

**SUPERIOR COURT**  
(Commercial Division)

**CANADA**  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**  
**NO: 500-11-064451-244**  
**DATE: September 20, 2024**

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**PRESIDING: THE HONOURABLE CHRISTIAN IMMER, J.S.C.**

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
RSC 1985, C C-36 OF:**

**MEDXL INC.**

-and-

**LIEBEL-FLARSHEIM CANADA INC.**

-and-

**9431-0091 QUÉBEC INC.**

-and-

**9190-2395 QUÉBEC INC.**

Debtors/Applicants

-and-

**FTI CONSULTING CANADA INC.**

Monitor

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**SECOND AMENDED AND RESTATED INITIAL ORDER**

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- [1] **ON READING** the Debtors' *Application for the Issuance of (i) an Initial Order, (ii) an Amended and Restated Initial Order and (iii) an Order Approving a Sale and Investment Solicitation Process* dated July 25, 2024 (the "**Application**") filed by MedXL Inc., Liebel-Flarsheim Inc., 9431-0091 Québec Inc. and 9190-2395 Québec inc (collectively, the "**Debtors**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**"), the sworn statement and the exhibits filed in support thereof;

- [2] **ON READING** the Application for a *Application for a Second Amended and Restated Initial Order (i) Extending the Stay of Proceedings and (ii) Approving Supplemental Interim Financing* (the "**Second ARIO Application**") dated September 18, 2024 and the Third Report of FTI Consulting Inc. (the "**Third Report**") in its capacity as Monitor (the "**Monitor**") dated September 18, 2024;
- [3] **CONSIDERING** the Initial Order issued by this Court on July 26, 2024 and the Amended and Restated Initial Order issued on August 6, 2024;
- [4] **CONSIDERING** the notification of the Second ARIO Application;
- [5] **CONSIDERING** the submissions of the attorneys present at the hearing on the Application and the testimony of the witnesses heard;
- [6] **CONSIDERING** the provisions of the CCAA;

**THE COURT HEREBY:**

- [7] **GRANTS** the Second ARIO Application with reasons provided separately.
- [8] **ISSUES** an order pursuant to the CCAA (this "**Order**"), divided under the following headings:
- I. Service
  - II. Effective Time
  - III. Application of the CCAA and Administrative Consolidation
  - IV. Plan of Arrangement
  - V. Stay of Proceedings against the Debtors and the Property
  - VI. Stay of Proceedings against the Directors and Officers
  - VII. Possession of Property and Operations
  - VIII. No Exercise of Rights or Remedies
  - IX. No Interference with Rights
  - X. Continuation of Services
  - XI. Non-Derogation of Rights
  - XII. Interim Financing
  - XIII. Directors' and Officers' Indemnification and Charge
  - XIV. Restructuring
  - XV. The Monitor
  - XVI. Priorities and General Provisions Relating to CCAA Charges
  - XVII. Hearing Scheduling and Details
  - XVIII. General

**I. SERVICE**

- [9] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.

[10] **DECLARES** that sufficient prior notice of the presentation of this Application has been given by the Debtors to interested parties, including the secured creditors which are likely to be affected by the charges created herein.

**II. EFFECTIVE TIME**

[11] **DECLARES** that this Order and all its provisions are effective as of 12:01 a.m. Montréal time, province of Québec, on July 26, 2024 (the “**Effective Time**”).

**III. APPLICATION OF THE CCAA AND ADMINISTRATIVE CONSOLIDATION**

[12] **DECLARES** that the Debtors are debtor companies to which the CCAA applies.

[13] **ORDERS** the consolidation of these CCAA proceedings of the Debtors (the “**CCAA Proceedings**”) under one single Court file and that all existing and future proceedings, filings, and other matters in relation to the CCAA Proceedings be filed jointly and together in Court file number 500-11-064451-244.

[14] **DECLARES** that the consolidation of the CCAA Proceedings in respect of the Debtors shall be for administrative purposes only and shall not effect a consolidation of the assets and property or of the debts and obligations of each of the Debtors including, without limitation, for the purposes of any Plan or Plans that may be hereafter proposed.

**IV. PLAN OF ARRANGEMENT**

[15] **DECLARES** that one or more of the Debtors shall have the authority to file with this Court and to submit to its creditors one or more plans of compromise or arrangement (a “**Plan**”) in accordance with the CCAA.

**V. STAY OF PROCEEDINGS AGAINST THE DEBTORS AND THE PROPERTY**

[16] **ORDERS** that, until and including October 25, 2024 or such later date as the Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), including but not limited to seizures, executions, notices of execution, judicial or extrajudicial right of resolution or resiliation, right of set-off or compensation between mutual claims arising prior to the Effective Time or mutual claims arising respectively prior to and after the Effective Time, writs of seizure or execution, any and all actions, applications, arbitration proceedings and other lawsuits existing at the time of this Order in which any of the Debtors is a defendant, party or respondent (either individually or with other Persons (as defined below)) shall be commenced or continued against or in respect of any of the Debtors, or affecting any of the Debtors’ business operations and activities (the “**Business**”) or any of the Property (as defined herein below), including as provided in paragraph [25] herein except with leave of this Court. All Proceedings currently under way against or in respect of the Debtors or affecting the Business or the Property are hereby stayed and

suspended pending further order of this Court, the whole subject to Section 11.1 of the CCAA.

- [17] **ORDERS** that the rights of His Majesty in right of Canada and His Majesty in right of a Province are suspended in accordance with the terms and conditions of Section 11.09 of the CCAA.
- [18] **ORDERS** that the respective claims of Mitsubishi HC Capital Canada, Inc. ("**Mitsubishi**") pursuant to the credit agreement entered into between Mitsubishi, as lender, and the Debtors, as borrowers, dated August 24, 2023, as amended by a first amendment dated September 21, 2023 and a second amendment dated March 21, 2024, and of Private Debt Partners Senior Opportunities Fund LP ("**PDP**" and, collectively with Mitsubishi, the "**Secured Lenders**") pursuant to the credit agreement entered into between PDP, as lender, and the Debtors, as borrowers, dated March 15, 2024 shall not be compromised or arranged pursuant to the Plan or these proceedings, and the Secured Lenders shall be treated as unaffected creditors in any Plan.

#### **VI. STAY OF PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

#### **VII. POSSESSION OF PROPERTY AND OPERATIONS**

- [20] **ORDERS** that the Debtors shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof and all bank accounts (collectively the "**Property**"), notwithstanding any enforcement process, including but not limited to seizures, executions, writs of seizure or execution, the whole in accordance with the terms and conditions of this Order.
- [21] **ORDERS** that up to the completion of the collection of the receivables purchased by, or assigned to, eCapital Commercial Finance (Canada) Corp. prior to the date of the Initial Order (the "**Pre-Filing eCapital Receivables**"), and until the time when all obligations towards eCapital Commercial Finance (Canada) Corp. have been fulfilled, the Debtors shall continue to be bound by existing cash management arrangements contemplated and set out in the Master Purchase and Sale Agreement dated as of April 26, 2024 (the "**MPSA**") and the applicable Blocked Account Agreements dated as of May 2024 (the "**BAA**"), the whole

solely in respect of the Pre-Filing eCapital Receivables, and **ORDERS** that the MPSA and the BAA shall continue to apply and shall not be disclaimed, resiliated or cancelled, the whole solely in respect of the Pre-Filing eCapital Receivables. To the extent that funds relating to the accounts receivables other than the Pre-Filing eCapital Receivables are deposited in any bank account subject to the BAA, the Monitor shall be authorized to instruct eCapital Commercial Finance (Canada) Corp. to transfer any such funds to the Debtors bank account to be designated by the Monitor, and eCapital Commercial Finance (Canada) Corp. shall transfer such funds within 24 hours of such request. For greater certainty, the Debtors shall be authorized to deposit cash relating to account receivables other than Pre-Filing eCapital Receivables in any bank account not subject to the cash management arrangements contemplated and set out in the MPSA or any blocked account agreement in favour of eCapital Commercial Finance (Canada) Corp.

- [22] **ORDERS** that, subject to the terms and conditions set out in the Interim Financing Term Sheet (as defined below) and the Supplemental Interim Financing Term Sheet (as defined below), each of the Debtors is authorized, in the ordinary course of business, to complete outstanding transactions and to engage in new transactions with one another, and to continue, on and after the date of this Order, to buy and sell goods and services from and to one another, and to collect and pay the associated costs, expenses and other amounts from and to one another (collectively, the "**Ordinary Course Intercompany Transactions**"). All Ordinary Course Intercompany Transactions shall continue on terms consistent with existing arrangements or past practice, unless otherwise required or agreed upon by the Monitor and the Interim Lenders (as defined below) in consultation with the Secured Lenders, or as otherwise ordered by this Court.
- [23] **ORDERS** that the Debtors shall be entitled but not required to pay the following expenses, whether incurred prior to or after this Order, with the prior written consent of the Monitor and in accordance with the Interim Financing Term Sheet and the cash flow forecasts appended thereto:
- (a) all outstanding and future wages, salaries, expenses, benefits and vacation pay payable before, on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
  - (b) the fees and disbursements of any advisor or counsel retained or employed by the Debtors in connection with these proceedings, at their standard rates and charges.
- [24] **ORDERS** that the Debtors are authorized to remit or pay the following expenses, in accordance with legal requirements in accordance with the Interim Financing Term Sheet and the cash flow forecasts appended thereto

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension Plan, and (iv) income taxes;
- (b) payment of pre-filing amounts and expenses to suppliers deemed critical by the Debtors, up to an aggregate amount of \$ 200,000;
- (c) all goods and services, harmonized sales or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Debtors and in connection with the sale of goods and services by the Debtors, but only where such Sales Taxes are accrued or collected after the date of this Order.

#### **VIII. NO EXERCISE OF RIGHTS OR REMEDIES**

- [25] **ORDERS** that, during the Stay Period, and subject to, *inter alia*, Subsection 11.1 of the CCAA, all rights and remedies, of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of any of the Debtors, or affecting the Business, the Property or any part thereof, including, any contractual right of any third party to modify any of the Debtors' existing rights as a result of any event of default or of non-performance by the Debtors under any agreement (including any bond, surety, indemnity or other comparable agreement), including by reason of the insolvency of the Debtors, the commencement CCAA Proceedings and/or any admissions or evidence filed by the Debtors in the CCAA Proceedings, are hereby stayed and suspended except with leave of this Court.
- [26] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Debtors or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Debtors, or any of them, become(s) bankrupt or a receiver as defined in Subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") is appointed in respect of the Debtors, the period between the date of this Order and the day on which the Stay Period ends shall not be calculated in respect of the Debtors in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

**IX. NO INTERFERENCE WITH RIGHTS**

[27] **ORDERS** that during the Stay Period, no Person shall discontinue, fail to renew per the same terms and conditions, honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the Debtors, as applicable, and the Monitor, or with leave of this Court.

**X. CONTINUATION OF SERVICES**

[28] **ORDERS** that during the Stay Period and subject to paragraph [30] hereof and Subsection 11.01 of the CCAA, all Persons having verbal or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Debtors, are hereby restrained until further order of this Court from discontinuing, failing to renew per the same terms and conditions, altering, interfering with, terminating the supply or, where the case may be, interrupting, delaying or stopping the transit of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtors, without having to provide any security deposit or any other security, 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 Debtors, as applicable, with the consent of the Monitor, or as may be ordered by this Court.

[29] **ORDERS** that, subject to Subsection 11.01 of the CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Debtors on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to make further advance of money or otherwise extend any credit to the Debtors.

[30] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any of the Debtors with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by the Debtors and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into any of the Debtors' accounts until those

cheques or other instruments have been honoured by the financial institution on which they have been drawn.

#### **XI. NON-DEROGATION OF RIGHTS**

[31] **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the “**Issuing Party**”) at the request of any of the Debtors shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of this Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

#### **XII. INTERIM FINANCING**

[32] **ORDERS** that the Debtors are authorized to borrow and repay from Vaxiron Inc. and Briva Finance (Équité) S.E.C. (collectively the “**Interim Lender**”), from time to time, a maximum principal amount of up to \$4,000,000 (the “**Interim Facility**”) outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet, Exhibit R-17 filed in support of the Application (the “**Interim Financing Term Sheet**”) and in the Interim Financing Documents (as defined hereinafter) as same may be amended by an agreement to be entered into between the parties acceptable to the Monitor and the Secured Lenders incorporating the substance of the representations made to the Court on September 29, 2024, to fund the ongoing expenditures of the Debtors and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents.

[33] **ORDERS** that the Debtors are hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the “**Interim Financing Documents**”) as may be required by the Interim Lender in connection with the Interim Facility and the Interim Financing Term Sheet, and the Debtors are authorized and ordered to perform all of their obligations under the Interim Financing Documents. For clarity, the Interim Lender Charge shall not affect the Pre-Filing eCapital Receivables.

[34] **ORDERS** that the Debtors shall pay to the Interim Lender , when due, all amounts owing, (including principal, interest, fees and expenses, including, without limitation, all fees and disbursement of counsel and other advisors (including financial advisors) to or agents of the Interim Lender on a full indemnity basis (the “**Interim Lender Expenses**”) under the Interim Financing Documents and shall perform all of their other obligations to the Interim Lender pursuant to the Interim Financing Term Sheet, the Interim Financing Documents and this Order.



- [35] **DECLARES** that all of the Property of the Debtors (including, without limitation, the immovable property described in Schedule A attached hereto) is hereby subject to a charge, hypothec and security for an aggregate amount of \$4,800,000 (the “**Interim Lender Charge**”) in favour of the Interim Lender as security for all obligations of the Debtors to the Interim Lender with respect to all amounts owing (including principal, interest and the Interim Lender Expenses) under or in connection with the Interim Financing Term Sheet and the Interim Financing Documents. The Interim Lender Charge shall subsist without necessity of any publication, registration, recording, filing or perfection, and shall have the priority established by paragraphs [60] and [61] of this Order.
- [36] **ORDERS** that the Debtors are authorized to borrow and repay from Briva Finance (Équité) S.E.C. (the “**Supplemental Interim Lender**” and hereinafter collectively with the Interim Lender, the “**Interim Lenders**”), from time to time, a maximum principal amount of up to \$1,900,000 (the “**Supplemental Interim Facility**”) outstanding at any time, on the terms and conditions as set forth in the Supplemental Interim Financing Term Sheet, Exhibit R-1 filed in support of the Second ARIO Application (the “**Supplemental Interim Financing Term Sheet**”) and in the Supplemental Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of the Debtors and to pay such other amounts as are permitted by the terms of this Order and the Supplemental Interim Financing Documents.
- [37] **ORDERS** that the Debtors are hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the “**Supplemental Interim Financing Documents**”) as may be required by the Supplemental Interim Lender in connection with the Supplemental Interim Facility and the Supplemental Interim Financing Term Sheet, and the Debtors are authorized and ordered to perform all of their obligations under the Supplemental Interim Financing Documents. For clarity, the Supplemental Interim Lender Charge shall not affect the Pre-Filing eCapital Receivables.
- [38] **ORDERS** that the Debtors shall pay to the Supplemental Interim Lender, when due, all amounts owing, (including principal, interest, fees and expenses, including, without limitation, all fees and disbursement of counsel and other advisors (including financial advisors) to or agents of the Supplemental Interim Lender on a full indemnity basis (the “**Supplemental Interim Lender Expenses**”) under the Supplemental Interim Financing Documents and shall perform all of their other obligations to the Supplemental Interim Lender pursuant to the Supplemental Interim Financing Term Sheet, the Supplemental Interim Financing Documents and this Order.
- [39] **DECLARES** that all of the Property of the Debtors (including, without limitation, the immovable property described in Schedule A attached hereto) is hereby subject to a charge, hypothec and security for an aggregate amount of \$2,280,000 (the “**Supplemental Interim Lender Charge**”) in favour of the

Supplemental Interim Lender as security for all obligations of the Debtors to the Supplemental Interim Lender with respect to all amounts owing (including principal, interest and the Supplemental Interim Lender Expenses) under or in connection with the Supplemental Interim Financing Term Sheet and the Supplemental Interim Financing Documents. The Supplemental Interim Lender Charge shall subsist without necessity of any publication, registration, recording, filing or perfection, and shall have the priority established by paragraphs [60] and [61] of this Order.

- [40] **ORDERS** that the Debtors shall forthwith provide the Interim Lenders and their financial advisor (Raymond Chabot inc.), upon request with access to the Business or Property, including the premises, books, records, data, and other documents of the Debtors.
- [41] **ORDERS** that the claims of the Interim Lender pursuant to the Interim Financing Documents, the claims of the Supplemental Interim Lender pursuant to the Supplemental Interim Financing Documents and the claims of eCapital Commercial Finance (Canada) Corp. with respect to the Pre-Filing eCapital Receivables shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lenders in that capacity, shall be treated as unaffected creditors in these proceedings and in any Plan.
- [42] **ORDERS** that the Interim Lenders may:
- (a) notwithstanding any other provision of this Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lender Charge, the Interim Financing Documents, the Supplemental Interim Lender Charge and the Supplemental Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
  - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Debtors if any of them fail to meet the provisions of the Interim Financing Term Sheet, of the Interim Financing Documents, of the Supplemental Interim Financing Term Sheet, of the Supplemental Interim Financing Documents, or of this Order or any other order which may eventually be issued by this Court.
- [43] **ORDERS** that the Interim Lenders shall not take any enforcement steps under the Interim Financing Documents, the Interim Lender Charge, the Supplemental Financing Documents, or the Supplemental Interim Lender Charge without providing at least five (5) business days written notice (the "**Notice Period**") of a default thereunder to the Debtors, the Monitor, the Secured Lenders and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lenders shall be entitled to take any and all steps under the Interim Financing Documents, the Interim Lender Charge, the Supplemental Interim Financing

Documents, the Supplemental Interim Lender Charge and otherwise permitted at law, but without having to send any demands under Section 244 of the BIA and upon the Interim Lenders taking such steps.

- [44] **ORDERS** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs [32] to [43] hereof unless either (a) notice of an application for such order is served on the Interim Lenders by the moving party at least seven (7) days prior to the presentation thereof or (b) the Interim Lenders apply for or consent to such order.

### **XIII. DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

- [45] **ORDERS** that the Debtors shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Debtors after the Effective Time, except where such obligations or liabilities were incurred as a result of such Director's gross negligence, willful misconduct or gross or intentional fault as further detailed in Section 11.51 of the CCAA.
- [46] **ORDERS** that the Directors of the Debtors shall be entitled to the benefit of and are hereby granted a charge, security and hypothec in the Property to the extent of the aggregate amount of \$600,000 (the "**Directors' Charge**"), as security for the indemnity provided in paragraph [45] hereof as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority established by paragraphs [60] and [61] of this Order.
- [47] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph [45] of this Order.

### **XIV. RESTRUCTURING**

- [48] **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Debtors, shall have the right, subject to approval of the Monitor and in consultation with the Secured Lenders and the Interim Lenders or further order of the Court, to:
- (a) permanently or temporarily cease, downsize, or shut down any of their operations or locations as they deem appropriate and make provision for the consequences thereof in the Plan;

- (b) pursue all avenues to finance or refinance, market, convey, transfer assign or in any other manner, dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 of the CCAA, and under reserve of subparagraph [48](c);
- (c) convey, transfer, assign, lease, or in any other manner, dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$100,000 individually or \$300,000 in the aggregate and that the prior written approval of the Interim Lenders or the Secured Creditors is obtained;
- (d) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as the Debtors deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Debtors, as applicable, and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Debtors may determine;
- (e) subject to the provisions of Section 32 of the CCAA, disclaim or resiliate, any of the Debtors' agreements, contracts, or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Debtors and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
- (f) subject to Section 11.3 of the CCAA, assign any rights and obligations of the Debtors.

[49] **DECLARES** that, in order to facilitate the Restructuring, the Debtors may also, subject to the approval of the Monitor and in consultation with the Secured Lenders and the Interim Lenders, or further order of the Court, settle claims of creditors, customers and suppliers that are in dispute;

[50] **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of any of the Debtors pursuant to Section 32 of the CCAA and Subsection [48](e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Debtors and the Monitor 24 hours' prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Debtors, provided nothing herein shall relieve such landlord of their obligation to mitigate any damages claimed in connection therewith.

- [51] **ORDERS** that the Debtors shall provide to any relevant landlord notice of any of Debtors' intention to remove any fittings, fixtures, installations, or leasehold improvements at least seven (7) days in advance. If the Debtors have already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between the Debtors and the landlord.
- [52] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Debtors and the Monitor are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Debtors binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Debtors or destroyed. If a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Debtors.

## **XV. THE MONITOR**

- [53] **ORDERS** that FTI Consulting Canada Inc. is hereby appointed to monitor the business and financial affairs of the Debtors as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:
- (a) shall, as soon as practicable, (i) publish once a week for two (2) consecutive weeks or as otherwise directed by the Court, in *La Presse* and the *Globe and Mail National Edition* and (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website (the "**Website**") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Debtors of more than \$1,000, advising them that this Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;

- (b) shall control and monitor the Debtors' receipts and disbursements;
- (c) shall assist the Debtors in dealing with their creditors and other interested Persons during the Stay Period;
- (d) shall assist the Debtors with the preparation of their cash flow projections and any other projections or reports and the development, negotiation, and implementation of a Plan;
- (e) shall advise and assist the Debtors to review the Debtors' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (f) shall assist the Debtors with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- (g) shall report to the Court on the state of the business and financial affairs of the Debtors or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated reports for the Debtors;
- (h) shall report to the Interim Lenders, on demand and as required by the Interim Lenders, on the state of the operations, business and financial affairs of the Debtors or developments in these proceedings or any related proceedings, including with respect to any solicitation efforts to be made in connection with the Debtors' Property;
- (i) shall report to this Court and interested parties, including but not limited to creditors affected by any Plan, with respect to the Monitor's assessment of, and recommendations with respect to, such Plan;
- (j) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (k) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under this Order or under the CCAA;
- (l) may act as a "foreign representative" of any of the Debtors or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;

- (m) may give any consent or approval as may be contemplated by the Order or the CCAA;
- (n) may hold and administer funds in trust in connection with arrangements made among the Debtors, any counterparties and the Monitor, or by Order of this Court; and
- (o) may perform such other duties as are required by this Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Debtors, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Debtors nor shall the Monitor be deemed to have done so.

- [54] **ORDERS** that, without limiting the generality of anything herein, the Debtors and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of this Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Debtors in connection with the Monitor's duties and responsibilities hereunder, the Restructuring, the Property and the Business.
- [55] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Debtors with information in response to requests made by them in writing addressed to the Monitor and copied to the counsel for the Debtors. In the case of information that the Debtors have advised the Monitor as being confidential, proprietary, or competitive, the Monitor shall not provide such information to any Person without the consent of the Debtors unless otherwise directed by this Court.
- [56] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Debtors or continues the employment of the Debtors' employees, the Monitor shall benefit from the provisions of Section 11.8 of the CCAA.
- [57] **DECLARES** that Section 215 of the BIA applies *mutatis mutandis*, and no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least seven (7) days' notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [58] **ORDERS** that the Debtors shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Debtors' legal counsel, the Secured Lenders' legal counsel and the Interim Lenders' legal counsel directly related to these proceedings, a Plan and the Restructuring, whether incurred before or after

this Order, and shall be authorized to provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

[59] **DECLARES** that the Monitor, the Monitor's legal counsel (Stikeman Elliott LLP), the legal counsel for the Debtors (Fasken Martineau DuMoulin LLP), as well as legal counsel for the Secured Lenders, the Interim Lender Vaxiron (McCarthy Tétrault LLP) and legal counsel for the Interim Lender and Supplemental Interim Lender Briva (Lavery De Billy LLP) as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge, hypothec and security in the Property, to the extent of the aggregate amount of \$750,000 (the "**Administration Charge**"), having the priority established by paragraphs [60] and [61] of this Order.

#### **XVI. PRIORITIES AND GENERAL PROVISIONS RELATING TO CCAA CHARGES**

[60] **DECLARES** that the priorities of the Administration Charge, the Directors' Charge, the Interim Lender Charge and the Supplemental Interim Lender Charge (collectively, the "**CCAA Charges**"), as between such CCAA Charges with respect to any Property to which they apply, shall be as follows:

- (a) first, the Administration Charge;
- (b) second, the Interim Lender Charge;
- (c) third, the Supplemental Interim Lender Charge; and
- (d) fourth, the Directors' Charge;

[61] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all claims, rights, hypothecs, mortgages, liens, security interests, priorities, charges, deemed trusts, encumbrances or security of whatever nature or kind, whether or not they have been registered, published or filed (collectively, "**Encumbrances**") affecting the Property charged by such Encumbrances.

[62] **ORDERS** that, except as otherwise expressly provided for herein, the Debtors shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Debtors, as applicable, obtain the prior written consent of the Monitor and of the Interim Lenders, and the prior approval of the Court.

[63] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Debtors, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.



[64] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such application(s) or any assignment(s) in bankruptcy made or deemed to be made in respect of any of the Debtors; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Debtors (a "**Third-Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

- (a) the creation of any of the CCAA Charges shall not create nor be deemed to constitute a breach by the Debtors of any Third-Party Agreement to which any of the Debtors is a party; and
- (b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third-Party Agreement caused by or resulting from the creation of the CCAA Charges.

[65] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such application(s) or any assignment(s) in bankruptcy made or deemed to be made in respect of any of the Debtors; and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any of the Debtors pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

[66] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Debtors charged by the CCAA Charges and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver any of the Debtors.

## **XVII. HEARING SCHEDULING AND DETAILS**

[67] **ORDERS** that, subject to further Order of this Court, all applications in these CCAA proceedings are to be brought by any moving party on not less than five (5) calendar days' notice to all Persons on the service list prepared by the Monitor or counsel for the Monitor in connection with these CCAA proceedings (the "**Service List**"). Each application shall specify a date (the "**Initial Return Date**") and time (the "**Initial Return Time**") for the hearing.

[68] **ORDERS** that any Person wishing to object to the relief sought on an application in these CCAA proceedings must serve responding materials or a notice stating

the objection to the application and the grounds for such objection (a “**Notice of Objection**”) in writing to the moving party, the Debtors and the Monitor, with a copy to all Persons on the Service List, no later than 5:00 p.m. on the date that is three (3) calendar days prior to the Initial Return Date (the “**Objection Deadline**”).

- [69] **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of these proceedings (the “**Presiding Judge**”) may determine: (a) whether a hearing is necessary; (b) whether such hearing will be in person, by videoconference, by telephone or by written submissions only; and (c) the parties from whom submissions are required (collectively, the “**Hearing Details**”). In the absence of any such determination, a hearing will be held in the ordinary course.
- [70] **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Debtors’ counsel shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Debtors’ counsel shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor’s next report in these proceedings.
- [71] **ORDERS** that, if a Notice of Objection is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time, or such earlier or later time as may be directed by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial Return Date and at the Initial Return Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested application and such other matters, including interim relief, as the Court may direct.

#### **XVIII. GENERAL**

- [72] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisors of the Debtors or of the Monitor in relation to the Business or Property of the Debtors, without first obtaining leave of this Court, upon ten (10) days’ written notice to the Debtors counsel, the Monitor’s counsel, and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
- [73] **DECLARES** that this Order and any proceeding or sworn statement leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Debtors under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [74] **DECLARES** that, except as otherwise specified herein, the Debtors and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or

other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Debtors and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.

- [75] **DECLARES** that the Debtors and any party to the proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing an electronic copy of such materials to counsels' email addresses as provided for on the Service list.
- [76] **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on counsel for the Debtors and counsel for the Monitor and has filed such notice with this Court, or appears on the Service list prepared by counsel for the Monitor, save and except when an order is sought against a Person not previously involved in these proceedings.
- [77] **DECLARES** that the Debtors or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.
- [78] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [79] **AUTHORIZES** the Debtors or the Monitor to apply as they may consider necessary or desirable, in consultation with the Interim Lenders, with or without notice, to any other court or administrative body, whether in Canada, the United States of America, or elsewhere, for orders which aid and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, complement this Order and any subsequent orders of this Court and for which the Monitor shall be the foreign representative of the Debtors (the "**Foreign Representative**"). All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Debtors and the Foreign Representative as may be deemed necessary or appropriate for that purpose.
- [80] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in Canada, the United States of America or elsewhere, to give effect to this Order and to assist the Debtors, the Monitor, and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby requested to make such orders and to provide such assistance to the Debtors, and the Monitor as may be

necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Debtors in any foreign proceeding, to assist the Debtors, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

- [81] **DECLARES** that, for the purposes of any applications authorized by paragraphs [79] and [80], Debtors' centre of main interest is located in the province of Québec, Canada.
- [82] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without security.
- [83] **THE WHOLE WITHOUT COSTS.**



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The Honourable Christian Immer, J.S.C.

## **Schedule A**

### **Description of Immovable Property**

#### **DÉSIGNATION**

Un emplacement ayant front sur l'Autoroute Transcanadienne à Pointe-Claire, composé du lot DEUX MILLIONS CINQ CENT VINGT-HUIT MILLE QUATRE CENT NEUF (2 528 409), Cadastre du Québec, circonscription foncière de Montréal.

Avec toutes les constructions dessus érigées, circonstances et dépendances, notamment la bâtisse portant le numéro 7500, Autoroute Transcanadienne, Pointe-Claire, province de Québec, H9J 3Z4.