

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**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

**FACTUM OF THE RECEIVER  
(MOTION RETURNABLE MAY 25, 2022)**

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

**TO: SERVICE LIST**

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## PART I — OVERVIEW

1. Pursuant to the Order of Justice Koehnen (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted February 28, 2020, FTI Consulting Canada Inc. (“**FTI**”) was appointed as receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Kew Media Group Inc. (“**KMG**”) and Kew Media International (Canada) Inc. (together with KMG, the “**Debtors**”), acquired for, or used in relation to a business carried on by the Debtors.

2. The Receiver seeks an order (the “**Fee Approval and Discharge Order**”) of this Court, substantially in the form of the draft order included at Tab 3 of the Receiver’s Motion Record, among other things:

- (a) discharging the Receiver and terminating the within proceedings with effect upon the filing of the Receivership Termination Certificate (as defined in the Fifth Report of the Receiver dated May 5, 2023 (the “**Fifth Report**”));
- (b) releasing the Receiver from any and all liability that FTI now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of FTI while acting as Receiver, save and except for any gross negligence or wilful misconduct on the Receiver’s part;
- (c) approving the actions, conduct and activities of the Receiver as described in the Receiver’s Fourth Report dated September 29, 2021 (“**Fourth Report**”), and the Fifth Report;

- (d) approving the fees and disbursements of: (i) the Receiver for the period November 1, 2020, to April 14, 2023; (ii) the Receiver’s legal counsel, Torys LLP (“**Torys**”), for the period November 1, 2020, to April 14, 2023, 2023; and the Receiver’s legal counsel, Lax O’Sullivan Lisus Gottlieb LLP (“**LOLG**”), for the period December 31, 2020, to March 31, 2023 (collectively, the “**Fees and Disbursements**”), plus an amount of up to \$80,000 (exclusive of HST) (the “**Subsequent Fees and Disbursements**”) to cover the remaining fees and disbursements of the Receiver, Torys and LOLG;
- (e) approving the completion by the Receiver of the activities remaining to be completed in the within proceedings, as more particularly set out in the Fifth Report, including, without limitation: (i) delivering to Goodmans LLP, legal counsel to the Debtors, the Transferred Records; and (ii) subject to any applicable law, destroying any copies of the Debtor Non-Tax Records that are not Transferred Records (each term as defined below); and
- (f) providing such further and other relief as this Court deems just.

3. The Receiver recommends issuance of the Fee Approval and Discharge Order for the factual and legal bases set forth herein and in its Motion Record, filed May 8, 2023.

## **PART II — THE FACTS**

### **A. General Background**

4. A detailed description of the facts is set forth in the Fifth Report.

5. The Receivership application was made by Truist Bank, in its capacity as agent for a syndicate of lenders consisting of Truist Bank, Bank of Montreal and The Toronto-Dominion Bank (collectively, the “**Secured Lenders**”). The Receivership application and the granting of the Receivership Order were founded in serious allegations of wrongdoing by KMG and one or more of its officers and directors.<sup>1</sup>

**B. Discontinuance of the GT Action**

6. During the pendency of the Receivership proceedings, the Receiver identified a potential claim against Grant Thornton LLP, and Grant Thornton UK LLP and Grant Thornton UK LLC (the “**GT Action Defendants**”), as the former auditors for KMG and its subsidiaries in relation to damages suffered by KMG and Kew Media International Limited, an indirect subsidiary of KMG on account of the GT Action Defendants’ failure to detect issues with the KMG group’s financial information and financial reporting (the “**GT Claim**”).<sup>2</sup>

7. After further investigation by the Receiver and discussions with the Secured Lenders and their counsel, the Receiver commenced a legal proceeding on February 9, 2021, in respect of the GT Claim (the “**GT Action**”),<sup>3</sup> before the Ontario Superior Court of Justice pursuant to the Receiver’s powers under paragraph 3(i) of the Receivership Order.<sup>4</sup>

8. The Secured Lenders supported the Receiver’s commencement of the GT Action. The Receiver made it clear to the Secured Lenders that, given the lack of funds available in the Receivership, in order to continue to pursue the GT Action, it would be necessary for the Secured

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<sup>1</sup> Fifth Report, para 12, Tab 2 to the Receiver’s Motion Record dated May 8, 2023 (“**Motion Record**”).

<sup>2</sup> Fifth Report, para 26, Tab 2 to the Motion Record.

<sup>3</sup> The GT Action was commenced under Court File No. CV-21-00656707-0000.

<sup>4</sup> Fifth Report, para 27, Tab 2 to the Motion Record.

Lenders to provide continued funding to the Receiver or to take an assignment of the action and pursue those claims directly. Over a period of many months, the Receiver engaged in discussions with the Secured Lenders to consider these matters and advance a litigation strategy.<sup>5</sup>

9. After distribution of proceeds realized to date, the Secured Lenders face a shortfall in excess of US\$100 million.<sup>6</sup> In light of this shortfall, each of the Secured Lenders informed the Receiver that it would not provide further funding to continue the pursuit of the GT Action nor take an assignment of the action, and that the Secured Lenders were willing, in the circumstances, to have the GT Action discontinued.<sup>7</sup>

10. The Receiver further considered whether it would be feasible for unsecured creditors to potentially pursue the GT Action, but ultimately determined that the economics precluded any reasonable prospect of an unsecured creditor being prepared to pursue the GT Action.<sup>8</sup>

11. The Receiver has no funding to continue the GT Action. The Secured Lenders – having the principal economic interest at stake – are not prepared to further fund or assume a continuation of the GT Action, and no known unsecured creditor of the Debtors has a material enough economic interest to warrant efforts to acquire or continue the GT Action. Accordingly, the Receiver has determined that it is necessary and appropriate in the circumstances to discontinue the GT Action.<sup>9</sup>

12. Pursuant to Rule 23.01(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, a plaintiff may discontinue an action at any time by filing the consent of the parties or, in the absence

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<sup>5</sup> Fifth Report, para 35, Tab 2 to the Motion Record.

<sup>6</sup> Fifth Report, para 18, Tab 2 to the Motion Record.

<sup>7</sup> Fifth Report, para 36, Tab 2 to the Motion Record.

<sup>8</sup> Fifth Report, paras 37-39, Tab 2 to the Motion Record.

<sup>9</sup> Fifth Report, para 40, Tab 2 to the Motion Record.

of such consent, with leave of the Court after the close of pleadings. Accordingly, the Receiver's counsel filed a notice of discontinuance with the consent of the GT Action Defendants on May 18, 2023, which notice is attached as Schedule "D".

### **C. D&O Claims**

13. The Receiver previously reported in its Fourth Report that it was conducting an ongoing investigation into potential claims against the former directors and officers of the Debtors (the "**D&O Claims**").<sup>10</sup> The Receiver has since investigated the potential D&O Claims and has discussed such claims at length with the Secured Lenders and their counsel. Ultimately, the Secured Lenders have, in the circumstances, declined to support further pursuit of the D&O Claims by the Receiver. For the reasons discussed above with respect to the GT Action, it is not reasonable to expect that any unsecured creditors of the Debtors would be able or willing to assume carriage of the D&O Claims.<sup>11</sup>

14. Consequently, no litigation proceedings have been commenced by the Receiver and the D&O Claims will not be further pursued by the Receiver.<sup>12</sup>

### **D. The Class Action**

15. On July 20, 2020, a securities class action was commenced by two individual plaintiffs (the "**Class Action Plaintiffs**") against certain of KMG's former directors and officers and KMG before the Ontario Superior Court of Justice (the "**Class Action**").<sup>13</sup> The class members are all shareholders or former shareholders of KMG. Accordingly, they have only equity claims against

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<sup>10</sup> Fifth Report, para 42, Tab 2 to the Motion Record.

<sup>11</sup> Fifth Report, para 43, Tab 2 to the Motion Record.

<sup>12</sup> *Ibid.*

<sup>13</sup> The Class Action was commenced under Court File No. CV-20-00644200-00CP; Fifth Report, para 44, Tab 2 to the Motion Record.

the Debtors, are not creditors in the Receivership and do not have an economic interest in the Debtors' estates.<sup>14</sup>

16. As further outlined in the Fifth Report, a defence of the Class Action by KMG is considered essential by the Class Action Plaintiffs' counsel because of the position taken by the insurers and brokers under KMG's director and officer insurance policy (collectively, the "**D&O Insurer**"); namely, that there is no insurance coverage available if KMG does not defend against such a lawsuit. Accordingly, the Class Action Plaintiffs served a motion in the fall of 2021 for an order compelling the Receiver to defend the Class Action on behalf of KMG.<sup>15</sup> The Receiver had significant concerns about the proposed order, given that its defense would potentially conflict with the Receiver's positions in the GT Action, and the Receiver would incur costs without and prospect of a benefit to the Debtors' estate or their creditors (i.e., because the class consists entirely of equity claimants with no economic interest in the estate).<sup>16</sup> Ultimately, the motion was never advanced.<sup>17</sup>

17. Through further discussions among the parties, the Receiver understands that Goodmans LLP is prepared to act for Kew Media following the Receiver's discharge in defending the Class Action and that the D&O Insurer is in agreement with this proposal.<sup>18</sup> As outlined in the Fifth Report, given the discontinuance of the GT Action and the Receiver's proposed discharge, the Receiver's aforementioned concerns will become moot.<sup>19</sup>

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<sup>14</sup> Fifth Report, para 45, Tab 2 to the Motion Record.

<sup>15</sup> Fifth Report, para 52, Tab 2 to the Motion Record.

<sup>16</sup> Fifth Report, para 53, Tab 2 to the Motion Record.

<sup>17</sup> Fifth Report, para 52, Tab 2 to the Motion Record.

<sup>18</sup> Fifth Report, para 62, Tab 2 to the Motion Record.

<sup>19</sup> Fifth Report, para 60, Tab 2 to the Motion Record.



18. To that end, and as discussed below, the Receiver and Goodmans LLP have agreed upon an arrangement – subject to this Court’s approval – whereby the Receiver will deliver certain books, records, and electronic devices to Goodmans LLP to enable it to fully engage in the defence of Kew Media. The Receiver intends to execute a document authorising and consenting to Steven Silver, a defendant in the Class Action and a former officer and director of KMG, directing and instructing Goodmans on behalf of KMG in KMG’s defence of the Class Action from and after the discharge of the Receiver and the termination of the KMG receivership proceedings.<sup>20</sup> The form of document to be signed is attached as Appendix B to the Fifth Report.<sup>21</sup>

#### **E. Books and Records**

19. Following its appointment, the Receiver took possession of 154 boxes of records. In addition, the Receiver has in its possession various items of electronic storage media containing records of the Debtors.<sup>22</sup>

20. Pursuant to tax legislation, the Debtors must maintain certain records for a period of 6 years after the end of the tax year to which the records relate (the “**Debtor Tax Records**”). It is the Receiver’s understanding that of the 154 boxes of records in its possession, 10 boxes contain Debtor Tax Records and 144 boxes contain miscellaneous other records (the “**Debtor Non-Tax Records**”).<sup>23</sup>

21. The Receiver understands that all of the parties to the Class Action, including the D&O Insurer, wish to ensure that certain of the Debtors’ books and records related to the Class Action

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<sup>20</sup> Fifth Report, para 62, Tab 2 to the Motion Record.

<sup>21</sup> Draft Consent to Defence of Class Action, Appendix B to the Fifth Report, Tab 2 to the Motion Record.

<sup>22</sup> Fifth Report, para 77, Tab 2 to the Motion Record.

<sup>23</sup> Fifth Report, para 79, Tab 2 to the Motion Record.

are preserved and not destroyed. Pursuant to paragraph 6A of the Receivership Order, D&O's Counsel was provided with an electronic copy of the back-up of the Debtors' server. Further, the Receiver has worked with Goodmans LLP to identify such Debtor Non-Tax Records as may be relevant to the Class Action, and Goodmans LLP has requested that the Receiver not destroy certain of the Debtor Non-Tax Records and that it instead transfer to it both the Debtor Tax Records, the relevant Debtor Non-Tax Records, and electronic storage media in the possession of the Receiver (collectively, the "**Transferred Records**"). Goodmans LLP has undertaken to preserve the Transferred Records in accordance with the relevant provisions of the applicable tax legislation, and to provide access to the Receiver to such records at no cost should they be required by the Receiver and notwithstanding the Receiver's discharge. The Receiver understands that the Class Action Plaintiffs' counsel and the D&O Insurer's counsel do not object to this arrangement.<sup>24</sup>

#### **F. Fees and Disbursements**

22. The Receiver and its legal counsel, Torys LLP and LOLG, have accrued the Fees and Disbursements in their capacity as Receiver and counsel to the Receiver, respectively.

23. As outlined in the affidavit of Nigel Meakin sworn May 5, 2023 (the "**Meakin Affidavit**"),<sup>25</sup> the affidavit of Mike Noel sworn May 5, 2023 (the "**Noel Affidavit**")<sup>26</sup> and the affidavit of Rahool Agarwal sworn May 2, 2023 (the "**Agarwal Affidavit**"),<sup>27</sup> the Fees and

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<sup>24</sup> Fifth Report, para 80, Tab 2 to the Motion Record.

<sup>25</sup> Affidavit of Nigel Meakin sworn May 5, 2023, Appendix C to the Fifth Report, Tab 2 to the Motion Record.

<sup>26</sup> Affidavit of Mike Noel sworn May 5, 2023, Appendix D to the Fifth Report, Tab 2 to the Motion Record.

<sup>27</sup> Affidavit of Rahool Agarwal sworn May 5, 2023, Appendix E to the Fifth Report, Tab 2 to the Motion Record.

Disbursements of the Receiver, Torys and LOLG, exclusive of HST, total \$301,372.85, \$395,253.55 and \$358,580.23, respectively.

### **PART III — ISSUES**

24. The Receiver's request for approval of the Fee Approval and Discharge Order raises the following issues:

- (a) Should this Court approve the Records Protocols (defined below)?
- (b) Should this Court approve the Fees and Disbursements and the Subsequent Fees and Disbursements?
- (c) Should this Court approve the Fourth Report, the Fifth Report and the activities of the Receiver described therein?
- (d) Should this Court discharge and release the Receiver?

### **PART IV — LAW AND ARGUMENT**

#### **A. The Records Protocols should be approved**

25. The Receiver submits that this Court should authorize it to: (i) deliver to Goodmans LLP the Transferred Records; and (ii) subject to applicable law, destroy any copies of the Debtor Non-Tax Records remaining in the Receiver's possession or control after delivery of the Transferred Records (together, the "**Records Protocols**").

26. The role of a court-appointed receiver flows from the order providing for its appointment.<sup>28</sup> Where a receiver is appointed to discharge the powers and duties prescribed by its appointment

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<sup>28</sup> *Ravelston Corporation Limited (Re)*, [\[2007\] OJ No 414 \(QL\)](#), [29 CBR \(5th\) 1 \(Ont. Sup. Ct. J. \[Commercial List\]\)](#), para 60.

order, the receiver's primary responsibility is to discharge those duties and powers honestly, in good faith and in a manner that fairly balances the interests of relevant stakeholders.<sup>29</sup>

27. Here, the Receivership Order authorized and empowered the Receiver to, among other things, take possession of and exercise control over any or all of the Records (as defined in the Receivership Order) and take any steps reasonably incidental to the exercise of the Receiver's powers in the Receivership Order or the performance of any statutory obligations.<sup>30</sup> Such powers necessarily extend to the steps taken by the Receiver to address its possession of the Records upon the completion of its mandate, including by developing protocols for the return or destruction of the Records.

28. In accordance with those powers under the Receivership Order, the Receiver, acting in good faith, developed the Records Protocols in consultation with key stakeholders in these proceedings and/or their counsel.<sup>31</sup> The Records Protocols are fair and reasonable in the circumstances and take those stakeholders' interests into consideration.

29. As noted, the Receiver's mandate is substantially complete, and the Receiver no longer requires access to, or possession or control of, the Records (save and except pursuant to applicable law). There would also be ongoing costs to continue to store the Records.

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<sup>29</sup> *Ravelston Corporation Limited (Re)*, [\[2007\] OJ No 414 \(QL\), 29 CBR \(5th\) 1 \(Ont. Sup. Ct. J. \[Commercial List\]\)](#), paras 63.

<sup>30</sup> Receivership Order, paras 3, 5 and 6, Schedule C.

<sup>31</sup> Fifth Report, para 80, Tab 2 to the Motion Record.

30. The Debtors are not bankrupt and continue to exist as legal entities, and they are entitled upon termination of the receivership proceedings to re-acquire possession and control of their respective property.

31. Further, the Receiver is mindful of the ongoing Class Action that will continue after the termination of the receivership proceedings, and the Records Protocols have been developed with a view to ensuring that the parties to the Class Action are able to fully and fairly advance that litigation following termination of the receivership and the discharge of the Receiver.

32. Accordingly, the Receiver respectfully requests this Court's approval of the Records Protocols.

**B. The Fees and Disbursements and the Subsequent Fees and Disbursements should be approved**

33. The Receiver submits that the Fees and Disbursements should be approved. This Court previously approved the fees and disbursements of the Receiver and Torys up to October 31, 2020, by the Order of Justice McEwen dated December 8, 2020.<sup>32</sup> Accordingly, the Fees and Disbursements include all fees and disbursements incurred by the Receiver, Torys and LOLG since November 1, 2020.

34. The Receiver meets the test for this Court's approval of the Fees and Disbursements. The Court of Appeal reiterated in *Confectionately Yours Inc. (Re)* that the test for approving the fees and disbursements of a receiver and its counsel is whether they are fair and reasonable.<sup>33</sup> The

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<sup>32</sup> Order of Justice McEwen dated December 8, 2020, paras 3 and 5, *Truist Bank, as Agent v Kew Media Group Inc. and Kew Media International (Canada) Inc.*, Court File No. CV-20-00637081-00CL (Ont. Sup Ct. J. [Commercial List]) ([available on the Receiver's public website](#)).

<sup>33</sup> *Confectionately Yours Inc. (Re)*, [\[2000\] 36 C.B.R. \(4th\) 200, 219 D.L.R. \(4th\) 72 \(Ont. C.A.\)](#), para 46.

Court of Appeal further held that, in determining whether such fees and disbursements are fair and reasonable, the Court may consider a number of factors, including, but not limited to:

- (a) the work done;
- (b) the responsibility imposed on the receiver;
- (c) the time spent doing the work;
- (d) the reasonableness of the time expended;
- (e) the necessity of doing the work; and
- (f) the results obtained.<sup>34</sup>

35. The Receiver's activities are set out in the Fourth Report and the Fifth Report, and include, among other things: (i) commencing and preparing for the GT Action, including correspondence and negotiations with multiple parties thereto; (ii) conducting an investigation in respect of the D&O Claims; (iii) conducting complex and time-consuming activities, discussions and negotiations in connection with the Class Action; and (iv) preparing the Fourth Report and Fifth Report, including the detailed summaries contained therein of the foregoing activities.

36. The Receiver believes that its, Torys' and LOLG's fees and disbursements were incurred at rates that reflect the scope, complexity and heightened risk profile associated with the Receiver's engagement. Accordingly, they are fair, reasonable and justified in the circumstances. The Fees and Disbursements are consistent with the responsibilities of the Receiver, including the

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<sup>34</sup> *Ibid.*

complexity of the case, the contentious nature of the engagement, the number of parties involved and the other issues involved. The time incurred is reasonable given that approximately two and a half years of work has been undertaken on this matter since the Receiver's previous motion for fee approval, and was at all times necessary and consistent with the Receiver's duties under the Receivership Order. Further, the Fees and Disbursements accurately reflect the work done by the Receiver and on behalf of the Receiver by Torys and LOLG in connection with the receivership, which work was necessary and in line with the responsibility placed on the Receiver. The results obtained were, in the opinion of the Receiver, the best possible under the circumstances. The Receiver therefore respectfully submits that the Fees and Disbursements should be approved.

37. The Fees and Disbursements are fair and reasonable in the circumstances. The factors set forth in the jurisprudence referenced above militate in favour of this conclusion. As detailed in the Fourth Report, the Fifth Report, the Meakin Affidavit, the Noel Affidavit and the Agrawal Affidavit, the Receiver, Torys and LOLG performed work necessary for the optimal administration of the receivership. Therefore, the Receiver respectfully submits that the Fees and Disbursements should be approved.

38. The economic brunt of the Fees and Disbursements is borne by the Secured Lenders, given the significant shortfall in their recovery. The Secured Lenders and their counsel have been consulted throughout these proceedings as to the activities of the Receiver, and they do not object to the approval of the Fees and Disbursements.

39. Additionally, the Subsequent Fees and Disbursements are fair and reasonable in the circumstances and should be approved. Following the within motion, and prior to the Receiver's discharge, the Receiver, Torys and/or LOLG intend to undertake the activities described at

paragraph 64 of the Fifth Report, including: (i) filing tax returns and collection of sales tax refunds; (ii) payment of final Receivership expenses; (iii) completion of the Records Protocols; and (iv) completion of statutory administrative duties.<sup>35</sup> The Subsequent Fees and Disbursements represents the Receiver's, Torys' and LOLG's estimate of their fees and disbursement to complete these activities.

**C. The Fourth Report, the Fifth Report and the activities of the Receiver described therein should be approved**

40. The Receiver submits that the Fourth Report, the Fifth Report and the activities of the Receiver described therein should be approved on the qualified basis provided in the Fee Approval and Discharge Order. The form of Fee Approval and Discharge Order sought by the Receiver provides at paragraph 1 that:

THIS COURT ORDERS that the Fourth Report dated September 29, 2021, and the Fifth Report, and the actions and activities of the Receiver described in such reports, be and they are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.<sup>36</sup>

41. This Court has the inherent jurisdiction to review and approve the activities of a court appointed receiver as they are set out in the receiver's report.<sup>37</sup> In bringing a motion for the approval of its reports and activities, a receiver provides any other interested persons the

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<sup>35</sup> Fifth Report, para 64, Tab 2 to the Motion Record.

<sup>36</sup> Draft Fee Approval and Discharge Order, para 1, Tab 3 to the Motion Record. [emphasis added]

<sup>37</sup> *Bank of America Canada v Willann Investments Ltd.*, [1993] O.J. No. 1647, 20 C.B.R. (3d) 223 ([Westlaw](#)), para 3, aff'd [1996] O.J. No. 2806 ([Westlaw](#)).



opportunity to question the receiver's activities and conduct to date.<sup>38</sup> To the extent that the reports accurately summarize the receiver's material activities, the court may approve those activities.<sup>39</sup>

42. The activities of the Receiver, as set out in detail and with accuracy in the Fourth Report and the Fifth Report, were all necessary and untaken in good faith pursuant to the Receiver's duties and powers set out in the Receivership Order and other Orders made in these proceedings. Furthermore, no interested party in these proceedings have raised any objections to the within motion for approval of the Fourth Report, the Fifth Report and its activities described therein.

43. For these reasons, the Receiver respectfully requests this Court's approval of the Fourth Report, the Fifth Report and the activities of the Receiver described therein on the basis provided in the Fee Approval and Discharge Order.

**D. The Receiver should be discharged and released**

44. The Receiver has substantially completed its mandate as contemplated by the Receivership Order, including realizing upon all available assets of the Debtors and distributing the proceeds of realization.<sup>40</sup> There are no funds remaining with which to pay for any further activities of the Receiver or continuation of the receivership proceedings.<sup>41</sup> Accordingly, the Receiver respectfully submits that it should be discharged and released, following the filing of a discharge certificate confirming that it has completed the remaining activities in respect of its administration of the

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<sup>38</sup> *Bank of America Canada v Willann Investments Ltd.*, [1993] O.J. No. 1647, 20 C.B.R. (3d) 223 ([Westlaw](#)), para 5, aff'd [1996] O.J. No. 2806 ([Westlaw](#)).

<sup>39</sup> *Confectionately Yours Inc. (Re)*, [2000] 36 C.B.R. (4th) 200, 219 D.L.R. (4th) 72 (Ont. C.A.), para 36.

<sup>40</sup> Fifth Report, para 8, Tab 2 to the Motion Record.

<sup>41</sup> Fifth Report, paras 9-10, Tab 2 to the Motion Record.

receivership, including those described at paragraph 64 of the Fifth Report. The discharge certificate is attached as Exhibit “A” to the Fee Approval and Discharge Order.<sup>42</sup>

45. With respect to the Class Action, given that the Receiver has fulfilled its mandate and has no further funds available to it, it would be inappropriate to refuse to discharge the Receiver and to order that the Receiver defend the Class Action on behalf of KMG solely to assist the Class Action Plaintiffs in their pursuit of a recovery against the D&O Insurer. With the discontinuance of the GT Action and the arrangements contemplated for continuation of the Class Action, there is no prejudice to any party in the Receiver’s discharge and the termination of the within proceedings. On the contrary, termination of the receivership proceedings will now simplify for all parties the continuation of the Class Action.

46. The Receiver is also seeking a release from any and all liability that FTI, in its capacity as Receiver, now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of FTI while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the part of FTI.

47. As Justice Pattillo asserted in the case of *Pinnacle v Kraus*, “in the absence of any evidence of improper or negligent conduct, the release should issue.”<sup>43</sup> There is an absence of any evidence of improper or negligent conduct in the case at bar, and the Receiver submits that it is fair and reasonable for it to have the certainty provided by the release sought in the within proceedings. The Receiver respectfully submits that the release should be granted.

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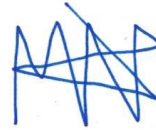
<sup>42</sup> Draft Fee Approval and Discharge Order, Exhibit “A”, Tab 3 to the Motion Record.

<sup>43</sup> *Pinnacle v Kraus*, [2012 ONSC 6376 \[Commercial List\]](#), para 47.

**PART V — ORDER REQUESTED**

48. For the reasons set forth herein and in the Fifth Report, the Receiver respectfully requests the granting of the Fee Approval and Discharge Order in the form contained in the Receiver's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of May, 2023.



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David Bish / Tony DeMarinis  
Adam M. Slavens / Mike Noel

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

**SCHEDULE A**  
**LIST OF AUTHORITIES**

1. *Ravelston Corporation Limited (Re)*, [\[2007\] OJ No 414 \(QL\), 29 CBR \(5th\) 1 \(Ont. Sup. Ct. J. \[Commercial List\]\)](#).
2. Order of Justice McEwen dated December 8, 2020, *Truist Bank, as Agent v Kew Media Group Inc. and Kew Media International (Canada) Inc.*, Court File No. CV-20-00637081-00CL (Ont. Sup Ct. J. [Commercial List]) ([available on the Receiver's public website](#)).
3. *Confectionately Yours Inc. (Re)*, [\[2000\] 36 C.B.R. \(4th\) 200, 219 D.L.R. \(4th\) 72 \(Ont. C.A.\)](#).
4. *Bank of America Canada v Willann Investments Ltd.*, [1993] O.J. No. 1647, 20 C.B.R. (3d) 223 ([Westlaw](#)), aff'd [1996] O.J. No. 2806 ([Westlaw](#)).
5. *Pinnacle v Kraus*, [2012 ONSC 6376 \[Commercial List\]](#).

**SCHEDULE B**  
**RELEVANT STATUTES**

***Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3***

**Court may appoint a receiver**

[243 \(1\)](#) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

**Restriction on appointment of receiver**

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

**Definition of receiver**

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
  - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
  - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

**Definition of receiver — subsection 248(2)**

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

**Trustee to be appointed**

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

**Place of filing**

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

**Orders respecting fees and disbursements**

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

**Meaning of disbursements**

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

*Courts of Justice Act, R.S.O. 1990, c. C.43*

**Injunctions and receivers**

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

**Terms**

(2) An order under subsection (1) may include such terms as are considered just.

***Rules of Civil Procedure, R.R.O. 1990, Reg. 194***

**Rule 23 – Discontinuance and Withdrawal**

**Discontinuance by Plaintiff**

[23.01 \(1\)](#) A plaintiff may discontinue all or part of an action against any defendant,

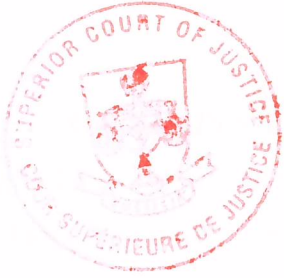
- (a) before the close of pleadings, by serving on all parties who have been served with the statement of claim a notice of discontinuance (Form 23A) and filing the notice with proof of service;
- (b) after the close of pleadings, with leave of the court; or
- (c) at any time, by filing the consent of all parties. R.R.O. 1990, Reg. 194, r. 23.01 (1); O. Reg. 427/01, s. 10.

(2) If a party to an action is under disability, the action may be discontinued by or against the party only with leave of a judge obtained on motion under rule 7.07.1.

**SCHEDULE C**  
**RECEIVERSHIP ORDER**

See attached.





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

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

THE HONOURABLE  
JUSTICE KOEHNEN

)  
)  
)

FRIDAY, THE 28TH  
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 vkk*

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.

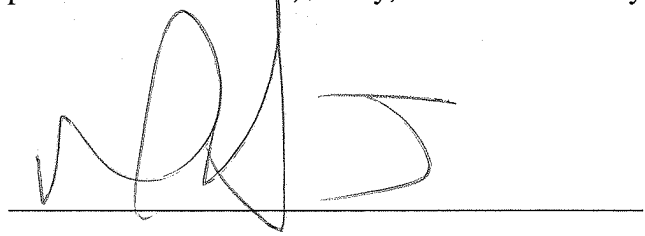
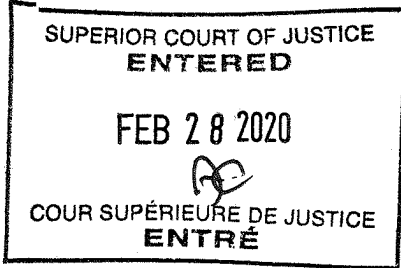
28 **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

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, consisting of several loops and a long horizontal stroke at the end, positioned above 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)**

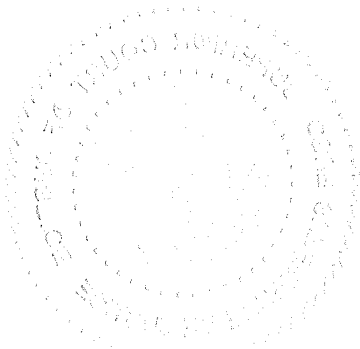
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*Lawyers for the Applicant, Truist Bank, as Agent*



**SCHEDULE D**  
**NOTICE OF DISCONTINUANCE FILED MAY 18, 2023**

See attached.

Court File No. CV-21-00656707-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

Plaintiffs

and

GRANT THORNTON LLP, GRANT THORNTON UK LLP and  
GRANT THORNTON UK LLC

Defendants

**NOTICE OF DISCONTINUANCE**

The Plaintiffs, Kew Media Group Inc. and Kew Media International (Canada) Inc.,  
wholly discontinue this action against the Defendant, Grant Thornton LLP.

May 18, 2023

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Lawyers for the Defendant

NOTE: If there is a Counterclaim, the Defendant should consider rule 23.02, under which the Counterclaim may be deemed to be discontinued.

NOTE: If there is a Cross-Claim or Third Party Claim the Defendant should consider rule 23.03, under which the Cross-Claim or Third Party Claim may be deemed to be dismissed.

KEW MEDIA GROUP INC. et al.  
Plaintiffs

-and- GRANT THORNTON LLP  
Defendant

Court File No. CV-21-00656707-0000

ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT TORONTO

NOTICE OF DISCONTINUANCE

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Applicant

-and-

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

Respondents

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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**FACTUM OF THE RECEIVER  
(MOTION RETURNABLE MAY 25, 2022)**

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