

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NELSON EDUCATION LTD. AND  
NELSON EDUCATION HOLDINGS LTD.**

Applicants

**MOTION RECORD  
(Motion for an Amended and Restated Initial Order  
returnable June 8, 2015)**

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# TAB 1

Court File No. CV15-10961-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
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Applicants

**NOTICE OF MOTION  
(Motion for an Amended and Restated Initial Order  
returnable June 8, 2015)**

The Applicants will bring a motion before the Honourable Justice Newbould on June 8, 2015, at 9:30 a.m. or as soon before or after that time as the matter may be heard at 330 University Avenue, Toronto, Ontario.<sup>1</sup>

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

**1. THE APPLICANTS MAKE A MOTION FOR:**

- (a) an Order in the form attached as Tab 2 to the Motion Record of the Applicants amending and restating the Initial Order granted on May 12, 2015 (the “**Initial Order**”) pursuant to the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended* (the “**CCAA**”) effective June 8, 2015 (the “**Amended and Restated Initial Order**”), to provide for, *inter alia*:
  - (i) a charge in favour of FTI Consulting Canada Inc. (“**FTI**”) as the Monitor in these CCAA proceedings effective May 29, 2015 (the “**Monitor**”),

<sup>1</sup> Any capitalized terms that are not defined herein shall have the meanings ascribed to them in the Affidavit of Greg Nordal sworn May 11, 2015 attached as Tab 5 to the Motion Record of the Applicants.

counsel to the Monitor, counsel to the Applicants and the financial advisor to the Applicants (the “**Administration Charge**”);

- (ii) a charge in favour of the Royal Bank of Canada (“**RBC**”), in its capacity as provider of the Cash Management System (as defined in the Amended and Restated Initial Order) (the “**Cash Management Charge**”); and
- (iii) the extension of the Stay Period (as defined in the Amended and Restated Initial Order) until and including July 17, 2015; and

(b) such further and other relief as this Court deems just.

## 2. **THE GROUNDS FOR THE MOTION ARE:**

- (a) on May 12, 2015, the Court granted the Initial Order, *inter alia*, (i) granting a stay of proceedings under the CCAA in respect of the Applicants until June 10, 2015, and (ii) setting a date of May 29, 2015 for a comeback hearing (the “**Comeback Hearing**”) to allow any interested party that wished to amend or vary the Initial Order to appear or bring a motion before the Court;
- (b) at the Comeback Hearing on May 29, 2015, the Court appointed FTI as the Monitor of the Applicants going forward in these CCAA proceedings;
- (c) since the Initial Order, the Applicants have acted and continue to act in good faith and with due diligence in respect of all matters relating to the CCAA proceedings;
- (d) since the Initial Order, the Applicants have been in contact with various stakeholders to notify them of the CCAA proceedings and the Transaction, and have responded to various stakeholder inquiries;
- (e) the Applicants and their advisors have been working to review with the Monitor matters relating to the Transaction, which remains subject to the approval of the Court;
- (f) the Applicants and their advisors have been discussing and working with the Monitor, the First Lien Steering Committee and RBC, and their respective

advisors, to address matters raised at the Initial Application Hearing and the Comeback Hearing and other matters;

- (g) the Applicants and their advisors have been working with the Monitor and its counsel to provide information and materials in connection with the Company, the Nelson Business, the Applicants' cash flows, the SISP and the proposed Transaction;
- (h) in accordance with the Initial Order, the Applicants have continued to pay expenses and satisfy obligations incurred in the ordinary course of business, and have continued to operate and manage the Nelson Business and fulfill ongoing contracts in the ordinary course;
- (i) the Applicants require an extension of the Stay Period to July 17, 2015 to, among other things, (i) continue to work with FTI as Monitor in these CCAA proceedings; (ii) review matters relating to the Transaction with the Monitor; (iii) continue to work with stakeholders in connection with matters related to the Applicants and these proceedings; (iv) continue to respond to and address stakeholder inquiries; and (v) continue to manage and operate the Nelson Business in the ordinary course;
- (j) the Applicants believe that it is important for the Company to complete the Transaction as soon as possible;
- (k) the Applicants are discussing and reviewing their cash flow forecast with their financial advisor and the Monitor based on the current status of outstanding matters, and the Monitor will file a copy of the Applicants' cash flow forecast with the First Report of the Monitor, to be filed;
- (l) the Monitor supports the Applicants' requested extension of the Stay Period;
- (m) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

- (n) Rules 1.04, 1.05, 2.03, 3.02, 16, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (o) such further and other grounds as counsel may advise and this Court may permit.

**3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

- (a) the Affidavit of Greg Nordal sworn June 3, 2015, filed;
- (b) the Monitor's First Report and any appendices attached thereto, to be filed; and
- (c) such further and other materials as counsel may advise and this Court may permit.



Date: June 3, 2015

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TO: THE SERVICE LIST

Court File No. CV15-10961-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*  
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
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Applicants

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

Court File No: CV15-10961-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
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Applicants

***ONTARIO*  
SUPERIOR COURT OF JUSTICE-  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Returnable June 8, 2015)**

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Lawyers for the Applicants

## **TAB 2**

Court File No. CV15-10961-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	MONDAY, THE 8 <sup>TH</sup>
	)	
JUSTICE NEWBOULD	)	DAY OF JUNE, 2015

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF NELSON EDUCATION LTD.  
AND NELSON EDUCATION HOLDINGS LTD.**

Applicants

**AMENDED AND RESTATED INITIAL ORDER**

THIS MOTION, made by Nelson Education Ltd. ("**Nelson Education**") and Nelson Education Holdings Ltd. ("**Holdings**", together with Nelson Education, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Amended and Restated Initial Order was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Greg Nordal sworn June 3, 2015 and the Exhibits thereto (the "**June Affidavit**"), the First Report of FTI Consulting Canada Inc. ("**FTI**") as the Court-appointed monitor (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, the Monitor, the First Lien Steering Committee and the First Lien Agent (each as defined in the May Affidavit (as defined below)), Royal Bank of Canada in its capacities as the non-Consenting First Lien Lender, Second Lien Agent, Second Lien Lender and provider of the Applicants' Cash Management System (each as defined in the May Affidavit (as defined below)) and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Sydney Young, filed.

**DRAFT: 1 - June 3, 2015 - 6:06 PM**



## **CAPITALIZED TERMS**

1. THIS COURT ORDERS that, unless otherwise indicated or defined herein, capitalized terms have the meaning given to them in the affidavit of Greg Nordal sworn May 11, 2015 (the “**May Affidavit**”).

## **AMENDED AND RESTATED ORDER**

2. THIS COURT ORDERS that, other than as it relates to the appointment of FTI as Monitor which shall be effective from and after May 29, 2015, effective on and from the date hereof, this Amended and Restated Order shall amend and restate the Initial Order granted on May 12, 2015 in these proceedings (the “**Initial Order**”).

## **POSSESSION OF PROPERTY AND OPERATIONS**

3. THIS COURT ORDERS that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall each continue to carry on business in the ordinary course and in a manner consistent with the preservation of their business (the “**Business**”) and the Property.

4. THIS COURT ORDERS that, subject to the provisions of paragraph 5 hereof, the Applicants shall be entitled to continue to utilize the central cash management system currently in place, including the Applicants’ current business forms, cheques and bank accounts, as described in the May Affidavit (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, and shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System.

5. THIS COURT ORDERS that Royal Bank of Canada, in its capacity as provider of the Cash Management System (“**RBC**”), shall be entitled to the benefit of and is hereby granted a charge (the “**Cash Management Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$●, as security for any obligations of the Applicants to RBC that may arise in connection with RBC’s provision of the Cash Management System. The Cash Management Charge shall have the priority set out in paragraphs 26 and 28 hereof.

6. THIS COURT ORDERS that, subject to review of the Monitor, the Applicants shall be entitled but not required to pay expenses and satisfy obligations whether incurred prior to, on or after the making of this Order, in the ordinary course of business.

7. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees’ wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. THIS COURT ORDERS that, notwithstanding anything else contained herein, from and after June 2, 2015, without further order of the Court, the Applicants shall not make any payments (including but not limited to interest and professional fees and expenses) to the First Lien Lenders, the First Lien Agent, the Second Lien Lenders or the Second Lien Agent.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

9. THIS COURT ORDERS that until and including July 17, 2015, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business 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 during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (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 RIGHTS**

11. THIS COURT ORDERS that during the Stay Period, 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 Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with an Applicant or statutory or regulatory mandates for the supply of goods, content and/or services, including without limitation all computer software, communication and other data services, licenses, distribution, printing, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or an Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods, content or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods, content or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier, content provider or service provider and each of the applicable Applicants and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

13. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided 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 advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

14. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be

liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

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

15. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

16. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2.2 million, as security for the indemnity provided in paragraph 15 of this Order. The Directors' Charge shall have the priority set out in paragraphs 26 and 28 herein.

17. THIS COURT 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 Applicants' directors and officers 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 indemnified in accordance with paragraph 15 of this Order.

### **APPOINTMENT OF MONITOR**

18. THIS COURT ORDERS that, effective May 29, 2015, FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, employees, consultants, agents, experts, accountants, counsel and such other persons currently retained or employed by them shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers

and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

19. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in their preparation of their cash flow statements, which information shall be reviewed with the Monitor, as required from time to time, which may be used in these proceedings;
- (d) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (e) take such steps as the Monitor considers necessary or desirable in reviewing the SISP and the activities undertaken by the Applicants and their advisors in connection with the SISP and any sale approval motion;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

20. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the

Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

21. THIS COURT ORDERS that nothing herein contained shall require the Monitor 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’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.

22. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

23. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor 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. Nothing in this Order

shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

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

25. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicants and the financial advisor to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor, counsel to the Monitor, counsel to the Applicants and the financial advisor to the Applicants both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 26 and 28 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

26. THIS COURT ORDERS that the priorities of the Administration Charge, the Directors’ Charge and the Cash Management Charge, as among them, shall be as follows, subject to paragraph 28 of this Order:

- (a) First – Administration Charge (to the maximum amount of \$750,000);
- (b) Second – Directors’ Charge (to the maximum amount of \$2.2 million); and
- (c) Third – Cash Management Charge (to the maximum amount of \$●).

27. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the Directors’ Charge and the Cash Management Charge (together, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.



28. THIS COURT ORDERS that the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, notwithstanding the order of perfection or attachment, except for any validly perfected security interest in favour of a “secured creditor” as defined in the CCAA existing as at the date hereof other than any validly perfected security interest in favour of the First Lien Agent, the First Lien Lenders, the Second Lien Agent or the Second Lien Lenders. Nothing in this Order affects the priority of the First Lien Agent, the Second Lien Agent, the First Lien Lenders and the Second Lien Lenders against the rights of each other and third parties (other than beneficiaries of the Charges) as of the date of this Order. The Applicants shall be entitled to seek priority of the Charges ahead of all or certain of the other Encumbrances on a subsequent motion on notice to those parties likely to be affected thereby.

29. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection registration or performance of any documents in respect thereof shall create or be deemed to constitute a breach by an Applicant of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

30. THIS COURT ORDERS that the Charges created by this Order over leases of real property in Canada shall only be a charge in the Applicants' interest in such real property leases.

#### **SEALING ORDER**

31. THIS COURT ORDERS that each of (i) the summary of the key employee retention program attached as Exhibit J to the May Affidavit, and (ii) the Stockholders and Registration Rights Agreement attached as Exhibit H to the May Affidavit be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

#### **SERVICE AND NOTICE**

32. THIS COURT ORDERS that the Monitor shall not, without further order of the Court, (i) publish any notice containing the information prescribed under the CCAA, (ii) send any prescribed notices to creditors, or (iii) make publicly available any list showing the names and addresses of creditors or the estimated amounts of creditors' claims.

33. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/))

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 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <http://cfcanda.fticonsulting.com/NelsonEducationLtd/>.

34. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are 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 Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or electronic 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.

35. THIS COURT ORDERS that, except with respect to an urgent motion subject to further Order of this Court, any interested party that wishes to object to the relief to be sought in a motion brought in these proceedings shall, subject to further Order of this Court, provide the Service List with responding motion materials or a written notice (including by e-mail) stating its objection to the motion no later than three (3) business days prior to the date such motion is returnable (the "**Objection Deadline**"). The Monitor shall have the right to extend the Objection Deadline after consulting with the Applicants.

36. THIS COURT ORDERS that following the expiry of the Objection Deadline, the Monitor or counsel to the Applicants shall inform the Court, including by way of a 9:30 a.m. appointment, of the absence or the status of any objections to the motion and the judge having carriage of the motion may determine (a) whether a hearing in respect of the motion is necessary, (b) whether such hearing will be in person, by telephone or by written submissions only and (c) the parties from whom submissions are required. In the absence of any such

determination, a hearing will be held in the ordinary course on the date specified in the notice of motion.

## **GENERAL**

37. THIS COURT ORDERS that each of the Applicants and the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

38. 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 Applicants, the Monitor and their respective 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

39. THIS COURT ORDERS that each of the Applicants and the Monitor 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 Monitor 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.

40. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

4 **IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF**  
1 **ION EDUCATION LTD. AND NELSON EDUCATION HOLDINGS LTD.**

Applicants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE-**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED AND RESTATED**  
**INITIAL ORDER**

**GOODMANS LLP**

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Lawyers for the Applicants

**DRAFT: 1 - June 3, 2015 - 6:06 PM**

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# TAB 3

Court File No. CV15-10961-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	TUESDAY <del>MONDAY</del> , THE 12 <del>8</del> <sup>TH</sup>
	)	
JUSTICE NEWBOULD	)	DAY OF <del>MAY</del> <u>JUNE</u> , 2015

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF NELSON EDUCATION LTD.  
AND NELSON EDUCATION HOLDINGS LTD.**

Applicants

**AMENDED AND RESTATED INITIAL ORDER**

THIS ~~APPLICATION~~MOTION, made by Nelson Education Ltd. ("**Nelson Education**") and Nelson Education Holdings Ltd. ("**Holdings**", together with Nelson Education, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Amended and Restated Initial Order was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Greg Nordal sworn ~~May 11,~~June 3, 2015 and the Exhibits thereto (the "~~Nordal June~~ Affidavit") ~~and the Pre-filing Report of the Proposed Monitor, Alvarez & Marsal Canada Inc. ("A&M"), and on being advised that the First Lien Agent and the First Lien Steering Committee were given notice of this Application~~First Report of FTI Consulting Canada Inc. ("FTI") as the Court-appointed monitor (the "Monitor"), and on hearing the submissions of counsel for the Applicants, A&Mthe Monitor, the First Lien Steering Committee and the First Lien Agent, ~~and on reading the consent of A&M to act as the Court-appointed monitor (the "Monitor"), and on ex parte notice to the (each as defined in the May Affidavit (as defined below)), Royal Bank of Canada in its capacities as the non-Consenting~~

**DRAFT: 1 - June 3, 2015 - 6:00 PM**

First Lien Lender, Second Lien Agent, Second Lien Lender and provider of the Applicants' Cash Management System (as each as defined in the Nordal Affidavit), May Affidavit (as defined below)) and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Sydney Young, filed.

### **CAPITALIZED TERMS**

1. THIS COURT ORDERS that, unless otherwise indicated or defined herein, capitalized terms have the meaning given to them in the affidavit of Greg Nordal sworn May 11, 2015 (the "May Affidavit").

### **AMENDED AND RESTATED ORDER**

2. THIS COURT ORDERS that, other than as it relates to the appointment of FTI as Monitor which shall be effective from and after May 29, 2015, effective on and from the date hereof, this Amended and Restated Order shall amend and restate the Initial Order granted on May 12, 2015 in these proceedings (the "Initial Order").

### **POSSESSION OF PROPERTY AND OPERATIONS**

3. ~~2.~~ THIS COURT ORDERS that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall each continue to carry on business in the ordinary course and in a manner consistent with the preservation of their business (the "**Business**") and the Property.

4. ~~3.~~ THIS COURT ORDERS that, subject to the provisions of paragraph 5 hereof, the Applicants shall be entitled to continue to utilize the central cash management system currently in place, including the Applicants' current business forms, cheques and bank accounts, as described in the ~~Nordal Affidavit~~ May Affidavit (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the



Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, and shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System.

5. THIS COURT ORDERS that Royal Bank of Canada, in its capacity as provider of the Cash Management System (“RBC”), shall be entitled to the benefit of and is hereby granted a charge (the “Cash Management Charge”) on the Property, which charge shall not exceed an aggregate amount of \$●, as security for any obligations of the Applicants to RBC that may arise in connection with RBC’s provision of the Cash Management System. The Cash Management Charge shall have the priority set out in paragraphs 26 and 28 hereof.

6. ~~4-~~ THIS COURT ORDERS that, subject to review of the Monitor, the Applicants shall be entitled but not required to pay expenses and satisfy obligations whether incurred prior to, on or after the making of this Order, in the ordinary course of business.

7. ~~5-~~ THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees’ wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, “Sales Taxes”) required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of

municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. THIS COURT ORDERS that, notwithstanding anything else contained herein, from and after June 2, 2015, without further order of the Court, the Applicants shall not make any payments (including but not limited to interest and professional fees and expenses) to the First Lien Lenders, the First Lien Agent, the Second Lien Lenders or the Second Lien Agent.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

9. ~~6-~~THIS COURT ORDERS that until and including ~~June 10,~~July 17, 2015, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

10. ~~7-~~THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (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 RIGHTS**

11. ~~8-~~THIS COURT ORDERS that during the Stay Period, 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 Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

12. ~~9-~~THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with an Applicant or statutory or regulatory mandates for the supply of goods, content and/or services, including without limitation all computer software, communication and other data services, licenses, distribution, printing, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or an Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods, content or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods, content or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier, content provider or service provider and each of the applicable Applicants and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

13. ~~10-~~THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided 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 advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

14. ~~11.~~ THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

## DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

15. ~~12.~~ THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

16. ~~13.~~ THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2.2 million, as security for the indemnity provided in paragraph ~~12~~15 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~22~~26 and ~~24~~28 herein.

17. ~~14.~~ THIS COURT 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 Applicants' directors and officers 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 indemnified in accordance with paragraph ~~12~~15 of this Order.

## APPOINTMENT OF MONITOR

18. ~~15.~~ THIS COURT ORDERS that ~~A&M~~, effective May 29, 2015, FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, employees, consultants, agents, experts, accountants, counsel and such other persons currently retained or employed by them shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

19. ~~16.~~ THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in their preparation of their cash flow statements, which information shall be reviewed with the Monitor, as required from time to time, which may be used in these proceedings;
- (d) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (e) take such steps as the Monitor considers necessary or desirable in reviewing the SISP and the activities undertaken by the Applicants and their advisors in connection with the SISP and any sale approval motion;

(f) ~~(e)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(g) ~~(f)~~ perform such other duties as are required by this Order or by this Court from time to time.

20. ~~17.~~ THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

21. ~~18.~~ THIS COURT ORDERS that nothing herein contained shall require the Monitor 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’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.

22. ~~19.~~ THIS COURT ORDERS ~~that~~ that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is

confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

23. ~~20.~~ THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor 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. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

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

25. ~~THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicants and the financial advisor to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “Administration Charge”) on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor, counsel to the Monitor, counsel to the Applicants and the financial advisor to the Applicants both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 26 and 28 hereof.~~

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

26. ~~22.~~ THIS COURT ORDERS that the priorities of the Administration Charge, the Directors’ Charge shall be a first priority charge (to the maximum amount of \$2.2 million) and the Cash Management Charge, as among them, shall be as follows, subject to paragraph 2428 of this Order:

- (a) First – Administration Charge (to the maximum amount of \$750,000);
- (b) Second – Directors’ Charge (to the maximum amount of \$2.2 million); and
- (c) Third – Cash Management Charge (to the maximum amount of \$●).

27. ~~23.~~—THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the Directors' Charge and the Cash Management Charge (together, the "Charges") shall not be required, and that the ~~Directors' Charge~~Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the ~~Directors' Charge~~Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

28. ~~24.~~—THIS COURT ORDERS that the ~~Directors' Charge~~Charges shall constitute a charge on the Property and such ~~Directors' Charge~~Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, notwithstanding the order of perfection or attachment, except for any validly perfected security interest in favour of a "secured creditor" as defined in the CCAA existing as at the date hereof other than any validly perfected security interest in favour of the First Lien Agent, the First Lien Lenders, the Second Lien Agent or the ~~First~~Second Lien Lenders. Nothing in this Order affects the priority of the First Lien Agent, the Second Lien Agent, the First Lien Lenders and the Second Lien Lenders against the rights of each other and third parties (other than beneficiaries of the ~~Directors' Charge~~Charges) as of the date of this Order. The Applicants shall be entitled to seek priority of the ~~Directors' Charge~~Charges ahead of all or certain of the other Encumbrances on a subsequent motion on notice to those parties likely to be affected thereby.

29. ~~25.~~—THIS COURT ORDERS that the ~~Directors' Charge~~Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the ~~Directors' Charge~~Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an



“**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the ~~Directors’ Charge~~Charges nor the execution, delivery, perfection registration or performance of any documents in respect thereof shall create or be deemed to constitute a breach by an Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the ~~Directors’ Charge~~Charges; and
- (c) the payments made by the Applicants pursuant to this Order and the granting of the ~~Directors’ Charge~~Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

30. ~~26.~~ THIS COURT ORDERS that the ~~Directors’ Charge~~Charges created by this Order over leases of real property in Canada shall only be a charge in the Applicants’ interest in such real property leases.

#### SEALING ORDER

31. ~~27.~~ THIS COURT ORDERS that each of (i) the summary of the key employee retention program attached as Exhibit J to the ~~Nordal~~May Affidavit, and (ii) the Stockholders and Registration Rights Agreement attached as Exhibit H to the ~~Nordal~~May Affidavit be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

#### SERVICE AND NOTICE

32. ~~28.~~ THIS COURT ORDERS that the Monitor shall not, without further order of the Court, (i) publish in the ~~Globe and Mail~~ any notice containing the information prescribed under

the CCAA, (ii) send, ~~in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$10,000, or (iii) prepare a~~ any prescribed notices to creditors, ~~or (iii) make publicly available any~~ list showing the names and addresses of ~~those creditors, save and except creditors who are individuals, and~~ or the estimated amounts of ~~those 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, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available~~ creditors' claims.

33. ~~29.~~ THIS COURT ORDERS that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/)) 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 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <http://www.alvarezandmarsal.com/nelsoncfcanada.fticonsulting.com/NelsonEducationLtd/>.

34. ~~30.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are 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 Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or electronic 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.

35. ~~31.~~ THIS COURT ORDERS that, except with respect to ~~any motion to be heard on the Comeback Date (as defined below), or an urgent motion subject to further Order of this Court,~~ any interested party that wishes to object to the relief to be sought in a motion brought in these

proceedings shall, subject to further Order of this Court, provide the Service List with responding motion materials or a written notice (including by e-mail) stating its objection to the motion no later than three (3) business days prior to the date such motion is returnable (the “**Objection Deadline**”). The Monitor shall have the right to extend the Objection Deadline after consulting with the Applicants.

36. ~~32.~~ THIS COURT ORDERS that following the expiry of the Objection Deadline, the Monitor or counsel to the Applicants shall inform the Court, including by way of a 9:30 a.m. appointment, of the absence or the status of any objections to the motion and the judge having carriage of the motion may determine (a) whether a hearing in respect of the motion is necessary, (b) whether such hearing will be in person, by telephone or by written submissions only and (c) the parties from whom submissions are required. In the absence of any such determination, a hearing will be held in the ordinary course on the date specified in the notice of motion.

#### **GENERAL**

37. ~~33.~~ THIS COURT ORDERS that each of the Applicants and the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

38. ~~34.~~ 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 Applicants, the Monitor and their respective 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

39. ~~35.~~ THIS COURT ORDERS that each of the Applicants and the Monitor 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 Monitor 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.

~~36. THIS COURT ORDERS that any interested party (other than the Applicants or the Monitor) that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court on May 29, 2015 (the “Comeback Date”), and any such interested party shall give notice to the Service List and any other party or parties likely to be affected by the Order sought in advance of the Comeback Date. The comeback hearing is to be a true comeback hearing. In moving to set aside or vary any provisions of this Order, moving parties do not have to overcome any onus of demonstrating that the Order should be set aside or varied.~~

40. ~~37.~~ THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NELSON  
EDUCATION LTD. AND NELSON EDUCATION HOLDINGS LTD.

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE-  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED AND RESTATED  
INITIAL ORDER**

**GOODMANS LLP**

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Lawyers for the Applicants

**DRAFT: 1 - June 3, 2015 - 6:00 PM**

64528396459823

# TAB 4

Court File No. CV-15-10961-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NELSON EDUCATION LTD. AND  
NELSON EDUCATION HOLDINGS LTD.

Applicants

AFFIDAVIT OF GREG NORDAL  
(Sworn June 3, 2015)

I, Greg Nordal, of the City of Toronto, in the Province of Ontario, MAKE OATH AND  
SAY:

I. INTRODUCTION

1. I am the President and Chief Executive Officer of Nelson Education Ltd. ("**Nelson Education**" or the "**Company**")<sup>1</sup>, Canada's leading education publishing company, providing learning solutions to universities, colleges, students, teachers, professors, libraries, government agencies, schools, professionals and corporations across the country. I have been the President and Chief Executive Officer of Nelson Education since September 2008 and have been actively engaged in the discussions and negotiations surrounding the proposed restructuring of Nelson Education. I am also a director on the board of directors of Nelson Education and a director on the board of directors of Nelson Education Holdings Ltd., the sole shareholder of Nelson

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<sup>1</sup> Any capitalized terms that are not defined herein shall have the meanings ascribed to them in the Affidavit of Greg Nordal sworn May 11, 2015.

Education. Accordingly, I have knowledge of the matters deposed to herein. Where I have relied upon other sources of information, I have stated the source of that information and believe such information to be true.

2. This affidavit is sworn in support of a motion by the Applicants for an Order amending and restating the Initial Order granted on May 12, 2015 (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) effective June 8, 2015 (the “**Amended and Restated Initial Order**”) to provide for, *inter alia*:

- (a) a charge in favour of FTI Consulting Canada Inc. (“**FTI**”) as the Monitor in these CCAA proceedings effective May 29, 2015 (the “**Monitor**”), counsel to the Monitor, counsel to the Applicants and the financial advisor to the Applicants (the “**Administration Charge**”);
- (b) a charge in favour of the Royal Bank of Canada (“**RBC**”), in its capacity as provider of the Cash Management System (as defined in the Amended and Restated Initial Order) (the “**Cash Management Charge**”); and
- (c) the extension of the Stay Period (as defined in the Amended and Restated Initial Order) until and including July 17, 2015.

## II. ACTIVITIES SINCE INITIAL ORDER

### (A) The Comeback Hearing

3. At the hearing for the Initial Order on May 12, 2015 (the “**Initial Application Hearing**”), the date for a comeback hearing (the “**Comeback Hearing**”) of May 29, 2015 was



set to allow for any interested party that wished to amend or vary the Initial Order to appear or bring a motion before the Court.

4. The Comeback Hearing was heard on May 29, 2015 as scheduled. At the Comeback Hearing, the Court appointed FTI as the Monitor of the Applicants going forward in these CCAA proceedings.

**(B) The Applicants' Activities Since the Initial Order**

5. The Applicants' activities since the Initial Order include the following:

- (a) on May 13, 2015, the Applicants provided letters to their employees to inform them of the CCAA proceedings and the Transaction, and senior management held a town hall meeting to inform employees of the CCAA proceedings and to explain the rationale for the proceedings and the anticipated impact on employees and other stakeholders;
- (b) on May 13, 2015, the Applicants updated Nelson Education's internal and external websites to include information for employees and stakeholders, respectively, about the CCAA proceedings and the Transaction and the anticipated impact of the CCAA proceedings on the Company's stakeholders;
- (c) on June 2 and 3, 2015, the Applicants updated Nelson Education's internal and external websites to provide updated information with respect to the Monitor and the new website for the Monitor;
- (d) the Applicants and their advisors have responded to various inquiries from stakeholders regarding the effect of the CCAA proceedings and the Transaction;
- (e) the Applicants and their advisors have been working to review with the Monitor matters relating to the Transaction, which remains subject to the approval of the Court;

- (f) the Applicants and their advisors have been discussing and working with the Monitor, the First Lien Steering Committee and RBC, and their respective advisors, to address matters raised at the Initial Application Hearing and the Comeback Hearing and other matters;
- (g) the Applicants and their advisors have been working with the Monitor and its counsel to provide information and materials in connection with the Company, the Nelson Business, the Applicants' cash flows, the SISP and the proposed Transaction;
- (h) in accordance with the Initial Order, the Applicants have continued to pay expenses and satisfy obligations incurred in the ordinary course of business; and
- (i) the Applicants have continued to operate and manage the Nelson Business and fulfill ongoing contracts in the ordinary course.

### **III. EXTENSION OF STAY**

6. The Applicants and their advisors have continued to act diligently and in good faith in respect of all matters relating to the CCAA proceedings, including the steps taken in furtherance of the Transaction.

7. There are several matters that remain to be addressed in connection with the CCAA proceedings and the Transaction, including:

- (a) continuing to work with FTI as Monitor in these CCAA proceedings;
- (b) reviewing matters relating to the Transaction with the Monitor;
- (c) continuing to work with stakeholders in connection with matters related to the Applicants and these proceedings;
- (d) continuing to respond to and address stakeholder inquiries; and

(e) continuing to manage and operate the Nelson Business in the ordinary course.

8. The Stay Period granted in the Initial Order covered the period from the date of the Initial Order until and including June 10, 2015. The Applicants are requesting an extension of the Stay Period to and including July 17, 2015.


9. The Applicants believe that it is important for the Company to complete the Transaction as soon as possible.

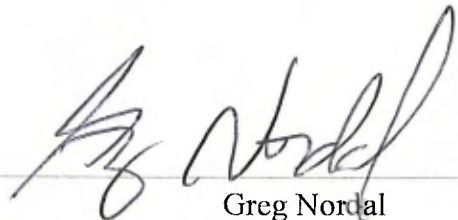
10. The Applicants are discussing and reviewing their cash flow forecast with their financial advisor and the Monitor based on the current status of outstanding matters. I understand that the Monitor will file a copy of the Applicants' cash flow forecast with the First Report of the Monitor, to be filed in connection with this motion.

#### IV. CONCLUSION

11. I believe that the relief is appropriate and necessary to enable the Applicants to continue working towards their restructuring goals, including the implementation of the Transaction.

SWORN before me in the City of Toronto,  
in the Province of Ontario, on June 3, 2015.

  
A Commissioner for taking affidavits  
Caroline Descours

  
Greg Nordal

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

Court File No: CV15-10961-00C1

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NELSON EDUCATION LTD. AND NELSON EDUCATION HOLDINGS LTD.

Applicants

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE-  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF GREG NORDAL**  
**(sworn June 3, 2015)**

**GOODMANS LLP**

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Lawyers for the Applicants

# **TAB 5**

Court File No. CV15-10961-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NELSON EDUCATION LTD. AND  
NELSON EDUCATION HOLDINGS LTD.**

Applicants

**AFFIDAVIT OF GREG NORDAL  
(sworn May 11, 2015)**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NELSON EDUCATION LTD. AND  
NELSON EDUCATION HOLDINGS LTD.**

Applicants

**AFFIDAVIT OF GREG NORDAL  
(sworn May 11, 2015)**

I, Greg Nordal, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

**I. INTRODUCTION**

1. I am the President and Chief Executive Officer of Nelson Education Ltd. (“**Nelson Education**” or the “**Company**”), Canada’s leading education publishing company, providing learning solutions to universities, colleges, students, teachers, professors, libraries, government agencies, schools, professionals and corporations across the country. I have been the President and Chief Executive Officer of Nelson Education since September 2008 and have been actively engaged in the discussions and negotiations surrounding the proposed restructuring of Nelson Education. I am also a director on the board of directors of Nelson Education and a director on the board of directors of Nelson Education Holdings Ltd. (“**Holdings**”), the sole shareholder of Nelson Education. Accordingly, I have knowledge of the matters deposed to herein. Where I have relied upon other sources of information, I have stated the source of that information and believe such information to be true.

2. This Affidavit is sworn in support of an application for an order (the “**Initial Order**”) in respect of Nelson Education and Holdings (together, the “**Applicants**”, and collectively with their affiliates, the “**Nelson Group**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency.

3. The principal objectives of these proceedings are to ensure the ongoing operations of the Applicants for the benefit of their many stakeholders and to complete the sale and transfer of Nelson Education’s business to a newly incorporated entity (the “**Purchaser**”) to be owned indirectly by the Company’s First Lien Lenders (as defined below) pursuant to the Transaction (as defined and further described below). The Transaction will significantly reduce the debt levels of the Company, establish a stronger financial foundation for Nelson Education, create stability for the business, and strengthen the Company’s position as Canada’s leading educational publisher.

4. As further discussed below, in July 2007 the business and assets of Nelson Education were acquired by certain entities owned by OMERS Administration Corporation and certain funds of APAX Partners from The Thomson Corporation together with the U.S. business and assets of Thomson Learning for a combined total value of approximately US\$7.75 billion, of which approximately US\$550 million was attributed to the Canadian business (the “**2007 Acquisition**”).

5. In connection with the 2007 Acquisition, the Company was financed by way of (i) first lien debt in the initial aggregate principal amount of US\$311,438,278.60 and a revolver

facility<sup>1</sup> in an initial aggregate principal amount of \$50 million pursuant to a First Lien Credit Agreement dated as of July 5, 2007 (the “**First Lien Credit Agreement**”) among Nelson Education, Holdings, Royal Bank of Canada, as Administrative Agent, Collateral Agent and Swing Line Lender, as succeeded by Wilmington Trust, National Association, as Administrative Agent and Collateral Agent (the “**First Lien Agent**”) and the lenders party thereto (the “**First Lien Lenders**”); and (ii) second lien debt in an initial aggregate principal amount of US\$171,291,053.23 pursuant to a Second Lien Credit Agreement dated as of July 5, 2007 (the “**Second Lien Credit Agreement**”, together with the First Lien Credit Agreement, the “**Credit Agreements**”) among Nelson Education, Holdings, Royal Bank of Canada, as Administrative Agent and Collateral Agent (the “**Second Lien Agent**”) and the lenders party thereto (the “**Second Lien Lenders**”). At the time of the 2007 Acquisition, the value of the Canadian dollar relative to the U.S. dollar was approximately \$1.00 to US\$0.9463.

6. The Company currently has, in the aggregate, over US\$430 million (or over \$544 million in Canadian dollars<sup>2</sup>) of secured first and second lien debt (including accrued interest) outstanding under its Credit Agreements, resulting in an unsustainable leverage ratio of debt to EBITDA, net of pre-publication expenditures, of approximately 17:1 for the fiscal year ending March 31, 2015. In addition, Nelson Education’s First Lien Credit Agreement matured on July 3, 2014 and has not been repaid, and the Company is in default under its Second Lien Credit Agreement.

<sup>1</sup> The revolving facility under the First Lien Credit Agreement matured in July 2013.

<sup>2</sup> Based on the exchange rate of \$1.00 to US\$0.7895 as at March 31, 2015.

7. Commencing in April 2013, with the assistance of its professional advisors, Nelson Education had begun engaging in discussions and exploring a variety of transaction alternatives with the Second Lien Agent and with a steering committee of its First Lien Lenders (the “**First Lien Steering Committee**”) in an effort to achieve a transaction that would, among other things, address the Company’s obligations under its Credit Agreements, protect value, improve the financial position of the Company, and create stability for the business, including the Company’s employees, customers, lenders and other key stakeholders.

8. These negotiations ultimately resulted in a transaction framework on the terms set out in the First Lien Term Sheet dated September 10, 2014 (the “**First Lien Term Sheet**”) for a sale or restructuring of the business, as discussed in greater detail below. In connection with the First Lien Term Sheet, Nelson Education and Holdings entered into a support agreement (the “**First Lien Support Agreement**”) with First Lien Lenders representing approximately 88% of the principal amounts outstanding under the First Lien Credit Agreement (the “**Consenting First Lien Lenders**”). The Consenting First Lien Lenders comprise 21 of the 22 First Lien Lenders, or approximately 95% of all of the First Lien Lenders. The only First Lien Lender that is not a Consenting First Lien Lender is also a Second Lien Lender.

9. Pursuant to the terms of the First Lien Term Sheet and the First Lien Support Agreement, the Company, with the assistance of its financial advisor, commenced on September 22, 2014, a sale and investment solicitation process (the “**SISP**”) to identify one or more potential purchasers of, or investors in, the Nelson Business (as defined below). As described in further detail below, a total of 168 potential buyers and 11 potential lenders were contacted, of which seven submitted non-binding expressions of interest pursuant to the SISP. The Company,

with the assistance of its financial advisor, and in consultation with the First Lien Steering Committee, proceeded to the second phase (“**Phase 2**”) of the SISP with five bidders.

10. As further discussed below, the SISP ultimately did not result in an executable transaction that would result in proceeds to repay the obligations under the First Lien Credit Agreement in full or would otherwise be supported by the First Lien Lenders, confirming that there is no value available beyond the value of the obligations under the First Lien Credit Agreement. Accordingly, pursuant to the First Lien Support Agreement and consistent with the Company’s view that the Transaction is the best option available to Nelson Education, the Company is proceeding at this time with the Transaction pursuant to which the First Lien Lenders will exchange and release all of the indebtedness owing under the First Lien Credit Agreement in exchange for: (i) 100% of the common shares of a newly incorporated entity (“**Purchaser Holdco**”) that will own 100% of the common shares of the Purchaser to which substantially all of the Company’s assets would be transferred, and (ii) the obligations under a new US\$200 million first lien term facility to be entered into by the Purchaser. As further discussed below, the Transaction includes, among other things:

- a) the transfer of substantially all of the Company’s assets to the Purchaser;
- b) the assumption by the Purchaser of substantially all of the Company’s trade payables, contractual obligations and employment obligations incurred in the ordinary course and as reflected in the Company’s balance sheet (other than as set out in paragraphs 11, 12 and 13 below); and
- c) an offer of employment by the Purchaser to all of the Company’s employees.

11. Under the Transaction, the Purchaser will not assume the Company's obligations to the Second Lien Agent or the Second Lien Lenders under the Second Lien Credit Agreement and certain other liabilities, as further discussed in paragraph 108 below.

12. I am not aware of any trade payables, contractual obligations or employment obligations, other than certain obligations in respect of former employees, obligations relating to matters in respect of the Second Lien Credit Agreement, and the Nelson Education Promissory Note (as defined below), that are not being assumed by the Purchaser pursuant to the Transaction.

13. Pursuant to the Transaction, the Purchaser may, in its sole and absolute discretion, at any time up to three business days prior to the closing of the Transaction, elect to not acquire any of the assets, properties, and rights of the Company, including contracts of the Company specified by the Purchaser as excluded contracts.

14. Having regard to the financial circumstances of the Company, the Applicants have determined that it is necessary to seek protection under the CCAA in order to preserve enterprise value and continue as a going concern while seeking to implement the Transaction. There is no value available to the Second Lien Lenders and the CCAA proceedings are required to transfer the assets and property of the Company in satisfaction of the indebtedness owing to the First Lien Lenders free and clear of the obligations under the Second Lien Credit Agreement.

15. In connection with the Transaction, the Applicants intend to bring a motion in conjunction with the within application to be heard on a date to be set by this Court to, among other things, approve the Transaction (the "**Sale Approval Motion**"). Further details with

respect to the Transaction are discussed below and will be set out in the affidavit filed in support of the Sale Approval Motion.

## **II. BACKGROUND**

### **(A) Overview**

16. Nelson Education is Canada's leading education publishing company, providing learning solutions to universities, colleges, students, teachers, professors, libraries, government agencies, schools, professionals and corporations across the country. Nelson Education has a deep line of products focused across the various segments of the education market. It is also a leading developer of digital educational resources.

17. Nelson Education is the sole operating entity in the Nelson Group. The registered and principal office of Nelson Education is at 1120 Birchmount Road, Scarborough, Ontario. Nelson Education operates from a 230,000 square foot facility and employs approximately 335 full-time, permanent, non-unionized employees and approximately 38 part-time non-unionized employees.

18. As described in greater detail below, the Company is financed primarily through a term loan under the First Lien Credit Agreement and a term loan under the Second Lien Credit Agreement. As at the date hereof, there is approximately US\$268,753,930, plus accrued interest, outstanding under the First Lien Credit Agreement and approximately US\$153,218,764, plus accrued interest, outstanding under the Second Lien Credit Agreement. In Canadian dollars, based on the exchange rate as at March 31, 2015, the principal amount outstanding under the First Lien Credit Agreement is approximately \$340,410,298, plus accrued interest, and the

principal amount outstanding under the Second Lien Credit Agreement is approximately \$194,070,632, plus accrued interest.

19. For the fiscal year ending March 31, 2015, the Company's revenue was approximately \$129 million and its EBITDA, net of pre-publication expenditures, was approximately \$31.5 million, and for the twelve-month period ending March 31, 2014, the Company's revenue was approximately \$128 million and its EBITDA, net of pre-publication expenditures, was approximately \$31.7 million. The Company's financial leverage at a ratio of debt to EBITDA, net of pre-publication expenditures, of approximately 17:1 as at March 31, 2015 is not sustainable.

20. As noted above, the First Lien Credit Agreement matured on July 3, 2014, and the Second Lien Credit Agreement has a maturity date of July 3, 2015. Nelson Education has been and continues to be unable to repay the First Lien Credit Agreement and has not made certain interest payments under the Second Lien Credit Agreement, as further discussed below.

**(B) History of Nelson Education**

21. Nelson Education's history dates back to 1914 when Thomas Nelson and Sons began operations in Canada. In 1962, The Thomson Corporation acquired Thomas Nelson and Sons as a complement to its growing educational publishing business, Thomson Learning Group. Between 2000 and 2006, the company grew significantly both organically and by way of several acquisitions. In 2014, Nelson Education celebrated its centennial anniversary.

22. As discussed above, in 2007, Thomson Learning Group was acquired for a combined total value of approximately US\$7.75 billion, of which approximately US\$550 million



was attributed to the Canadian business. As a result of, among other factors, certain *Investment Canada Act* (Canada) restrictions with respect to non-Canadian acquisition of a majority interest in a Canadian book publisher, the Canadian operations of the Thomson Learning Group were structured as an independent entity from the rest of the Thomson Learning Group and Nelson Education was incorporated on May 25, 2007 under the laws of Canada to acquire the book publishing assets and liabilities of Thomas Nelson, a division of Thomson Canada Limited, as well as all of the common shares of Group Modulo Inc. (“**Modulo**”), which produces and sells instruction materials, mainly French language books, to schools, school boards, colleges and universities in Quebec. Modulo was subsequently sold on January 31, 2013 to Transcontinental Media Inc.

23. Nelson Education was financed separately from the Thomson Learning Group by way of the financing under the First Lien Credit Agreement and financing under the Second Lien Credit Agreement.

24. In connection with the 2007 Acquisition, an Operating Agreement and a Master Services Agreement were put in place pursuant to which, among other things, the Thomson Learning Group would provide educational content and certain related operational support to Nelson Education. Nelson Education pays approximately US\$22 million per year for such content and operational support. The Operating Agreement expires on January 1, 2018, subject to automatic extensions for successive one-year renewal periods unless terminated by either party on at least 270 days’ written notice prior to the expiry of the agreement.

25. Shortly after the 2007 Acquisition, Thomson Learning Group, outside of Canada, changed its name to Cengage Learning Holdings II, LP (“**Cengage**”).<sup>3</sup>

26. Nelson Education maintains a strong relationship with Cengage and is the exclusive distributor for Cengage education content in Canada. Cengage is a preferred and key business partner of Nelson Education. As further discussed below, Nelson Education has maintained ongoing communication with Cengage in connection with its business in the ordinary course, as well as with respect to its restructuring efforts and has explored with Cengage potential options and alternatives for the benefit of the Company.

(C) **The Nelson Business**

(i) **Overview**

27. Nelson Education operates two business segments: (i) “K-12”, which services schools, school boards, teachers and students from kindergarten to grade 12 (the “**K-12 Business**”); and (ii) “Higher Education”, which services the post-secondary education market, including universities, colleges, and trade schools (the “**Higher Education Business**”, together with the K-12 Business, the “**Nelson Business**”).

28. Nelson Education is the Canadian industry leader in the K-12 Market and holds a leading position in the Higher Education Market. In 2014, the K-12 Business represented approximately 30% and the Higher Education Business represented approximately 70% of Nelson Education’s revenues.

<sup>3</sup> In July 2013, Cengage filed voluntary petitions for reorganization under Chapter 11 of the U.S. Bankruptcy Code in the Bankruptcy Court for the Eastern District of New York. On March 31, 2014, Cengage Learning completed its financial restructuring and emerged from its Chapter 11 reorganization.

29. Nelson Education's K-12 Business produces and distributes print and digital products and materials across all K-12 subject areas (other than first-language French and French immersion), such as science, social studies, humanities, language arts, mathematics, technology, business studies, English and other modern languages. Nelson Education works with various provincial and territorial bodies to provide products that meet requirements of specific curricula or to provide supplemental materials to existing curricula. Nelson Education has the largest "book bag" in comparison to its competitors, offering more than 25,000 titles.

30. Nelson Education's Higher Education Business offers tailored learning solutions for students and professionals and produces and distributes products and materials in the major fields of study including business and economics, humanities, social studies, hard sciences, soft sciences and technology and offers thousands of titles.

31. Within its K-12 Business and its Higher Education Business, Nelson Education has three types of products: (i) "Indigenous" products, being products specifically created and published by Nelson Education for the Canadian market by way of it contracting with Canadian educators and authors, and created either from the ground-up or adapted from existing content that is usually published by Cengage in the United States; (ii) "Cengage Agency" products, being Cengage publications in respect of which Nelson Education is the exclusive distributor for all academic markets in Canada; and (iii) "Third Party Agency" products, being products of certain third party publishers which Nelson Education also distributes. Nelson Education has long-standing relationships with well-known third party publishers.

32. Nelson Education is also a leading developer of digital educational resources, which to date have been adopted at a much more advanced pace in the Higher Education Market

(as defined below) than the K-12 Market (as defined below). Digital penetration is currently relatively limited in the K-12 Market due to a lack of government funding and infrastructure; however, it is generally accepted that the transition to digital products in the classroom will accelerate over the coming years.

**(ii) Customers**

33. Nelson Education's K-12 Business services primarily schools, school boards, provincial Ministries of Education, teachers and students from kindergarten to grade 12, while its Higher Education Business services primarily public and private colleges and universities and technical training and professional schools across Canada.

34. In the K-12 Market, each province and territory in Canada has authority over curriculum development, deployment and funding, overseen by the applicable Ministry of Education of each province and territory. Nelson Education's sale orders are secured at the board and/or school level, with the exception of Newfoundland where product decisions are made at the provincial level. Nelson Education has a national footprint in the K-12 industry with a customer base of over 5,000 customers. Nelson Education's customers include all major schools and school boards across Canada providing a diversified customer base.

35. In the Higher Education Market, college and university faculty are typically the ultimate decision makers regarding choice and adoption of new materials, but the end users that purchase the products are generally students. Nelson Education sells its Higher Education products across Canada through school bookstores, online and other third party sellers.

**(iii) Content Providers**

36. In connection with its creation, production and/or adaptation of its K-12 and Higher Education products and materials, Nelson Education works with thousands of authors, illustrators, reviewers, researchers, content editors and other consultants to develop such products and materials. Nelson Education has long-standing relationships with its numerous content providers who are integral to the Nelson Business and the development of Nelson Education's extensive "book bag".

**(iv) Offices and Facilities**

37. Nelson Education operates from an owned 230,000 square foot facility located in Scarborough, Ontario. Nelson Education does not own or lease any other offices or facilities.

**(v) Employees**

38. As of the date hereof, Nelson Education employed approximately 335 full-time, permanent, non-unionized employees and approximately 38 part-time non-unionized employees.

(a) Unions

39. Nelson Education does not have any active unions or collective agreements in place.

(b) Pension Plans

40. Nelson Education maintains a defined contribution pension plan (the "**DC Plan**") for its employees and for its executives with Sun Life Assurance Company of Canada ("**Sun Life**").

41. The DC Plan is compulsory for eligible executive members (“**Executive Members**”) and Executive Members must join immediately upon becoming eligible for membership. Executive Members are not required or permitted to contribute to the DC Plan. The Company is required to contribute 8.5% of Executive Members’ respective earnings (including base employment compensation, including incentive, commissions and accrued bonuses, but excluding overtime pay). Company contributions to the DC Plan in respect of the Executive Members are vested immediately.

42. The DC Plan also covers all employees who meet minimum age and service requirements (the “**Employee Members**”) and allows participants to defer a portion of their annual compensation on a pre-tax basis. The Company matches 20% to 100% (depending on years of service and/or position) of the Employee Member’s contributions up to the first 6% of the Employee Member’s contribution. These matching contributions vest based on the Employee Member’s years of service and become fully vested after two years of service.

43. The Company is current on its contributions and its total contribution expense for the fiscal year ending March 31, 2015 was approximately \$1,126,949.

(c) Other Employee Benefit Plans

44. Nelson Education offers a group registered retirement savings plan for its executives and employees (the “**Group RRSP Plan**”). Membership in the Group RRSP Plan is voluntary and available to eligible executives and employees. Employees and executives can make contributions to their Group RRSP Plan by way of payroll deductions or by making lump sum contributions at any time. The Company does not contribute to the Employee Group RRSP Plan.

45. Nelson Education also provides medical and dental benefits and insurance coverage through Sun Life and Accidental Death and Dismemberment Insurance and Critical Illness Insurance through ACE INA Life Insurance to its employees and executives. The Company's total benefit plan expense for the fiscal year ending March 31, 2015 was approximately \$1,975,916.

(d) Key Employee Retention Program

46. Nelson Education has put in place a key employee retention program for certain key employees and officers, which is described in detail in Section III(F) below.

**(D) Corporate Structure and Financial Position of the Applicants**

**(i) Applicants**

*(i) Nelson Education*

47. Nelson Education, a corporation organized under the *Canadian Business Corporations Act* ("CBCA"), is a direct, wholly-owned subsidiary of Holdings.

48. Nelson Education is the sole operating entity in the Nelson Group. The registered and principal office of Nelson Education is at 1120 Birchmount Road, Scarborough, Ontario, M1K 5G4.

49. Nelson Education's financial reporting is done on a consolidated basis and all intercompany balances and transactions are eliminated on consolidation. The following financial statements are being provided to this Court in support of this Affidavit:

- (a) Nelson Education's audited financial statements as at March 31, 2014, attached hereto as Exhibit "A"; and
- (b) Nelson Education's unaudited financial statements as at December 31, 2014, attached hereto as Exhibit "B".

50. As of March 31, 2014, the Company changed its fiscal year end to March 31 as this better reflects the natural sales cycle of the Company and aligns with the back office systems of Cengage which also moved to a March 31 fiscal year end.

51. Based on Nelson Education's unaudited financial statements dated December 31, 2014, Nelson Education's assets had a book value of approximately \$262.7 million. Of this asset value, approximately \$86.2 million consists of current assets while the remaining approximately \$176.4 million consists of non-current assets. The current assets include cash totalling approximately \$40.3 million, accounts receivable of approximately \$5.1 million, inventory of approximately \$8.8 million and prepaid expense and other current assets of approximately \$32.0 million. The non-current assets include pre-publication cost of approximately \$18.0 million, property and equipment of approximately \$13.0 million, identifiable intangible assets of approximately \$111.1 million and goodwill of approximately \$34.4 million. As evidenced by the results of the SISP, the book value of Nelson Education's assets does not reflect the market value for many of such assets.

52. As at December 31, 2014, Nelson Education's liabilities amounted to approximately \$657.6 million, including approximately \$529.6 million of current liabilities and approximately \$128.0 million of non-current liabilities. The current liabilities include approximately \$31.2 million of accounts payable, approximately \$8.8 million of deferred



revenue and approximately \$489.5 million of the current portion of long-term debt. The non-current liabilities are comprised of approximately \$128.0 million owing under an intercompany promissory note owing to Nelson Education's parent, Holdings (the "**Nelson Education Promissory Note**"), which liability was subsequently reduced to approximately \$102.3 million in March 2015 in connection with the waiver by Holdings of certain interest amounts owing by Nelson Education to Holdings pursuant to the Nelson Education Promissory Note.

(ii) *Holdings*

53. Holdings is a corporation organized under the CBCA and a guarantor under each of the First Lien Credit Agreement and the Second Lien Credit Agreement.

54. Holdings directly owns 100% of the shares of Nelson Education.

55. A copy of Holdings' unaudited financial statements as at March 31, 2014 is attached hereto as Exhibit "C".

56. Based on Holdings' unaudited financial statements dated March 31, 2014, Holdings' assets had a book value of approximately \$161.8 million. Of this asset value, approximately \$122.5 million consists of the Nelson Education Promissory Note and approximately \$39.3 million consists of its investment in Nelson Education.

57. As at March 31, 2014, Holdings' liabilities amounted to approximately \$123.4 million, of which approximately \$122.2 million consists of a promissory note to its parent and approximately \$1.2 million was due to Nelson Education.

(E) **Credit Agreements**

(i) **First Lien Credit Agreement**

58. The First Lien Lenders extended credit to Nelson Education pursuant to the First Lien Credit Agreement. In January 2014, Royal Bank of Canada was replaced by Wilmington Trust, National Association as the First Lien Agent. A copy of the First Lien Credit Agreement (without schedules or exhibits) is attached hereto as Exhibit “D”.

59. As at the date hereof, Nelson Education is indebted in the aggregate principal amount of US\$268,753,930, plus accrued interest, under the First Lien Credit Agreement. The maturity date under the First Lien Credit Agreement was July 3, 2014. The outstanding principal amount due under the First Lien Credit Agreement was not paid on maturity.

60. Interest and any fees accruing under the First Lien Credit Agreement are being paid in cash in the ordinary course.

61. Holdings guaranteed the obligations of Nelson Education under the First Lien Credit Agreement. As security for the repayment of the amounts owed under the First Lien Credit Agreement, each of Nelson Education and Holdings has granted first-priority security over all or substantially all of its respective assets, including a pledge of shares of Nelson Education by Holdings.

**(ii) Second Lien Credit Agreement**

62. The Second Lien Lenders extended credit to Nelson Education pursuant to the Second Lien Credit Agreement. A copy of the Second Lien Credit Agreement (without schedules or exhibits) is attached hereto as Exhibit “E”.

63. As at the date hereof, Nelson Education is indebted in the aggregate principal amount of US\$153,218,764, plus accrued interest, under the Second Lien Credit Agreement. The maturity date under the Second Lien Credit Agreement is July 3, 2015.

64. Nelson Education is in default under the Second Lien Credit Agreement and has not paid in full the interest payment due under the Second Lien Credit Agreement on March 31, 2014 and has not paid the interest payments due under the Second Lien Credit Agreement on June 30, 2014, September 30, 2014, December 31, 2014 or March 31, 2015.

65. Holdings guaranteed the obligations of Nelson Education under the Second Lien Credit Agreement. As security for the repayment of the amounts owed under the Second Lien Credit Agreement, each of Nelson Education and Holdings has granted second-priority security over all or substantially all of its respective assets.

**(iii) Intercreditor Agreement**

66. In connection with the First Lien Credit Agreement and the Second Lien Credit Agreement, Nelson Education, Holdings, Royal Bank of Canada, in its capacity as collateral agent for the obligations under the First Lien Credit Agreement (including its successors and assigns), and Royal Bank of Canada, in its capacity as collateral agent for the obligations under the Second Lien Credit Agreement (including its successors and assigns), entered into an

Intercreditor Agreement dated July 5, 2007 (the “**Intercreditor Agreement**”, a copy of which is attached hereto as Exhibit “F”).

67. Section 6.1(a) of the Intercreditor Agreement provides as follows:

The Second Lien Collateral Agent on behalf of the Second Lien Claimholders, agrees that it will raise no objection or oppose a sale or other disposition of any Collateral free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code (or any similar provision of any other Bankruptcy Law<sup>4</sup> or any order of a court of competent jurisdiction) if the First Lien Claimholders have consented to such sale or disposition of such assets and the Second Lien Collateral Agent and each other Second Lien Claimholder will be deemed to have consented under Section 363 of the Bankruptcy Code (or any similar provision of any other Bankruptcy Law or any order of a court of competent jurisdiction) to any sale supported by the First Lien Claimholders and to have released their Liens in such assets.<sup>5</sup>

(F) **Educational Publishing Industry Decline**

68. The Nelson Business has been affected by a general decline in the Canadian kindergarten to grade 12 market (the “**K-12 Market**”) and higher education market (the “**Higher Education Market**”) over the past few years. The K-12 Market peaked in 2006 at a value of approximately \$221 million and in 2014, had an approximate value of \$115 million. The Higher Education Market peaked in 2011 at a value of approximately \$339 million and in 2014, had an approximate value of \$319 million. In the past year, overall revenues in the K-12 Market have

<sup>4</sup> “Bankruptcy Law” is defined in the Intercreditor Agreement to mean “the Bankruptcy Code, the BIA, the CCAA, the WURA and any other applicable law granting relief from or otherwise affecting creditors, and any similar federal, provincial, state or foreign bankruptcy, insolvency, arrangement, reorganization or receivership law.”

<sup>5</sup> Capitalized terms in this paragraph shall have the meanings given to such terms in the Intercreditor Agreement.

declined by approximately 13% and overall revenues in the Higher Education Market have declined by approximately 3%. Notwithstanding the industry decline over the last few years, Nelson Education has maintained strong EBITDA results in the circumstances.<sup>6</sup>

**(i) K-12 Market**

69. In Canada, each province and territory has authority over curriculum development and education funding for the K-12 Market. Following a historic high in Canada in 2006 with respect to new curriculum development and spending, the K-12 Market contracted. The K-12 Market has been negatively affected by reduced spending on new curriculum by Canadian schools over the last five years, and in particular the spending decline in Ontario which represents the largest proportion of educational spending in Canada.

70. The decline in educational spending in Ontario was the result of historic increases in spending in the years leading up to and including 2006, resulting from increased funding from the province and directed specifically towards educational resources for classrooms. These funding programs were subsequently curtailed and this along with certain other factors combined to cause Canadian educational resource spending to fall to historic lows.

71. However, it is generally expected that curricula will be refreshed every seven to ten years, although there are a number of factors ranging from political will to budgetary constraints that impact timing for release of new curricula. As a result of a number of factors across most of the provinces and territories in Canada (and in particular Ontario, Alberta and British Columbia which comprise approximately 70% of book revenue across Canada), there has

<sup>6</sup> The values referenced in this paragraph are based on information compiled by the Canadian Educational Resources Council in respect of the K-12 Market, and by the Canadian Publishers' Council in respect of the Higher Education Market.

been a reduction in the release of new curriculum over the last five years. Ontario, Alberta and British Columbia are each past due or due for new curricula for almost all subjects based on historical curriculum cycles of seven to ten years.

72. There is also some uncertainty surrounding recent amendments to Canada's *Copyright Act*, which is having an impact on the industry. These amendments may have an impact on copyright protection for creators and publishers and have led school boards and Ministries of Education to advise Access Copyright (a cooperative of Canadian media publishers, including Nelson Education, with a mandate to administer and provide access to copyrighted materials) that they will no longer be paying royalties in accordance with their historical practices.

**(ii) Higher Education Market**

73. The Higher Education Market has been negatively affected by, among other things: a lack of clarity at universities with respect to “ancillary fees”, with certain institutions banning digital homework solutions with added fees; increased traction in the open textbook movement due in part to government funding in a number of provinces; and the use of used books, rental books and peer-to-peer sharing, impacting the demand for new textbooks at universities and colleges in Canada. The impact caused by used books and rental books is mitigated by revisions cycles and new textbook editions, the adoption of digital materials and increased use of custom and indigenous products.

74. In addition, the Higher Education Market is in transition from traditional print books to digital products, which is having a transformative effect on the business.

(G) **Nelson Education's Efforts to Improve its Financial Position**

(i) **Cost Savings and Debt Reduction Efforts**

75. Nelson Education has pursued efforts to pay-down debt and implement certain cost-saving initiatives in order to improve its financial position. These efforts have resulted in a pay-down of Nelson Education's first lien debt by approximately \$20 million and the implementation of approximately \$3 million of cost-reductions in the last 2014 fiscal year.

76. Over the years, the Company has regularly reviewed and considered beneficial cost-saving initiatives that could be implemented while preserving value of the Nelson Business and maintaining Nelson Education's commitment to the provision of innovative products and solutions for the diverse learning needs of students and educators across the country. In March, 2015, a third party consultant confirmed that Nelson Education's EBITDA margins and cost metrics are the best among its peer group.

(ii) **Digital Product Development**

77. Nelson Education has been investing in preparation for an increasing conversion to digital products.

78. In 2013, Nelson Education's Technology Services Group (Digital Center of Excellence) was formalized to enable the successful execution of the Company's technology business strategy. The group has three functional areas of responsibility (Technology Development, Technology Product Management, and Digital Production) and is responsible for the direction, development and deployment of learning platforms, product applications, learning

management system content deployments, common standards, management of product life cycles, as well as technology solutions and recommendations to support product requirements.

79. As discussed above, while digital penetration is currently relatively limited in the K-12 Market due to a lack of government funding and infrastructure, it is generally accepted that the transition to digital products in the classroom will accelerate over the coming years.

80. Digital penetration and adoption is more advanced in the Higher Education Market, and it is expected that the rate of digital adoption in the Higher Education Market will continue to grow at an increasing rate as professor buy-in increases, schools require classrooms to move to a blended platform (print and digital) and as the industry transitions to a “Course Fee Model” (typically 100% digital).

81. Nelson Education’s three main digital products include eBooks, practice & learning solutions and homework solutions. Today, in addition to traditional print format, all of Nelson Education’s Higher Education products (published from 2010 and forward) are also available in an eBook format and have some combination of a study and practice and/or a homework solution available. All of Nelson Education’s digital products are capable of being integrated with a school’s learning management system. In Canada, more than 70% of Higher Education institutions now have a learning management system.

82. Five years ago, very few of Nelson Education’s Higher Education products were sold with a digital component. Today approximately 37% of Nelson Education’s Higher Education sales include a digital component.



83. The experience gained and tools developed by Nelson Education in the Higher Education Market will generally be applied to the K-12 Market as adoption of digital products accelerates in the coming years.

84. Given the foregoing, I believe that Nelson Education is well positioned to take advantage of future increasing opportunities in the digital educational market space.

**(iii) Discussions with Stakeholders**

85. In March 2013, Nelson Education engaged Alvarez and Marsal Canada Securities ULC (“A&M”) as its financial advisor to assist the Company in reviewing and considering potential strategic alternatives, including a refinancing and/or restructuring of its Credit Agreements, and developing a five-year business plan. At that time, the Company was facing declines in the K-12 Market and the Higher Education Market over the past few years, and the July 2014 maturity date under the First Lien Credit Agreement.

86. The Second Lien Agent also engaged a financial advisor in March 2013 and the First Lien Steering Committee engaged a financial advisor in June 2013.

87. Commencing in April 2013, Nelson Education, with the assistance of its financial and legal advisors, entered into discussions with a number of stakeholders, including the Second Lien Agent, the First Lien Steering Committee, and their respective advisors, in connection with potential alternatives to address the Company’s debt obligations for the benefit of the Company and its stakeholders. Nelson Education and its advisors engaged in continued dialogue and sought continuous feedback in respect of potential consensual transaction alternatives, including the exchange of a number of without prejudice and confidential proposed transaction term sheets

between August 2013 and September 2014, and provided information and updates about the Company and its business to the First Lien Steering Committee, the Second Lien Agent, and their respective advisors. Members of the Company's management and its advisors attended several in-person meetings with the First Lien Steering Committee and its advisors, and with the Second Lien Agent and its advisors, and diligently pursued a consensual solution.

88. As noted above, Cengage had commenced Chapter 11 proceedings in July 2013, and completed its financial restructuring and emerged from its Chapter 11 reorganization on March 31, 2014. It is my understanding that the Company's lenders wanted to better understand the Cengage restructuring prior to advancing in detail Nelson Education's recapitalization.

89. On July 7, 2014, Nelson Education commenced a consent solicitation process to solicit the consent of the First Lien Lenders to the amendment and extension of the First Lien Credit Agreement (the "**July Proposed Extension**"). First Lien Lenders were asked to provide their consent to the July Proposed Extension on or prior to the early consent date in respect of the July Proposed Extension, which consent date had last been extended to September 10, 2014. The July Proposed Extension did not receive the support of the First Lien Lenders.

90. Following the announcement of the July Proposed Extension, the Company and its advisors continued to have discussions and meetings with the First Lien Steering Committee and its advisors, and with the Second Lien Agent and its advisors, with the aim of achieving a consensual solution that would be supported by Nelson Education's lenders.

**(iv) First Lien Term Sheet**

91. On September 10, 2014, the Company announced to the First Lien Lenders the Company's proposed transaction framework on the terms set out in the First Lien Term Sheet for a sale or restructuring of the business and sought the support of all of its First Lien Lenders.

92. The First Lien Term Sheet provides for among other things (i) a comprehensive and open SISP to be conducted by the Company to identify potential sale and/or investment transactions, and (ii) if a transaction that would provide for net sale or investment proceeds sufficient for payment in full of all obligations under the First Lien Credit Agreement or that is otherwise acceptable to First Lien Lenders holding at least 66 2/3% of the outstanding obligations under the First Lien Credit Agreement (a "**Superior Offer**") is not identified pursuant to the SISP, a credit bid by the First Lien Lenders of all of the debt owing to them under the First Lien Credit Agreement to effectuate a conversion of the First Lien Lenders' claims for a new first lien term facility and for common shares of the Purchaser (the "**Transaction**").

93. Following the announcement of the First Lien Term Sheet and the Transaction, the Company continued certain limited discussions and exchange of correspondence with the Second Lien Agent.

**(v) First Lien Support Agreement**

94. As discussed above, in connection with the First Lien Term Sheet, Nelson Education and Holdings entered into the First Lien Support Agreement with the Consenting First Lien Lenders representing approximately 88% of the principal amounts outstanding under the First Lien Credit Agreement. The Consenting First Lien Lenders comprise 21 of the 22 First

Lien Lenders, or approximately 95% of all of the First Lien Lenders. A copy of the First Lien Support Agreement (without lender signature pages) is attached as Exhibit “G” hereto.

95. The First Lien Support Agreement contains certain milestones to be achieved pursuant to the terms of the agreement in connection with SISP and/or the Transaction, as applicable. The initial dates (subsequently extended) for certain of the key milestones under the First Lien Support Agreement were as follows:

- a) Definitive Documentation for a Superior Offer: execution of binding definitive documentation, in form and substance acceptable to the Company and the First Lien Steering Committee, in respect of a Superior Offer by December 15, 2014 (or such later date as may be agreed to by the Company and the First Lien Steering Committee);
- b) Definitive Documentation for a Transaction: finalization of definitive documentation with respect to the Transaction by October 31, 2014 (or such later date as may be agreed to by the Company and the First Lien Steering Committee);
- c) Transaction Implementation Process: in the event the Transaction is to be effectuated, agreement on the process to implement the Transaction by November 14, 2014 (or such later date as may be agreed to by the Company and the First Lien Steering Committee);

- d) Outside Date: outside date of February 1, 2015 (or such later date as may be agreed to by the Company and the First Lien Steering Committee) for completion of a Superior Offer or the Transaction.

96. Each of the above milestones was most recently extended to June 2, 2015, by agreement of the parties pursuant to the First Lien Support Agreement (subject to further extensions as may be agreed to by the parties) in order to continue discussions among the parties to advance transaction matters and to work towards a proper transition of the Nelson Business in an efficient manner.

97. Pursuant to the First Lien Support Agreement, Consenting First Lien Lenders who executed the First Lien Support Agreement or a Joinder Agreement (as defined in the First Lien Support Agreement) prior to September 25, 2014 (the “**Early Consenting First Lien Lenders**”) are entitled to an amount equal to: (i) their pro rata share of an early cash consent fee of (a) 2% of the aggregate principal amount outstanding under the First Lien Credit Agreement as at July 4, 2014, plus (b) a percentage of the aggregate principal amount outstanding under the First Lien Credit Agreement as at July 4, 2014 calculated based on an annual rate of 10% less the interest rate paid under the First Lien Credit Agreement (including the Default Rate (as defined in the First Lien Credit Agreement)) for the period from July 4, 2014 to September 30 2014 (collectively, the “**Initial First Lien Early Consent Fee**”); and (ii) after September 30, 2014, a monthly cash consent fee calculated based on an annual rate of 10% less the interest rate paid under the First Lien Credit Agreement (including the Default Rate) in respect of the outstanding principal amount owing to such Early Consenting First Lien Lenders under the First Lien Credit Agreement (the “**Additional First Lien Early Consent Fee**”).

98. Pursuant to the First Lien Support Agreement, the Initial First Lien Early Consent Fee was due on September 30, 2014 and the Additional First Lien Early Consent Fee is payable on a monthly basis in arrears on the last business day of each month until the termination of the First Lien Support Agreement.

99. The Company paid the Initial First Lien Early Consent Fee on September 30, 2014, and has paid Additional First Lien Early Consent Fee payments as they have become payable, in each case pursuant to the First Lien Support Agreement.

**(vi) Sales Process**

100. Pursuant to the First Lien Support Agreement, the Company engaged A&M to also assist with the SISP. As discussed above, pursuant to the terms of the First Lien Term Sheet and the First Lien Support Agreement, the Company, with the assistance of its advisors, commenced its SISP on September 22, 2014, to identify one or more potential purchasers of, or investors in, the Nelson Business. A total of 168 potential buyers and 11 potential lenders were contacted, of which 65 parties executed confidentiality agreements with Nelson Education. Parties who executed a confidentiality agreement with the Company were provided with, among other things, a confidential information memorandum and were asked to submit a non-binding expression of interest (“**EOIs**”) by 5:00 p.m. (EST) on November 7, 2014.

101. Seven parties submitted EOIs to acquire all or part of the Nelson Business. The Company, with the assistance of its advisors, and following certain clarifying discussions with potential bidders and consultation with the First Lien Steering Committee and its advisors, continued to Phase 2 of the SISP whereby qualified bidders, among other things, received access to the Company’s data room and management presentations.

102. Five parties ultimately proceeded to Phase 2 of the SISP of which three parties submitted non-binding offers for the purchase of substantially all of the Nelson Business and one party submitted a non-binding offer to purchase solely the K-12 Business. All of the offers received were reviewed by the Company and its advisors, in consultation with the First Lien Steering Committee and its advisors. Three of the offers received set forth purchase prices that were significantly below the value of the obligations under the First Lien Credit Agreement. The fourth offer was subject to a number of conditions and was not ultimately advanced by the bidder.

103. As noted above, the Company, with the assistance of its advisors, also maintained communications with Cengage throughout its restructuring efforts, including the SISP. The Company and A&M engaged in preliminary discussions with Cengage with respect to a potential transaction and related benefits to each of Nelson Education and Cengage under the agreements between the parties. In February 2015, Cengage and Nelson Education terminated their discussions about a potential sale transaction. Cengage and Nelson Education continue to discuss and advance ongoing business and operational matters and continue to have a strong business relationship related to the creation and delivery of high quality educational products.

104. The Company and A&M conducted a thorough canvassing of the market and are satisfied that all alternatives and expressions of interests were properly and thoroughly pursued. The SISP, however, did not result in an executable transaction that would result in proceeds to repay the obligations under the First Lien Credit Agreement in full or would otherwise be supported by the First Lien Lenders. Accordingly, pursuant to the First Lien Support Agreement, the Company is proceeding at this time with the Transaction.

(vii) **Transaction**

105. Concurrently with the carrying out of the SISP, the Company and its advisors worked with the First Lien Steering Committee and its advisors in connection with a potential Transaction in the event a Superior Offer was not achieved. Following the determination that there was no executable transaction that would result in proceeds to repay the obligations under the First Lien Credit Agreement in full or would otherwise be supported by the First Lien Lenders, the parties worked to settle the key transaction documents in connection with proceeding with the Transaction, including the asset purchase agreement pursuant to which the Nelson Education assets and business will be transferred to the Purchaser (the “**Purchase Agreement**”). On May 11, 2015, the Applicants entered into a supplemental support agreement (the “**Supplemental Support Agreement**”) among the Company, Holdings, the First Lien Agent, Cortland Capital Market Services LLC, as sub-agent and supplemental administrative agent appointed in connection with the implementation of the Transaction (the “**Supplemental Agent**”) and Consenting First Lien Lenders party thereto pursuant to which, upon entry of an Approval and Vesting Order approving the Transaction, in the form attached to the Purchase Agreement, the Company agreed to enter into the Purchase Agreement and the Supplemental Agent (the sole shareholder of Purchaser Holdco on behalf of the First Lien Lenders) agreed to cause the Purchaser to enter into the Purchase Agreement with the Company.

106. As discussed above, the Transaction includes, among other things:

- a) the transfer of substantially all of the Company’s assets to the Purchaser;
- b) the assumption by the Purchaser of substantially all of the Company’s trade payables, contractual obligations and employment obligations



incurred in the ordinary course and as reflected in the Company's balance sheet (other than as set out in paragraphs 11, 12 and 13 above);

- c) an offer of employment by the Purchaser to all of the Company's employees; and
- d) an exchange and release by the First Lien Lenders of all of the indebtedness owing under the First Lien Credit Agreement for: (i) 100% of the common shares of Purchaser Holdco which will own 100% of the common shares of the Purchaser, and (ii) the obligations under a new US\$200 million first lien term facility to be entered into by the Purchaser.

107. Effectuating the Transaction involves, among others, the following key steps:

- a) Nelson Education and the Purchaser enter into the Purchase Agreement;
- b) Nelson Education sells and transfers the Purchased Assets (as defined in the Purchase Agreement) to the Purchaser pursuant to the Purchase Agreement;
- c) in satisfaction of the purchase price for the Purchased Assets, pursuant to the Purchase Agreement, the Purchaser:
  - (i) assumes the Closing Date Assumed Liabilities (as defined in the Purchase Agreement);
  - (ii) enters into a new first lien credit agreement (the "**Newco First Lien Credit Agreement**") with Nelson Education and issues to

Nelson Education a US\$200 million note (the “**Newco Note**”) pursuant to the Newco First Lien Credit Agreement; and

(iii) issues 1,000 non-voting redeemable/retractable preference shares in capital stock of the Purchaser (the “**Newco Preferred Shares**”) to Nelson Education with an aggregate redemption amount equal to US\$16 million;

d) Nelson Education conveys to the First Lien Lenders the Newco First Lien Credit Agreement, the Newco Note and the Newco Preferred Shares in partial payment and satisfaction of the Company’s indebtedness under the First Lien Credit Agreement and the First Lien Lenders forgive the remaining amount owing under the First Lien Credit Agreement.

108. Under the Transaction, the Purchaser will not assume certain of the Company’s obligations, including (i) any of the Company’s obligations to the Second Lien Agent or the Second Lien Lenders under the Second Lien Credit Agreement, (ii) any liabilities relating to excluded assets, including excluded contracts (if any), (iii) any pre-closing environmental liabilities of the Company, except as required under applicable law, (iv) any liabilities of the Company with respect to any pre-closing infringement, misappropriation, misuse or passing off of intellectual property (if any), and (v) any other liability of the Company not expressly assumed under the Purchase Agreement, including the Nelson Education Promissory Note.

109. As noted above, I am not aware of any trade payables, contractual obligations or employment obligations, other than certain obligations in respect of former employees, obligations relating to matters in respect of the Second Lien Credit Agreement and the Nelson

Education Promissory Note, that are not being assumed by the Purchaser pursuant to the Transaction. I am also not aware of any valid pre-closing infringement, misappropriation, misuse or passing off of intellectual property claim.

110. As also noted above, pursuant to the Transaction, the Purchaser may, in its sole and absolute discretion, at any time up to three business days prior to the closing of the Transaction, elect to not acquire any of the assets, properties, and rights of the Company, including contracts of the Company specified as excluded contracts by the Purchaser.

111. After due consideration of the results of the SISP, the circumstances of the Applicants, the status of the Nelson Business and the benefits to the Applicants' stakeholders, the Applicants determined that proceeding with the Transaction under the terms and conditions of the Purchase Agreement is in the best interests of the Applicants and their stakeholders.

112. The Purchase Agreement represents an enterprise value for the Purchased Assets that is significantly higher than any transaction that could have been achieved under the SISP.

113. The Applicants believe that the Purchase Agreement provides a fair and reasonable price for the Purchased Assets in the circumstances. The Transaction is designed to ensure the ongoing operation of the Nelson Business going forward and to preserve:

- a) the employment of all of the Company's 335 full-time, permanent, non-unionized employees and approximately 38 part-time non-unionized employees;

- b) substantially all of the Company's contractual obligations (other than as set out in paragraphs 11, 12 and 13 above) incurred in the ordinary course and as reflected in the Company's balance sheet; and
- c) all of the Company's trade obligations incurred in the ordinary course and as reflected in the Company's balance sheet.

114. The Transaction is also intended to preserve the Company's ongoing relationship with Cengage, its preferred and key business partner, and the arrangements between the parties are to remain unaffected under the Transaction.

115. The Company maintains the ability under the Transaction to complete a sale transaction that would result in proceeds sufficient to repay the obligations under the First Lien Credit Agreement in full prior to the closing of the Transaction.

116. The Transaction represents a transaction that will eliminate uncertainty, significantly reduce the Company's debt levels and improve its balance sheet, and provide stability to the Nelson Business in a process that is fair and reasonable to all stakeholders. Nelson Education believes that the implementation of the Transaction, which will result in a stronger financial foundation, will enable Nelson Education to solidify its position as Canada's leading education publisher and take advantage of improved market and industry conditions.

117. The Transaction is subject to customary conditions and receipt of requisite approvals. The Company's advisors have had numerous exchanges and discussions with Canadian Heritage in connection with the Transaction. The Company does not believe that there are any further consents required from Canadian Heritage prior to the completion of the

Transaction. The parties are seeking to complete the Transaction prior to the outside date of June 2, 2015 under the Purchase Agreement.

118. As noted above, under the First Lien Support Agreement, the parties agreed they would determine the appropriate process to implement the Transaction by the applicable milestone date under the First Lien Support Agreement. As discussed above, having regard to the current circumstances of the Applicants and the importance of continuing the Nelson Business without disruption, the Applicants and the Consenting First Lien Lenders determined that a Court-supervised CCAA process is the most appropriate manner for implementing the Transaction.

119. As also noted above, the Applicants intend to seek approval of the Transaction at the Sale Approval Motion. Additional details with respect to the Sale Process and the Transaction will be set out in the affidavit filed in support of the Sale Approval Motion.

120. The Applicants also intend to seek at the Sale Approval Motion a mutual release of claims among the Applicants, the Purchaser, their respective affiliates, the First Lien Lenders, the First Lien Agent, the Supplemental Agent and their respective directors, officers, employees, advisors and other representatives in connection the Nelson Business, the SISP, the Transaction, the First Lien Credit Agreement, these proceedings, and other related matters. The Applicants may seek a further release of claims at a later date in respect of such and/or similar matters.

#### **(viii) Stockholders and Registration Rights Agreement**

121. The First Lien Term Sheet provides that corporate governance and shareholder agreements acceptable to the Purchaser and the First Lien Steering Committee are to be entered

into in connection with the Transaction as a condition to the Transaction. I understand from our counsel, Robert Chadwick, that a Stockholders and Registration Rights Agreement (the “**Stockholders and Registration Rights Agreement**”), which is to apply in respect of the First Lien Lenders who are to become holders of the common shares of Purchaser Holdco as of the implementation of the Transaction, has been negotiated and agreed to by Purchaser Holdco and the First Lien Steering Committee.

122. A copy of the form of Stockholders and Registration Rights Agreement (attached hereto as Exhibit “H”) will be provided to the Court under seal and a sealing order will be sought with respect to such agreement. I understand based on discussions with Mr. Chadwick that the First Lien Lenders believe that the Stockholders and Registration Rights Agreement is commercially sensitive and has already been made available to all First Lien Lenders. I believe sealing the Stockholders and Registration Rights Agreement is appropriate in the circumstances.

123. I further understand based on discussions with Mr. Chadwick that the First Lien Steering Committee requires that all of the First Lien Lenders be bound to the terms of the Stockholders and Registration Rights Agreement.

124. Accordingly, the Applicants intend to seek at the Sale Approval Motion that the Stockholders and Registration Rights Agreement be declared binding on all persons entitled to receive common shares of Purchaser Holdco in connection with the Transaction with the same force and effect as if such persons were signatories to the Stockholders and Registration Rights Agreement.

### **III. CCAA PROCEEDINGS**

125. Nelson Education and Holdings are Applicants within these CCAA proceedings. For reasons discussed in this Affidavit, it is appropriate for this Court to exercise its jurisdiction to grant the Initial Order in respect of the Applicants.

#### **(A) The Applicants are Insolvent for the Purposes of the CCAA**

126. Despite its comprehensive efforts to address its financial difficulties, Nelson Education has been unable to find an out-of-court solution that would enable it to repay or refinance the amounts owing under the Credit Agreements.

127. Although the Nelson Business is generating positive EBITDA, Nelson Education does not currently have sufficient funds to repay its obligations under the First Lien Credit Agreement, which matured on July 3, 2014, and is in default under its Second Lien Credit Agreement. Holdings is likewise unable to satisfy its guarantee obligations under the Credit Agreements. In light of the financial circumstances of the Applicants, it is not possible to obtain additional financing that could be utilized to repay the amounts owing under the Credit Agreements and there is no reasonable expectation that the Applicants' financial condition will improve absent these restructuring proceedings.

128. In addition, the value of the Applicants' assets, property and undertaking, taken at fair value, is not sufficient to enable the Applicants to pay all of their obligations under the Credit Agreements, as evidenced by the results of the SISP.

129. The Applicants are therefore insolvent.

130. The Applicants and their respective boards of directors have thoroughly considered the circumstances and the alternatives available to the Applicants in the present circumstances. In exercise of their business judgment and with the assistance of their legal and financial advisors, they have determined that it is in the best interest of the Applicants and their stakeholders for the Applicants to file for protection under the CCAA. By pursuing the implementation of the Transaction under the CCAA at this time, the Nelson Business can continue as a going concern while substantially all of the Company's assets, trade payables and employment obligations are transferred to and assumed by the Purchaser.

**(B) Stay of Proceedings under the CCAA**

131. The Applicants are concerned that in light of the Applicants' financial circumstances, there could be an erosion of value to the detriment of all stakeholders. In particular, the Applicants are concerned about the following risks:

- a) the First Lien Lenders enforcing on their security in respect of the obligations under the First Lien Credit Agreement;
- b) potential termination of contracts by key suppliers and content providers; and
- c) potential termination of contracts by customers.

132. Having regard to the circumstances, and in an effort to preserve the value of the Nelson Business, the commencement of the within CCAA proceedings and the granting of a stay of proceedings in order to permit the Applicants to restructure their affairs and implement the Transaction are in the best interests of the Applicants and their stakeholders.



133. Subject to the Court's approval of the Transaction at the Sale Approval Motion, the Company is seeking to complete the Transaction as efficiently as reasonably possible in order to minimize the impact of these CCAA proceedings on the Nelson Business. Pursuant to the Purchase Agreement, the Transaction must be completed by June 2, 2015, or such later date as may be agreed to by the Majority Initial Consenting First Lien Lenders and the Company.

(C) **The Monitor**

134. Alvarez & Marsal Canada Inc., an affiliate of A&M, has been retained to act as Monitor in potential CCAA proceedings. A&M has been engaged as Nelson Education's financial advisor since March 2013, to, among other things, assist the Company in improving its financial and operational performance and developing a five-year business plan, and to assist the Company with the SISP since September 2014. The professionals of Alvarez & Marsal Canada Inc. who have carriage of this matter, and who will have carriage of this matter for Alvarez & Marsal Canada Inc. as the Monitor, have acquired considerable knowledge of the Applicants, the Nelson Business and the Transaction. Alvarez & Marsal Canada Inc. is in a position to immediately assist the Applicants with its restructuring process.

135. Alvarez & Marsal Canada Inc. has consented to act as the Monitor of the Applicants in the within proceedings (the "**Monitor**"), subject to Court approval. A copy of Alvarez & Marsal Canada Inc.'s consent is attached as Tab "3" to the Application Record.

136. In connection with Alvarez & Marsal Canada Inc.'s appointment as the Monitor, it is contemplated that a Court-ordered charge over the assets and property of the Applicants would be granted in favour of the Monitor, its legal counsel, the Applicants' Canadian and U.S. counsel, the First Lien Agent, the Supplemental Agent, and Canadian and U.S. counsel to the

First Lien Steering Committee, the First Lien Agent and the Supplemental Agent in respect of their fees and disbursements incurred at their standard rates and charges, and in favour of the financial advisor to the First Lien Steering Committee pursuant to the engagement letter dated June 24, 2014 (the “**Administration Charge**”), which Administration Charge is to be in an aggregate amount of \$1 million. All of the beneficiaries of the Administration Charge have contributed, and continue to contribute, to the restructuring efforts of the Company, including the Transaction.

137. In connection with the Sale Approval Motion, the Applicants expect to seek to amend the Administration Charge to reduce it to an aggregate amount of \$400,000 for the benefit of the Monitor and the Monitor’s counsel only, effective upon the completion of the Transaction.

**(D) Funding of the Applicants**

**(i) Cash Flow Forecast**

138. As at May 6, 2015, the Company had a cash balance of approximately \$22.5 million. A copy of cash-flow forecast prepared by the Applicants with the assistance of the proposed Monitor is attached hereto as Exhibit “T” (the “**Cash Flow Forecast**”).

139. As set out in the Cash Flow Forecast, the Applicants have sufficient funding through the period of the Cash Flow Forecast. The principal uses of cash during the next five-week period will consist of the costs associated with ongoing payments made in the ordinary course in respect of employee compensation, utility services, suppliers, content providers and other ordinary course of business obligations, and professional fees and disbursements in connection with these CCAA proceedings.

140. As noted above, upon completion of the Transaction, which remains subject to, among other things, approval by this Court, substantially all of the assets of the Company, including the Company's cash, will be transferred to the Purchaser. Under the Purchase Agreement, the parties have agreed to a cash reserve of \$1,150,000 to remain with the Company, with any remaining funds to be provided to the Purchaser on the earlier of 18 months or the wind-down of the Company. The amount of the cash reserve was determined with the assistance of the Company's financial advisor and based on estimated professional fees and other post-closing expenses of the Applicants.

**(ii) Cash Management System**

141. Nelson Education has a banking relationship with the Royal Bank of Canada ("RBC") and the Company's cash management system (the "**Cash Management System**") is operated through its accounts held at RBC in Toronto, namely: (i) a Canadian dollar operating account (the "**CAD Operating Account**"); (ii) a U.S. dollar operating account (the "**USD Operating Account**"), together with the CAD Operating Account, the "**Operating Accounts**"; (iii) a Canadian dollar positive pay account (the "**CAD Positive Pay Account**"); (iv) a U.S. dollar positive pay account ("**USD Positive Pay Account**"), together with the CAD Positive Pay Account, the "**Positive Pay Accounts**"; and (v) one Canadian dollar payroll account, which is only used for infrequent emergency payroll payments. Nelson Education also has one restricted cash account held with Valiant Trust in respect of certain payments payable under the KERP (as defined below), as further discussed below.

142. The Applicants seek the authority to continue to use the existing Cash Management System and to maintain the banking arrangements already in place.

143. Cash receipts on credit sales received by Nelson Education are generally deposited into the CAD Operating Account at RBC, which serves as the Company's primary bank account. Approximately 60% of receipts are paid via customer cheque sent to either a Nelson P.O. Box or its head office, 37% of receipts are paid via direct deposit, and 3% are paid by credit card. Nelson accepts Visa and MasterCard and uses Moneris Solutions to process credit card receipts. The majority of receipts are deposited into the CAD Operating Account, but to the extent that funds are received in U.S. denominated currency, such receipts are deposited into the USD Operating Account.

144. The USD Operating Account is also used to deposit any cash receipts received from Cengage. Cash receipts from Cengage are related to certain back office functions that Nelson Education provides to Cengage, as well as any revenue attribution that arises as per an agreement between the two parties to provide compensation for cross-border online sales. CAD funds are converted to U.S. funds on an as needed basis and vice versa.

145. The Company utilizes the cash in the CAD Operating Account to fund its payroll and make wire transfer or direct deposit payments to various vendors. The USD Operating Account is primarily used to make payments to Cengage; however, non-USD denominated amounts owing to Cengage are paid via the CAD Operating Account. The USD Operating Account is also used to make wire transfers and direct deposit payments to other U.S. based vendors. Additionally, funds from the USD Operating Account are used to make interest and principal repayments under the Company's Credit Agreements. Funds are transferred from the CAD Operating Account to the USD Operating Account through electronic fund transfers on an as needed basis in order to pay for third-party vendors as well as Cengage-related products,

service fees and royalties, and obligations under the Credit Agreements. Nelson is not required to maintain a minimum amount of cash on hand.

146. The Positive Pay accounts are the Company's primary disbursement accounts that process all cheque payments, generally to third party vendors. The CAD Positive Pay Account is used to pay the majority of the Company's vendors related to day-to-day operations. Approximately 75% of the Company's aggregate cash disbursements are paid from the CAD Positive Pay Account. The USD Positive Pay Account is used to process cheques to U.S. based vendors. Funds are transferred from the Operating Accounts to the respective Positive Pay accounts using electronic fund transfers through RBC Express on a weekly basis.

147. Nelson Education's payroll account is used to process cheque payments relating to payroll transactions outside of the typical bi-monthly payroll payments.

148. The current Cash Management System includes the necessary accounting controls to enable the Applicants, as well as its creditors and this Court, to trace funds through the system and ensure that all transactions are adequately ascertainable. As such, it is hereby requested that this Court grant a continuation of the current Cash Management System.

**(E) Payments during the CCAA Proceedings**

149. During the course of these CCAA proceedings, subject to the terms of the Supplemental Support Agreement, the Applicants intend to make payments for goods, content and services supplied pre-filing and post-filing in the ordinary course as set out in the Cash Flow Forecast described above and as permitted by the Initial Order.

150. It is also contemplated by the Cash Flow Forecast that all employee obligations owing to current employees will be paid in the ordinary course, whether such obligations are incurred pre-filing or post-filing.

**(i) Suppliers and Content Providers**

151. Nelson Education relies on the supply of products and services from its suppliers and service providers and content from its numerous content providers in connection with the ongoing creation, development and/or adaptation of its products and materials as an integral part of the Nelson Business.

152. It is my understanding that, without approval from the Court, amounts owing to suppliers in respect of pre-filing debt cannot be paid. For the reasons discussed below, the Applicants are seeking Court approval to allow them to pay ordinary course pre-filing amounts to Nelson Education's suppliers, service providers and content providers.

153. Nelson Education operates in a highly competitive environment where the ongoing creation of products and materials and the timely provision of its products and materials is essential in order for Nelson Education to remain a successful player in the industry and to ensure the continuance of the Nelson Business.

154. Nelson Education intends to continue to rely on those suppliers, service providers and content providers with which it has contracts or arrangements that were entered into prior to the date of the filing. The Applicants must ensure continued good relations with suppliers, service providers and content providers for the benefit of the ongoing Nelson Business.

155. As will be set out in further detail in the Proposed Monitor's Pre-Filing Report, the Cash Flow Forecast currently contemplates the ability to make ordinary course pre-filing payments to suppliers, service providers and content providers.

**(ii) Customer Programs**

156. The Applicants have several customer programs in place pursuant to existing contracts or arrangements with certain of their customers, including refunds, returns, rebates, warranties and similar programs.

157. In order to maintain customer relationships as part of the Company's going concern business, the Applicants are seeking approval of the Court to continue providing certain existing customer programs in compliance with the contracts and arrangements in place with customers and to pay certain ordinary course amounts owing or allow the customer application of credits in accordance with certain customer programs.

158. As will be set out in further detail in the Proposed Monitor's Pre-Filing Report, the Cash Flow Forecast currently contemplates customer application of pre-filing credits and the ability to make pre-filing payments relating to customer programs in the ordinary course.

**(F) Key Employee Retention Program**

**(i) KERP**

159. The retention of key employees and officers has been and continues to be of vital importance to Nelson Education during its restructuring efforts, including preserving the value of the Nelson Business in the context of a going concern sale.

160. In January 2014, Nelson Education developed a key employee retention program (the “**KERP**”) with the principal purpose of providing an incentive for certain key existing employees critical to the preservation of the Company’s enterprise value to remain with the Company despite the financial difficulties that the Company is currently facing. The Company consulted with the First Lien Steering Committee in connection with the KERP. The KERP was reviewed and approved by the Company’s Board of Directors.

161. Under the KERP, the eligible employees will become eligible to receive a retention payment if such employees remain with the Company until their applicable retention date (collectively, the “**Retention Payments**”). Remaining Retention Payments under the KERP become payable to certain eligible employees on June 30, 2015 and are to be paid by no later than July 15, 2015. Funds in respect of the Retention Payments have been set aside by the Company in an escrow account.

162. If an eligible employee resigns or is terminated for just cause prior to the applicable retention date for such employee, such employee will not be eligible for its Retention Payment under the KERP. If an eligible employee is terminated without cause prior to the applicable retention date for such employee, such employee will remain eligible for its Retention Payment under the KERP as though such employee had remained until the applicable retention date. In the case of death or disability prior to the applicable retention date, an eligible employee will receive its pro rata portion of its Retention Payment under the KERP for the number of completed months following the date of the KERP agreement with such employee and prior to the applicable retention date that such employee was actively employed by the Company.



163. Eligible employees have to this point relied on the KERP and are focussed on working to complete a transaction to maximize the value of the Nelson Business.

164. The eligible employees are essential for a successful restructuring of the Company and the preservation of the Company's value during the restructuring process and are likely to seek alternative employment absent the KERP. It would be detrimental to the restructuring process if the Company were required to find replacements for eligible employees during this critical period. It is the Company's belief that the KERP, including the payments payable thereunder, not only provides appropriate incentives for the eligible employees to remain in their current positions, but also ensures that they are properly compensated for their assistance in the Company's restructuring process.

**(ii) KERP Charge**

165. The maximum aggregate amount of Retention Payments is approximately \$340,000. The Applicants request a Court-ordered charge in the amount of \$340,000 over the assets and property of the Applicants as security for the Retention Payments (the "**KERP Charge**").

166. In connection with the Sale Approval Motion, the Applicants expect to seek a release and discharge of the KERP Charge upon the completion of the Transaction and the assumption by the Purchaser of all of the obligations under the KERP.

167. A detailed summary of the individual Retention Payments (attached hereto as Exhibit "J") will be provided to the Court under seal and a sealing order will be sought with respect to such information. Nelson Education does not wish to make the salaries of its

employees publically known. I believe sealing this information is appropriate in the circumstances.

(G) **Director and Officer Protections**

168. The directors of the Applicants have been actively involved in the attempts to address the Applicants' current financial circumstances and difficulties, including through the exploration of alternatives, communicating with the principal secured lenders, implementation of the SISP, and the commencement of the within CCAA proceedings. The directors have been mindful of their duties with respect to the supervision and guidance of the Applicants in advance of these CCAA proceedings.

169. It is my understanding that in certain circumstances directors and officers can be held personally liable for certain of a company's obligations to the federal and provincial governments, including in connection with payroll remittances, harmonized sales taxes, goods and services taxes, workers compensation remittances, etc. Furthermore, I understand it may be possible for directors and officers of a corporation to be held personally liable for certain wage-related obligations to employees.

170. Nelson Education maintains a Director and Officer Insurance Policy (the "**D&O Policy**") with AIG Insurance Company of Canada ("**AIG**") for the directors and officers of the Applicants which expires on June 30, 2015. The current Primary D&O Policy provides \$15 million in coverage. The D&O Policy also includes certain additional coverage for the directors and officers of the Applicants in certain circumstances where indemnification is unavailable of up to \$1 million in excess of coverage otherwise provided by the D&O Policy.

171. The D&O Policy contains several exclusions and limitations to the coverage provided by such policy, and there is a potential for there to be insufficient coverage in respect of the potential directors' liabilities for which the directors and/or officers may be found to be responsible.

172. The directors and officers of the Applicants have expressed their desire for certainty with respect to potential personal liability if they continue in their current capacities. In order to complete a successful restructuring, including the Transaction, the Applicants require the active and committed involvement of their directors and officers.

173. The Applicants request a Court-ordered charge in the amount of \$2.2 million over the assets and property of the Applicants to indemnify the directors and officers of the Applicants in respect of liabilities they may incur in such capacities from and after the commencement of these proceedings (the "**Directors' Charge**").

(H) **Priorities of Charges**

174. It is contemplated that the priorities of the various charges set out herein will be as follows:

- a) First – the Administration Charge (to a maximum of \$1 million);
- b) Second – the Directors' Charge (to a maximum of \$2.2 million); and
- c) Third – the KERP Charge (to a maximum of \$340,000).

175. The Initial Order sought by the Applicants provides for the Administration Charge, the Directors' Charge and the KERP Charge (collectively, the "**Charges**") on the assets

and property of the Applicants, ranking in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any person, notwithstanding the order of perfection or attachment, except for any validly perfected security interest in favour of a “secured creditor” as defined in the CCAA other than any validly perfected security interest in favour of the First Lien Agent, the First Lien Lenders, the Second Lien Agent and the Second Lien Lenders under the Credit Agreements. Counsel to the First Lien Agent, the First Lien Lenders, the Second Lien Agent and the Second Lien Lenders that are affected by the Charges have been given notice of these CCAA proceedings.

176. The Applicants believe the amounts of the Charges are fair and reasonable in the circumstances.

#### **IV. CONCLUSION**

177. The Applicants currently have unsustainable debt levels when compared to their annual revenue and EBITDA. The Applicants’ First Lien Credit Agreement matured in July 2014 and remains unpaid, and the Applicants are also in default under their Second Lien Credit Agreement which matures on July 3, 2015.

178. The Company, with the assistance of its advisors, conducted a comprehensive sales and investment solicitation process that did not result in an executable transaction that would result in proceeds to repay the obligations under the First Lien Credit Agreement in full or would otherwise be supported by the First Lien Lenders.

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179. There is no value available to the Second Lien Lenders and the within CCAA proceedings are necessary to preserve the value of the Nelson Business with minimal disruption while the Applicants pursue the completion of the Transaction and the transfer of the assets and property of the Company in satisfaction of the indebtedness owing to the First Lien Lenders free and clear of the obligations under the Second Lien Credit Agreement.

180. The Transaction is the only executable transaction in the circumstances and will significantly reduce the debt levels of the Company, establish a stronger financial foundation for Nelson Education, create stability for the business, and strengthen the Company's position as Canada's leading educational publisher for the benefit of the Company's many stakeholders.

SWORN before me at the City of  
Vancouver, on May 11, 2015.



A Commissioner for taking affidavits



Greg Nordal

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

Court File No: CV15-10961-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NELSON EDUCATION LTD. AND NELSON EDUCATION HOLDINGS LTD.**

Applicants

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**ONTARIO  
SUPERIOR COURT OF JUSTICE-  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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**AFFIDAVIT OF GREG NORDAL  
(sworn May 11, 2015)**

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Lawyers for the Applicants

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT* ACT,  
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**SUPERIOR COURT OF JUSTICE-**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD**  
**(Returnable June 8, 2015)**

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