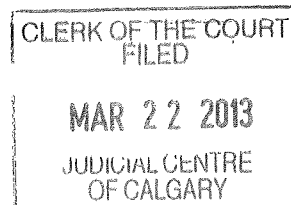


**FIAT:** Let the Clerk of the Court of Queen's Bench of Alberta file this Affidavit of Howard Elliott notwithstanding it is not the original.

Dated this 22<sup>nd</sup> day of March, 2013



  
Master

Clerk's stamp:

COURT FILE NUMBER	1301-02432
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE <i>COMPANIES' CREDITORS ARRANGEMENT ACT</i> , R.S.C. 1985, c. C-36, AS AMENDED
	AND IN THE MATTER OF THE ALBERTA <i>BUSINESS CORPORATIONS ACT</i> , R.S.A. 2000, c. B-9, AS AMENDED
APPLICANT	RS TECHNOLOGIES INC.
DOCUMENT	<b>AFFIDAVIT</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BLAKE, CASSELS & GRAYDON LLP 3500, 855 – 2 <sup>nd</sup> Street S.W. Calgary, AB T2P 4J8 Attn: Kelly J. Bourassa/Ryan Zahara Telephone/Facsimile: 403-260-9697/403-260-9700 Email: <a href="mailto:kelly.bourassa@blakes.com">kelly.bourassa@blakes.com</a> <a href="mailto:ryan.zahara@blakes.com">ryan.zahara@blakes.com</a> File Ref.: 89300/1

**AFFIDAVIT OF HOWARD R. ELLIOTT  
(Re: Pre-Filing Obligations and KERP)**

I, Howard R. Elliott, of the City of Milan, in the State of Michigan, United States of America, **MAKE OATH AND SAY THAT:**

1. I am the President and Chief Executive Officer of RS Technologies Inc. ("RS" or the "**Company**") and swear this Affidavit on behalf of RS. I have personal knowledge of the facts deposed to herein or, where indicated, I have been advised and believe the facts to be true to the best of my knowledge. In preparing this Affidavit, I have also consulted with other members of the senior management team at RS.

2. I am authorized to make this Affidavit on behalf of RS.
3. All capitalized terms used but not defined herein have the meaning ascribed to them in my Affidavit sworn on March 13, 2013 (the "**First Affidavit**").

#### **RELIEF REQUESTED**

4. This Affidavit is made in support of an application by the Company pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order (the "**Order**"):
  - (a) authorizing the Company, with the consent of the Monitor and the Interim Lenders, to pay certain pre-filing obligations to suppliers it determines are critical to its ongoing operations; and
  - (b) approving the key employee retention plan (the "**KERP**") and authorizing the Company and the Monitor to do all such things as are reasonably necessary to implement the KERP including, without limitation, making payments to any persons identified as being key employees (the "**Key Employees**") who are entitled to receive payments pursuant to the KERP.

#### **BACKGROUND**

5. The Company's present financial circumstances are the result of a variety of factors that are more specifically described in the First Affidavit.
6. As a result of such financial difficulties the Company sought and obtained protection from its creditors under the CCAA pursuant to the Initial Order (the "**Initial Order**") granted by this Honourable Court on March 14, 2013.
7. The Company sought relief under the CCAA to reorganize its financial affairs while maintaining its business operations in order to allow the Company to continue to grow itself as a strong and competitive industry participant.

## PRE-FILING OBLIGATIONS

8. The Company has certain suppliers of goods and services which are critical to its ongoing operations. Generally, these suppliers do not have formal written contracts that govern the relationship with RS, but rather supply goods on a pre-order basis. This includes the provision of raw materials, services or products which are essential for the Company to continue to manufacture, sell and deliver the RS Poles.
9. The Company is concerned that certain of these critical suppliers will advise that they will no longer supply their products or services to RS if they do not receive payment of outstanding pre-filing obligations. The products or services provided by these suppliers are not readily replaceable by RS and are essential for maintaining uninterrupted the operations of the Company. The failure by RS to receive critical raw materials or deliver its goods in a timely fashion could severely impact the Company's relations with its customers.
10. Further, there is a risk that if the pre-filing obligations owing to certain critical suppliers are not paid then it could result in these suppliers either ceasing operations or being unable to supply RS without interruption. Without the supply of materials and products from such suppliers, RS will not be able to maintain its operations and service its customers in a timely fashion.
11. The outstanding pre-filing obligations for the categories of critical suppliers described above which RS may have to pay is up to the approximate amount of \$150,000.
12. If the pre-filing obligations of these critical suppliers are not paid then the ongoing operations of RS may be dramatically impacted. Any effect on the ongoing operations of RS could negatively affect the offers received pursuant to any sale and investor solicitation procedure, the restructuring of RS under the CCAA and ultimately the amounts received by all of RS's stakeholders in such restructuring.
13. Given the foregoing, and notwithstanding the limitations provided by sections 6 and 9 of the Initial Order, the Company is seeking the Court's authorization to pay certain pre-

filing amounts to suppliers of the types described above, with the consent of the Monitor and the Interim Lender, whose services or supplies are deemed to be critical to the Company's continued operations.

## **THE KERP**

14. As described in the First Affidavit, the Company's employees and consultants are critical to the operations and success of the Company. Without these individuals, the continued operation of the Company on a going concern basis would be impossible.
15. During the past 16 months, the Company has actively attempted to reduce its operating expenses by, among other things, streamlining its management and employees. The Company is currently operating with essentially the minimum number of employees necessary to efficiently and effectively maintain its operations and to meet its obligations to customers.
16. Further, the production, installation and utilization of RS Poles is highly technical. Accordingly, the training of employees requires a significant period of time due to the unique characteristics and extensive knowledge of the product and manufacturing process required by each employee. The Company's existing employees have already received such training and are intimately familiar with the Company's products and manufacturing process.
17. The Company cannot afford to lose a single employee as it has found that since streamlining its operations it has taken on average a period of approximately 120 days to effectively replace any employee who may choose to leave his or her employment with the Company.
18. Given the foregoing, the management of the Company has worked with the Interim Lender and the Monitor to develop a KERP which would result in the payment of certain pre-determined amounts to each Key Employee. The proposed KERP considers every direct employee of the Company to be a Key Employee for the reasons set out above.

- 19. The amounts payable under the KERP represent either a pre-determined percentage of an employee's salary or wages, or the value of an accrued but not yet paid bonus, due to the employee under the terms of his or her current employment agreement. In addition, Management Employees (as defined in the KERP) have been provided with a Contingent Bonus (as defined in the KERP) which is only payable if a Management Employee is not retained by the Company, or the successful purchaser of the Company's assets or shares, upon the completion of the within CCAA proceedings.
- 20. The total maximum amount payable under the KERP is approximately \$495,775, including any contingent amounts that may become payable.
- 21. When compared to the estimated damage to the on-going operations, value and costs to replace the loss of any Key Employees, I believe the KERP and the payments contemplated thereunder are reasonable in the circumstances.
- 22. Now shown to me and marked as Exhibit "A", but not attached hereto due to its confidential nature, is a copy of the KERP. As a result of the confidential information contained in the calculation and resulting allocation under the KERP, the Company is seeking a sealing Order with respect to the KERP and the commercially sensitive and confidential information contained therein.
- 23. I swear this Affidavit in support of an Application filed by the Company for an Order authorizing payment of certain pre-filing obligations to suppliers who are critical to the operations of the Company, with the consent of the Monitor and the Interim Lender, and approving the KERP.

SWORN BEFORE ME, at the City of )  
 Ann Arbor, Michigan this 21<sup>st</sup> day of )  
 March, 2013 )

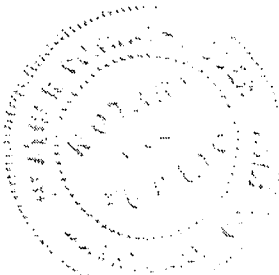
Heather Conway-Visser )

Howard Elliott

A Notary Public in and for the State of )  
 Michigan, United States of America )

**HOWARD R. ELLIOTT**

HEATHER CONWAY-VISSER  
 NOTARY PUBLIC, STATE OF MI  
 COUNTY OF WASHTENAW  
 MY COMMISSION EXPIRES Aug 12, 2017  
 ACTING IN COUNTY OF Washtenaw



This is exhibit "A" referred to in the Affidavit of Howard Elliott sworn before me on March 21<sup>st</sup>, 2013 at the City of Ann Arbor, Michigan.



A Notary Public in and for the State of  
Michigan, United States of America

HEATHER CONWAY-WISSER  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WASHTENAW  
MY COMMISSION EXPIRES Aug 12, 2017  
ACTING IN COUNTY OF *Washtenaw*