordingly, the Receiver is now seeking authority to make distributions from time to time to the Agent on account of the Syndicate Indebtedness subject to the establishment of reserves in the discretion of the Receiver, including, without limitation, on account of any priority claims and the Receiver's present and anticipated future costs of administration.
99. The proposed Repayment & Distribution Order would allow for such distributions to be made from the proceeds of sale or other realizations other than the Purchase Price received for the TCB Shares.

AMENDMENT OF STYLE OF CAUSE

100. The Receivership Order in its style of cause includes the name of Architect Films Inc. ("**Architect**"). Neither Architect nor any of its property is actually subject to the Receivership Order.

101. The inclusion of Architect in the style of cause was in error. At the time the application for the Receivership Order were being prepared, it was contemplated that Architect would be included in the Receivership as no offers had been received by the EOI Deadline. Shortly before the filing of the application, Architect management expressed an interest in acquiring Architect. Accordingly, Architect was removed from the application so that their offer could be explored. However, Architect's name was inadvertently left in the style of cause.
102. The sale of Architect was successfully negotiated and, as noted earlier in this Report, the Receiver has sold the shares of Architect.
103. Accordingly, the Receiver is seeking an Order amending the style of cause for these Receivership Proceedings to remove the reference to Architect.

The Receiver respectfully submits to the Court this, its First Report.

Dated this 6th day of April, 2020.

FTI Consulting Canada Inc.
In its capacity as Receiver of certain assets of
Kew Media Group Inc. and Kew Media International (Canada) Inc.
And not in its personal or corporate capacity



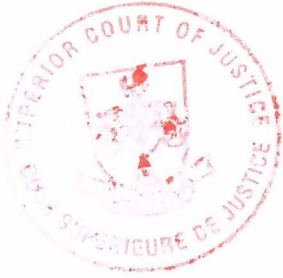
Nigel D. Meakin
Senior Managing Director



Toni Vanderlaan
Senior Managing Director

Appendix A

The Receivership Order



Court File No. CV-20-00637081-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) FRIDAY, THE 28TH
JUSTICE KOEHNEN) DAY OF FEBRUARY, 2020

TRUIST BANK, AS AGENT

Applicant

- and -

**KEW MEDIA GROUP INC., KEW MEDIA INTERNATIONAL (CANADA) INC., AND
ARCHITECT FILMS INC.**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY
ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF
JUSTICE ACT*, R.S.O. 1990, c. C.43 AS AMENDED

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant, Truist Bank (“**Truist**”), in its capacity as agent for a syndicate of lenders consisting of Truist, Bank of Montreal and The Toronto-Dominion Bank, for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing FTI Consulting Canada Inc. (“**FTI**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Kew Media Group Inc. (“**Kew**”), and Kew Media International (Canada) Inc. (“**KMICI**”), acquired for, or used in relation to a business carried on by Kew and KMICI (together, Kew and KMICI are the “**Debtors**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Juan De Jesus-Caballero sworn February 27, 2020, and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, counsel for the Debtors, counsel for the Receiver, [and counsel for Bank of Montreal as financier to certain production subsidiaries of the Debtors] no one else appearing although duly served as appears from the affidavit of service of Amanda Campbell sworn February 27, 2020, and on reading the consent of FTI to act as the Receiver,

SERVICE

1 **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2 **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, FTI is hereby appointed Receiver, without security of all of the assets, undertakings and properties of the Debtors Kew and KMICI acquired for, or used in relation to a business carried on by Kew and KMICI, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3 **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent

security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors Kew and KMICI, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors Kew and KMICI;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors Kew and KMICI or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby

conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$2,500,000, provided that the aggregate consideration for all such transactions does not exceed \$10,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors Kew and KMICI;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors Kew and KMICI;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (r) with the consent of the Applicant, to make such payments as the Receiver may deem necessary or appropriate to or for the benefit of employees, contractors, suppliers, counterparties, joint venture partners, consultants, advisors, and creditors of any direct or indirect subsidiary of the Debtors; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4 **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant

immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5 **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6 **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information. *See para 6A attached*

7 **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least

6A. THIS COURT ORDERS that the Receiver shall not destroy during its appointment any Records of the Debtors or any books, documents, contracts, orders, accounting and corporate records or any other papers, records or information of any kind related to the business or affairs of the Debtors' affiliates in the possession, custody or control of the Receiver, whether in hard copy or electronic form (the "Affiliate Records"). The Receiver shall, subject to applicable privacy law, provide the current and former directors and officers of the Debtors and their affiliates with reasonable access at their expense (excluding the costs of the Receiver or its counsel) to the Records and the Affiliate Records, and such directors and officers shall have the right to make and retain copies of such records at their expense (excluding the costs of the Receiver or its counsel). This paragraph may only be amended by Court order following reasonable notice to the directors and officers of the Debtor and its affiliates as of the date of this Order.

seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors. If the Receiver occupies and has the use and enjoyment of any premises that are subject to a real property lease entered into by the Debtors Kew and KMICI, the Receiver shall pay all amounts constituting rent or payable as rent under the real property lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Receiver and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

NO PROCEEDINGS AGAINST THE RECEIVER

8 **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9 **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10 **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in

respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11 **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12 **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13 **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14 **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15 **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16 **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17 **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18 **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver's Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of

this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19 **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20 **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21 **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed US\$2,200,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22 **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23 **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24 **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25 **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://cfcanada.fticonsulting.com/kmg>.

26 **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27 **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

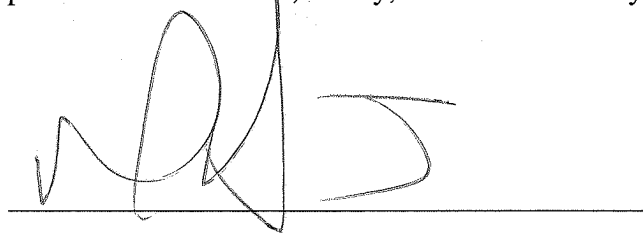
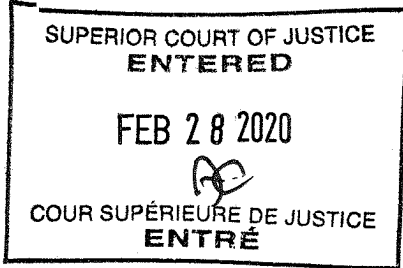
28 **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

29 **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30 **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31 **THIS COURT ORDERS** that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

32 **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver 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.

A handwritten signature in black ink, appearing to be 'MRS', is written over a horizontal line.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

33 THIS IS TO CERTIFY that FTI Consulting Canada Inc., the receiver (the “**Receiver**”) of the assets, undertakings and properties Kew Media Group Inc. (“**Kew**”) and Kew Media International (Canada) Inc. (“**KMICI**”) acquired for, or used in relation to a business carried on by Kew and KMICI, including all proceeds thereof (collectively, the “**Property**”), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the ___ day of February, 2020 (the “**Order**”) made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the “**Lender**”) the principal sum of US\$_____, being part of the total principal sum of US\$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

34 The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon. Interest is to be calculated at a rate equal to the Base Rate as defined in the Credit Agreement, plus 4.75%. Interest shall be calculated on the basis of a year of 365 days and paid for the actual number of days elapsed by capitalizing such interest to the principal balance of the advances made hereunder on the last day of each month.

35 Credit Agreement means the Amended and Restated Revolving Credit and Term Loan Agreement dated as of July 23, 2018 (as amended, supplemented or otherwise modified from time to time) among Truist Bank (“**Truist**”), as the Agent for syndicate of lenders comprising Truist, Bank of Montreal, and The Toronto Dominion Bank, as lenders, and Kew and Kew Media International Limited, as co-borrowers.

36 Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the

Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

37 All sums payable in respect of principal and interest under this certificate are payable at the office of the Agent in Charlotte, North Carolina.

38 Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

39 The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

40 The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2020.

FTI Consulting Canada Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

TRUIST BANK, AS AGENT

- and -

KEW MEDIA GROUP INC., et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**ORDER
(appointing Receiver)**

DENTONS CANADA LLP

77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Kenneth Kraft (LSO # 31919P)

Tel: (416) 863-4374

Fax: (416) 863-4592

kenneth.kraft@dentons.com

Robert Kennedy (LSO # 474070)

Tel: (416) 367-6756

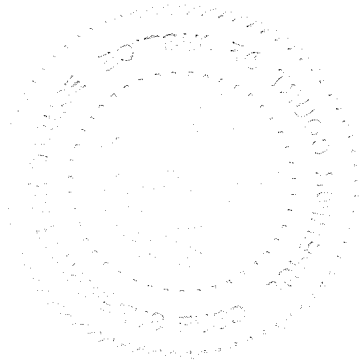
robert.kennedy@dentons.com

Mark A. Freake (LSO #63656H)

Tel: (416) 863-4456

mark.freake@dentons.com

Lawyers for the Applicant, Truist Bank, as Agent



Appendix B

The TCB SPA

SHARE PURCHASE AGREEMENT

BETWEEN

**FTI CONSULTING CANADA INC., solely in its capacity as Court
appointed receiver and manager of KEW MEDIA GROUP INC. and KEW MEDIA
INTERNATIONAL (CANADA) INC., and not in its personal, corporate or any other
capacity**

AND

BEYOND ENTERTAINMENT LIMITED

REGARDING

TCB MEDIA RIGHTS LTD

MADE AS OF

MARCH 31, 2020

SHARE PURCHASE AGREEMENT

THIS AGREEMENT is made as of March 31, 2020

BETWEEN Beyond Entertainment Limited, a corporation incorporated under the laws of the Republic of Ireland (the “**Purchaser**”)

AND FTI CONSULTING CANADA INC., solely in its capacity as court appointed receiver and manager of KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC., and not in its corporate, personal or other capacity

WHEREAS on February 28, 2020, the Court granted an Order (the “**Receivership Order**”) appointing FTI Consulting Canada Inc. (the “**Receiver**”) as receiver and manager of, among other things, the assets, undertakings and properties of Kew Media Group Inc. (“**KMG**”) and Kew Media International (Canada) Inc. (“**KMICI**”).

AND WHEREAS pursuant to the Receivership Order, the Receiver was authorized to, among other things, market and sell the assets, undertakings and properties of KMG and KMICI.

AND WHEREAS the Purchaser desires to purchase the Purchased Shares upon and subject to the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1 – INTERPRETATION

1.01 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

“**Administrators**” means, collectively, Andrew Johnson and Simon Kirkhope, insolvency practitioners of FTI Consulting LLP, solely in their capacity as administrators of Kew Media International Limited (in administration), and not in their personal or other capacity..

“**Affiliates**” means, with respect to any Person, any other Person that controls or is controlled by or is under common control with the referent Person.

“**Agreement**” means this agreement, including its recitals and schedules, as amended from time to time.

“**Applicable Law**” means:

- (i) any applicable domestic or foreign law including any statute, subordinate legislation or treaty, as well as the common law; and
- (ii) any applicable and enforceable rule, requirement, order, judgment, injunction, award or decree of a Governmental Authority.

“**Approval and Vesting Order**” means an order of the Court substantially in the form attached hereto as **Exhibit A**: (i) approving the sale of the Purchased Shares by the Receiver to the Purchaser pursuant to the terms of this Agreement; and (ii) providing for the vesting of the right, title, benefit and interest of KMG in and to the Purchased Shares in and to the Purchaser, free and clear of all Liens other than the Permitted Encumbrances.

“**Books and Records**” means all personnel records, inspection records, financial records, and other records, books, documents and data bases recorded or stored by means of any device, including in electronic form, relating to the Business and the Purchased Shares as are in the possession or under the control of KMG.

“**Business**” means the business activities and operations formerly carried on by KMG.

“**Business Day**” means a day other than a Saturday, Sunday, statutory or civic holiday in Toronto, Ontario.

“**Claim**” means any actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, investigation or proceeding by or before any Person and any Loss, claim or demand relating thereto or resulting therefrom, or any other claim or demand of whatever nature or kind (including any cross-claim).

“**Closing Date**” means the first Business Day following the day that is 10 days after the date of the Approval and Vesting Order, or such other date as may be agreed in writing between the parties hereto.

“**Collection Account**” has the meaning set out in Section 2.04(a)(i).

“**Company**” means TCB Media Rights Ltd, a company organized under the laws of England (company number 08140937).

“**Company Direction**” has the meaning set out in Section 6.02(i).

“**Confidential Information**” means (a) any information relating to KMG or its Affiliates that is disclosed to the Purchaser or its Representatives by or on behalf of KMG, the Receiver, the Senior Agent or their respective Affiliates (including by any Representative of KMG, the Receiver, the Senior Agent or any of their respective Affiliates) that relates to KMG or any of its Affiliates (whether prepared or communicated by KMG, the Receiver, the Senior Agent or any of their respective Affiliates, their respective Representatives or otherwise), and (b) any Work Product using any of the information described in clause (a) above, but excludes (i) information that was, is or becomes generally available to the public other than as a result of a disclosure by

the Purchaser or any of its Representatives in breach of this Agreement and (ii) information that was within the possession of the Purchaser or any of its Representatives prior to being furnished to the Purchaser or its Representatives by or on behalf of KMG, the Receiver, the Senior Agent or their respective Affiliates pursuant hereto or is lawfully obtained by the Purchaser or any of its Representatives thereafter from a source other than KMG, the Receiver, the Senior Agent or their respective Affiliates (or any of their respective Affiliates or Representatives) that, in each case, as far as the Purchaser or such Representatives are aware, is not, by virtue of such disclosure, in breach of any obligation of confidentiality of such source with respect to such information and (iii) information that is independently developed by the Purchaser or its Representatives without reference to or based upon any Confidential Information.

“**Contract**” means any contract, agreement, license, instrument or commitment recognized at law or equity, whether express or implied, or arising by a course of conduct or usage of trade.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Governmental Authority**” means any domestic or foreign legislative, executive, judicial or administrative body or person having jurisdiction in the relevant circumstances.

“**Group Relief**” means any Relief available between members of a group.

“**KMG Intercompany Debt**” means the aggregate of £578,652.42 due from the Company to KMG as of the Closing Date.

“**KMG Intercompany Debt Settlement**” has the meaning set out in Section 4.02(5).

“**KMIL**” means Kew Media International Limited (in administration).

“**KMIL Intercompany Debt**” means the aggregate of £8,032,539.12 or any amounts that may vary from time to time due from the Company to KMIL as of the Closing Date.

“**Liabilities**” means all costs, expenses, charges, debts, liabilities, commitments and obligations of any nature or kind, whether accrued or fixed, actual, absolute, contingent, latent or otherwise, matured or unmatured or determined or undeterminable, including those arising under any Applicable Law or Claim and those arising under any Contract or undertaking or otherwise, including any tax liability or tort liability.

“**Liens**” means any lien (statutory or otherwise), mortgage, pledge, security interest (whether contractual, statutory or otherwise), hypothecation, trust or deemed trust (whether contractual, statutory, or otherwise), execution, levy, charge, encumbrance, interest in property, or other financial or monetary claim which, in each case, in substance, secures payment or performance of an obligation, or similar charge of any kind.

“**Management Team**” has the meaning set out in Section 4.01(2).

“**Non-Disclosure Agreement**” means any non-disclosure agreement entered into by the

Purchaser or any of its Affiliates in connection with the purchase of the Purchased Shares.

“**Outside Date**” has the meaning set out in Section 5.04(b).

“**Person**” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or other entity.

“**Personal Information**” means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

“**Purchase Price**” has the meaning set out in Section 2.02(a).

“**Purchased Shares**” means the entire issued share capital of the Company currently owned by KMG, being 2 ordinary shares with a nominal value of £1 each.

“**Receiver**” has the meaning set out in the recitals hereto.

“**Receiver’s Certificate**” means a certificate signed by the Receiver substantially in the form attached as **Schedule A** to the Approval and Vesting Order confirming that: (i) the Purchaser has paid, and the Receiver has received payment of, the Purchase Price in relation to the purchase by the Purchaser of the Purchased Shares, and (ii) the conditions to be complied with at or prior to the Time of Closing as set out in Sections 5.01 and 5.02, respectively, have been satisfied or waived by the Receiver or the Purchaser, as applicable, pursuant to Section 5.03.

“**Receivership Order**” has the meaning set out in the recitals hereto.

“**Relief**” means any loss, allowance, exemption, credit, deduction or set off against income, profits or against or in respect of taxation for the purposes of Tax or any right to repayment of Tax (including any repayment supplement or interest in respect of Tax).

“**Representatives**” means, with respect to any person, its Affiliates and the directors, officers, employees, agents, advisors, counsel and auditors of such person and of such person’s Affiliates.

“**Senior Agent**” means Truist Bank, as successor by merger to SunTrust Bank, in its capacity as administrative agent for a syndicate of lenders consisting of Truist Bank, Bank of Montreal and The Toronto-Dominion Bank.

“**Tax**” or “**Taxation**” means any form of tax, levy, impost, duty, charge, social security contribution, deduction or withholding, or governmental charge (national or local), whenever imposed, whether of Canada, Ireland, the United Kingdom or elsewhere, collected or assessed by, or payable to, a Tax Authority or any other person as a result of any enactment relating to tax, together with all related fines, penalties, interest, costs, charges and surcharges any liability to make a payment by way of reimbursement, recharge, indemnity, damages or management charge connected in any way with any tax, regardless of whether or not any such amounts are

directly or primarily chargeable against, recoverable from or attributable to the Company or any other person or the Company has, or may have, any right of reimbursement against any other person).

“**Tax Act**” means the *Income Tax Act* (Canada).

“**Tax Authority**” means any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official in Canada, Ireland, the United Kingdom or elsewhere with the responsibility for or competence to impose, collect or administer, any form of Taxation.

“**Time of Closing**” means 9:00 a.m. (Toronto Time) on the Closing Date.

“**Withholding Taxes**” has the meaning set out in Section 4.02(6).

“**Work Product**” means all memoranda, notes and other documents and analyses developed by the Purchaser or its Representatives.

1.02 **Headings**

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Exhibits are to Articles and Sections of and Exhibits to this Agreement.

1.03 **Extended Meanings**

In this Agreement words importing the singular number include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities. The term “including” means “including without limiting the generality of the foregoing” and the term “third party” means any Person other than the Receiver and the Purchaser.

1.04 **Capacity of Receiver**

The Receiver, in executing this Agreement, is entering into this Agreement solely in its capacity as the court appointed receiver and manager of KMG and KMICI, and not in its personal, corporate or any other capacity. The Receiver shall have no personal or corporate liability of any kind whatsoever, whether in contract, tort or otherwise, under or pursuant to or in any manner whatsoever relating to this Agreement, the transactions contemplated by this Agreement, or any act or omission taken or not taken in connection therewith. For greater certainty, and without limitation to the foregoing, the Purchaser shall not under any circumstance

have any recourse to or claim against the Receiver, in its personal or corporate capacity, or against any of the Receiver's directors, officer, employees, agents, advisors or other Representatives.

1.05 **Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.06 **Currency**

All references to currency herein are to lawful money of the United Kingdom.

ARTICLE 2- SALE AND PURCHASE

2.01 **Shares to be Sold and Purchased**

Upon and subject to the terms and conditions hereof, the Receiver will sell to the Purchaser and the Purchaser will purchase from the Receiver, as of and with effect from the Time of Closing, all of the right, title, benefit and interest of KMG and the Receiver, if any, in and to the Purchased Shares including the right to receive all dividends and distributions declared on or after the date of this agreement. The Purchaser is not obliged to complete the purchase of any of the Purchased Shares unless the purchase of all the Purchased Shares is completed simultaneously.

2.02 **Purchase Price**

(a) The aggregate purchase price payable to the Receiver for the Purchased Shares excluding all applicable Taxes (such amount being hereinafter referred to as the "**Purchase Price**") is an amount equal to the sum of £1,521,347.58 payable by the Purchaser.

(b) The Purchaser shall pay all stamp duties applicable to the Purchase Price.

2.03 **Allocation of Purchase Price**

The Purchase Price will be allocated 100% to the Purchased Shares. The Receiver and Purchaser will make and file all tax returns and filings on a basis which is consistent with the amount and allocation of the Purchase Price.

2.04 **Payment of Purchase Price**

(a) The Purchase Price will be satisfied by the Purchaser as follows:

- (i) paying an amount equal to £100,000 forthwith upon the Purchaser executing this Agreement by wire transfer of immediately available funds to an account specified by the Receiver, in trust, as a deposit to be held in the bank account designated in Exhibit “B” appended hereto (the “**Collection Account**”) and paid as provided in Section 2.04(b); and
- (ii) paying the balance of the Purchase Price by wire transfer at the Time of Closing of immediately available funds to the Collection Account.

(b) The deposit paid to the Receiver by the Purchaser pursuant to Section 2.04(a)(i) will be paid by the Receiver as follows:

- (i) to the Receiver at the Time of Closing, with any interest that has been paid by the applicable bank thereon being paid to the Purchaser, in each case net of any applicable bank fees or charges, if the sale and purchase of the Purchased Shares provided for herein is completed in accordance with the terms and conditions hereof;
- (ii) to the Receiver on or after the fifth Business Day after the date of termination of this Agreement, together with any interest that has been paid by the applicable bank thereon (net of any applicable bank fees or charges), if this Agreement is terminated by the Receiver pursuant to Section 5.04(a), Section 5.04(c) (unless with respect to a condition in Section 5.02(c) or Section 5.02(d)), or Section 5.04(e) (where the Purchaser has failed to comply with its obligations under this Agreement);
or
- (iii) to the Purchaser on or after the fifth Business Day after the date of termination of this Agreement, together with any interest that has been paid by the applicable bank thereon (net of any applicable bank fees or charges), if this Agreement is terminated by the Purchaser pursuant to Section 5.04(a) or Section 5.04(b), or by the Receiver pursuant to Section 5.04(c) (solely with respect to a condition in Section 5.02(c) or Section 5.02(d)) or Section 5.04(e) (unless the Purchaser has failed to comply with its obligations under this Agreement),

provided that if the sale and purchase of the Purchased Shares provided for herein is not completed in accordance with the terms and conditions hereof and, prior to 10:00 a.m. on the fifth Business Day referred to in Section 2.04(b)(ii) or (iii), as the case may be, written notice is given by either the Receiver or the Purchaser to the other counterparty that such party in good faith disputes that the other is entitled to receive the deposit and/or any accrued interest thereon, then such deposit and all accrued interest thereon may, at the option of the Receiver, be paid into Court as soon as reasonably possible (net of any applicable bank fees or charges), and further provided that the Receiver shall be entitled to seek the direction of the Court at any time in respect of any matter relating to the deposit, including the payment thereof to any Person.

(c) Payment of the Purchase Price in accordance with this Section 2.04 shall constitute a good and valid discharge of the Purchaser's obligations to pay the sum in question, and the Purchaser shall not be concerned to see the application of the monies so paid.

2.05 **Delivery of Purchased Shares**

At the Time of Closing, the Purchaser will take possession of the share certificates relating to the Purchased Shares as provided in Section 6.01. The Purchaser acknowledges that the Receiver has no obligation to deliver possession of such share certificates to the Purchaser at any other location.

2.06 **Releases**

(a) As of the Time of Closing, each of Purchaser and the Company hereby releases and discharges the Receiver, KMG and each of KMG's Affiliates (other than the Company) from any and all actions, claims and demands which it may have now or in the future against any of the Receiver, KMG and any Affiliate of KMG (other than the Company) in connection with all accrued and contingent liabilities owed as at the Closing Date by KMG and each Affiliate of KMG. The Purchaser shall arrange for and deliver such release from the Purchaser.

(b) Immediately following the Time of Closing, the Company shall release and discharge the Receiver, KMG and each of KMG's Affiliates (other than the Company) from any and all actions, claims and demands which it may have now or in the future against any of the Receiver, KMG and any Affiliate of KMG (other than the Company) in connection with all accrued and contingent liabilities owed as at the Closing Date by KMG and each Affiliate of KMG. The Purchaser shall arrange for and deliver such release from the Company to the Receiver prior to the Time of Closing, to be held in escrow pending release immediately following the Time of Closing.

(c) As of the Time of Closing, all guarantees and security interests in favour of the Senior Agent in (i) the Purchased Shares, and (ii) the assets and other personal property of the Company shall be terminated and discharged, and the Senior Agent shall acknowledge and consent to the release of the KMIL Intercompany Debt contemplated by Section 2.06(e) hereof. The Receiver shall arrange for and deliver such releases from the Senior Agent at the sole cost and expense of the Purchaser.

(d) As of the Time of Closing, KMG shall release the Company from any and all claims that KMG had, has or may have against the Company, other than the Intercompany Debt, which shall be paid in full in accordance with section 4.02(5) of this agreement. The Receiver shall arrange for and deliver such release from KMG.

(e) Immediately prior to the Time of Closing, KMIL shall release the Company from the KMIL Intercompany Debt and any and all other claims that KMIL had, has or may have against the Company. The Receiver shall arrange for and deliver such release from KMIL to the Purchaser prior to the Time of Closing, to be held in escrow pending release immediately prior to the Time of Closing.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

3.01 Receiver's Representations and Warranties

The Receiver represents and warrants to the Purchaser that, as at the date hereof and as of the Closing Date:

- (a) pursuant to the Receivership Order and subject to the granting of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, the Receiver has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;
- (b) pursuant to the Receivership Order and subject to the granting of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, this Agreement constitutes a valid and legally binding obligation of the Receiver, enforceable against the Receiver in accordance with its terms; and
- (c) KMG is not a non-resident of Canada within the meaning of section 116 of the Tax Act.

3.02 Purchaser's Representations and Warranties

The Purchaser represents and warrants to the Receiver that:

- (a) the Purchaser is a corporation duly incorporated, organized and existing under the laws of the Republic of Ireland;
- (b) the Purchaser has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;
- (c) this Agreement constitutes a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms;
- (d) the Purchaser has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement and completion of the transactions contemplated herein and the entering into of this Agreement in completion of the transactions contemplated herein will not breach its constitutional documents, any agreement binding on the Purchaser, or Applicable Laws relating to the Purchaser;
- (e) there are no orders of or proceedings before or pending before any Governmental Authority, or threatened to be brought by or before any Governmental Authority

by or against the Purchaser affecting the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby by the Purchaser;

- (f) except for the Approval and Vesting Order, no authorizations, consents or approvals of, or filing with or notice to, any Governmental Authority is required in connection with the execution, delivery or performance of this Agreement;
- (g) no consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement; and
- (h) the Purchaser has available sufficient funding to enable the Purchaser to consummate the purchase of the Purchased Shares on the terms set forth herein and otherwise to perform all of the Purchaser's obligations under this Agreement.

3.03 **“As Is, Where Is”**

(1) The Purchaser acknowledges and agrees that it is purchasing the Purchased Shares on an “as is, where is” basis and on the basis that the Purchaser has conducted to its satisfaction an independent inspection, investigation and verification of the Purchased Shares (including a review of title), Business and all other relevant matters and has determined to proceed with the transaction contemplated herein and will accept the Purchased Shares at the Time of Closing in the then current state, condition, location, and amounts of the Purchased Shares and the Business.

(2) Except as otherwise expressly provided in Section 3.01, the Purchaser acknowledges and agrees that it has relied entirely and solely on its own investigations as to the matters set out above and in determining to purchase the Purchased Shares pursuant to this Agreement. For greater certainty, and without limitation to the foregoing, the Purchaser acknowledges and agrees that in entering into this Agreement, completing the transactions contemplated hereby, and taking any and all other actions, it has not in any manner whatsoever relied on any representation, warranty, covenant, commitment, statement or act, in each case whether express or implied, of the Receiver or any of its directors, officers, employees, agents, advisors or representatives, including, without limitation, as to title, liens or encumbrances, description, fitness for purpose, merchantability, quantity, condition, suitability, durability, assignability or marketability of the Purchased Shares or any assets or properties of the Business.

(3) The description of the Purchased Shares and the Business contained herein is for the purpose of identification only and the inclusion of any item in such description does not confirm the existence of any such items or that any such item is owned by KMG. Except as otherwise explicitly set forth in Section 3.01, no representation, warranty or condition has been given by the Receiver concerning the completeness or accuracy of such descriptions and the Purchaser acknowledges and agrees that any other representation, warranty, statements of any kind or nature, express or implied, (including any relating to the future or historical financial

condition, results of operations, prospects, assets or liabilities of KMG or the quality, quantity or condition of the Purchased Shares) are specifically disclaimed by the Receiver.

(4) Any documents, materials and information provided by or on behalf of the Receiver to the Purchaser with respect to the Purchased Shares or the Business (including any confidential information memorandums, management presentations, or material made available in the electronic data room) have been provided to the Purchaser solely to assist the Purchaser in undertaking its own due diligence, and the Receiver has not made and is not making any representations or warranties, implied or otherwise, to or for the benefit of the Purchaser as to the accuracy and completeness of any such documents, materials or information or the achievability of any valuations, estimates or projections. The Purchaser acknowledges that it has not and will not rely upon any such documents, materials or information in any manner, whether as a substitute for or supplementary to its own due diligence, searches, inspections and evaluations. The Receiver, its Affiliates and their respective directors, officers, employees, agents and advisors shall not be liable for any inaccuracy, incompleteness or subsequent changes to any such documents, materials or information.

ARTICLE 4 - COVENANTS

4.01 Covenants of the Receiver

(1) The Receiver will ensure that the representations and warranties of the Receiver set out in Section 3.01 are true and correct in all material respects at the Time of Closing and use reasonable commercial efforts to ensure that the conditions of closing for the benefit of the Purchaser set out in Section 5.01 over which it has reasonable control have been performed or complied with in all material respects by the Time of Closing.

(2) The Receiver shall: (a) file with the Court, as soon as practicable after its execution and delivery of this Agreement, a motion seeking the Court's issuance of the Approval and Vesting Order; (b) promptly provide Paul Heaney and Dina Subhani (collectively, the "**Management Team**") with a copy of such motion; and (c) request that the Management Team consent to the purchase of the Purchased Shares; provided that the Receiver shall not be obligated to obtain such consent from the Management Team.

(3) The Receiver (or its duly authorised agents) will (at its own cost and expense) arrange for KMIL to remit to the relevant Tax Authority a loss of surrender consent in favour of the Company so as to permit the Company to make an appropriate claim for Group Relief in the year ended 31 December 2018 of £2,536,466 (or such amount that is required by the Company to reduce the Company's corporation tax liability to nil (after any other applicable tax credits such as double tax relief), based on the final tax computation) in respect of Tax losses of any other company within the Company's group immediately before the Time of Closing which can be utilised by the Company as at the Time of Closing insofar as such Tax losses are available to be surrendered and that the Administrators of KMIL remain in office.

(4) The Receiver shall, pursuant to the Company Direction (as defined below) and on behalf of the Company, apply the KMG Intercompany Debt Settlement promptly after the Time of Closing. The KMG Intercompany Debt Settlement will be applied first to the repayment of principal owing and then to accrued and unpaid interest, if any.

4.02 Covenants of the Purchaser

(1) The Purchaser will ensure that the representations and warranties of the Purchaser set out in Section 3.02 are true and correct in all material respects at the Time of Closing and use reasonable commercial efforts to ensure that the conditions of closing for the benefit of the Receiver set out in Section 5.02 over which it has reasonable control have been performed or complied with in all material respects by the Time of Closing.

(2) The Purchaser will provide the Receiver with all information within its possession or control that the Receiver may reasonably request to assist the Receiver in obtaining the Approval and Vesting Order.

(3) The Purchaser will preserve the Books and Records delivered to it at the Time of Closing for a period of six years from the Closing Date, or for such other period as is required by any Applicable Law, and will permit the Receiver and their respective authorized representatives reasonable access thereto in connection with the affairs of KMG, and the right to make copies thereof at their expense.

(4) The Purchaser will comply with the *Personal Information Protection and Electronic Documents Act* (Canada) and other similar Applicable Laws relating to privacy and the protection of Personal Information in respect of the Books and Records, Contracts and any other business and financial records related to the Purchased Shares and the Business.

(5) At the Time of Closing, the Purchaser shall advance the sum of £578,652.42 (the “**KMG Intercompany Debt Settlement**”) to the Company, which shall be paid by the Purchaser to the Receiver by wire transfer of immediately available funds to the Collection Account, to be held by the Receiver in trust for the Company and to be disbursed in accordance with the Company Direction. Payment of the KMG Intercompany Debt Settlement in accordance with this Section 4.02(5) shall constitute a good and valid discharge of the Company's obligations to pay the sum in question and the Purchaser shall not be concerned to see the application of the monies so paid.

(6) All payments in respect of the Purchase Price and the KMG Intercompany Debt Settlement shall be made free and clear of and without any deduction or withholding for or on account of any present and future Taxes or governmental charges, and all liabilities with respect thereto, imposed by Canada, Ireland, the United Kingdom, any other government, or any political subdivision or taxing authority thereof or therein (all such Taxes being hereinafter referred to as “**Withholding Taxes**”), except as required by Applicable Law. If any Withholding Taxes are imposed and required by Applicable Law to be deducted or withheld from any amount payable to the Receiver or the Company hereunder by the Purchaser or its Affiliate, then the Purchaser or such Affiliate, as applicable, shall (i) increase the amount of such payment so that

the Receiver or the Company, as applicable, will receive a net amount (after deduction of all Withholding Taxes) equal to the amount due hereunder, and (ii) withhold and remit such Withholding Taxes to the appropriate taxing authority for the account of the Receiver or the Company, as applicable, prior to the date on which penalties attach thereto or interest accrues thereon.

ARTICLE 5- CONDITIONS AND TERMINATION

5.01 Conditions for the Benefit of the Purchaser

The sale by the Receiver and the purchase by the Purchaser of the Purchased Shares is subject to the following conditions, which are for the exclusive benefit of the Purchaser and which are to be performed or complied with at or prior to the Time of Closing:

- (a) the representations and warranties of the Receiver set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;
- (b) the Receiver will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Receiver at or prior to the Time of Closing;
- (c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the sale and purchase of the Purchased Shares;
- (d) the Receivership Order will not have been stayed, varied in any material respect, set aside or appealed (or any such appeal shall have been dismissed with no further appeal therefrom); and
- (e) the Approval and Vesting Order will have been granted by the Court and such order will not have been stayed, varied in any material respect, set aside or appealed (or any such appeal shall have been dismissed with no further appeal therefrom).

5.02 Conditions for the Benefit of the Receiver

The sale by the Receiver and the purchase by the Purchaser of the Purchased Shares is subject to the following conditions, which are for the exclusive benefit of the Receiver and which are to be performed or complied with at or prior to the Time of Closing:

- (a) the representations and warranties of the Purchaser set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;
- (b) the Purchaser will have performed or complied in all material respects with all of

the obligations and covenants of this Agreement to be performed or complied with by the Purchaser at or prior to the Time of Closing;

- (c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the purchase and sale of the Purchased Shares;
- (d) the Receivership Order will not have been stayed, varied in any material respect, set aside or appealed (or any such appeal shall have been dismissed with no further appeal therefrom); and
- (e) the Approval and Vesting Order will have been granted by the Court and such order will not have been stayed, varied in any material respect, set aside or appealed (or any such appeal shall have been dismissed with no further appeal therefrom).

5.03 **Waiver of Condition**

The Purchaser, in the case of a condition set out in Section 5.01 (other than Sections 5.01(d) and 5.01(e)), and the Receiver, in the case of a condition set out in Section 5.02 (other than Section 5.02(d) and 5.02(e)), will have the exclusive right to waive the performance or compliance of such condition in whole or in part and on such terms as may be agreed upon without prejudice to any of its rights in the event of non-performance or non-compliance with any other condition in whole or in part. Any such waiver will not constitute a waiver of any other conditions in favour of the waiving party. Such waiving party will retain the right to complete the purchase and sale of the Purchased Shares herein contemplated.

5.04 **Termination**

This Agreement may be terminated, by notice given prior to or on the Closing Date:

- (a) by the Receiver or the Purchaser if a material breach of any representation, warranty, covenant, obligation or other provision of this Agreement has been committed by the other party and such breach has not been waived or cured within five days following the date on which the non-breaching party notifies the other party of such breach;
- (b) by the Purchaser if a condition in Section 5.01 becomes impossible to satisfy prior to April 30, 2020 or such later date as the parties may determine (the “**Outside Date**”) (other than through the failure of the Purchaser to comply with its obligations under this Agreement) and the Purchaser has not waived such condition;
- (c) by the Receiver if a condition in Section 5.02 becomes impossible to satisfy prior to the Outside Date (other than through the failure of the Receiver to comply with its obligations under this Agreement) and the Receiver has not waived such condition;

- (d) by written agreement of the Purchaser and the Receiver;
- (e) by the Receiver or the Purchaser if the completion of the sale of Purchased Shares herein contemplated has not occurred (other than through the failure of the party seeking termination to comply with its obligations under this Agreement) on or before the Outside Date.

5.05 **Effect of Termination**

Each party's right of termination under Section 5.04 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 5.04, all documents delivered in escrow pending the Time of Closing shall automatically terminate, the release of the KMIL Intercompany Debt shall be deemed to be void *ab initio*, and all further obligations of the parties under this Agreement will terminate, except that the obligations in Sections 6.04, 8.03 and 8.04 will survive; provided, however, that if this Agreement is terminated by a party because of a material breach of a representation or warranty, covenant, obligation or other provision of this Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired, subject always to the provisions of Sections 1.04 and 3.03.

ARTICLE 6 - CLOSING ARRANGEMENTS

6.01 **Closing**

The sale and purchase of the Purchased Shares will be completed at the Time of Closing at the offices of Dentons Canada LLP, 77 King Street West, Suite 400, Toronto-Dominion Centre, Toronto, Ontario M5K 0A1.

6.02 **Receiver's Closing Deliveries**

On or before the Time of Closing, the Receiver will deliver or cause to be delivered to the Purchaser the following:

- (a) a certificate executed by the Receiver confirming that the representations and warranties of the Receiver in this Agreement are true and correct in all material respects as of the Time of Closing and that the obligations of the Receiver to be performed prior to the Time of Closing have been performed in all material respects;
- (b) a stock transfer form of the Purchased Shares duly signed by Receiver, on behalf of KMG, in favour of the Purchaser;

- (c) if available, the original share certificate(s) in respect of the Purchased Shares, issued in the name of KMG, together with a power of attorney executed by the Receiver transferring the Purchased Shares to the Purchaser;
- (d) executed terminations and discharges, and acknowledgement and consent to the release of the KMIL Intercompany Debt, from the Senior Agent as contemplated by Section 2.06, in form and substance satisfactory to the parties, acting reasonably;
- (e) a copy of the issued and entered Approval and Vesting Order;
- (f) a release from KMG in favour of the Company, substantially in the form attached as Exhibit C hereto;
- (g) a release from KMIL in favour of the Company, substantially in the form attached as Exhibit D hereto;
- (h) to the extent in the possession or control of the Receiver, the minute books of the Company;
- (i) a direction from the Company (the “**Company Direction**”) substantially in the form attached as Exhibit E hereto, directing the Receiver, immediately following the Time of Closing, to use the KMG Intercompany Debt Settlement to pay the KMG Intercompany Debt; and
- (j) such other documents or instruments as contemplated or required to be delivered by the Receiver pursuant to this Agreement, all of which shall be in form and substance satisfactory to the parties, acting reasonably.

6.03 **Purchaser’s Closing Deliveries**

On or before the Time of Closing, the Purchaser will:

- (a) pay the Purchase Price to the Receiver as contemplated by Section 2.04;
- (b) pay the KMG Intercompany Debt Settlement to the Receiver, on behalf of the Company, as contemplated by Section 4.02(5);
- (c) deliver a certificate executed by a senior officer of the Purchaser confirming that the representations and warranties of the Purchaser in this Agreement are true and correct in all material respects as of the Time of Closing and that the obligations of the Purchaser to be performed prior to the Time of Closing have been performed in all material respects;
- (d) deliver or cause to be delivered executed releases from the Purchaser and the

Company as contemplated by Section 2.06; and

- (e) deliver or cause to be delivered such other documents or instruments as contemplated or required to be delivered by the Purchaser pursuant to this Agreement, all of which shall be in form and substance satisfactory to the parties, acting reasonably.

6.04 **Confidentiality**

(a) Subject to the terms of the Non-Disclosure Agreement, if applicable, both prior to the Closing Date and for a period of two years thereafter (or, if the sale and purchase of the Purchased Shares hereunder fails to occur for whatever reason, for a period of two years after the date of this Agreement), except as otherwise set forth in this Agreement, the Purchaser agrees to keep confidential and not to disclose the Confidential Information to any person and to use reasonable care in protecting the confidentiality of the Confidential Information.

(b) The Purchaser may disclose Confidential Information only:

- (i) to its Representatives engaged for the transactions contemplated by this Agreement and to its internal auditors to comply with internal audit or compliance policies; provided that (A) such Confidential Information shall not be used for any other purpose, (B) the Purchaser informs such Representatives and internal auditors, as applicable, of the confidential nature of such information and directs them to treat such information in accordance with the terms of this Agreement, and (C) the Purchaser shall be responsible for any breach of this Agreement that results from the actions or omissions of such Representatives or internal auditors;
- (ii) to the extent required by applicable law, or the rules of any applicable stock exchange, or in connection with any legal proceedings or otherwise requested by any governmental agency, regulatory authority (including, any self-regulatory organization claiming to have jurisdiction) or any bank examiner; provided that if the Purchaser discloses any Confidential Information to a person pursuant to this paragraph (ii), then the Purchaser will, to the extent not prohibited by any applicable law: (A) inform such person of the confidential nature of such information; and (B) notify the Receiver of such disclosure promptly; provided, however, that before making such disclosure, the Purchaser, to the extent permitted by applicable law, shall (1) give the Receiver written notice to allow the Receiver a reasonable opportunity either to seek a protective order or other appropriate remedy (at the Receiver's sole cost and expense) or to waive the Purchaser's compliance with its obligations under this agreement, (2) reasonably cooperate with the Receiver in its efforts to obtain a protective order or other appropriate remedy (at the Receiver's sole cost and expense), (3) disclose only that portion of the Confidential Information, having consulted with its counsel, that the Purchaser is

legally required to disclose, and (4) use commercially reasonable efforts to obtain reliable written assurance from the third party that the Confidential Information will be kept confidential.

(c) If the sale and purchase of the Purchased Shares hereunder fails to occur for whatever reason, the Purchaser will return to the Receiver all documents, records and all other information or data relating to KMG or to the Business which the Purchaser obtained pursuant to this Agreement.

(d) The Purchaser acknowledges that KMG is a “reporting issuer” (as such term is defined under Canadian securities laws) in at least one province or territory of Canada and that the Confidential Information may include material non-public information, including material non-public information concerning KMG and its Affiliates. The Purchaser acknowledges that it and its Representatives are subject to restrictions imposed by applicable securities laws on: (i) the purchase and sale of securities of an issuer while in the possession of material non-public information concerning that issuer; and (ii) the communication of such material non-public information to any other person.

6.05 **Delivery of Receiver’s Certificate**

When the Receiver is satisfied that all conditions hereunder have been satisfied or waived, and all documents to be delivered under the terms hereof have been delivered at or before the Time of Closing, the Receiver will deliver an executed copy of the Receiver’s Certificate to the Purchaser’s counsel in escrow upon the sole condition of receipt by the Receiver of the amounts referred to in Section 2.04. All of the foregoing amounts will then be paid by the Purchaser, by wire transfer of immediately available funds to the Collection Account. Following written confirmation of receipt by the Receiver of such funds (or such person directed by the Receiver to receive such funds), the Receiver’s Certificate will be released from escrow to the Purchaser. Upon such delivery, the closing will be deemed to have occurred at the Time of Closing. The Receiver will file a copy of the Receiver’s Certificate with the Court on the next Business Day following the Closing Date and provide evidence of such filing to the Purchaser.

ARTICLE 7- SURVIVAL

7.01 **Survival**

No covenants, representations and warranties of each party contained in this Agreement will survive the completion of the sale and purchase of the Purchased Shares hereunder, except for the covenants that by their terms are to be satisfied or survive after the Time of Closing (including without limitation Sections 4.02(3), 8.03 and 8.04), which covenants will continue in full force and effect in accordance with their terms.

ARTICLE 8 - GENERAL

8.01 **Further Assurances**

Each of the Receiver and the Purchaser will from time to time at the request and expense of the other execute and deliver all such further documents and instruments and do all acts and things as the other party may, either before or after the Closing Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

8.02 **Time of the Essence**

Time is of the essence of this Agreement.

8.03 **Fees, Commissions and other Costs and Expenses**

Each of the Receiver and the Purchaser will pay its respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred.

8.04 **Public Announcements**

Except as required by Applicable Law or the rules of any stock exchange, or as may be determined by the Receiver to be necessary or appropriate for its administration of the receivership estate or its duties and obligations as a court-appointed official in respect thereof, no public announcement or press release concerning the sale and purchase of the Purchased Shares may be made by the Receiver or the Purchaser without the prior consent and joint approval of the Receiver and the Purchaser.

8.05 **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties.

8.06 **Entire Agreement**

This Agreement (including the agreements contemplated hereby) and any Non-Disclosure Agreement, if applicable, constitute the entire agreement between the parties with respect to the subject matter hereof and such agreements cancel and supersede any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement (including the agreements contemplated hereby) or in any Non-Disclosure Agreement, if applicable.

8.07 **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and

duly executed by both of the parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

8.08 **Assignment**

This Agreement may not be assigned by the Receiver or the Purchaser without the written consent of the other provided that the Purchaser may assign this Agreement without the consent of the Receiver to an Affiliate of the Purchaser provided that: (i) such Affiliate enters into a written agreement with the Receiver to be bound by the provisions of this Agreement in all respects and to the same extent as the Purchaser is bound, and (ii) that the Purchaser will continue to be bound by all the obligations hereunder as if such assignment had not occurred and perform such obligations to the extent that such Affiliate fails to do so.

8.09 **Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery or by electronic means of communication addressed to the recipient as follows:

To the Receiver:

FTI Consulting Canada Inc.
in its capacity as receiver of Kew Media Group Inc. and
Kew Media International (Canada) Inc.
79 Wellington Street West, Suite 2010
Toronto, Ontario M5K 1G8

Email: nigel.meakin@fticonsulting.com and
toni.vanderlaan@fticonsulting.com

Attention: Nigel Meakin and Toni Vanderlaan

With copies to (which will not constitute notice)

Torys LLP
79 Wellington Street West, Suite 3300
Toronto, Ontario M5K 1N2

Email: dbish@torys.com
Attention: David Bish

Dentons Canada LLP
77 King Street West, 4th Floor
Toronto, Ontario M5K 0A1

Email: kenneth.kraft@dentons.com

Attention: Kenneth Kraft

To the Purchaser:

Beyond Entertainment Limited (Company number 389342)
78 Merrion Square South
Dublin 2, D02 R251

Email: mikael@beyond.com.au

Attention: Mikael Borglund

With copies to (which will not constitute notice)

Loopstra Nixon LLP
135 Queen's Plate Drive
Toronto, Ontario M9W 6V9

Email: gphoenix@loonix.com

Attention: Graham Phoenix

Taylor Wessing LLP
5 New Street Square
London
EC4A 3TW

Email: r.holden@taylorwessing.com

Attention: Russell Holden

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

8.10 **Remedies Cumulative**

The right and remedies of the parties under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

8.11 **No Third Party Beneficiaries**

This Agreement is solely for the benefit of:

- (a) the Receiver, and its successors and permitted assigns, with respect to the obligations of the Purchaser under this Agreement, and
- (b) the Purchaser, and its successors and permitted assigns, with respect to the obligations of the Receiver under this Agreement,

and this Agreement will not be deemed to confer upon or give to any other person any Claim or other right or remedy.

8.12 **Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

8.13 **Attornment**

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Receiver and the Purchaser each attorns to the jurisdiction of the courts of the Province of Ontario.

8.14 **Appointment of Agent for Service**

The Purchaser nominates, constitutes and appoints Loopstra Nixon LLP, Barristers and Solicitors, of the City of Toronto its true and lawful agent to accept service of process and to receive all lawful notices in respect of any action arising under this Agreement (other than any notice that is to be given by one party to another pursuant to Section 8.09). Until due and lawful notice of the appointment of another and subsequent agent in the Province of Ontario has been given to and accepted by the Receiver, service of process or of papers and such notices upon Loopstra Nixon LLP will be accepted by the Purchaser as sufficient service.

8.15 **Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect.

8.16 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

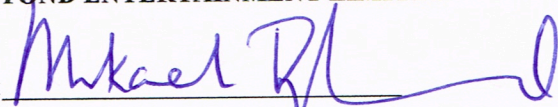
8.17 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

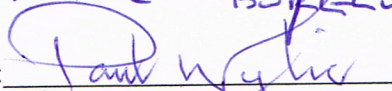
[signature page follows]

IN WITNESS WHEREOF the parties have executed this Agreement.

BEYOND ENTERTAINMENT LIMITED

By: 

MIKAEL BORRELLUND

By: 

PAUL WYLIE

FTI CONSULTING CANADA INC., solely in its capacity as receiver and manager of KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC., and not in its personal, corporate or any other capacity

By: _____

By: _____

IN WITNESS WHEREOF the parties have executed this Agreement.

BEYOND ENTERTAINMENT LIMITED

By: _____

By: _____

**FTI CONSULTING CANADA INC., solely
in its capacity as receiver and manager of
KEW MEDIA GROUP INC. and KEW
MEDIA INTERNATIONAL (CANADA)
INC., and not in its personal, corporate or
any other capacity**

By:  _____

Nigel D. Meakin
Senior Managing Director

Exhibit A

Form of Approval and Vesting Order

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) WEEKDAY, THE #
)
JUSTICE) DAY OF APRIL, 2020
)

B E T W E E N:

TRUIST BANK, AS AGENT

Applicant

- and -

KEW MEDIA GROUP INC., KEW MEDIA INTERNATIONAL (CANADA) INC.

and ARCHITECT FILMS INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C-43, AS AMENDED

APPROVAL AND VESTING ORDER

THIS MOTION, made by FTI CONSULTING CANADA INC. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Kew Media Group Inc. ("KMG") and Kew Media International (Canada) Inc. ("KMICI" and collectively with KMG, the "Debtors") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER] (the "Purchaser") dated [DATE], 2020, and appended to the Report of the Receiver

dated [DATE], 2020 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE], 2020, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. [For greater certainty, the Receiver is not bound by any prior contractual agreement by KMG not to enter into or complete the Transaction or to do so only with the consent of a third party.] The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Koehenen dated February 28, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii)

those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of KMG and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of KMG;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of KMG and shall not be void or voidable by creditors of KMG, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial

legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom, the United States, or elsewhere to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-20-00637081-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

TRUIST BANK, AS AGENT

Applicant

- and -

KEW MEDIA GROUP INC., KEW MEDIA INTERNATIONAL (CANADA) INC.

and ARCHITECT FILMS INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C-43, AS AMENDED

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], 2020, FTI CONSULTING CANADA INC. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Kew Media Group Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated April ____, 2020, the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT], 2020 (the "Sale

Agreement") between the Receiver and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**FTI CONSULTING CANADA INC., in its
capacity as Receiver of the undertaking,
property and assets of KEW MEDIA GROUP
INC., and not in its personal capacity**

Per: _____

Name:

Title:

[add backpage to receiver's certificate]

Schedule B – Purchased Assets

[set out shares in TCB being sold]

Schedule C – Claims to be deleted and expunged from Personal Property Registry

Schedule D – Permitted Encumbrances

(unaffected by the Vesting Order)

[note to draft: likely to be nil or just deleted and then make corresponding change to order]

[add backpage to order]

Exhibit B

Collection Account Details

Business Service Centre

4715 Tahoe Blvd.

Mississauga, Ontario L4W 0B4



To Whom It May Concern:

Re:

We provide the following banking information for the above company. Please feel free to contact me if you have any questions.

For Wire Transfers from Canada or International:

Beneficiary Name:

Beneficiary Address:

CAD Account # (ensure full 12-digit account number is used)

Final Receiving Bank Name: The Bank of Nova Scotia

Final Receiving Bank Address:

Final Receiving Bank SWIFT: NOSCCATT (Note: if used, the Bank Address will be Scotiabank Head Office)

Final Receiving Bank Routing Code: //CC0002

For EFT/EDI Payments:

CAD Account # (ensure full 12-digit account number is used)

Branch Location Transit:

Institution Number: 002

Receiving Bank Name: The Bank of Nova Scotia

Regards,

A handwritten signature in black ink, appearing to read 'James'.

Scotiabank Business Service Centre

P:

E:

Exhibit C

Form of KMG Release

RELEASE

TO: TCB Media Rights Ltd (the "**Releasee**")

IN CONSIDERATION of the mutual covenants set out the share purchase agreement dated March 31, 2020 (the "**Sale Agreement**") between Beyond International Limited and FTI Consulting Canada Inc., in its capacity as Court-appointed receiver and manager (in such capacity, the "**Receiver**") of Kew Media Group Inc. ("**KMG**") and not in any personal, corporate or other capacity, and for the payment of CAD\$1.00 by the Releasee to the Receiver (the receipt of which is hereby acknowledged) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Receiver, on behalf of each of the KMG and itself, hereby releases and forever discharges the Releasee of and from all manner of claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts and demands whatsoever, known or unknown, actual or contingent, which either KMG or the Receiver has, has had or may hereafter have against the Releasee for or by reason of or in any way arising out of any cause, matter or thing whatsoever, occurring prior to or existing as at the Closing Time , provided, however, that nothing herein shall release the Releasee from its obligation to pay the KMG Intercompany Debt to the Receiver as contemplated by the Sale Agreement; provided further, however, that upon receipt by the Receiver of the KMG Intercompany Debt Settlement and the indefeasible payment of the KMG Intercompany Debt using such KMG Intercompany Debt Settlement forthwith following the closing of the purchase and sale transaction contemplated by the Sale Agreement, the KMG Intercompany Debt will be deemed to be satisfied in full.

And for the same consideration, the Receiver hereby:

- (a) covenants and agrees not to join, assist, aid or act in concert in any manner whatsoever with any other person, firm or corporation in the making of any claim or demand or the taking or continuing of any proceeding or action against the Releasee or the making of any claim or demand or the taking or continuing of any proceeding or action against any other person or entity in respect of the matters and claims hereby released who may claim contribution or indemnity from the Releasee; and
- (b) represents, warrants and covenants that the Receiver has not assigned and will not assign to any other person or entity any of the actions, causes of action, suits, demands, debts, accounts, covenants, contracts, damages and other claims which the undersigned is releasing herein.

The releases and discharges contemplated herein will become effective immediately upon the closing of the Purchased Shares.

Capitalized terms used but not defined herein have the meanings given to them in the Sale Agreement.

If any provision of this Release or any part of any provision of this Release is held under any circumstances to be invalid or unenforceable in any jurisdiction, then (i) such provision or part thereof shall, with respect to such circumstances and in such jurisdiction, be deemed amended to conform to applicable laws so as to be valid and enforceable to the fullest possible extent, (ii) the invalidity or unenforceability of such provision or part thereof under such circumstances and in such jurisdiction shall not affect the validity or enforceability of such provision or part thereof under any other circumstances or in any other jurisdiction, and (iii) such

invalidity or unenforceability of such provision or part thereof shall not affect the validity or enforceability of the remainder of such provision or the validity or enforceability of any other provision of this Release. Each provision of this Release is separable from every other provision of this Release, and each provision of this Release is separable from every other part of such provision.

This Release shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

The provisions hereof shall enure to the benefit of the Releasee and its successors and assigns and shall be binding upon the Receiver and its successors and assigns.

This Release may be executed and delivered by electronic transmission and in any number of counterparts and all such electronic copies and counterparts shall be deemed to be an original hereof and for all purposes constitute one and the same instrument and shall be binding on the parties hereto.

[EXECUTIONS ON SEPARATE PAGE]

IN WITNESS WHEREOF the undersigned has executed this Release this ____ day of April, 2020.

FTI CONSULTING CANADA INC., solely in its capacity as Court-appointed receiver and manager of Kew Media Group Inc. and Kew Media International (Canada) Inc., and not in any personal, corporate or other capacity

Per: _____
Authorized signatory

Exhibit D

Form of KMIL Release

DEED OF RELEASE

This deed of release ("Release") is entered into by

1. Kew Media International Limited (in administration), a company registered in England and Wales under number 03040413 whose registered office is at 151 Shaftesbury Avenue Shaftesbury Avenue, London, England, WC2H 8AL) ("**KMIL**"), acting by its administrators Andrew Johnson and Simon Kirkhope, insolvency practitioners of FTI Consulting LLP, 200 Aldersgate, Aldersgate Street, London, EC1A 4HD (the "**Administrators**"); and
2. The Administrators

In favour of: TCB Media Rights Ltd (the "**Releasee**")

Capitalized terms used but not defined herein have the meanings given to them in the Sale Agreement.

This deed of release is being provided in connection with the share purchase agreement dated March 31, 2020 (the "**Sale Agreement**") between Beyond International Limited ("**Beyond**") and FTI Consulting Canada Inc., in its capacity as Court-appointed receiver and manager (in such capacity, the "**Receiver**") of Kew Media Group Inc. ("**KMG**") pursuant to which Beyond has agreed to acquire the entire issued share capital of the Releasee.

The Releasee is indebted to KMIL (in administration), an indirect wholly owned subsidiary of KMG in the sum of £8,032,539.12 (the "**KMIL Intercompany Debt**"). In their capacity as joint administrators of KMIL, the Administrators, on behalf of KMIL, hereby irrevocably and unconditionally release and forever discharge the Releasee of and from, to the extent permitted by law and regulation: (i) all liability to pay the KMIL Intercompany Debt; and (ii) all manner of claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts and demands whatsoever, known or unknown, actual or contingent (including, for the avoidance of doubt, in respect of the KMIL Intercompany Debt), which either KMIL or the Administrators have, have had or may hereafter have against the Releasee for or by reason of or in any way arising out of any cause, matter or thing whatsoever, occurring prior to or existing as at the Closing Time.

The Administrators hereby:

- (a) covenant and agree not to join, assist, aid or act in concert in any manner whatsoever with any other person, firm or corporation in the making of any claim or demand or the taking or continuing of any proceeding or action against the Releasee or the making of any claim or demand or the taking or continuing of any proceeding or action against any other person or entity in respect of the matters and claims hereby released who may claim contribution or indemnity from the Releasee; and
- (b) represent, warrant and covenant that the Administrators have not assigned and will not assign to any other person or entity any of the actions, causes of action, suits, demands, debts, accounts, covenants, contracts, damages and other claims which the undersigned is releasing herein.

The releases and discharges contemplated herein will become effective immediately prior to the closing of the Purchased Shares pursuant and subject to the terms of the Sale Agreement.

The Administrators shall incur no personal liability under, or by virtue of, this deed, nor in relation to any related matter or claim howsoever, whenever, and wherever arising, and whether such claim be formulated in contract or tort or both or by reference to any other remedy or right, and in whatever jurisdiction or forum. In particular the Administrators shall not be liable on any deed or document executed with a view, or for the purpose, of putting this deed into effect whether or not such deed or document so provides in its terms and the Administrators shall be entitled at any time to have any such deeds or documents amended to include an exclusion of personal liability in the above terms.

The Administrators are agents of KMIL and shall incur no personal liability by reason of their acting in that capacity.

The exclusion of liability contained in this deed is in addition to and not in substitution for any right of indemnity or relief or remedy otherwise available and will continue notwithstanding the termination of this deed or closing of the Purchased Shares in whole or in part.

If any provision of this Release or any part of any provision of this Release is held under any circumstances to be invalid or unenforceable in any jurisdiction, then (i) such provision or part thereof shall, with respect to such circumstances and in such jurisdiction, be deemed amended to conform to applicable laws so as to be valid and enforceable to the fullest possible extent, (ii) the invalidity or unenforceability of such provision or part thereof under such circumstances and in such jurisdiction shall not affect the validity or enforceability of such provision or part thereof under any other circumstances or in any other jurisdiction, and (iii) such invalidity or unenforceability of such provision or part thereof shall not affect the validity or enforceability of the remainder of such provision or the validity or enforceability of any other provision of this Release. Each provision of this Release is separable from every other provision of this Release, and each provision of this Release is separable from every other part of such provision.

This Release shall be governed by the laws of England and Wales and each of the parties to this deed hereby submits to the exclusive jurisdiction of the English courts.

The provisions hereof shall enure to the benefit of the Releasee and its successors and assigns and shall be binding upon the Receiver and its successors and assigns.

This Release may be executed and delivered by electronic transmission and in any number of counterparts and all such electronic copies and counterparts shall be deemed to be an original hereof and for all purposes constitute one and the same instrument and shall be binding on the parties hereto.

[EXECUTIONS ON SEPARATE PAGE]

IN WITNESS WHEREOF the undersigned has executed and delivered this Release as a deed this _____ day of April, 2020.

Kew Media International Limited (in administration)

EXECUTED and **DELIVERED** as a deed by)
Kew Media International Limited (in administration))
acting by its joint administrator)
Simon Kirkhope)
acting as agent and without personal liability)
on behalf of himself and Andrew Johnson,)
in the presence of:)

Simon Kirkhope

Signature of witness:

Name:

Address:

The Administrators

EXECUTED and **DELIVERED** as a deed)
by **Simon Kirkhope**)
in his capacity as administrator of)
Kew Media International Limited (in administration))
for and on behalf of Andrew Johnson and himself)
without personal liability and solely for the purpose of)
obtaining the benefit of the provisions of this deed)
in the presence of:)

Simon Kirkhope

Signature of witness:

Name:

Address:

Exhibit E

Form of Company Direction

IRREVOCABLE DIRECTION

FROM: TCB MEDIA RIGHTS LTD (the “**Company**”)
TO: FTI CONSULTING CANADA INC., solely in its capacity as Court-appointed receiver and manager of KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC., and not in its personal, corporate or any other capacity (in such capacity, the “**Receiver**”)
RE: Release of Funds to Pay Indebtedness of the Company to Kew Media Group Inc. (“**KMG**”)

WHEREAS the Receiver entered into a share purchase dated March 30, 2020 (the “**SPA**”), pursuant to which the entire issued share capital of the Company was to be sold to ***** (the “**Purchaser**”).

AND WHEREAS pursuant to the terms of the SPA, the Purchaser paid to the Receiver the amount of £578,652.42, in trust (the “**KMG Intercompany Debt Settlement**”), representing the amount due and owing by the Company to KMG as at the Closing Date (*as defined in the SPA*).

AND WHEREAS pursuant to the terms of the SPA, immediately following the closing of the transaction contemplated by the SPA (the “**Transaction**”), the Receiver is to, upon the direction of the Company, release the KMG Intercompany Debt Settlement from trust and apply the same to satisfy the **KMG Intercompany Debt** (*as defined in the SPA*) in full.

AND WHEREAS the Transaction has been completed.

NOW THEREFORE, the undersigned, being the Company, hereby:

- (a) unconditionally and irrevocably authorizes and the Receiver to release the KMG Intercompany Debt Settlement from trust and to apply the same to pay the KMG Intercompany Debt in full, and this irrevocable direction shall be the Receiver’s good, sufficient and irrevocable authority for so doing; and
- (b) acknowledges and agrees that a photocopy, pdf, or telefaxed copy of this executed Irrevocable Direction may be relied upon by the Receiver to the same extent as if it were an original executed version.

DATED this _____ day of April, 2020.

TCB MEDIA RIGHTS LTD

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have the authority to bind the corporation.

Appendix C

Borglund Email dated April 6, 2020

From: [Meakin, Nigel](#)
To: [Meakin, Nigel](#)
Subject: FW: [EXTERNAL] Kew Media Group: TCB Media Rights Limited: Beyond Entertainment Ltd
Date: Monday, April 6, 2020 9:11:51 AM

From: Mikael Borglund <mikael@beyond.com.au>
Sent: Monday, April 6, 2020 8:14 AM
To: Meakin, Nigel <Nigel.Meakin@fticonsulting.com>
Cc: dbish@torys.com; Graham Phoenix <gphoenix@loonix.com>; Paul Wylie <paul_wylie@beyond.com.au>
Subject: [EXTERNAL] Kew Media Group: TCB Media Rights Limited: Beyond Entertainment Ltd

Mr. Meakin,

Further to your request for an update through our counsel, please be advised that Beyond has been in direct negotiations with the current management of TCB Media Rights (Paul Heaney and Dina Subhani) since February 2020.

These negotiations have been with a view to continuing their employment after the acquisition, not only in respect of the TCB portfolio but also leading Beyond's existing television distribution business when combined with TCB. The terms of the proposed employment that we have provided to Paul are largely on the same terms as they exist with TCB, with an increase of over █████ in base salary with eligibility to participate in employee share plans and other incentive programs. Additionally, the proposals provide that Paul would sit as a director and in the merged business (Beyond Entertainment Limited). As well, as a specific incentive, the proposals provide for Paul and Dina to receive equity (employee share scheme) in the Australian publicly listed company Beyond International Limited that would make them large shareholders in the public company (top █████). (As an aside, the proposed terms provide for certain other key TCB management team members to be issued equity as well under the employee share scheme, as a sort of "jump start" into the employee share scheme).

As discussed, Beyond has had every intention of working with the existing TCB team. The proposed employment strategy going forward represents more of a business marriage than an acquisition. We believed discussions on this point were going well. Paul had forwarded our last term sheet sent 3 April 2020 to his lawyers for review.

For the reasons above, to hear that Paul has retained counsel in Canada to possibly oppose the approval of the sale is concerning. Not only is it contrary to our current discussions but, following the completion of our diligence on 13 March 2020, Paul has advised me that he and Dina were 100% in favour of Beyond acquiring TCB from the Receiver.

In any event, we are moving forward regardless. Ideally, it will be with key members of the existing TCB team if we can agree mutually acceptable terms going forward.

Regards,

Mikael
Mikael Borglund
Chief Executive Officer & Managing Director
Beyond International Limited

109 Reserve Road
Artarmon NSW 2064 Australia
Ph: +61 2 9437 2000
mikael_borglund@beyond.com.au

Appendix D

Heaney Email dated April 1, 2020

From: [Paul Heaney](#)
To: [Meakin, Nigel](#)
Cc: [Kirkhope, Simon](#); [Dina Subhani](#); [Alan Gar](#)
Subject: [EXTERNAL] Re: KMG - TCB Share Sale
Date: Wednesday, April 1, 2020 3:42:18 PM

Nigel,

I have a number of concerns about the sale of TCB to Beyond Entertainment, which I am disappointed appears to have proceeded without my express consent.

First, I am concerned that Beyond is not financially secure. With just some rudimentary online due diligence it seems that the group is currently experiencing material financial hardship and an announcement was made just yesterday confirming that there have been office closures and that staff and executives have been asked to take pay cuts. It appears on the face of it that the COVID-19 pandemic may call into question the group's future existence. Whilst I accept your only concern is Beyond's ability to fund the purchase of the shares, as directors of the company our wider concern for the business and our staff is that we may simply be swapping one insolvent owner for another. We have no interest in repeating that experience.

Second, despite requests for information, I am concerned about the continued lack of clarity around Beyond's plans for the company post acquisition including proposed employment terms for the staff and the availability of future acquisition funding.

Given this uncertainty I am afraid I am simply unable at this time to give my consent to the sale pursuant to section 6.8(b) of the share purchase agreement.

Suffice to say I disagree with your interpretation of the consent rights and believe them to be both valid and enforceable and my lawyers are taking urgent advice in Canada. I would therefore request that you provide an undertaking by return that you will raise these issues with the court and show them a copy of this email and furthermore that you will provide me with a copy of the court application when it is issued and give me at least 2 business days written notice of any relevant court hearing date.

Best
Paul

From: "Meakin, Nigel" <Nigel.Meakin@fticonsulting.com>
Date: Wednesday, 1 April 2020 at 03:36
To: Paul Heaney <paul.heaney@tcbmediarights.com>
Cc: "Kirkhope, Simon" <Simon.Kirkhope@fticonsulting.com>
Subject: KMG - TCB Share Sale

Paul,

As you know, we have been in discussions with two interested parties regarding the sale of TCB and a deadline of March 31, 2020, for execution of an agreement had been set by the Receiver and communicated to both interested parties. After careful consideration of the available options, the current state of the negotiations with each of the interested parties and the relative purchase prices, the Receiver has selected Beyond Entertainment Limited as the successful bidder and has today executed a Share Purchase Agreement (the “Beyond SPA”).

The Receiver is aware of the Share Purchase Agreement dated October 10, 2017, between Kew Media Group Inc., yourself and Dina and TCB Media Rights Ltd. and the consent rights set out in Section 6.8(b) of that agreement. In the Receiver’s view: (i) contractual restrictions on the sale of property that is subject to a court-appointed receivership, such as the consent rights, are not effective as against the receiver and (ii) in any event, the court has the jurisdiction to approve a sale transaction irrespective of any such contractual provisions. Having said that, it is our preference to deal consensually, if possible, with the consent issue. Accordingly, please provide your consent to the sale of the TCB shares to Beyond Entertainment pursuant to the Beyond SPA.

Kind regards

Nigel

Nigel Meakin

+1.416.649.8065 T | +1.416.258.7371 M

nigel.meakin@fticonsulting.com

Confidentiality Notice:

This email and any attachments may be confidential and protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the e-mail or any attachment is prohibited. If you have received this email in error, please notify us immediately by replying to the sender and then delete this copy and the reply from your system. Thank you for your cooperation.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 9TH
JUSTICE KOEHNEN) DAY OF APRIL, 2020

B E T W E E N:

TRUIST BANK, AS AGENT

Applicant

- and -

KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED***

APPROVAL AND VESTING ORDER

THIS MOTION, made by FTI CONSULTING CANADA INC. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Kew Media Group Inc. ("KMG") and Kew Media International (Canada) Inc. ("KMICI" and collectively with KMG, the "Debtors") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Beyond Entertainment Limited (the "Purchaser") dated March 31, 2020, and appended to the Report of the Receiver dated April 6, 2020 (the "Report"), and vesting in the Purchaser the Debtor's right, title

and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for each of the Receiver, and Truist Bank

no one appearing for any other person on the service list, although properly served as appears from the affidavit of Cathy Pellegrini sworn April 6, 2020, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. For greater certainty, the Receiver is not bound by any prior contractual agreement by KMG not to enter into or complete the Transaction or to do so only with the consent of a third party. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Koehenen dated February 28, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii)

those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of KMG and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of KMG;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of KMG and shall not be void or voidable by creditors of KMG, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial

legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom, the United States, or elsewhere to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-20-00637081-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

TRUIST BANK, AS AGENT

Applicant

- and -

KEW MEDIA GROUP INC., KEW MEDIA INTERNATIONAL (CANADA) INC.

and ARCHITECT FILMS INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C-43, AS AMENDED

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Koehnen of the Ontario Superior Court of Justice (the "Court") dated February 28, 2020, FTI CONSULTING CANADA INC. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Kew Media Group Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated April ____, 2020, the Court approved the agreement of purchase and sale made as of March 31, 2020 (the "Sale Agreement") between the

Receiver and Beyond Entertainment Limited (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 5.02 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 5.02 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**FTI CONSULTING CANADA INC., in its
capacity as Receiver of the undertaking,
property and assets of KEW MEDIA GROUP
INC., and not in its personal capacity**

Per: _____

Name:

Title:

<p>TRUIST BANK, AS AGENT</p> <p style="text-align: right;">Applicant</p> <p>-and-</p> <p>KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.</p> <p style="text-align: right;">Respondents</p>	<p style="text-align: right;">Court File No: CV-20-00637081-00CL</p>
	<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding Commenced at TORONTO</p>
	<p>RECEIVER'S CERTIFICATE</p>
	<p>TORYS LLP 79 Wellington St. W., Suite 3000 Box 270, TD Centre Toronto, Ontario M5K 1N2 Fax: 416.865.7380</p> <p>David Bish (LSO#: 41629A) Tel: 416.865.7353 Email: dbish@torys.com</p> <p>Tony DeMarinis (LSO#: 29451Q) Tel: 416.865.8162 Email: tdemarinis@torys.com</p> <p>Adam Slavens (LSO#:54433J) Tel: 416.865.7333 Email: aslavens@torys.com</p> <p>Lawyers for FTI Consulting Canada Inc., the Court-appointed Receiver and Manager of Kew Media Group Inc. and Kew Media International (Canada) Inc.</p>

Schedule B – Purchased Assets

The entire issued share capital of TCB Media Rights Ltd, a company organized under the laws of England (company number 08140937), currently owned by Kew Media Group Inc., being 2 ordinary shares with a nominal value of £1 each.

Schedule C – Claims to be deleted and expunged from Personal Property Registry

Personal Property Registry File No. 730197351, registered against Kew Media Group Inc. in favour of Truist Bank, as Agent.

Schedule D – Permitted Encumbrances

(unaffected by the Vesting Order)

Nil.

<p>TRUIST BANK, AS AGENT</p> <p>-and-</p> <p>KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.</p>	<p>Applicant</p> <p>Court File No: CV-20-00637081-00CL</p> <p>Respondents</p>
	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding Commenced at TORONTO</p> <hr/> <p style="text-align: center;">APPROVAL AND VESTING ORDER</p> <hr/> <p>TORYS LLP 79 Wellington St. W., Suite 3000 Box 270, TD Centre Toronto, Ontario M5K 1N2 Fax: 416.865.7380</p> <p>David Bish (LSO#: 41629A) Tel: 416.865.7353 Email: dbish@torys.com</p> <p>Tony DeMarinis (LSO#: 29451Q) Tel: 416.865.8162 Email: tdemarinis@torys.com</p> <p>Adam Slavens (LSO#:54433J) Tel: 416.865.7333 Email: aslavens@torys.com</p> <p>Lawyers for FTI Consulting Canada Inc., the Court-appointed Receiver and Manager of Kew Media Group Inc. and Kew Media International (Canada) Inc.</p>

TAB 4

Court File No. ~~_____~~ CV-20-00637081-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE ~~_____~~) ~~WEEKDAY~~THURSDAY, THE #9TH
JUSTICE ~~_____~~KOEHNEN) DAY OF ~~MONTH~~APRIL, ~~20YR~~2020

B E T W E E N:

~~PLAINTIFF~~

Plaintiff

TRUIST BANK, AS AGENT

Applicant

- and -

~~DEFENDANT~~

Defendant

KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~FTI CONSULTING CANADA INC.
in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and
assets of ~~[DEBTOR]~~ ~~(the "Debtor"~~Kew Media Group Inc. ("KMG") and Kew Media

International (Canada) Inc. ("KMICI" and collectively with KMG, the "Debtors") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and ~~[NAME OF PURCHASER]~~ Beyond Entertainment Limited (the "Purchaser") dated ~~[DATE]~~ March 31, 2020, and appended to the Report of the Receiver dated ~~[DATE]~~ April 6, 2020 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for each of the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~, and Truist Bank

no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~ Cathy Pellegrini sworn ~~[DATE]~~ April 6, 2020, filed¹:

1. **THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.**

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. **For greater certainty, the Receiver is not bound by any prior contractual agreement by KMG not to enter into or complete the Transaction or to do so only with the consent of a third party.** The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

¹~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

²~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

3. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~[and listed on Schedule B hereto]~~⁴ shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~ **Koehenen** dated ~~[DATE]~~ **February 28, 2020**; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

~~3. — THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

⁴ To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

⁵ The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale⁸, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "•" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

6. ~~7.~~ THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of ~~the Debtor~~ **KMG** and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of ~~the Debtor~~ **KMG**;

⁷~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

⁸~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of ~~the Debtor~~KMG and shall not be void or voidable by creditors of ~~the Debtor~~KMG, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

7. ~~9.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada ~~or in~~, the United Kingdom, the United States, or elsewhere to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A ~~—~~ Form of Receiver's Certificate

Court File No. ~~_____~~ CV-20-00637081-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

~~PLAINTIFF~~

~~Plaintiff~~

TRUIST BANK, AS AGENT

Applicant

- and ~~—~~

~~DEFENDANT~~

~~Defendant~~

KEW MEDIA GROUP INC., KEW MEDIA INTERNATIONAL (CANADA) INC.

and ARCHITECT FILMS INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND*
INSOLVENCY ACT, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Koehnen of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ February 28, 2020, FTI CONSULTING CANADA INC. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ Kew Media Group Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated ~~[DATE]~~, April _____, 2020, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ March 31, 2020 (the "Sale Agreement") between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ and Beyond Entertainment Limited (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ~~5.02~~ 5.02 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ~~5.02~~ 5.02 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

~~{NAME OF RECEIVER}~~ FTI CONSULTING CANADA INC., in its capacity as Receiver of the undertaking, property and assets of ~~{DEBTOR}~~ KEW MEDIA GROUP INC., and not in its personal capacity

Per: _____

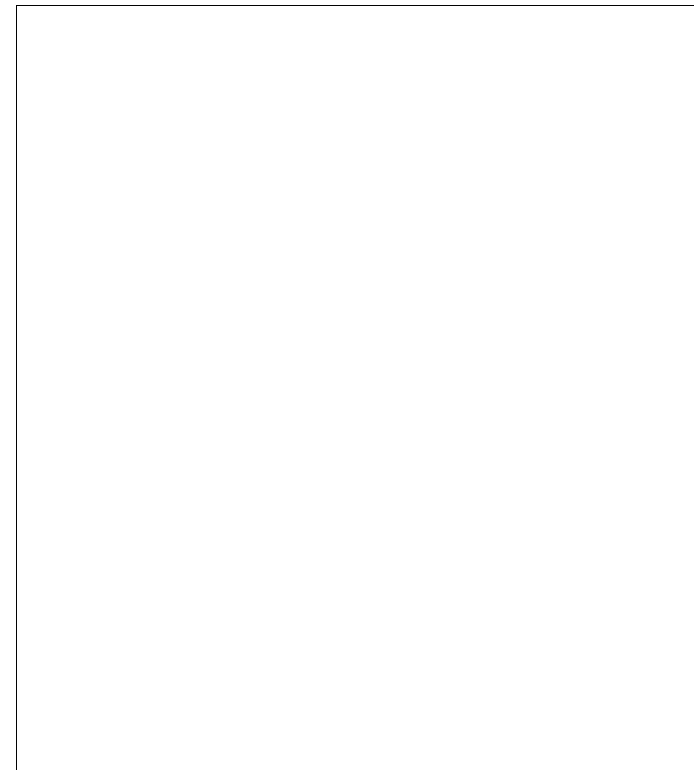
Name:

Title:

<p><u>TRUIST BANK, AS AGENT</u></p> <p><u>-and-</u></p> <p><u>KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.</u></p> <p><u>Applicant</u></p> <p><u>Respondents</u></p>	<p><u>Court File No: CV-20-00637081-00CL</u></p>
	<p><u>ONTARIO</u> <u>SUPERIOR COURT OF JUSTICE</u> <u>(COMMERCIAL LIST)</u> <u>Proceeding Commenced at TORONTO</u></p> <p><u>RECEIVER'S CERTIFICATE</u></p> <p><u>TORYS LLP</u> <u>79 Wellington St. W., Suite 3000</u> <u>Box 270, TD Centre</u> <u>Toronto, Ontario M5K 1N2</u> <u>Fax: 416.865.7380</u></p> <p><u>David Bish (LSO#: 41629A)</u> <u>Tel: 416.865.7353</u> <u>Email: dbish@torys.com</u></p> <p><u>Tony DeMarinis (LSO#: 29451Q)</u> <u>Tel: 416.865.8162</u> <u>Email: tdemarinis@torys.com</u></p> <p><u>Adam Slavens (LSO#:54433J)</u> <u>Tel: 416.865.7333</u></p>

Email: aslavens@torys.com

Lawyers for FTI Consulting Canada Inc., the
Court-appointed Receiver and Manager of Kew
Media Group Inc. and Kew Media International
(Canada) Inc.



Schedule B — Purchased Assets

The entire issued share capital of TCB Media Rights Ltd, a company organized under the laws of England (company number 08140937), currently owned by Kew Media Group Inc., being 2 ordinary shares with a nominal value of £1 each.

Schedule C ~~=~~ Claims to be deleted and expunged from ~~title to Real~~Personal Property Registry
Personal Property Registry File No. 730197351, registered against Kew Media Group Inc. in favour of
Truist Bank, as Agent.

Schedule D ~~— Permitted Encumbrances, Easements and Restrictive Covenants~~
~~related to the Real Property~~

(unaffected by the Vesting Order)

Nil.

<p><u>TRUIST BANK, AS AGENT</u></p> <p><u>-and-</u></p> <p><u>KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.</u></p>	<p><u>Applicant</u></p> <p><u>Court File No: CV-20-00637081-00CL</u></p> <p><u>Respondents</u></p>
	<p><u>ONTARIO</u> <u>SUPERIOR COURT OF JUSTICE</u> <u>(COMMERCIAL LIST)</u> <u>Proceeding Commenced at TORONTO</u></p> <p><u>APPROVAL AND VESTING ORDER</u></p> <p><u>TORYS LLP</u> <u>79 Wellington St. W., Suite 3000</u> <u>Box 270, TD Centre</u> <u>Toronto, Ontario M5K 1N2</u> <u>Fax: 416.865.7380</u></p> <p><u>David Bish (LSO#: 41629A)</u> <u>Tel: 416.865.7353</u> <u>Email: dbish@torys.com</u></p> <p><u>Tony DeMarinis (LSO#: 29451Q)</u> <u>Tel: 416.865.8162</u> <u>Email: tdemarinis@torys.com</u></p> <p><u>Adam Slavens (LSO#:54433J)</u> <u>Tel: 416.865.7333</u> <u>Email: aslavens@torys.com</u></p> <p><u>Lawyers for FTI Consulting Canada Inc., the</u></p>

Court-appointed Receiver and Manager of Kew
Media Group Inc. and Kew Media International
(Canada) Inc.

Document comparison by Workshare 9.5 on Monday, April 6, 2020 12:31:05 PM

Input:	
Document 1 ID	file:///C:/Users/mnoel/Onedrive - Torys LLP/_root/_tmp/approval-and-vesting-order-EN.doc
Description	approval-and-vesting-order-EN
Document 2 ID	C:\NRPortb\TorysAtWork\MNOEL\29632164_1.docx
Description	C:\NRPortb\TorysAtWork\MNOEL\29632164_1.docx
Rendering set	Firm_Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:

	Count
Insertions	128
Deletions	85
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	213

TAB 5

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) THURSDAY, THE 9TH
)
JUSTICE KOEHNEN) DAY OF APRIL, 2020

BETWEEN:

TRUIST BANK, AS AGENT

Applicant

- and-

KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED**

REPAYMENT AND DISTRIBUTION ORDER

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of the undertaking, property and assets of Kew Media Group Inc. and Kew Media International (Canada) Inc. (collectively, the “**Kew Group**”) for, among other things, an Order in substantially the form set out at Tab 5 of the Receiver’s Motion Record was heard this day by way of teleconference hearing because of the COVID 19 emergency.

ON READING the Receiver’s Motion Record, filed, in respect of this motion, including the Notice of Motion, the Receiver’s First Report dated April 6, 2020 (the “**First Report**”) and the draft forms of Orders sought by the Receiver;

AND UPON hearing the submissions of counsel for each of the Receiver, and Truist Bank

no one else appearing for any other person on the service list, although duly served as appears from the affidavit of service of Cathy Pellegrini sworn April 6, 2020, filed;

TIME FOR SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein be and is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

AMENDMENT OF THE STYLE OF CAUSE

2. **THIS COURT ORDERS** that the style of cause of the within proceedings is hereby amended to remove Architect Films Inc., as a respondent such that the style of cause shall hereinafter be as follows:

Court File No. CV-20-00637081-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

TRUIST BANK, AS AGENT

Applicant

- and -

KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED***

AUTHORIZATION OF REPAYMENT OF BORROWINGS

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to repay any portion of the principal sums advanced to it pursuant to a receiver's certificate, together with interest thereon and all reasonable expenses incurred by the holder or holders of such receiver's

certificate, all in accordance with the Order of this Court dated February 28, 2020 (the “**Appointment Order**”), in the within proceedings.

DISTRIBUTION TO TRUIST BANK, AS AGENT

4. **THIS COURT ORDERS** that, subject to the establishment of reasonable reserves in the discretion of the Receiver (including, without limitation, on account of any priority claims and the Receiver’s present and anticipated future costs of administration), the Receiver is hereby authorized to distribute from time to time any proceeds of sale or other realizations by the Receiver pursuant to the powers granted to the Receiver in the Appointment Order, other than the Purchase Price received for the TCB Shares, in each case to Truist Bank, as administrative agent for Truist Bank, Bank of Montreal and Toronto-Dominion Bank, provided that the aggregate amount so distributed shall not exceed the obligations of the Kew Group to such lenders. For greater certainty, the net sale proceeds resulting from the sale of the TCB Shares shall not be distributed without further Order of this Court.

GENERAL

5. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada against all persons, firms, corporations, governmental, municipal and regulatory authorities against whom it may be enforceable.

6. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province to act in aid of and to be complementary to this Court in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

<p>TRUIST BANK, AS AGENT</p> <p style="text-align: right;">Applicant</p> <p>-and-</p> <p>KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.</p> <p style="text-align: right;">Respondents</p>	<p style="text-align: right;">Court File No: CV-20-00637081-00CL</p>
	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding Commenced at TORONTO</p> <hr/> <p style="text-align: center;">REPAYMENT AND DISTRIBUTION ORDER</p> <hr/> <p>TORYS LLP 79 Wellington St. W., Suite 3000 Box 270, TD Centre Toronto, Ontario M5K 1N2 Fax: 416.865.7380</p> <p>David Bish (LSO#: 41629A) Tel: 416.865.7353 Email: dbish@torys.com</p> <p>Tony DeMarinis (LSO#: 29451Q) Tel: 416.865.8162 Email: tdemarinis@torys.com</p> <p>Adam Slavens (LSO#:54433J) Tel: 416.865.7333 Email: aslavens@torys.com</p> <p>Lawyers for FTI Consulting Canada Inc., the Court-appointed Receiver and Manager of Kew Media Group Inc. and Kew Media International (Canada) Inc.</p>

<p>TRUIST BANK, AS AGENT</p> <p>-and-</p> <p>KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.</p>	<p>Applicant</p> <p>Court File No: CV-20-00637081-00CL</p> <p>Respondents</p>
	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p style="text-align: center;">Proceeding Commenced at TORONTO</p> <hr/> <p style="text-align: center;">MOTION RECORD (Returnable April 9, 2020)</p> <hr/> <p>TORYS LLP 79 Wellington St. W., Suite 3000 Box 270, TD Centre Toronto, Ontario M5K 1N2 Canada</p> <p>David Bish (LSUC#: 41629A) Tel: 416.865.7353 Fax: 416.865.7380 Email: dbish@torys.com</p> <p>Tony DeMarinis (LSUC#: 29451Q) Tel: 416.865.8162 Fax: 416.865.7380 Email: tdemarinis@torys.com</p> <p>Adam Slavens (LSO#:54433J) Tel: 416.865.7333 Email: aslavens@torys.com</p> <p>Lawyers for FTI Consulting Canada Inc., the Court-appointed Receiver and Manager of Kew Media Group Inc. and Kew Media International (Canada) Inc.</p>